

Spanish Government Approves Additional Labor Measures to Mitigate the Impact of COVID-19

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On 17 March 2020, the Council of Ministers approved Royal Decree-law 8/2020, of urgent and extraordinary measures to mitigate the economic and social impact of COVID-19 (RDL 8/2020), which introduced important labor measures focusing mainly on the suspension of contracts and reduction of working hours (the so-called ERTE).

Due to the significant number of job cuts and the volume of ERTEs filed since then, on 28 March 2020, the Spanish Official Gazette has published the Royal Decree-law 9/2020, of 27 March, adopting complementary labor measures to mitigate the impact of COVID-19 (RDL 9/2020).

Redundancies related to COVID-19

The force majeure and the economic, technical, organizational, and production grounds covered by the measures for suspension of contracts and reduction of working hours provided for in RDL 8/2020 (that is, ERTEs based on force majeure and ERTEs grounded on economic, technical, organizational, and production causes related to COVID-19), **cannot be understood as justification for the termination of the employment contracts or dismissal.**

Although the wording of RDL 9/2020 is very succinct, in the authors' opinion, this provision prevents companies from carrying out collective redundancies for economic, technical, organizational, and production reasons related to COVID-19 (the so-called ERE) during the state of alarm. Individual redundancies made below the ERE thresholds will be declared unjustified (unfair) for lack of cause.

ERTEs effects to fixed-term contracts

The **suspension of temporary contracts**, including training contracts, hand-over contracts (*i.e.* those to replace workers who retire partially) and interim contracts (*i.e.* those to substitute workers that have the right to return), for any of the grounds laid down in RDL 8/2020, **will entail the interruption of the computation, both of the duration of these contracts, as well as the reference periods equivalent to the suspended period.**

The temporary contracts that are affected by an ERTE will see the calculation of their duration interrupted, thus remaining in force for the entire duration of the ERTE, even if their ordinary period of validity ended earlier.

Maximum duration of ERTes due to force majeure

RDL 9/2020 clarifies that the maximum duration of ERTes due to force majeure will be that of the state of alarm.

This limitation will be applicable both to files in which there is an express resolution with recognition of force majeure and to those in which the existence of force majeure is favorably resolved by administrative silence.

Penalty system and reimbursement of undue benefits

Given the volume of ERTes submitted in recent days and in order to avoid the fraudulent use of public funds, RDL 9/2020 provides that **companies will be sanctioned** if the ERTE requests (i) contained falsehoods or inaccuracies in the data provided, or (ii) were not necessary or did not have sufficient connection with the alleged cause and originated payment of improper benefits. The sanctions will be imposed in accordance to the Labor Infringements and Penalties Act.

In such cases, if the workers have received a public benefit, companies, in addition to potential administrative and criminal liabilities, **shall be mandated to return** to the managing entity of unemployment benefits **the public benefits received by their workers**, deducting the wages that would have corresponded to the employees, with the limit of the sum of such wages.

The obligation to return the benefits will be enforceable until the prescription of the relevant infringements, as set out in the Labor Infringements and Penalties Act.

Unemployment benefits derived from ERTes

The procedure for recognizing the unemployment benefit will be more flexible for all persons affected by procedures for suspension of contracts and reduction of working hours based on the causes set forth in RDL 8/2020. In this sense, RDL 9/2020 establishes that **companies must submit a collective application** on behalf of all workers to the managing entity of unemployment benefits, through a model provided by the managing entity in which certain information will be included.

The **company must submit the application must be submitted within five days** from the request for the temporary employment regulation file in cases of force majeure, or from the date the company notifies the competent labor authority of its decision in the case of the temporary employment regulation files for economic, technical, organizational, or production causes derived from COVID-19. The communication will be sent through electronic means and in the manner determined by the State Public Employment Service. In the event that the request had occurred prior to the entry into force of RDL 9/2020, the period of five days will begin to be computed from this earlier date. The non-transmission of this regulated communication will be considered a serious offense punishable by a fine of up to €6,250.

Regarding the effective date of the **legal situation of unemployment** (*i.e.* date on which the public benefit starts), RDL 9/2020 clarifies that:

- a) In cases of ERTE due to force majeure, the effective date will be the date of the event causing the force majeure;
- b) For other ERTes, the effective date will be the date on which the company notifies the labor authorities of the company's decision (or any day thereafter if the company's decision takes effect at a later date).

The cause and date of effects of the legal situation of unemployment must appear, in any case, in the company certificate, which will be considered a valid document for its accreditation.

Other measures

Maintenance of health centers and care centers for the elderly: During the validity of the state of alarm, centers, services, and health facilities as well as the social centers for the elderly, dependent people, or people with disabilities, will be deemed essential services, regardless the ownership (public or private) or the management system. Therefore, these establishments must maintain their activity, and may only proceed to reduce or partially suspend it in the terms permitted by the competent authorities.

Entry into force and duration: RDL 9/2020 is effective as of 28 March 2020) and will remain in effect during the alarm state.

Latham & Watkins will continue to monitor and update on the situation.

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