

MAIN MEASURES IN LABOUR ISSUES TO MITIGATE THE IMPACT OF COVID-19 AND REDUCE THE MOBILITY OF THE POPULATION

As a continuation of the different measures that were adopted by Royal Decree 463/2020, of 14th March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19, please find in the following the main measures that have recently been approved with impact in the labour sphere:

ROYAL DECREE-LAW 9/2020 OF 27TH MARCH, by which a series of complementary measures are adopted in the labour sphere in order to mitigate the consequences derived from COVID-19.

Entry into force: 28th March 2020.

It contains a series of labour measures complementary to those that were already approved by Royal Decree -Law 8/2020 and which we summarize in the following:

- **Limitation of labour contract terminations based on the health crisis caused by COVID-19.**

It expressly declares that the force majeure and the economic, technical, organizational and production causes on which the measures of contract suspensions and working day reduction (ERTE) related to COVID-19 are based may not be considered justifiable reasons for labour contract terminations or dismissals.

- **Interruption of the calculation of the maximum duration of temporary contracts (including training, relief and provisional contracts) and the periods of reference equivalent to the suspension period during the validity of the Temporary Employment Regulation Plan (ERTE).**

In this sense, in the case of workers with a temporary employment contract, the labour relationship shall not be terminated during the validity of the ERTE and this period shall not be considered for the purpose of the duration of the labour relationship.

- **Limitation of the duration of the ERTE due to force majeure.**

Independently on the duration indicated on the company's application, the measures derived from the ERTE and stipulated according to article 22 of Royal Decree-Law 8/2020 (Force Majeure) shall be valid until the validity of the state of alarm and its possible extensions, both in those cases with express resolution and those which shall be resolved by affirmative administrative silence.

- **Application of the measures of protection and exemption of the Social Security contributions in the case of ERTE submission due to force majeure.**

The measures contained in articles 24 and 25 of Royal Decree-Law 8/2020 shall be applicable, i.e. the exemption of the Social Security contributions and the unemployment benefit for companies and workers in the case of ERTES applications submitted before 18th March 2020, date of entry into force of said RD Law, provided that they are based on force majeure derived from the health crisis and the declaration of state of alarm.

- **Acceleration of the formalities and payment of the unemployment Benefit for the workers affected by the ERTE.**

The benefit recognition procedure shall be initiated by means of a collective application submitted by the company, in line with a specific form to be submitted electronically.

The term shall be 5 days from the date of application of the ERTE of force majeure or from the date of notification of the company's decision to the labour authority, in the remaining cases. However, if the application has been submitted before 28th March, the 5 day term shall start from that date.

The effective date of the legal unemployment situation due to forced majeure shall be the date of the event that caused this situation, i. e. from the date of the declaration of the state of alarm by the Spanish Government. In the remaining cases, the effective date of the legal unemployment situation shall in any case be equal or after the date of communication of the company's decision to the labour authority.

The minimum and maximum amount of the unemployment Benefit shall be independent from the number of dependent children the worker has.

The company's non-compliance with its obligation of communication shall be considered a serious infringement, as specified in article 22.13 of the Law on Labour Infringements and Sanctions, and may be sanctioned with a fine between 626 and 6.250 euros.

- **Ex officio review of the ERTE submitted based on the measures approved by the RD Law 8/2020 and establishment of the sanctions regime.**

In the event that there is any evidence of fraud with regard to obtaining the benefits, it will be communicated to the Labour and Social Security Inspection, which will be in charge of verifying the existence of any alleged causes in the applications and communications of these ERTE, under cooperation with the Spanish Tax Administration and law enforcement authorities.

The companies will be sanctioned if the applications contain any false or incorrect information regarding the data provided, if the measures requested are not necessary or do not have a sufficient connection with the alleged cause, provided that they result in undue benefits. In these cases, the company must refund the amount unduly received by the worker, by deducting the amount from the corresponding salaries no longer paid, being the maximum amount the sum of these salaries, without prejudice of the legally pertinent administrative or criminal liability.

The refund shall be enforceable until the prescription of the infringements described in the Law on Labour Infringements and Sanctions.

ROYAL DECREE-LAW 10/2020 OF 29TH MARCH, regulating a recoverable paid leave for employees who do not provide essential services, in order to reduce the mobility of the population in the context of the fight against COVID-19.

Entry into force: 29th March 2020

Through this RD Law, all non-essential work activities or those that cannot be carried out by teleworking are paralysed.

Scope of application: It shall apply to all employees who provide services in companies or entities in the public or private sector and whose activity has not been paralysed as a result of the declaration of the state of alarm established by Royal Decree 463/2020, of 14 March.

SINGLE PAID LEAVE

Employees who provide services in companies whose activity is not considered to be essential shall enjoy a compulsory recoverable paid leave between 30th March and 9th April 2020 both inclusive.

Workers may compensate their working hours from the day after the end of the state of alarm until 31st December 2020. This compensation will have to be negotiated in a consultation period - opened for such purpose - between the company and the legal representation of the workers, which will last a maximum of 7 days.

This leave will mean that workers will keep the right to the remuneration which they would have received if they had been providing their ordinary services, including basic salary and salary supplements.

