

Informative Note

News on employment matters in relation to COVID-19 adopted by Royal Decree Law 11/2020

1st April 2020

The 31st March Royal Decree-Law 11/2020, adopting additional urgent measures in the social and economic field to deal with COVID-19

The [31st March Royal Decree Law 11/2020](#), adopting urgent supplementary measures in the social and economic field to deal with COVID-19, which comes into force the day after its publication in the Official State Gazette on 1 April 2020, contains a series of measures that complement those already adopted previously by the executive and, specifically, those included in Royal Decree Law 8/2020 of 17th March, some of which it profoundly modifies.

It adopts and implements a whole range of economic and social measures aimed essentially at protecting employment, helping the most vulnerable and maintaining the production system.

This is a new overview of articles intended to "clarify" and complement the measures taken by:

- a.- 29th March Royal Decree-Law 10/2020 regulating recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19 ("RDL 10/2020");
- b.- 27th March Royal Decree-Law 9/2020, adopting supplementary measures in the field of employment to mitigate the effects of COVID-19 ("RDL 9/2020");
- c.- 17th March Royal Decree-Law 8/2020, on urgent extraordinary measures to deal with the economic and social impact of COVID-19. ("RDL 8/2020");
- d.- 12th March Royal Decree Law 7/2020, adopting urgent measures to address the economic impact of COVID-19 ("RDL 7/2020");
- e.- 10th March Royal Decree-Law 6/2020, adopting certain urgent measures in the economic field and for the protection of public health ("RDL 6/2020");
- f.- 14th March Royal Decree 463/2020, declaring the state of alert for the management of the crisis situation caused by COVID-19 ("RDL 463/2020").

One should note that all these measures are designed to prevent the economic slowdown resulting from a situation such as the current one from having a structural impact that would hinder economic and social recovery once this exceptional situation resulting from the COVID-19 crisis has been overcome.

Without prejudice to the fact that a complete and detailed reading of RDL 11/2020 is recommended, as well as legal advice prior to the implementation or adoption of any of the measures listed, the most relevant aspects of each of the measures implemented in the field of employment are summarised and commented on below:



Measures to protect workers affected by the COVID-19 crisis

Special protection measures for workers			
Measure	Content	Beneficiaries	Conditions/ Results
Exceptional allowance for lack of activity for domestic employees (art. 30 and D.T. 3^a of RDL 11/2020)	The obtaining of an extraordinary subsidy for those Domestic Employees who have totally/partially lost their activity, for reasons beyond their control, as a consequence of the crisis derived from the COVID-19. It will be retroactive: it affects situations prior to the entry into force of this RDL 11/2020 and subsequent to RD 463/2020.	Household employees who are contractually bound through the special employment relationship regulated in the article in Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship of the family household service	<u>Conditions</u> for receiving this allowance: i.- Have stopped providing services in one or more homes, for reasons beyond their control as a result of the health crisis, in order to reduce the risk of contagion. ii.- Disconnection on a temporary basis - suspension - or definitively - dismissal / withdrawal -. iii.- Not receiving a temporary disability benefit or, where appropriate, for recoverable paid leave.
Exceptional unemployment benefit at last temporary contracts (Article 33 of RDL 11/2020)	Receipt of a subsidy amounting to 80 % of the IPREM (multiplier for the public income index), i.e. 430.27. -Euros. The duration of this subsidy will be one month - a period that can be extended by this RDL 11/2020-.	Those workers who have had their temporary contract / fixed term contract terminated - including, interim and training - and do not meet the requirements for access to unemployment benefit or subsidy.	The requirements for receiving this subsidy are i.- The duration of the temporary contract is equal or superior to two months. ii.- Not to receive any other benefit (inclusion income, minimum income, social wage, etc.)
Availability of pension plans for the unemployed (D.A. 20^o of RDL 11/2020)	Exceptionally, and during the period of 6 months, it will be possible to request the reimbursement of the rights consolidated in the pension plans, insured welfare plans, complementary social welfare plans and mutual welfare societies.	Among other groups, employees affected by a Temporary Employment Regulation ("ERTE") file resulting from the health crisis caused by COVID-19 will benefit from this possibility.	Without limiting any regulatory provisions that may be established, the employees affected by an ERTE may only "redeem" or reimburse the vested rights for an amount equivalent to the wages lost as a result of the suspension of contracts / reduction of working hours.
Temporary incapacity for "total confinement" situations (D.A. 21st of RDL 11/2020)	Receiving the benefit for Temporary Incapacity of those workers who are in a situation of total confinement.	Workers subject to total confinement are those who: (i) provide services in an activity considered essential in accordance with RDL 10/2020; (ii) reside in a place where the population has been confined - having been denied the possibility of displacement by the competent authority; (iii) cannot work online for reasons not attributable to the companies; and (iv) do not receive any other subsidy.	Proof of the confinement of the place where the worker lives and the refusal of movement shall be provided by means of a certificate issued by the local authority.
Compatibility of childcare allowance and unemployment	The childcare allowance will be perfectly compatible with the unemployment benefit resulting from a contract	Employees who were receiving childcare allowance as of March 14 th 2020	Companies will have to indicate the people who have their working hours reduced due to the care of a minor with

