

## Employment Update

# Employment Developments 2020: 12th May Royal Decree-Law 18/2020 on social measures to defend employment

13th May 2020

Regarding the 12th May Royal Decree-Law 18/2020 on social measures to defend employment

Today the BOE (Official State Gazette) published the [12th May Royal Decree-Law 18/2020](#) on social measures in defence of employment ("RDL 18/2020"). The main objective of this new RDL 18/2020 is to facilitate the progressive reactivation of the economy, through the dynamisation of those sectors whose activity continues to be limited by health restrictions derived, among other situations, from the containment and containment measures agreed within the framework of the state of alert.

The aforementioned regulation establishes measures in relation to the procedures for the suspension of contracts and reduction of working hours ("ERTE") due to force majeure and economic, technical, organizational or production causes ("ETOP") regulated in articles 22 and 23 of the 17th March Royal Decree-Law 8/2020, on exceptional urgent measures to deal with the economic and social impact of Covid-19 ("RDL 8/2020").

Likewise, and through RDL 18/2020, modifications are made to the 27th March Royal Decree-Law 9/2020, which adopts additional measures, in employment, to alleviate the effects derived from Covid-19 ("RDL 9/2020").

Below is a summary of the most relevant aspects of each of the measures implemented in employment:

KEY AGREED MEASURES	
Measures	Content of the measure
<p><b>Particularities applicable to ERTes due to force majeure during de-escalation</b></p> <p><b>(Article 1)</b></p>	<p>A series of measures are established in relation to force majeure TRE's regulated in article 22 of RDL 8/2020:</p> <p><b>a.- Possibility of extension until 30th June 2020:</b> as of today, those companies that have implemented an ERTE due to force majeure may extend the duration of this measure when the activity cannot be restarted and in no case beyond 30th June 2020.</p> <p><b>b.- Partial force majeure:</b> those companies who have implemented an ERTE due to force majeure authorized as from today will be in a situation of partial force majeure derived from Covid-19 from the moment that the partial recovery of their activity is possible and, in any case, until 30th June 2020. These companies must reincorporate the workers affected by the ERTE to the extent necessary for the development of their activity - reductions in working hours being a priority.</p> <p><b>c.- Procedure for communicating the waiver of the ERTE:</b> the companies referred to in this article must communicate the total resignation to the authorized ERTE to the Employment Authority within 15 days from the date of effects of the resignation.</p>



