

COVID-19: PEOPLE: LATEST DEVELOPMENTS IN EMPLOYMENT LAW (SPAIN)

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Legal Briefings

On 28 March, Spain's Official State Journal (*Boletín Oficial del Estado*) published Royal Decree-law 9/2020, of 27 March, which adopts a series of supplementary measures in employment matters to mitigate the impact of COVID-19 ("**RDL 9/2020**"). Royal Decree-law 10/2020, which regulates recoverable paid leave for workers in non-essential services, was then published on 29 March 2020 ("**RDL 10/2020**").

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RDL 9/2020 establishes the following measures:

- Force majeure and the economic, technical, organisational and productive grounds related to COVID-19 **do not justify termination of an employment contract or dismissal**.
- The process for recognising unemployment benefit in the case of anyone affected by temporary layoffs or reduction of working hours based on COVID-19 has been made quicker; companies must now file a **collective application** to the benefit entity, which now acts as the employees' representative.

The application will be completed on the **template provided by the unemployment benefit entity**, including the following information:

- Name or trade name of the company, address, tax code and Social Security code applicable to the workers for which the temporary layoff or reduced working hours is being applied for.
- Name and surname, tax identification number, telephone and email address of the company's legal representative.
- Case file number allocated by the labour authority.
- Identification of the specific measures adopted, as well as the date on which each of the affected workers started providing their services.
- If workers' working hours are to be reduced, indication of the percentage by which their working hours will be reduced, calculated on the basis of the normal working day, week, month or year.
- In order to provide evidence of the representatives of the affected workers, a statement of compliance must be issued indicating that authorisation has been obtained from the workers' representatives to file the application.
- Any additional information, if any, that should be required by the Directorate General of State Public Employment Service (Dirección General del Servicio Público de Empleo Estatal, or "SEPE").

The **notification** must be made within five days from the date on which an application has been made for a temporary layoff (expediente de regulación temporal de empleo, or "**ERTE**") in the event of force majeure, or from the date on which the company notifies the competent labour authority of its decision to adopt the measure on economic, technical, organisational and productive grounds related to COVID-19.

The notification shall be sent electronically and in the form established by the SEPE.

If the ERTE application is made before RDL 9/2020 entered into force, the term of five days will begin to run on the date it entered into force.

Companies must report any changes to the information initially included in the notification, and in any event whenever referring to the end of the measure.

- The **suspension of fixed-term contracts**, including trainee, relief and seasonal contracts, due to ERTE on force majeure or economic, technical, organisational and

productive grounds will interrupt the duration of the contracts and any periods of reference in them equivalent to the period of suspension.

- The **maximum duration of the ERTE on grounds of force majeure** shall be the term of the state of emergency established by Royal Decree 463/2020, of 14 March, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19 (“RD 463/2020”), irrespective of the ERTE having been authorised expressly, or tacitly as a result of the respective authority not having issued an answer.
- Companies that file ERTE applications containing **untruths or inaccurate information face penalties**. Equally, companies that request **measures affecting employment that are unnecessary or that are not sufficiently related** to the claimed cause will also face penalties provided that they lead to undue benefits being generated or received.

If benefits are awarded unduly to workers as a result of any of the breaches indicated above, the process that led to those benefits being granted will be reviewed automatically. If so, without prejudice to the administrative or criminal liability involved, the company will have to pay the benefit entity any amounts that the worker has unduly received, which it will deduct from the applicable unpaid salary, up to the limit of those salaries.

The **obligation to reimburse any benefits received** as per the above paragraph shall apply until the statutory limitation period on those offences expires under the Recast Law of Labour Offences and Sanctions (*Texto Refundido de la Ley de Infracciones y Sanciones en el Orden Social*).

- The unemployment benefit will **apply** to the affected workers on the **following dates**: i) when the ERTE is made on grounds of force majeure, it will apply from the date on which the event triggering the force majeure took place; ii) when the ERTE is on economic, technical, organisational or productive grounds, it will apply on or after the date on which the company notifies the labour authorities of the decision made.

The grounds for the ERTE and the date on which the measure takes effect must be included in the company certificate (certificado de empresa). This document is valid for providing evidence of the measure.

- RDL 9/2020 lifts - in the case of ERTEs based on COVID-19 (whether due to force

majeure or on objective grounds) filed before 18 March 2020 – the suspension on unemployment applications, benefit extension applications and annual income statements that have been made out of time.

RDL 10/2020 establishes a so-called “**recoverable paid leave**” (*permiso retribuido recuperable*) for people who work in **non-essential services**. The main features of this new concept are:

- All workers who render services in public or private companies whose business activities have not been frozen by the state or emergency established in RD 463/2020¹ must take recoverable paid leave between 30 March and 9 April 2020, both included.
- The above obligation **does not apply** to:
 - Workers who render services in sectors defined as essential in the annex to RDL 10/2020.
 - Workers who render services in divisions or productions lines in sectors defined as essential in the annex to RDL 10/2020.
 - Workers hired by (i) companies that have applied for or that have adopted an ERTE and (ii) those companies authorised to implement an ERTE during the period of the leave.
 - Workers on leave due to temporary incapacity or whose contracts have been suspended on other grounds provided by law.
 - Workers who are able to perform their normal work from home or using any other form of remote working.
- During the term of the leave, workers will continue to be paid as if they were working normally, including their base wage and any additional salary items.
- Workers can be required to recover the hours lost from the day following the end of the state of emergency until 31 December 2020.

- Exactly how those lost hours will be recovered must be negotiated during the consultation period opened for that purpose between the company and the workers' legal representatives. That consultation period will last for a maximum of seven days.
- Companies that have an obligation to apply the recoverable paid leave may, if necessary, establish a minimum staffing level or shifts that are strictly vital to continue essential work.
- When it is impossible to stop work immediately, workers falling within the scope of RD 10/2020 may continue to render their services on 30 March 2020 for the sole purpose of performing the essential tasks necessary for them to take the recoverable paid leave in a manner that will not be irreparably and disproportionately detrimental to the subsequent resumption of business.

¹ RDL 10/2020 includes an annex of the activities to which the recoverable paid leave applies.

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