(D.A 22 ^a del RDL 11/2020)	suspension/reduction of working hours caused by the COVID-19 health crisis.		a serious illness -ex. art. 37.6 of the Workers' Statute-
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Moratorium on contributions | Deferral of debt:

RDL 11/2020 establishes two extraordinary measures that will allow companies to delay their obligations with the Security Administration.

	Content	Requirements	Procedure	Consequences of non-compliance
Moratorium on social security contributions (Article 34 of RDL 11/2020)	<p><u>To postpone for a maximum period of 6 months</u>, the payment of social security contributions - including the payment of joint collection quotas - whose accrual period corresponds to the months of April, May and June.</p> <p><u>The moratorium does not imply the accrual of interest.</u></p> <p>It cannot be applied for in the case of contributions for which the ordinary collection period has ended prior to the application for the moratorium.</p>	<p>a.- To comply with the conditions set out in the order of the Minister of Social Security, Inclusion and Migration.</p> <p>b.- That they are not companies with an activity suspended by RD 463/2020.</p> <p>c.- Those companies / contribution account codes that have obtained exemption from payment of quotas under the provisions of RDL 8/2020 (suspension of contracts / reduction of working hours due to force majeure) will not be eligible.</p>	<p>1.- Applications shall be submitted individually for each Contribution Account Code.</p> <p>2.- The RED System or equivalent shall be used to process requests for moratoriums.</p> <p>3.- Applications shall be made within the first 10 calendar days within the regulatory periods for payment.</p> <p>4.- The granting of the moratorium will be communicated within 3 months of the request. However, this notification will be understood to have been made if the General Treasury of Social Security applies the moratorium to the settlements made after the request.</p>	<p>i.- Return of Social Security contributions whose payment has been unduly postponed, plus the corresponding surcharges and interest.</p> <p>ii.- Administrative responsibilities; basically, sanctions under the provisions of Royal Legislative Decree 5/2000, of 4th August, approving the revised text of the Law on Infractions and Sanctions in the Social Order ("LISOS"). False or incorrect information will be particularly relevant.</p> <p>iii.- Possible criminal proceedings.</p>
Social Security debt deferment (Article 35 of RDL 11/2020)	<p>The possibility of deferring payment of social security debts for which the statutory income deadline is between April and June 2020.</p> <p>The <u>deferment will entail the accrual of interest of 0.5 %.</u></p>	<p>Not having another debt deferment in place.</p>	<p>No special procedure is envisaged, so the general procedure set out for deferrals in Article 35 of Royal Decree 1415/2004, of 11 June, approving the General Regulations on Social Security Collection, must be followed.</p>	<p>In the event of failure to comply with any of the conditions or payments of the deferment, the enforcement procedure initiated before the concession shall be continued without further formality.</p>

Specialties to implement contract suspensions / reductions in working hours in companies that have gone bankrupt:

RDL 11/2020 introduces a new supplementary provision 10 in RDL 8/2020 in order to clarify that companies in insolvency proceedings may implement an ERTE provided that the de facto requirements

of RDL 8/2020 for the suspension of contracts/reduction of working hours are met, both in cases of force majeure and in those of economic, technical, organizational or productive causes ("ETOP").

ERTEs implemented by bankrupt companies will be regulated by the provisions of Chapter II "Measures of flexibility of the mechanisms of temporary adjustment of activity to avoid dismissals" -arts. 22 to 28- of RDL 8/2020, as well as by the Workers' Statute, being **expressly excluded** the application of article 64 Law 22/2003, of July 9, Bankruptcy. Without prejudice to the above, a series of specialities are established:

