

SPAIN. EXTENSION OF EXCEPTIONAL LABOUR MEASURES DERIVED FROM COVID-19

The exceptional situation of the healthcare crisis caused by Covid-19 in Spain obliged the Government to adopt a series of measures in labour matters, largely in the form of Royal Decrees-Law, designed to stabilise employment and avoid mass destruction of jobs by means of internal flexibility mechanisms, some of which have been updated and/or extended as the months have passed since the end of the State of Emergency.

Due to the uncertainty generated by the negative evolution of the pandemic at present, with the possibility of certain activities being suspended once again, Royal Decree Law 30/2020, of 29 September, on social measures to protect employment ("RDL") has been passed, entering into force on 30 September 2020, with the effect of (i) extending the application of the exceptional measures envisaged in articles 22 and 23 of Royal Decree Law 8/2020 of 17 March ("RDL 8/20") as well as the supplementary measures for the protection of employment, due to expire on 30 September 2020; and (ii) establishing new measures of suspension and reduction of working time caused by impediments or restrictions to the activity of companies as a result of the limitation or containment measures that the competent authorities may adopt.

Below is a summary of the most relevant aspects of the new regulations affecting labour relations:

1. ERTES DUE TO TEMPORARY FORCE MAJEURE

ERTEs due to temporary force majeure in force at 30 September 2020 are automatically extended until 31 January 2021.

A specific regime for reductions in Social Security contributions is established, divided into the following categories:

Key aspects

- ERTEs due to temporary force majeure are automatically extended until 31 January 2021.
- New ERTEs due to temporary force majeure which prevents or restricts activity, may be processed, pursuant to the terms of article 47.3 ET.
- A series of exemptions from payment of Social Security contributions are regulated, depending on the type of ERTE and activity, introducing new categories that include companies particularly hard hit by the healthcare crisis.
- The undertaking to maintain employment in ERTEs due to temporary force majeure is extended, as well as the incorrectly called "prohibition on firing" due to reasons related to Covid-19 until 31 January 2021.
- A variety of measures such as the prohibition on overtime or establishing new outsourcings are extended.

- Companies with a high coverage ratio and a low rate of recovery of activity, understood as those companies with activities belonging to any of the CNAE codes envisaged in the Annex to the RDL; and
- Companies whose business depends, indirectly and to a majority extent, on the companies described in the foregoing section, or that form part of their value chain (i.e. companies, at least 50% of whose 2019 turnover, was generated by operations carried out directly with those included in any of the CNAE codes in the Annex, as well as those whose actual activity depends indirectly on a company of those included in said CNAE codes).

Specifically, it establishes a Social security contribution reduction regime for the following companies: (i) companies belonging to a sector with a high coverage ratio and a reduced activity recovery rate; (ii) companies transitioning from ERTES due to force majeure to ERTES due to economic, technical, organisational or production-related ("**ETOP**") reasons during the validity of the RDL, whose activity is categorised in one of the CNAE codes envisaged in the Annex of the RDL; (iii) companies with ERTES due to ETOP reasons in force at 30 September 2020 whose activity is categorised in one of the CNAE codes envisaged in the Annex; and (iv) dependent companies and those forming part of the value chain of others, of those referred to the first point above, transitioning from force majeure ERTES to ETOP ERTES.

The Social Security contributions and joint contribution items of these companies will be reduced from 1 October 2020 and 31 January 2021 with the following percentages and conditions:

- Companies with fewer than 50 employees at 29 February 2020: 85% of the employer's contribution accruing in October, November, December 2020 and January 2021; and
- Companies with 50 employees or more at 29 February de 2020: 75% of the employer's contribution accruing in October, November, December 2020 and January 2021.

ERTES due to impediments to performance of activity

Companies in any sector or activity who are prevented from performing their activity (that is, obliged to cease all activity completely) in any of the work centres as a result of the adoption of new healthcare restrictions or containment measures as of 1 October 2020, will be able to process new force majeure ERTES due to impediments, pursuant to the procedure envisaged in article 47.3 of the Workers' Statute ("**ET**"). These ERTES will apply only to those work centres affected and for the duration of the impeditive measures approved.

These companies will be exempted, from the cessation of activity and until 31 January 2021, from payment of the employer's Social Security contribution and joint contribution amounts, with regard to those employees whose activities have been suspended, in the following terms:

- Companies with fewer than 50 employees at 29 February 2020: exempt from payment of 100% of the employer's contribution; and
- Companies with 50 employees or more at 29 February de 2020: 90% reduction in employer's contribution.

