

Spain Passes New Royal Decree-Law 24/2020 to Protect Jobs and Boost the Economy

EMEA – July 2020

On Friday 26 June, Spain's new Royal Decree-Law 24/2020 (RDL 24/2020) came into force, aimed at protecting jobs and supporting businesses in the transition towards full economic activity. RDL 24/2020 represents a scaling back of the emergency measures established in Royal Decree-Law 8/2020 of 17 March and in the First Social Agreement on the Protection of Employment, which expired on 30 June 2020.

A number of the changes relate to the Temporary Employment Regulation Schemes (ERTE) that were introduced by the Spanish government to allow employers to suspend workers temporarily or reduce their working hours in response to the coronavirus pandemic, while allowing affected workers to claim unemployment benefits. If the changes are authorised by the relevant labour authority, employers are also eligible to claim exemptions from the payment of certain social security contributions.

Key measures for employers to be aware of include:

"Force majeure" ERTes to be extended until 30 September 2020

Any "force majeure" ERTes that were already in place before RDL 24/2020 came into force will now be extended until 30 September 2020, giving employers more time within which to integrate staff back into the business.

Affected companies must now seek to reintegrate any employees affected by the suspension/reduction in working hours back into the business in line with any increase in business activity in the following weeks and months, giving priority to adjustments in terms of reduction in working hours.

ERTes caused by "economic, technical, organizational and productive reasons"

This type of ERTE will continue to be available to employers and may be submitted by them to the relevant labour authority while a force majeure ERTE is still in force.

If the application is submitted after the termination of an ERTE due to force majeure, the date of the effects of the ERTE will be backdated to the date the force majeure ERTE is terminated.

Any ERTes that were in force at the commencement of RDL 24/2020 will continue to apply on the terms set out in the final communication from the company and for the period set out therein.

Prohibition of overtime and outsourcing

No overtime or new outsourcing of activity may be carried out by employers during the implementation of an ERTE due to force majeure or economic, technical, organizational and productive reasons.

This prohibition may be waived if workers that provide the service (in need of overtime or outsourcing) cannot carry out their functions due to training, qualification or other objective and justified reasons, but only after the company has informed the workers' legal representatives. Employers need to be very careful to ensure they do not breach these provisions as this may result in action by the Labour and Social Security Inspectorate.

Unemployment protection measures

The unemployment measures provided for in Article 25 of RDL 8/2020 will remain in force until 30 September 2020, with the exception of those provisions for "permanent-discontinuous" employees, which will continue until 31 December 2020.

For the purpose of regularising unemployment benefits, companies must declare any days worked in the previous calendar month through the "certific@2" application, whether there have been any periods of inactivity during that month, any reduction in working hours or both.

This notification requirement applies notwithstanding a company's existing obligation to notify the authorities, prior to any withdrawals and variations in suspension and reduction of working hours, under the terms already established by law.

Extraordinary contribution measures linked to ERTE

Companies may benefit from the following exemptions from social security contributions:

For force majeure ERTE:

	Applicable to employees who had their activity restarted or who restart it from July 1	Applicable to employees with their activities suspended as of July 1
	Accrued contribution in July, August and September	Accrued contribution in July, August and September
Companies with less than 50 employees	60%	35%
Companies with more than 50 employees	40%	25%

For ERTE caused by economic, technical, organizational and productive reasons:

	Applicable to employees who had their activity restarted from July 1	Applicable to employees with their activities suspended between July 1 and September 30
	Accrued contribution in July, August and September	Accrued contribution in July, August and September
Companies with less than 50 employees	60%	35%
Companies with more than 50 employees	40%	25%

The General Treasury of the Social Security will process applications for exemption. Companies must submit details of the relevant employees, the period of suspension or reduction in working hours as well as a declaration of the validity of the ERTE through a 'responsible declaration', evidencing each contribution account code and month of accrual.

For the exemption to apply, the responsible declaration must be presented before requesting the calculation of the quota settlement corresponding to the quota accrual period on which said declarations have effect.

The express waiver of the ERTE filed with the labour authority determines the termination of these exemptions. Companies must communicate to the General Treasury of the Social Security this express waiver of the ERTE.

The presentation of the responsible declarations and, if applicable, the communication of the waiver of ERTE, must be made through the RED System.

Temporary transitional and accompanying measures relating to contributions

Companies may benefit from the following exemptions from social security contributions:

For partial force majeure ERTE:

	Applicable to employees whose activities are suspended as of July 1		
	Accrued contribution in July	Accrued contribution in August	Accrued contribution in September
Companies with less than 50 employees	70%	60%	35%
Companies with more than 50 employees	50%	40%	25%

Companies which, from 1 July 2020, are prevented from carrying out their normal activities because of new restrictions on one of their workplaces may benefit, with regard to the employees assigned and registered in the contribution account codes of the affected workplaces, from the exemption percentages set out below, subject to the authorisation of a force majeure ERTE:

- 80% of the company contribution accrued during the closure period and until 30 September
– for those companies with less than 50 employees on 29 February 2020; and
- 60% of the company contribution accrued during the closure period and until 30 September
– for those companies with 50 or more employees on 29 February 2020.

When the companies referred to above restart activities, the measures set out in the previous section shall apply to them from that point up until 30 September 2020.

Extension of the commitment to maintain employment

The obligation to maintain employment levels will be extended to those companies that apply for an ERTE for economic, technical, organisational and productive reasons, and benefit from exemptions to social security contributions. Consequently, such companies will also be obliged not to dismiss staff for six months. For those companies that will benefit for the first time from the social security exemptions set out in RDL 24.2020, the six-month period will start to run from 26 June 2020, namely when the new provisions came into force.

Extension of additional employment protection measures

Articles 2 and 5 of Royal Decree Law 9/2020 set out (i) measures to protect employment, which provide that force majeure and economic, technical, organisational and productive reasons for ERTes are not legitimate reasons to justify the termination of the employment contract or dismissal; and (ii) how to calculate the maximum duration of temporary contracts during the ERTE. Both of these provisions will now remain in force until 30 September 2020.

Contacts

Ignacio Regojo

Partner, Madrid

T +34 91 426 4804

E ignacio.regojo@squirepb.com

Juan Nasarre

Director, Madrid

T +34 91 426 4866

E juan.nasarre@squirepb.com