

Spanish Government Approves Extension of Furlough Scheme for Force Majeure to 31 May 2021

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The Spanish government has approved the Royal Decree-law 2/2021, thereby extending the duration of ERTes due to *force majeure*, prevention ERTes and limitation ERTes until 31 May 2021. Neither the submission of a further administrative authorisation nor a collective application of employment benefits is required as part of this process. Instead, a communication sent to the labour authority and to the workers' representatives about the extension will suffice to benefit from this scheme.

Through this extension, employees will continue to receive 70% of their base salary. In addition, until January 2022, the time an employee has been on this furlough scheme will not affect the calculation of future government benefits.

In addition to the extension of the furlough scheme, the Royal Decree-law 2/2021 also covers other relevant measures:

a. Exemptions to Social Security Contribution Obligations

The furlough schemes covered by these exemptions until 31 May 2021 include:

- **Most affected sectors** – For those industry sectors listed in the CNAE (National Classification of Economic Activity) as most affected, there will be social security contribution exemptions of 85% for businesses with less than 50 employees and 75% for businesses with 50 or more employees, during February, March, April and May 2021.
- **Prevention ERTE** – Companies that are unable to carry out their business activity in any of their workplaces (so are essentially closed altogether) due to the government restrictions in place for COVID-19 can apply for the "prevention ERTE." Such companies are wholly or partially exempt from social security payments while the workplace is closed. The contributions will be 100% covered by the state until 31 May 2021 for businesses with less than 50 employees and 90% covered for those with 50 or more employees.
- **Limitation ERTE** – Companies whose business activity is limited due to the imposition on them of COVID-19 measures (those that are open but not able to supply the full range of their normal products or services and do not need all their staff) can apply for this scheme from the labour authority. In such cases, the social security exemptions will be:

	February	March	April	May
Businesses with more than 50 employees	90%	80%	75%	70%
Businesses with less than 50 employees	100%	90%	85%	80%

b. Job Retention Safeguarding Clause

Companies that benefit from these exemptions must commit to the continuation of employment beyond the end of the scheme for a further six-month period. This does not prevent them from dismissing employees in that window due to fair disciplinary reasons. This commitment shall also not be considered breached when the employment contract is terminated due to employee's resignation, death, retirement, total permanent disability or absolute disability, nor by the end of the call of the employees with a 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.

c. New ERTes After 31 January 2021

The prospect of new ERTes has also been included in this Royal Decree-law where companies are unable to operate their business or are limited in their business activity. Such companies can apply to the labour authority for the appropriate ERTE depending on whether they are in circumstances of full closure or only a reduction in activity.

ERTes for objective reasons can also benefit from the simplified administrative process in place as per article 23 Royal Decree-law 8/2020. Similarly, an extension of this type of ERTE is processed through the labour authority.

In addition, the following conditions remain unchanged: (i) fiscal transparency and restrictions on dividend distributions; (ii) restriction on overtime hours and outsourcing; (iii) zero layoffs; and (iv) time suspended within temporary contracts does not form part of the maximum time period calculation.

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