These exemption or reduction percentages will apply to ERTes due to impediments authorised on the basis of the terms of section 2 of Additional Provision 1 of Royal Decree Law 24/2020, of 26 June, which are in force at 30 September 2020.

ERTes due to restrictions to normal performance of activity

Companies from any sector or activity where the normal performance of their activity is restricted due to the adoption of new decisions or measures as of 1 October 2020 can process new force majeure ERTes because of restrictions, pursuant to the procedure envisaged in article 47.3 ET.

These companies will have exemptions or reductions in payment of the employer's Social Security Contribution and joint contribution amounts, with regard to those employees whose activities have been suspended, as follows:

- Companies with fewer than 50 employees at 29 February 2020: exemption or reduction in payment of employer's contribution accruing in October, November, December 2020 and January 2021, of 100%, 90%, 85% and 80% respectively; and
- Companies with 50 employees or more at 29 February de 2020: exemption or reduction in payment of employer's contribution accruing in October, November, December 2020 and January 2021, of 90%, 80%, 75% and 70%, respectively.

2. ERTES DUE TO ECONOMIC, TECHNICAL, ORGANISATION OR PRODUCTION-RELATED REASONS ("ETOP")

ERTes for ETOP reasons linked to Covid-19 starting as of 1 October 2020 and until 31 January 2021, will continue to be governed by the simplified procedure in force to date.

ETOP ERTes in force at 30 September 2020 can be extended after they have expired if a new agreement is reached during the consultation period. An ETOP ERTE may be processed while a force majeure one is in force.

In the case of an ETOP ERTE in (i) companies transitioning from a force majeure ERTE to an ETOP ERTE whose activity is categorised in one of the CNAE codes envisaged in the Annex to the RDL; (ii) companies with ETOP ERTes in force at 30 September 2020 whose activity is categorised in one of the CNAE codes envisaged in the Annex; and (iii) dependent companies and those forming part of the value chain of others, of those referred to the first point above, transitioning from a force majeure ERTE to an ETOP ERTE, will benefit from the following reductions in the payment of social contributions:

- Companies with fewer than 50 employees at 29 February 2020: 85% of the employer's contribution from October 2020 to January 2021; and
- Companies with 50 employees or more at 29 February de 2020: 75% of the employer's contribution from October 2020 to January 2021.

3. SAFEGUARDING EMPLOYMENT, RESTRICTIONS ON DISMISSALS AND OTHER EXTRAORDINARY MEASURES

Undertaking to maintain employment in the case of ERTes with contribution exemptions or reductions

The obligation to maintain employment for 6 months as of resumption of activities for companies who applied ERTes based on temporary force majeure based on Covid-19, is maintained unchanged.

Companies processing a new ERTE (whether force majeure or ETOP) pursuant to the RDL, will be bound to safeguard employment for an additional 6 months. In the case of force majeure ERTes in force at 30 September 2020, the new 6-month period will start when the previous period ends.

Valid grounds for the termination of contracts and suspension of countdown in temporary contracts

The exclusion of force majeure and ETOP reasons related to Covid-19 (which has been incorrectly called a "*prohibition on firing*" for those reasons) as grounds for terminating contracts of employment is extended until 31 January 2021. Overwhelming doctrine confirms that this legal provision means that dismissals based on such grounds would be unfair, not null and void.

Moreover, the suspension of the countdown until expiry of temporary contracts affected by suspension ERTes is extended until 31 January 2021.

Prohibition on overtime, outsourcing services or hiring new employees

The RDL maintains the prohibition on working overtime, establishing new outsourcings of the activity or entering into new contracts (whether direct or indirect) during the application of the ERTes regulated in the RDL, with the exception of some specific cases which meet objective and justified grounds.

4. LIMITS REGARDING THE DISTRIBUTION OF DIVIDENDS AND TAX TRANSPARENCY

The limits for processing ERTes in companies that are tax resident in countries or territories classed as tax havens are extended, as are those established in relation to the distribution of dividends in the terms already envisaged.

These limits will apply to all ERTes due to impediments or restrictions of activity as of their entry into force.

CONTACTS



Juan Calvente
Counsel

T +34 91 590 7546
E juan.calvente@cliffordchance.com



Efraína Fernández
Associate

T +34 91 590 9464
E efraina.fernandez@cliffordchance.com



Jorge Martín-Fernández
Associate

T +34 91 590 4101
E jorge.martin-fernandez@cliffordchance.com



Cristina González
Associate

T +34 91 590 2259
E cristina.gonzalez@cliffordchance.com



Isabel Palacios
Associate

T +34 91 590 4186
E isabel.palacios@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Paseo de la Castellana 110,
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