Those companies which have to apply for the recoverable paid leave may, if necessary, set the minimum number of staff or the strictly necessary shifts in order to maintain the essential activity.

EXCEPTIONS:

However, the following workers shall be exempt from the scope of application:

- Workers providing services in the sectors described as essential in the annex to this RD Law.
- Workers who provide services in the divisions or production lines whose activity corresponds to the sectors described as essential in the annex to this Royal Decree-Law.
- Workers hired by companies that have applied for or are applying for a temporary suspension.
- Persons who are authorised to apply for a temporary suspension during the validity period of the leave provided for in this Royal Decree-Law.

- Workers who are on a temporary incapacity leave or whose contract is suspended for other legally established reasons.
- Workers who can continue to carry out their activity normally by means of teleworking or any of the non-presential modalities of service provision.

The Annex including all activities that are considered essential and may therefore continue to operate is published, so that the paid leave regulated in the RD Law will not be applicable and therefore the following employees may continue to provide their services:

- Those workers who perform any of the activities that must continue to be carried out in accordance with articles 10.1, 10.4, 14.4, 16, 17 and 18 of Royal Decree 463/2020 of 14th March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19 and with the regulations approved by the Competent Authority and the Delegated Competent Authorities.
- Those workers with activities in the market supply chain and in the operation of the services of the production centres of basic goods and services, including food, drinks, animal feed, hygienic products, medicines, health products or any product necessary for health protection, allowing the distribution of these from their origin to their final destination.
- Those workers providing services in hotel and restaurant activities providing home delivery services.
- Those workers providing services in the supply and distribution chain of goods, services, health technology, medical material, protective equipment, health and hospital equipment and any other material necessary for the provision of health services.
- Those workers being essential for the maintenance of the production activities of the manufacturing industry offering the supplies, equipment and materials necessary for the correct development of the essential activities.
- Those workers carrying out any transportation services, both for people and goods, that continue to being carried out since the declaration of the state of alarm, as well as those that must ensure the maintenance of the means used for this purpose, in accordance with the regulations approved by the competent authority and the delegated competent authorities since the declaration of the state of alarm.
- Those providing services in penal institutions, civil protection, maritime rescue, fire prevention, extinction and rescue, mine safety, and traffic and road safety. Likewise, those employees who work in private security companies providing security transport, alarm response, patrol or discontinuous surveillance services, and those that need to be used for the performance of security services to guarantee essential services and supply to the population.
- Those workers who are indispensable to support the maintenance of the armed forces' material and equipment.
- Those workers of health centres, services and establishments, as well as those who (i) care the elderly, minors, dependent persons or persons with disabilities, and those who work in companies, R&D&I and biotechnology centres linked to COVID-19, (ii) the animal facilities linked to them, (iii) the maintenance of the minimum services of the facilities associated with them and the companies supplying products necessary for such research, and (iv) those that work in funeral services and other related activities.
- Those workers of animal health care centres, services and establishments.
- Those workers providing services at press points of sale and in public and private media or news agencies, as well as in their printing or distribution.
- Those workers of financial service companies, including bank, insurance and investment companies, for the provision of services that are indispensable and activities related to payment infrastructures and financial markets.

- Those workers of telecommunication, audiovisual and essential computer service companies, as well as the networks and installations that support them and the sectors or subsectors necessary for their proper functioning, especially those that are indispensable for the proper provision of public services, as well as the operation of the non-presential work of public employees.
- Those workers who provide services related to the protection and care of gender violence victims.
- Those employees working as lawyers, court agents, social graduates, translators, interpreters and psychologists and those ones who assist procedural actions that have not been suspended by Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis situation caused by COVID-19.
- Those workers providing services in legal firms or legal advice offices, administrative and social graduate agencies, and external and own services of prevention of occupational risks, in urgent matters.
- Those workers providing services in notaries and registries for the fulfilment of the essential services established by the General Direction of Legal Security and Public Trust.
- Those workers who provide cleaning, maintenance, urgent breakdown repair and surveillance services, as well as those who provide services for the collection, management and treatment of hazardous waste, as well as solid urban waste, both hazardous and non-hazardous, wastewater collection and treatment, decontamination activities and other waste management services and the transport and removal of by-products or in any of the entities belonging to the Public Sector, in accordance with the provisions of Article 3 of Law 9/2017, of 8 November, on Public Sector Contracts.
- Those working in the Refugee Reception Centres and Temporary Stay Centres for Immigrants and privately-run public entities subsidised by the Secretary of State for Migration and operating within the framework of International Protection and Humanitarian Assistance.
- Those workers carrying out activities of water supply, treatment, transportation, purification and sanitation.
- Those workers who are indispensable for the provision of meteorological prediction and observation services and the associated processes of maintenance, surveillance and control of operational processes.
- Those workers of the operator designated by the State to provide the universal postal service, in order to provide the services of collection, admission, transport, classification, distribution and delivery for the exclusive purpose of guaranteeing the universal postal service.
- Those workers who provide services in those sectors or subsectors that participate in the import and supply of health material, such as logistics, transport, storage, customs transit (freight forwarders) companies and, in general, all those who take part in health agents.
- Those who work in the distribution and delivery of products acquired by online trade, telephone or correspondence.
- Any other workers who provide any services that have been considered essential.

March 30th, 2020