

Royal Decree-Law 9/2020 of 27 March, Adopting Supplementary Measures to Mitigate the Effects of COVID-19

This regulation sets out the mechanics of any temporary suspension of employment contracts (ERTE) due to *force majeure* or the economic, technical, organisational or productive reasons referred to in articles 22 and 23 of Royal Decree-Law 8/2020 of 17 March on emergency measures to deal with the economic and social impact of COVID-19, and it develops article 25 of the same regulation to speed up the payment of unemployment benefits in these extraordinary circumstances.

Extraordinary Measures For the Protection of Employment

Force majeure and economic, technical, organisational and productive causes relied on by employers as underpinning any temporary suspension of ERTE or reduction of working hours will not constitute sufficient justification for the dismissal of the affected employees. Terminations based on these reasons will be considered as automatically unfair and, therefore, the full statutory severance amount of 33/45 days' salary per year of service would be due.

Limit on Length of ERTE Due to Force Majeure Caused by COVID-19

The maximum duration of the suspension of employment for *force majeure* reasons caused by COVID-19 will be that of the State of Alarm declared on 14 March, i.e. until 11 April 2020 in the first instance and then during any subsequent extensions.

Interruption of the Calculation of the Maximum Duration of Temporary Contracts

The suspension of employment under fixed-term contracts (including training, relief and interim contracts) through an ERTE for *force majeure* or economic, technical, organisational or productive reasons arising from COVID-19 will result in those contracts being deemed extended by the duration of the ERTE.

Development of Extraordinary Measures to Speed Up the Payment of Unemployment Benefits in ERTE Cases

The procedure for the recognition of the contributory unemployment benefit for all the people affected by an ERTE will be started by a collective application submitted by the employing company to the unemployment benefits management entity (SEPE). This should be on the form provided by SEPE and it will include the following information, individually for each affected workplace:

- a. Business name of the company, address, tax identification number and social security contribution account code to which the employees affected by the requested suspension of employment contracts or reduction of working hours are assigned
- b. Name and surname, tax identification number, telephone number and email address of the company's legal representative
- c. Application number assigned by the Labour Authority
- d. Detail of the measures to be adopted, as well as the first date on which each individual employee will be affected, if it varies between them
- e. In the event of a reduction of working hours, the percentage of the temporary reduction, calculated on a daily, weekly, monthly or annual basis
- f. In order to prove the legal representation of the employees, a declaration stating that the employees' authorisation has been obtained for the submission of the application
- g. Any additional information determined from time to time by decision of the General Directorate of the Public State Employment Service

[The form provided by SEPE](#) includes all the data required by the regulation to be submitted in support of the application.

The company must send this communication within five days from the start of the ERTE due to *force majeure* by COVID-19 or from the date on which the company notifies the competent Labour Authority of its decision to implement an ERTE due to economic, technical, organisational or productive reasons.

For ERTEs requested before 28 March, the five-day period will begin from this date.

The communication should be sent by electronic means and in the form determined by the Public Service for State Employment, which is set out in an [information sheet](#).

The employer must also communicate any later variation in the data contained in the initial communication and, in any case, when it stops the ERTE.

Disciplinary Regime and Reimbursement of Undue Benefits

A failure to send these collective communications/applications will be a serious infringement of article 22.13 LISOS, punishable by a fine.

In addition, applications submitted by the company containing knowingly false or incorrect/incomplete data may give rise to the sanctions laid down in the Labour Infringements Act (LISOS).

If the company applies for ERTE measures that are not necessary or have insufficient connection with the cause that gave rise to them, this will also be punishable if that leads to the granting of benefits to ineligible employees or companies.

The payment of these benefits to employees for a reason not attributable to the virus, and without prejudice to the administrative or criminal liability that may arise as a result, may also lead to the company having to pay the amounts wrongly received by the employee to the management entity, deducting them from future instalments of salary that have not yet been paid, up to the limit of that salary.

The obligation to return the benefits in appropriate cases will be enforceable for four years following their receipt by the employee.

Fraud and Labour Inspection

If the unemployment service finds evidence of possible fraud in obtaining unemployment benefits, e.g. including a claim for those not affected by the virus, it shall notify the Labour and Social Security Inspectorate. The Inspectorate, in collaboration with the Tax Administration Agency and the Security Forces, will then include in its action plans steps to verify the existence or otherwise of the causes for the ERTE as alleged in the employer's applications and communications.

