

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

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Legal Briefings - By **Gustavo Arroyo**

On 13 May, Spain's Official State Journal, the Boletín Oficial del Estado, published Royal Decree-law 18/2020, of 12 May, on social measures to protect employment ("RDL 18/2020"), which entered into force on that same day.

The main employment-related measures brought in by RDL 18/2020 are:

- Force majeure-based temporary lay-offs (*expedientes de regulación temporal de empleo*, or "**ERTE**") based on article 22 of Royal Decree-law 8/2020, of 17 March, on extraordinary measures to tackle the economic and social impact of COVID-19 ("**RDL 8/2020**"), which were in force when RDL 18/2020 entered into effect **can continue provided** that the causes that prevent the resumption of the business activity remain, and can continue while those causes are present, and in any event until 30 June 2020.
- Companies that have implemented **force majeure-based ERTEs** authorised pursuant to article 22 RDL 8/2020 will be in a position of partial force majeure triggered by COVID-19 as soon as the causes established in that article allow the partial resumption of their business.
When this occurs, companies will have **15 days** within which to notify the labour authorities of the complete lifting of the ERTE and must bring back the affected workers insofar as this is necessary to perform their business; measures involving reduced working hours will have preference over other measures.
Companies must **previously notify** the State Public Employment Service (*Servicio Público Estatal de Empleo*) of **any changes to the data contained in the initial collective application** for unemployment benefit as a result of lifting the ERTE.

- Article 23 RDL 8/2020 will continue to apply to **ERTEs on economic, technical, organisational and productive grounds** that are implemented after the entry into force of RDL 18/2020, subject to the following particularities:
 - They may be applied while a force-majeure-based ERTE is in place as a result of COVID-19 and has been extended pursuant to RDL 18/2020.
 - When it is applied after the end of an ERTE based on the grounds established by article 22 RDL 8/2020, its effective date will be brought back to the date on which the latter ERTE ended.
 - ERTes that are ongoing when RDL 18/2020 enters into effect shall continue to apply on the terms established in the company's final notice, up to the end of the term referred to in that notice.
- The **unemployment measures** established in paragraphs 1 to 5 of article 25 RDL 8/2020 in respect of workers affected by an ERTE applied on the grounds of force majeure or on economic, technical, organisational and productive grounds triggered by COVID-19 **will be extended until 30 June 2020**. Those measures primarily entail an entitlement to unemployment benefit even if the workers have not paid contributions for the minimum required period and the time during which the workers receive the unemployment benefit not counting towards the future benefit they will be entitled to receive in the event of unemployment.
- The **special unemployment benefit** established in article 25.6 RDL 8/2020 in the case of workers under seasonal contracts or those who perform set, periodic tasks on certain fixed dates is extended until 31 December 2020.
- **Companies in a position of total force majeure triggered by COVID-19** will be entitled to relief from paying Social Security contributions for the month of May and June 2020, provided that on 29 February 2020 they had less than 50 workers registered with the Social Security. If those companies had 50 or more registered workers on that date, that relief will be 75% of their contributions.
- The following relief will apply to **companies in a position of partial force majeure**:

- In the case of the workers who return to work, companies will enjoy a 85% reduction on their company Social Security contribution for the month of May 2020 and 70% for the month of June 2020, provided that they had less than 50 workers registered with the Social Security on 29 February 2020. If a company has 50 or more workers on that date, it would enjoy a 60% reduction on its contribution payment for May 2020 and 45% for June 2020.
- In the case of the workers who remain temporarily laid-off after the date on which the company lifts the ERTE, and in respect of the periods and percentages of their working hours affected thereby, the relief on contributions will amount to 60% in May and 45% in June 2020, provided that the company had less than 50 workers registered with the Social Security on 29 February 2020. If the company had 50 or more workers on that date, a company would be entitled to a 45% reduction in May 2020 and 30% in June 2020.

The **relief from Social Security contributions** will not apply automatically; **companies must apply for relief** by submitting a statement of compliance electronically to the General Treasury of the Social Security, a notification that they remain affected by the restrictions that prevent them from performing their business or, as applicable, the date on which the ERTE is lifted, identifying the workers affected.

The above relief from Social Security contributions **will not have an impact on workers**. The period of relief will be considered as having been fully contributed for.

- Companies that have their **registered office in tax havens** in accordance with prevailing legislation cannot apply an ERTE pursuant to RDL 18/2020.
- Except for companies that have less than 50 workers at 29 February 2020, companies cannot pay out **dividends** during the tax year in which they have applied an ERTE, unless they pay back the amounts corresponding to the relief on Social Security contribution payments.
- The Council of Ministers is authorised to extend the measures established in RDL 18/2020 if the restrictions on business triggered by the COVID-19 health crisis continue on 30 June.
- A **tripartite employment Monitoring Commission** has been set up, composed of the Ministry of Employment and Social Economy; the Ministry of Inclusion, Social Security and Migrations; the Spanish Confederation of Business Organisations (*Confederación Española de Organizaciones Empresariales*, or CEOE); the Spanish Confederation of SMEs (*Confederación Española de la Pequeña y Mediana Empresa*, or CEPYME); and the largest

trade unions; *Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT). The main aim of the Monitoring Committee will be to monitor the employment measures adopted during the partial relaxation phase, referred to as “*excepcionalidad atenuada*”, the sharing of data and information, and the proposal of other measures for consideration.

- The following qualifications are also made to the **commitment to protect employment** made in the Sixth Additional Provision of RDL 8/2020:
 - The term of six months will start to run from the moment business resumes with workers returning to work, even if partially.
 - It will be understood that the obligation has not been fulfilled if any of the persons affected by the ERTE is dismissed or has their contract terminated, but not if the worker in question is not affected by the ERTE.
On the other hand, the obligation will not be considered to have been breached in the event of disciplinary dismissal ruled as fair, resignation, death, retirement or permanent total, absolute disability, or severe invalidity of the worker, nor when the period during which seasonal workers are hired comes to an end and does not entail dismissal, but rather an interruption of the contract. The obligation will not have been breached when a fixed-term contract terminates as a result of expiration of the term thereof or due to completion of the work or service engaged under the contract or when it is impossible to perform that work or service immediately.
 - The obligation will be assessed on the basis of the specific characteristics of the different sectors and applicable labour regulations, taking into account in particular the specific features of companies that have high employment turnover and seasonality.
 - It will not apply when a company enters insolvency proceedings.
 - Companies that breach the obligation must reimburse the full amount of any Social Security relief they have enjoyed, plus an applicable surcharge and late-payment interest.
- **The following terms have been extended to 30 June 2020: the term during which force majeure or economic, technical, organisational and productive grounds triggered by COVID-19 cannot be applied to terminate employment contracts;** the pause in calculating the maximum term of fixed-term contracts – articles 2 and 5 of 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,

respectively.

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