	<p>Likewise, the renunciation of the ERTE and the regularization of the unemployment benefits resulting from it will be carried out after notifying the State Public Employment Service ("SEPE") of the changes in the data contained in the initial collective application for access to unemployment benefits. In any event, companies must notify the SEPE of any changes which relate to the termination of the application of the measure in respect of all or some of the persons concerned or even in respect of the change in the percentage of partial activity.</p>
<p><b>Areas applicable to ETOP during de-escalation</b></p> <p><b>(Article 2)</b></p>	<p>The application of the features provided for in article 23 of RDL 8/2020 is foreseen with respect to ETOP cases initiated after the effective date of this RDL 18/2020 and until 30th June 2020, with the following specialities:</p> <p>a.- The processing of an ERTE for ETOP cases may be initiated while an ERTE for force majeure is in force.</p> <p>b.- When the ERTE due to ETOP causes is initiated after the termination of an ERTE due to force majeure, the date of effects of the ERTE will be retroactive to the date of termination of the ERTE.</p> <p>c.- The ERTE due to ETOP causes in force on the date of entry into force of RDL 18/2020 will continue to be applicable in the terms foreseen in the final communication and until the term referred to therein.</p>
<p><b>Exceptional measures for unemployment protection</b></p> <p><b>(Article 3)</b></p>	<p>In relation to the unemployment protection measures in respect of ERTE due to force majeure and ERTE due to ETOP, provided for in Article 25(1) to (5) of RDL 8/2020, their application is extended until 30th June 2020. The measures extended until 30th June include recognition of entitlement to contributory unemployment benefit without the requirement of a minimum period of contributory employment and without entitlement to the benefit being counted towards the consumption of maximum periods of receipt.</p> <p>Likewise, it establishes the application until December 31st 2020 of the extraordinary measures in the matter of unemployment protection for discontinuous permanent workers and those who carry out permanent and periodic work that is repeated on certain dates that were provided for in article 25.6 of RDL 8/2020.</p>
<p><b>Exceptional contribution measures linked to ERTEs due to force majeure</b></p> <p><b>(Article 4)</b></p>	<p>Two types of exemption are established for the contributions of May and June 2020 in respect of the employer's contribution provided for in Article 273.2 of the Consolidated Text of the 30th October General Social Security Act, approved by Royal Legislative Decree 8/2015 ("LGSS"), as well as the contributions for joint collection:</p> <p><b>a.- Companies that implement an ERTE due to force majeure stemming from Covid-19:</b> an exemption is regulated that: (i) will be total for the companies that, on February 29th 2020, had less than 50 workers -including those assimilated to the registration-; and (ii) will be 75% for companies, that on the mentioned date, had 50 or more workers -including those joined to the registration-.</p> <p><b>b.- Companies that have implemented an ERTE due to partial force majeure derived from Covid-19:</b> different exoneration percentages are indicated, ranging from 85%-30% depending on the following circumstances/variables: (i) if they are workers who restart their activity or workers who continue with their suspended activities as of the date of effects of the resignation; (ii) if it is the business contribution corresponding to the month of May or June 2020; and (iii) if the companies have 50 or more workers as of February 29th 2020.</p> <p>These exemptions from the contribution will be applied by the Tesorería General de la Seguridad Social ("TGSS") at the request of the company with the following requirements (i) prior communication to this body of the situation of total or partial force majeure with identification of those affected and periods of suspension/reduction of working hours; (ii) a communication shall be made for each contribution account code by means of a responsible declaration; (iii) said responsible declaration shall be presented before the calculation of the corresponding contribution settlement is requested through the RED System.</p> <p>From a perspective of control of the previous contribution exemptions, to verify that the SEPE proceeds to the recognition of the corresponding unemployment benefit for the period in question will be enough.</p>
<p><b>Limits related to dividend distribution and tax transparency</b></p> <p><b>(Article 5)</b></p>	<p>Certain specialities are included in relation to tax transparency and dividend distribution:</p> <p>a.- Companies with their tax domicile in countries or territories classified as tax havens cannot benefit from the ERTE due to force majeure.</p>



	<p>b.- The corporate and legal entities which benefit from the ERTE due to force majeure and use the public resources destined to the same, may not distribute dividends corresponding to the fiscal year in which the ERTE is applied, unless they previously pay the amount corresponding to the exemption applied to the social security contributions.</p> <p>The restriction on distributing dividends will not apply to those entities which, on 29th February 2020, had fewer than 50 employees.</p>
<p><b>Possibility of extension of certain measures (1ST A.P.)</b></p>	<p>It is envisaged that the following measures may be extended by agreement of the Council of Ministers:</p> <p>a.- The regulation of the ERTE by force majeure.</p> <p>b.- The exemptions in the matter of contributions linked to the ERTE due to force majeure, including the possibility of extending them to the ERTE due to ETOP causes.</p> <p>c.- The unemployment protection measures established in article 25.1 of RDL 8/2020.</p>
<p><b>Creation of the Tripartite Labour Monitoring Committee (2ND A.P.)</b></p>	<p>A Tripartite Employment Monitoring Commission for the process of deconfinement was created, composed of persons designated by the Ministry of Employment and Social Economy, the Ministry of Inclusion, Social Security and Migration, CEOE, CEPYME, CCOO and UGT.</p> <p>The main functions of this Commission will be (i) the monitoring of the measures being taken in the employment field during the phase of mitigated exceptionality; (ii) the exchange of data and information; (iii) the proposal and discussion of measures.</p>
<p><b>Modification of the clause to safeguard employment contained in the 6 A.P. of RDL 8/2020 (D.F.1)</b></p>	<p>Complements the employment safeguard clause established in the 6th A.P. of RD 8/2020:</p> <p>a.- The application of the safeguard of employment is limited to the <b>ERTEs due to force majeure</b>, establishing that the extraordinary measures foreseen in said provision shall be subject to the commitment of the company to maintain employment during a period of six months as <b>from the date of resumption of the activity</b>.</p> <p>b.- <b>The date of resumption of the activity is understood as the effective return to work of the persons affected by the file, even if this is partial or only affects part of the staff.</b></p> <p>c.- The commitment to safeguard employment will be understood to have been breached if any of the <u>workers affected by the files</u> are dismissed or have their contracts terminated.</p> <p>However, the commitment will not be understood to have been breached when the employment contract is terminated due to disciplinary dismissal declared as appropriate, resignation, death, retirement or total or absolute permanent disability of the worker, or due to the end of the appeal of the people with a permanent-discontinuous contract -when this does not involve a dismissal but rather an interruption of the contract-.</p> <p>In particular, in the case of temporary contracts, the commitment to maintain employment shall not be understood 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 which constitutes its object, or when the activity which is the object of the contract cannot be performed immediately.</p> <p>d.- The commitment to maintain employment will be assessed in accordance with the specific characteristics of the different sectors and the applicable legal</p>