Date of Effect of Unemployment Benefits Derived From ERTE Due to COVID-19

The effective date of unemployment in the case of an ERTE due to *force majeure* will be the date of the event causing it. When the ERTE is due to economic, technical, organisational or productive reasons, the effective date will be no earlier than the date on which the company notifies the Labour Authority of the decision it has taken in that respect.

The cause and effective date of unemployment must appear in the company certificate submitted as part of its application.

Maintenance of Activity in Health Centres and Centres for the Care of Elderly People

During the State of Alarm, essential services will include, whatever their ownership, centres, services and health establishments as determined by the Ministry of Health, as well as social centres for elderly, dependent or disabled people. In accordance with this essential nature, health and social centres for elderly people must continue their activity, and they may only reduce or partially suspend their activity on terms allowed by the competent authorities.

Measures in the Area of Public Procurement

The adoption of any type of direct or indirect measure by public sector entities to deal with COVID-19 will justify the emergency procedure in accordance with article 120 LCSP. The release of funds to meet the expenses generated by the adoption of measures to protect people's health from COVID-19 may be justified.

Invoices issued by non-national suppliers based abroad will not have to be submitted electronically.

Royal Decree-Law 10/2020 of 29 March Regulating Recoverable Paid Leave for Employees in Non-essential Services

What Does This Measure Mean?

This regulation establishes that employees who provide services in public and private companies and institutions whose activities have not been paralysed by the declaration of the State of Alarm will be granted compulsory recoverable paid leave between 30 March and 9 April 2020, inclusive. During this time, employees affected will retain their right to normal basic salary and salary complements.

How Can Hours Be Recovered?

The recovery of working hours by the employees working unpaid for an equivalent period will take place from the day following the end of the State of Alarm until 31 December 2020. If the State of Alarm is extended, that timescale may cause difficulties for both employers and employees and may need to be revisited. This recovery structure must be negotiated in consultation between the company and the workers' legal representatives, which will last a maximum of seven days.

If no agreement is reached during this consultation period, the employer shall notify the employee and the representative committee, within seven days from the end of the consultation period, of the decision on the recovery of the working hours not performed during the application of this paid leave.

In any case, the recovery of these hours will not imply the non-fulfilment of the minimum daily and weekly rest periods provided for by law and the collective bargaining agreement, the establishment of a period of notice lower than that set out in Article 34.1 of the Workers' Statute, nor the exceeding of the maximum annual working day provided for in the applicable collective bargaining agreement, the rights to the reconciliation of personal, working and family life recognised by law and by collective bargaining agreement must be also respected.

Who Is Affected by This Measure?

It applies to employees who provide services in public and private companies and institutions whose activities have not been paralysed by the declaration of the State of Alarm established by RD 463/2020, i.e. who remain at work at present.

For these purposes, recoverable paid leave, as provided for by the regulation, will not be applicable to employees:

- a. Who provide services in the sectors deemed as essential
- b. Who provide services in the divisions or production/supply lines of the sectors deemed essential
- c. Hired by those companies that (i) have requested or are applying a temporary suspension of employment contracts or (ii) are authorised to apply for a temporary suspension of employment contracts during the validity of the recoverable paid leave
- d. Who are temporarily disabled or whose contract is suspended for other legal non-coronavirus reasons
- e. Who can continue to carry out their normal activity by means of teleworking, etc.

In accordance with the Annex, the following employees are also excluded:

1. Employees of companies engaged in activities that must continue to be carried out according to Articles 10.1, 10.4, 14.4, 16, 17 and 18 of Royal Decree 463/2020, of 14 March, which declared the State of Alarm for the management of the health crisis caused by COVID-19 and the regulations approved by the competent authority and the delegated competent authorities.

The following establishments and services may continue to be open to the public:

