

## COVID-19: NEW SPANISH LABOUR MEASURES DERIVING FROM ROYAL DECREE-LAWS 9/2020, DATED 27 MARCH AND 10/2020, DATED 29 MARCH

Royal Decree-Law 9/2020, dated 27 March ("RDL 9/2020"), which entered into force on 28 March, includes several supplementary labour-related measures in addition to the ones already established by Royal Decree-Law 8/2020, dated 17 March.

In addition, Royal Decree-Law 10/2020, dated 29 March ("RDL 10/2020") establishes a recoverable period of paid leave for employees who render in person services related to activities not classified as essential, with the aim of reducing peoples' movement, in an effort to fight the spread of the COVID-19 virus.

The main new labour-related measures set forth in RDL 9/2020 and RDL 10/2020 are as follows:

### 1. ROYAL DECREE-LAW 9/2020, DATED 27 MARCH, ESTABLISHING SUPPLEMENTARY LABOUR-RELATED MEASURES, TO REDUCE THE EFFECTS DERIVING FROM COVID-19

- **Unjustified causes for the termination of contracts**

Force majeure and economic, technical, organisational and production-related reasons associated with COVID-19 will not be considered as valid "justified reasons" for the termination of employment contracts. This is because the aforementioned unjustified reasons were considered by the prior Royal Decree-Law 8/2020 as "temporary causes" deriving from the current health crisis, which could justify the temporary suspension of employment contracts ("ERTEs"), but not as valid "structural causes" to justify contractual terminations.

As a preliminary interpretation of this matter, we can conclude that, in practice, the main consequence of the above exclusion of these unjustified causes would be that, in the event of litigation, terminations of employment contracts based on force majeure or economic, technical, organisation or production-related reasons associated with COVID-19 would be declared unfair dismissals (in the event of individual dismissals based on objective reasons), or unjustified collective dismissals ("*no ajustados a derecho*").

As a consequence, considering that RDL 9/2020 does not expressly set forth that terminations based on the aforementioned grounds are to be considered null and void, we can conclude that such terminations would be regarded as effective, but subject to the statutory severance compensation established for unfair dismissals (i.e. generally, 33 days of salary per year of service – or 45 days of salary per year of service rendered prior to 12 February 2012 – capped at 2 years of salary), instead of being subject to the lower statutory severance payment established for fair dismissals based on objective grounds (i.e. 20 days of salary per year of service, capped at 1 year of salary).

Given the novelty of these types of legal provisions, we cannot rule out the possibility that Spanish labour courts may give them a different legal interpretation. Therefore, it seems advisable that the grounds used to justify terminations carried out during the current situation be carefully analysed and modulated.

- **Temporary contracts**

The maximum duration and validity period temporary contracts that be suspended as a consequence of an ERTE due to force majeure, or due to economic, technical, organisational and production-related reasons associated with COVID-19 will be interrupted, so that the validity of such temporary contracts will be extended for the same period of time as they are suspended under the corresponding ERTE.

- **Applications for unemployment benefits and fraud control measures**

The employer will be responsible for submitting the applications for unemployment benefits corresponding to those employees affected by an ERTE. Applications are to be submitted collectively by electronic means, according to the specific deadlines and procedures established under RDL 9/2020.

The huge number of ERTes submitted based on force majeure may lead to many of them being decided and approved by means of tacit consent (in the absence of objection), after a period of 5 days has elapsed, if no express resolution is obtained from the Labour Authorities, and therefore authorised without the effective verification of the causes on which they are based. In this regard, RDL 9/2020 states that ERTE applications based on force majeure which contain false or incorrect information or which are based on a cause that does not justify the requested measures (resulting in employees under the ERTE obtaining undue unemployment benefits) may be subject to administrative fines and will derive in the employer's obligation to refund all unduly paid unemployment benefits to the benefits management entity. As a result, the Labour and Social Security Inspectorate may perform checks and supervisory actions to ensure that this measure is not abused.

## **2. ROYAL DECREE-LAW 10/2020, DATED 29 MARCH, ESTABLISHING A RECOVERABLE PERIOD OF PAID LEAVE FOR EMPLOYEES WHO DO NOT RENDER ESSENTIAL SERVICES**

- **Scope of application and minimum indispensable activity**

The measure is applied to employees who render services in companies or entities which activity was not suspended by the State of Emergency declaration.

This measure is applied to employees who render indispensable services to companies or entities whose activities are not suspended as a result of the declaration of the state of emergency in Spain.

It does not apply to personnel rendering services within sectors or divisions of activity classified as "essential" under the annex to RDL 10/2020, nor to the employees of companies which have already applied for or obtained approval for an ERTE, employees on temporary sick leave, or employees whose employment contract is currently suspended for any other reason. Likewise, the measures excludes those employees who are able to carry on with their business or professional activities by remote working from home.

Affected companies may establish the minimum number of staff required or the work shifts that will be strictly necessary to maintain the indispensable activities, using as a reference the company's staffing needs during weekends or non-business days.

- **Recoverable period of paid leave**

Employees who fall under the scope of application of RDL 10/2020 will be granted a recoverable period of paid leave, of a compulsory nature, effective between 30 March and 9 April 2020, while remaining entitled to be paid for the salaries (including base salary and salary supplements) that they would have received, had they continued rendering services under ordinary circumstances.

The number of working hours "lost" during this leave period may be recovered as from the day immediately after the end of the state of emergency and until 31 December 2020.

The recovery of these "lost" working hours must be negotiated during a consultation period lasting a maximum of 7 days with the employees' legal representatives. If the employees have no representative, a representative committee will be constituted, comprised of the most representative trade unions or ad hoc representatives (employees from the company itself), appointed pursuant to Article 41 of the Spanish Worker' Statute. The committee must be constituted within a

maximum of 5 days. If an agreement cannot be reached, the company must notify the employees and the representative committee of its decision on the recovery of working hours within a term of 7 days.

Likewise in relation to the recovery of working hours, the employer must observe employees' minimum rest periods, provide at least 5 days' notice regarding scheduling, respect employees' maximum annual number of working hours and bear in mind their right to balance their work and home life.

## CONTACTS



**Juan Calvente**  
Counsel

**T** +34 91 590 7546  
**E** [juan.calvente@cliffordchance.com](mailto:juan.calvente@cliffordchance.com)



**Jorge Martín-Fernández**  
Abogado

**T** +34 91 590 4101  
**E** [jorge.martin-fernandez@cliffordchance.com](mailto:jorge.martin-fernandez@cliffordchance.com)



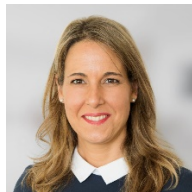
**Isabel Palacios**  
Abogada

**T** +34 91 590 4186  
**E** [isabel.palacios@cliffordchance.com](mailto:isabel.palacios@cliffordchance.com)



**Efraína Fernández**  
Abogada

**T** +34 91 590 9464  
**E** [efraina.fernandez@cliffordchance.com](mailto:efraina.fernandez@cliffordchance.com)



**Cristina González**  
Abogada

**T** +34 91 590 2259  
**E** [cristina.gonzalez@cliffordchance.com](mailto:cristina.gonzalez@cliffordchance.com)

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Clifford Chance, Paseo de la Castellana 110,  
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