- a.- The applications or communication of the files must be formulated by the bankrupt company with the authorization of the bankruptcy administration, or by the bankruptcy administration directly, according to the regime of intervention or suspension of patrimonial powers.
- b.- The bankruptcy administration will be part of the consultation period foreseen for the ERTes implemented for ETOP causes under the protection of RDL 8/2020.
- c.- In the event that no agreement is reached during the consultation period of an ERTE due to ETOP causes under the protection of RDL 8/2020, the decision to apply the measures on the suspension of contracts / reduction of working hours must be authorized by the bankruptcy administration or adopted by it, according to the intervention or suspension of economic powers regime.
- d.- In any case, the application, resolution and measures applied must be immediately reported to the bankruptcy judge, by telematic means.
- e.- The challenge of the agreement reached during the consultation period for fraud, deceit, coercion or abuse, as well as the challenges by the workers and/or the possible ex officio legal challenge made by the Labour Authority at the request of the State Public Employment Service, shall be dealt with through the bankruptcy incident in labour matters and the ruling shall be appealable in substitution.
- g.- In those cases in which the decision of the labour authority has not established the existence of force majeure, the bankrupt company may challenge the decision before the social jurisdiction.

Finally, a transitional regime is established - ex D.T. 4 of RDL 11/2020 - with two scenarios:

- i.- If, on the date of entry into force of RDL 11/2020, a ruling has been issued by the judge of the insolvency proceedings approving a suspension of contracts / reduction of working hours under RDL 8/2020, this will have full effect for the recognition of the unemployment benefit.
- ii.- In the event that, once RDL 11/2020 has come into force, the request to implement an ERTE has been submitted and the judge has not issued a decision, the file will be sent to the labor authority; however, the actions taken -including the consultation period- will be fully valid.

Explanatory statements and Supplementary Provision 4: interpretation of the safeguard of employment contained in D.A. 6 RDL 8/2020:

The explanatory statements and the 4th supplementary provision (D.A.) of RDL 11/2020, seeks to clarify how the safeguard of employment that was included in the 6th D.A. of RDL 8/2020 should be interpreted, which obliges the company to maintain employment during the period of 6 months from the end of the measures to reduce the working day or suspend contracts based on Covid-19. Thus, in the above-mentioned Explanatory Memorandum and D.A. 4, it is indicated that:

a.- This commitment must be fulfilled and verified, **taking into account the characteristics and circumstances of the undertaking or sector** concerned, with particular regard to the seasonality or variability of employment, and its correspondence with specific events, developments or other sectoral specificities such as those in the performing, musical, film and audiovisual arts. Likewise, the applicable labour regulations must be taken into account.

b.- The commitment **will not be understood** to have been breached when the employment contract is terminated by (i) disciplinary dismissal declared as appropriate, (ii) resignation, (iii) retirement; or (iv) total permanent disability, absolute disability or great invalidity of the working person. In the case of temporary contracts, the commitment shall also not be deemed to have been breached when the contract is terminated due to the expiry of the agreed time or the performance of the work or service that constitutes its object or when the activity that is the object of the contract cannot be performed immediately.

Finally, it points out that the "Measures to make the mechanisms for the temporary adjustment of activity to avoid dismissals more flexible" provided for in Articles 22 to 28 of RDL 8/2020 will apply to all workers, regardless of the fixed or indefinite duration of their contracts.

Other modifications of labour and/or Social Security interest:

Finally, and additionally, it is interesting to note that changes have been made in the following areas:

a.- Funds from the collection of the vocational training quota may be used for unemployment protection (D.A. 7 of RDL 11/2020).

b.- The time limit for administrative appeals, challenges, claims, conciliation, mediation or arbitration is extended (D.A. 8 of RDL 11/2020).

c.- New rules are established applicable to the duration of certain contracts of teaching and research personnel entered into by universities (D.A. 12th RDL 11/2020).

d.- An Action Plan will be approved within 15 days after the end of the state of alert to speed up judicial activity in social and contentious-administrative jurisdictions and in the area of commercial courts (D.A. 19th RDL 11/2020).

e.- Amendments regarding unemployment for permanent-discontinuous workers (D.T. 1^a of RDL 8/2020) extending its application to unemployment protection to workers whose contracts were suspended prior to the entry into force of RDL 8/2020, as a result of the health crisis arising from COVID-19.

f.- Amendments regarding the cessation of activity by self-employed workers (Article 17 of RDL 8/2020).

g.- Modification of the validity of RDL 8/ 2020 (D.F. 10th RDL 8/2020). Extends its validity to one month after the end of the declaration of the state of alarm

Effective date:

RDL 11/2020 will enter into force on the day following its publication in the Official State Gazette, i.e. 2 April 2020.

Notwithstanding the above, it is established that the measures provided for in RDL 11/2020 will remain in force until one month after the end of the declaration of the state of alarm, with the exception of those that have been expressly provided for a different duration.

We hope the information is useful and of interest to you. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

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