- Retail food, beverage, product and essential goods stores
 - Pharmacists, sanitary, veterinary centres or clinics
 - Opticians and orthopaedic products
 - Hygiene products
 - Press and stationery
 - Automotive fuel
 - Tobacco shops
 - Technological and telecommunications equipment
 - Pet food
 - Internet, telephone or mail businesses
 - Dry cleaners, laundromats
 - Home hairdressing services
 - Restaurant services for home delivery
 - Critical operators of essential services and utilities to ensure the supply of the population and the essential services themselves
2. Employees of companies that participate in the market supply chain and in the production of essential goods and services, including food, beverages, hygienic products, medicines, sanitary products or any product necessary for the protection of health, allowing its distribution from manufacture to final destination.
 3. Employees who provide restaurant home delivery services.
 4. Employees in the production and distribution chain of goods, services, health technology, medical materials, protective equipment, health and hospital equipment and any other material necessary for the provision of health services.
 5. Employees maintaining the productive activities of the manufacturing industry that provide the supplies, equipment and materials necessary for the development of the essential activities included in the Annex.
 6. Employees who provide transport services, both for people and goods
 7. Those employees who provide services in prisons, civil protection, maritime rescue, rescue and fire prevention and extinction, mine safety, and traffic and road safety. Likewise, those that provide services in private security companies that provide security transport, alarm response, patrol or discontinuous surveillance services, and those used for security services to guarantee essential services and supply the population.
 8. The indispensable employees who support the maintenance of the material and equipment of the armed forces, i.e. specialists only rather than administrative staff in that sector.
 9. Employees in (i) health centres, services and establishments, as well as those who care for the elderly, dependent or disabled people, as well as those who work in companies, entities, I+D+I and biotechnological centres where projects related to COVID-19 are being carried out, (ii) animal facilities associated with them, (iii) maintenance of the minimum services of those associated facilities and the companies supplying products necessary for such research and (iv) employees in funeral services and other related activities.
 10. Employees in animal healthcare centres, services and establishments.
 11. Employees providing services at press retailers and in public and private media or news agencies, as well as in their printing or distribution.
 12. Employees of financial services companies, including banking, insurance and investment services, for the provision of services that are essential, and activities relating to payment infrastructures and financial markets.
 13. Telecommunications, audio-visual and essential computer services, networks and facilities which support them and the sectors or subsectors necessary for their proper functioning, in particular those essential for the proper provision of public services and the functioning of public employees' teleworking facilities.
 14. Employees who provide services related to the protection and care of victims of gender-based violence.
 15. Lawyers, solicitors, social graduates, translators, interpreters and psychologists who assist in any legal proceedings not suspended by Royal Decree 463/2020 of 14 March and who thus comply with the essential services set out in the resolution of the Secretary of State for Justice of 14 March 2020.
 16. Employees who provide services in legal offices and consultancies, administrative and social graduate agencies, and external and own services for the prevention of occupational risks, in urgent matters.
 17. Those who provide services in notaries' offices and registries for the fulfilment of the services required by the General Direction of Legal Security and Public Faith.
 18. Employees providing cleaning, maintenance, urgent breakdown repair and surveillance services, and engaged in the collection, management and treatment of hazardous waste, as well as solid urban waste, decontamination activities, other waste management services
 19. Employees in the Refugee Reception Centres and Temporary Stay Centres for immigrants operating within the framework of International Protection and Humanitarian Assistance.
 20. Employees on water supply, purification, conduction and sanitation activities.
 21. Those indispensable for the provision of meteorological services for weather forecasting and observation.

22. Employees of the postal service, for the purpose of providing post collection, acceptance, transport, sorting and delivery services.
23. Employees involved in the import and supply of healthcare equipment, such as logistics, transport, storage and customs transit companies and, in general, all those involved in healthcare corridors.
24. Employees providing distribution and delivery of products services by internet, telephone or correspondence.
25. Any other employee providing services that have been deemed essential.

What Rights Do the Affected Companies Have?

Minimum Essential Activity

Companies required to apply the recoverable paid leave may establish, if necessary, the minimum number of employees or shifts strictly necessary in order to maintain the essential activity. This activity and this minimum number of employees or shifts shall be based on the activity carried out during an ordinary weekend or on public holidays.

Guarantees for the Resumption of the Business Activity

In those cases where it is impossible to interrupt the activity immediately, employees covered by the Royal Decree-Law may provide services on Monday 30 March 2020 with the sole purpose of carrying out the essential tasks in order to make the recoverable paid leave effective, without causing disproportionate harm to the resumption of the business activity.

Continuity of Transport Services

Those transport employees who are carrying out a service not included in the Royal Decree-Law at the time of its entry into force shall begin the recoverable paid leave once the service in progress has been completed, including as part of the service, if applicable, the corresponding return home from their last delivery destination.

Essential Services in the Administration of Justice

Judges, public prosecutors, court clerks and other personnel in the service of the Administration of Justice will continue to deal with procedural legal actions not suspended by Royal Decree 463/2020, of 14 March.

Contacts

Ignacio Regojo

Partner, Madrid
T +34 91 426 4804
E ignacio.regojo@squirepb.com

Juan Nasarre

Director, Madrid
Labor and Employment
T +34 91 426 4866
E juan.nasarre@squirepb.com