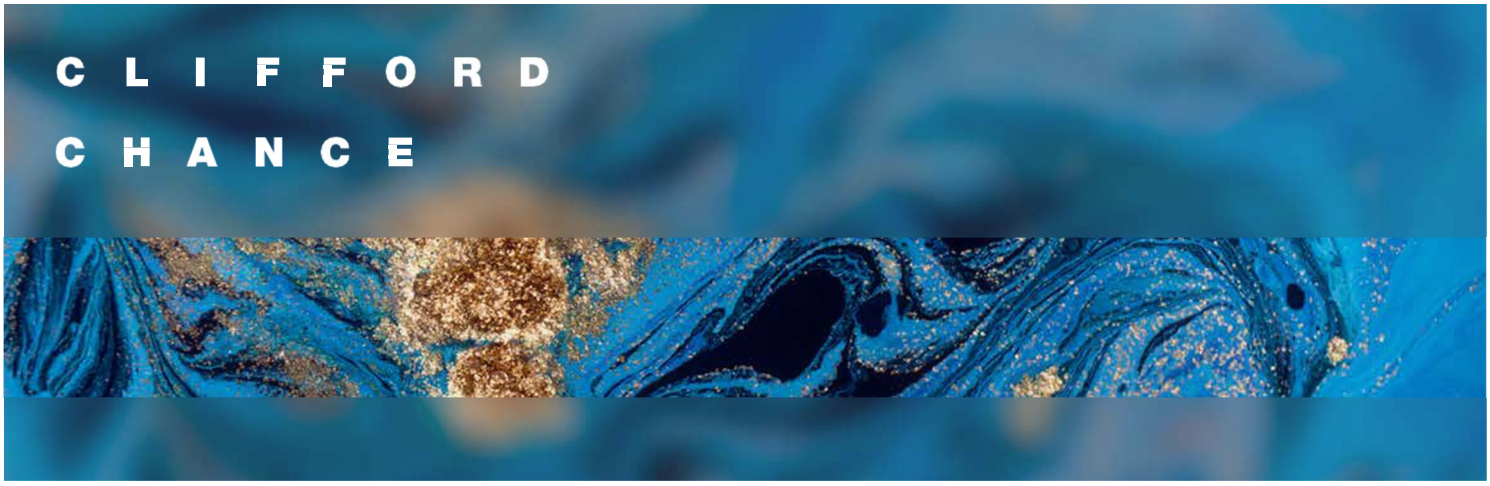

LABOUR DEVELOPMENTS IN SPAIN FOLLOWING COMMENCEMENT OF THE "NEW NORMAL" IN THE CONTEXT OF THE CORONAVIRUS HEALTH CRISIS – SITUATION AS OF 30 JUNE 2020

Key issues

- Remote and on-site working post-State of Emergency
- Labour measures adopted to address the socio-economic impact of the pandemic: extension of ERTEs

The State of Emergency declared on 14 March has come to an end, effective 21 June 2020, with the consequent reinstatement of the freedom of movement, resumption of activities and reopening of establishments that until then had been closed.

Royal Decree-Law 21/2020, of 9 June ("**RDL 21/20**"), however, together with various other regulations, establishes a series of preventive measures to continue to address the health crisis and to prevent new outbreaks after the lifting of the State of Emergency, in the context of the so-called "New Normal".

Moreover, Royal Decree-Law 24/2020, of 26 June ("**RDL 24/20**"), establishes new rules in relation to temporary collective measures for the suspension of employment or reduction of working hours ("**ERTEs**").

In this briefing we will summarise the two main employment-related issues resulting from the new regulations after the lifting of the State of Emergency: remote and on-site working and ERTEs as a measure to address the socio-economic impact of the pandemic.

1. REMOTE AND ON-SITE WORKING POST-STATE OF EMERGENCY

Royal Decree-Law 8/2020, of 17 March ("**RDL 8/20**"), established remote working as the preferred option, indicating that in order to ensure business continuity, companies had to implement organisational systems, in particular remote working, as a priority alternative to having to temporarily cease or reduce activities, provided that the system was technically and reasonably feasible and that the efforts involved in implementing it were proportionate.

As a result, companies implemented a remote working system where job posts allowed. Furthermore, and even though ordinary law establishes that remote working must be based on an agreement between the company and the employee, given the exceptional nature of the situation, and according to the provisions of RDL 8/20, companies were able to unilaterally impose remote working on a general basis for those employees who could work from home in order to protect their health, as a preventive measure based on this exceptional legislation.

In addition, RDL 8/2020 expressly refers to remote working as one of the measures which employees can request in order to exercise their right to adapt their working hours to be able to exercise duties of care in the exceptional circumstances related to Covid-19 (these measures will remain in force until 21 September 2020).

Royal Decree-Law 15/2020, of 21 April ("**RDL 15/20**"), established that the remote working measure will remain in force for three months after the State of Emergency is lifted, i.e. until 21 September 2020.

This notwithstanding, Ministerial Order of 30 May 2020, governing the last phase prior to the lifting of the State of Emergency, already established that companies could introduce certain protocols for the "return of employees to their places of work".

Lastly, RDL 21/20, in force since 21 June, establishes that companies must "adopt measures to enable the progressive return of employees to their places of work and to promote remote working when the nature of the employment activity so allows".

Consequently, in spite of the extension until 21 September of the rules establishing the priority of remote working, there is a legal basis for companies to call for the progressive return of employees who have until now been working from home to their places of work, even though remote working must still be promoted.

The effectiveness of remote working in avoiding the labour risk of contagion is beyond doubt, while the return of employees to their places of work leads from a risk-free scenario to one that involves a degree of risk, even if it can be minimized. Consequently, the first conclusion to make is that, whether or not remote working is considered compulsory, a contagion in the workplace after the return of employees could result in liabilities for the company.