	<p>regulations, and in particular, taking into account the specific characteristics of those companies that present a high variability or seasonality of employment.</p> <p>e.- The commitment to maintain employment in those companies in which there is a risk of insolvency proceedings under the terms established in the 9th July Article 5.2 of Law 22/2003, on Insolvency, will not be applicable.</p> <p>f.- The companies that do not comply with this commitment must reimburse the total amount of the contributions from which they were exempted, with the corresponding surcharge and interest for late payment, following actions by the Employment and Social Security Inspectorate that accredit the non-compliance and determine the amounts to be reimbursed.</p>
<p><b>Other modifications made to RDL 8/2020 and RDL 9/2020</b></p> <p><b>(1st and 2nd D.F.)</b></p>	<p>In addition to what is indicated in relation to the employment safeguard clause, the following precepts of RDL 8/2020 and RDL 9/2020 are modified:</p> <p><b>a.- Amendment of Article 24.1 of RDL 8/2020:</b> the exemption of social security contributions in the ERTE due to force majeure arising from Covid-19, as set out in said article, will be applicable in the months of March and April 2020.</p> <p><b>b.- Inclusion of Article 24.5 of RDL 8/2020:</b> this establishes the budget to be used to cover the exemption measures for Social Security contributions and joint collection concepts.</p> <p><b>c.- Amendment of D.F. 3 of RDL 9/2020:</b> the following provisions of RDL 9/2020 will remain in force until 30th June 2020:</p> <p>i.- Article 2 RDL 9/2020: force majeure and the ETOP causes under which the ERTE are covered cannot be understood as justifying the termination of the employment contract or dismissal.</p> <p>ii.- Article 5 RDL 9/2020: the suspension of temporary contracts, including training, relief and interim contracts due to the assignment of an ERTE due to force majeure or ETOP, will mean the interruption of the calculation of both the duration of these contracts and the reference periods equivalent to the suspended period, in each of these contractual modalities, with respect to the workers affected by them.</p>

We hope the information is useful and of your interest. 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.

For more information please contact:

[Alfredo Aspra](mailto:alfredo.aspra@andersentaxlegal.es) | Partner in the Employment Law area  
[alfredo.aspra@andersentaxlegal.es](mailto:alfredo.aspra@andersentaxlegal.es)

The above comments are for information purposes only and do not constitute professional opinions or legal advice, nor do they necessarily include the opinions of the authors. If you are interested in obtaining additional information or clarification of the content, please contact us by telephone on + 34 963 527 546/34 917 813 300 or by e-mail at [communications@andersentaxlegal.es](mailto:communications@andersentaxlegal.es).

