

On 13 May 2020, Royal Decree-law 18/2020 of 12 May, on employment social measures, has been published in the Official State Gazette. It sets out the agreements reached by the Spanish government together with the most representative trade unions and business associations, the terms of which are set out below.

Limitation of the Duration of the Suspension of Employment Contracts or Reduction of Working Hours (ERTE) Due to Force Majeure

The duration of the ERTE due to total *force majeure* is limited until 30 June 2020, as they were previously linked to the duration of the State of Alarm. This time limit may be extended if there are still health reasons.

If the causes reflected in the ERTE allow the partial recovery of the activity, companies will be in a situation of partial *force majeure* until 30 June 2020. These companies will reincorporate the employees to the necessary extent for the development of their activity, giving priority to adjustments in terms of reduction of working hours.

Companies will have to communicate to the labour authority the ERTE total resignation, if it is the case, within 15 days from the date of effects of the resignation. However, the SEPE must be notified in advance of any changes in the data contained in the initial collective application, as well as any changes relating to the termination of the application of the measure regarding all or some of the employees concerned.

ERTE Specifications for Economic, Technical, Organizational and Productive Reasons

An ERTE due to objective reasons can be filed while a *force majeure* ERTE is in force. In this case, the date of effects of the ERTE for objective reasons will coincide with the termination date of the *force majeure* ERTE.

Unemployment Protection

Unemployment measures of Article 25 of Royal Decree Law 8/2020, including the recognition of the right to unemployment benefits for the affected employees, even if they do not have the minimum period of contributory employment required and, not taking into account the time when the unemployment benefit is received, in order to consume the established maximum periods of receipt, will be applicable until 30 June 2020. With the exception of unemployment protection measures received by discontinued permanent employees, which will be applicable until 31 December 2020.

Social Security Contributions

In case of total force majeure ERTE:

The TGSS will exempt companies from the payment of employer's contributions and joint collection contributions for the months of May and June 2020, provided that, on 29 February 2020, they had less than 50 employees registered in the Social Security.

If these companies have 50 or more employees registered in the Social Security, the exemption will be equal to a 75% of the employer's contribution and joint collection contributions.

In case of partial force majeure ERTE:

Companies will be exonerated from the payment of the employer's contribution and from joint collection, in the following percentages:

	Employees Who Restart Their Activity		Employees With Their Activities Suspended	
	Contribution Accrued In May 2020	Contribution Accrued In June 2020	Contribution Accrued In May 2020	Contribution Accrued In June 2020
Companies With Less Than 50 Employees	85%	70%	60%	45%
Companies With More Than 50 Employees	60%	45%	45%	30%

The exemptions will be applied by the TGSS at the request of the company, after communication of the situation of total or partial *force majeure*, as well as the identification of the affected employees and the period of suspension or reduction of working hours. This communication shall be made for each contribution account code, by means of a responsible statement to be submitted through the RED System, before the calculation of the corresponding contribution settlement is requested.

Distribution of Dividends and Tax Transparency

Companies which use the public resources allocated to *force majeure* ERTE may not distribute dividends for the tax year in which the ERTE is applied, unless they pay in advance the amount corresponding to the exemption applied to Social Security contributions.

This limitation does not apply to companies with less than 50 employees registered in the Social Security on 29 February 2020.

Companies with their tax domicile in countries or territories classified as tax havens will not be able to benefit from the ERTE due to *force majeure*.

Extension of the Prohibition of Dismissals for Reasons Linked to COVID-19

Until 30 June 2020, *force majeure* and the economic, technical, organisational and production reasons for the suspension of contracts and reduction of working hours will not be considered as justifying the termination of the employment contract.

Employment Protection

The commitment of the company to maintain employment rates during the period of six months from the date of resumption of the activity is understood as the effective return to work of the employees affected by the ERTE, even if this is partial or only affects some employees.

This commitment will be understood to have been breached if any of the employees affected by the ERTE are dismissed or have their contracts terminated.

This commitment will not be considered breached when the employment contract is terminated due to fair disciplinary dismissal, resignation, death, retirement, total permanent disability or absolute disability of the employee, nor by the end of the call of the people with permanent-discontinuous contract, when this does not imply a dismissal, but an interruption of the contract.

In particular, in the case of fixed-term contracts, the commitment will 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 that constitutes its object, or when the activity that is the object of the contract cannot be performed immediately.

This commitment to maintain employment rates will be assessed in light of the specific characteristics of the various sectors and the applicable labour regulations, taking into account, in particular, the specificities of those companies with a high variable or seasonal employment rates.

The commitment to maintain employment will not apply for companies where there is a risk of insolvency proceedings.

Companies that fail to comply with this commitment must reimburse the full amount of the contributions from which they were exempted, with the corresponding surcharge and interest for late payment, following an action carried out by the Labour and Social Security Inspectorate to accredit non-compliance and determine the amounts to be reimbursed.

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