It is therefore essential that the employees' return to their places of work take place only after the occupational risk assessment of has been duly updated, following the specific protocols that must be adopted as well as the criteria established by the Prevention Services, and ensuring strict compliance with general occupational health and safety rules and with other, more specific prevention regulations established in the context of the pandemic.

RDL 21/20 sets forth some measures to be adopted in the workplace in this regard:

- Appropriate ventilation, hygiene and disinfection measures.
- Employees must be provided with hygiene products (soaps, hydroalcoholic gels)

- Companies must adjust working conditions, including the arrangement of work posts and the use of communal areas, as well as an adequate organisation of shifts to avoid crowds, especially in rush hours. A safe interpersonal distance of at least 1.5 metres must be guaranteed and, if this is not possible, employees must use personal protective equipment (face masks).

Companies may also consider adopting other measures as part of their occupational health and safety planning, such as temperature test or tests conducted by qualified professionals. Such measures must always observe both the employer's duty of employee health surveillance and protection and due respect for employees' rights (privacy and data protection).

2. LABOUR MEASURES ADOPTED TO ADDRESS THE SOCIO-ECONOMIC IMPACT OF THE PANDEMIC: EXTENSION OF ERTES

- **ERTEs due to force majeure**

  ERTEs due to force majeure associated with Covid-19 (pursuant to Article 22 RDL 8/20) that were submitted before the entry into force of the recent RDL 24/20 may be maintained until 30 September 2020.

  It should be noted that according to RDL 8/20, stoppage of activity caused directly by Covid-19, including the declaration of the State of Emergency, will be considered to fall under the concept of "force majeure" when it entails the following circumstances:

  – The suspension or cancellation of activities, temporary closure of premises frequented by the public, public transport restrictions and, in general, restrictions on the mobility of persons and/or goods.

  – A lack of supplies, constituting a major hindrance to the ordinary continuation of activities.

  – Those due to urgent and extraordinary situations caused by the contagion of personnel or the adoption of preventative isolation measures ordered by the health authorities, which must be duly substantiated.

  Companies must reinstate employees affected by the ERTE insofar as it is necessary to be able to carry out their business activities, , and must prioritise the reduction of working hours. Companies that fully withdraw the ERTE must notify the labour authorities within 15 days following the effective date. Any changes must also be notified to the State Public Employment Service (SEPE).

  In general, while the ERTE is in place, overtime, new employment contracts and outsourcing of activities are not permitted (exceptions may be made, subject to justified objective reasons).

  As of 1 July 2020, companies that are prevented from performing their activity due to the adoption of new restrictions or containment measures affecting any of their work places must activate an ERTE due to force majeure following the ordinary procedure, since the special procedure established in Article 22 RDL 8/20 is no longer available.

ERTE on economic, technical, organisational and production-related grounds

Companies – including those with an ERTE due to force majeure in place– may request an ERTE on economic, technical, organisational and production-related grounds ("**ETOP**") relating to Covid-19 until 30 September 2020. In this case, the special procedure established in Article 23 RDL 8/20 (i.e. a consultation period of seven days) will still be applicable. When an ERTE ETOP is activated after an ERTE due to force majeure, the end date of the ERTE due to force majeure will be considered the start date of the ERTE ETOP, with retroactive effect.

Additionally, companies with an ERTE ETOP still in place may maintain it with the same terms and conditions as established in the company's final communication on the matter and until the end date indicated in that communication.

In general, while the ERTE is in place, overtime, new employment contracts and outsourcing of activities are not permitted (exceptions may be made, subject to justified objective reasons).

Exemption from the payment of social security contributions and commitment to maintain employment contracts

In connection with partial ERTEs, Article 4 RDL 24/20 establishes the exemption from payment of certain percentages of social security contributions for ERTEs due to force majeure and ERTEs ETOP. As of 27 June 2020, the exemptions will also be applicable to ERTEs ETOP. Companies with fewer than 50 employees at 29 February 2020 will be exempt from paying 60% of their contributions for July, August and September 2020, while companies with 50 or more employees at that date will be exempt from 40%. The exemption for employees who remain suspended as of 1 July 2020 will be 35% during the same time period (July, August and September) for companies with fewer than 50 employees, and 25% for companies with 50 or more employees.

In connection with total ERTEs, Additional Provision One of RDL 24/20 establishes the percentages for full ERTEs due to force majeure that apply to companies that remain in a total force majeure situation at 1 July 2020. It also establishes higher exemption percentages (80% for companies with fewer than 50 employees and 60% for companies with 50 or more employees) for July, August and September 2020 for new ERTEs due to force majeure activated on or after 1 July 2020.

The commitment to maintain employment contracts is extended to companies that activate an ERTE ETOP and that benefit from the exemptions on social security contributions established in Article 4 RDL 24/20.

The six-month commitment period will start on the effective date of RDL 24/20, 27 June 2020, for those companies benefiting from these exemptions for the first time as of the entry into force of RDL 24/20.

Companies that have their address for tax purposes in tax havens will be prevented from activating the above-mentioned ERTEs.

Companies with 50 or more employees at 29 February 2020 that activate the above-mentioned ERTEs and that benefit from the public resources

earmarked for those ERTEs will be prohibited from distributing dividends for the financial years during which such ERTEs are applied, unless they first reimburse the amount exempted from their social security contributions and waive such exemptions.

The unemployment protections established in Article 25 RDL 8/20 (acknowledgment of unemployment rights even for employees who lack the minimum contribution periods required to obtain such benefits; and the time during which such unemployment benefits are received not counting towards the maximum benefit accrual periods established by law) will be applicable until 30 September 2020, while the unemployment protections for seasonal permanent employees will apply until 31 December 2020.

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