

# Main measures included by Royal Decree-Law 18/2020 of 12 May on social measures in defence of employment

18 May 2020

## Proceedings to suspend employment contracts or to reduce employees' working time (ERTE) due to Force Majeure of article 22 of RDL 8/2020

As of 13 May 2020, those companies that have applied an ERTE of Force Majeure will continue in a **total force majeure** situation derived from COVID-19 as long as the causes that led to it last and as a maximum of **30 June 2020**.

- Those companies that have implemented an ERTE but can recover part of their activity will be in a situation of **partial force majeure** derived from COVID-19. This recognition will be understood from the moment in which the partial recovery of their activity is allowed and as a maximum of **30 June 2020**.
- These companies must proceed to reincorporate the affected employees to the extent necessary for the development of their activity, giving priority to the reduction of working hours.
- The situation of total renunciation of force majeure must be communicated within 15 days from the date of effect of said renunciation, after notifying the SEPE of the variations in the data contained in the initial collective application for access to unemployment protection.

## ERTE for productive, technical, organisational or productive grounds (ETOP) processed by art. 23 of RDL 8/2020

- The processing of these ERTES may be initiated while an ERTE is running due to *force majeure*.
- When the ERTE ETOP is initiated after the termination of an ERTE due to *force majeure*, the date of effects of the ERTE ETOP will be backdated to the date of termination of the *Force Majeure* ERTE.

- The ERTES ETOP in force on the date of entry into force of RDL 18/2020 shall continue to apply in the terms provided for in the company's final communication and until the term referred to therein.
- The special procedures provided in RDL 8/2020 will remain in force until 30 June 2020. However, exceptionally, the Council of Ministers may extend their validity for certain sectors of activity.

## Extraordinary measures in the field of unemployment protection for Force Majeure ERTES and ERTES ETOP

- The unemployment protection measures provided for in paragraphs 1 to 5 of Article 25 of RDL 8/2020 will apply only until **30 June 2020**.

This implies that, as of 30 June 2020, **it will no longer be applicable:**

- The recognition of the right to unemployment benefit of those employees affected by an ERTE and who lacked the minimum period of contributed employment.
  - Do not count the time in which the unemployment benefit is received for the purpose of consuming the maximum periods of receipt established.
  - The possibility of taking advantage of these measures is open to people who are working members of labour companies and associated work cooperatives that were planned to be listed by the contingency of unemployment.
  - The possibility of taking advantage of these measures is open to all affected employees both (i) if at the time of the adoption of the business decision they were suspended their previous entitlement to unemployment benefit or subsidy and (ii) if they did not have the minimum period of employment in order to qualify for contributory benefit, or had not received previous unemployment benefit.
  - The special features established with respect to the amount and duration of the contributory benefit, so that it will no longer be extended until the expiry of the period of the ERTE.
- The extraordinary unemployment protection measures for permanent-discontinuous (“fijo-discontinuo”) employees will apply until **31 December 2020**.

## Extraordinary contribution measures for companies which have implemented a Force Majeure ERTE

- **ERTE due to total *force majeure*:**
  - **Companies with less than 50 employees on 29 February 2020:** The TGSS will exempt, with respect to contributions accrued in May and June 2020, the companies that have carried out an ERTE due to *force majeure* from the payment of the business contribution set in Article 273.2 LGSS and that related to the contributions for joint collection.
  - **Companies with more than 50 employees on 29 February 2020:** The obligation to pay contributions will reach 75% of the company contribution.

- **ERTE for partial force majeure:** Companies that use this modality will be exempt from paying the company contribution to Social Security and for joint collection concepts as follows:
  - With respect to the employees who restart their activity as from the date of effect of the resignation of the ERTE due to *force majeure* and the periods and percentages of the working day from that restart:
    - **Company with less than 50 employees on 29 February 2020:** The exemption will reach 85 % of the company contribution accrued in May 2020 and 70 % of the company contribution accrued in June 2020.
    - **Company with more than 50 employees on 29 February 2020:** For these cases, the exemption will reach 60 % of the company contribution accrued in May 2020 and 45 % of the company contribution accrued in June 2020.
  - With respect to the employees who continue with their suspended activities as from the date of effect of the resignation of the ERTE due to *force majeure* and the periods and percentages of the working day affected by the suspension:
    - **Company with less than 50 employees on 29 February 2020:** The exemption will reach 60% of the company contribution accrued in May 2020 and 45% of the company contribution accrued in June 2020.
    - **Company with more than 50 employees on 29 February 2020:** The exemption will reach 45 % of the company contribution accrued in May 2020 and 30 % of the company contribution accrued in June 2020. In this case, the exemption will apply to the payment of the company's contribution established in Article 273.2 LGSS, as well as that relating to the contributions for joint collection.
- Exemptions from the contribution shall 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 the working day.

In order for the exemption to be applicable, this communication this communication shall be made, for each contribution account code, by means of a responsible declaration that must be presented, before the calculation of the corresponding contribution settlement is requested, through the RED System.

- The exemptions in the contribution shall not have any effect on employees, and the period in which they are applied shall be considered as effectively contributed for all purposes.

## **Amendment of Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19**

With regard to safeguarding of employment for Force Majeure ERTes:

- The extraordinary measures in the field of employment will be subject to the commitment of the company to maintain employment for a period of six months from the date of

resumption of the activity, understanding as such the effective return to work of persons affected by the ERTE, even when this is partial or only affects part of the workforce.

- This commitment will be understood to have been breached if the dismissal or termination of the contracts of any of the persons affected by the ERTE occurs.
- This commitment shall not be deemed to have been breached when the employment contract is terminated by:
  - Disciplinary dismissal declared as fair
  - Resignation
  - Death
  - Retirement
  - Total or absolute permanent incapacity or severe disability of the employee
  - End of the call for fixed-discontinuous contracts
  - Interruption of the fixed-discontinuous contract (without causing dismissal)
  - End of time agreed in the temporary contracts
  - Completion of the work or service which is the subject of the temporary contract
  - The activity that is the object of the temporary contract cannot be carried out immediately
  - When the company is at risk of insolvency proceedings.
- This commitment to maintain employment will be assessed in the light of the specific characteristics of the various sectors and failure to comply with it will entail the reimbursement of the full amount of the contributions from which payment was exempted, with the corresponding surcharge and interest for late payment.

## **Amendment to Royal Decree Law 9/2020, of 27 March, adopting supplementary measures in the field of employment to mitigate the effects of COVID-19**

With regard to the prohibition of the termination of employment contracts for reasons related to COVID-19:

- The limitations specified in Articles 2 and 5 of RDL 9/2020 will only be in force until 30 June 2020. However, it should be noted that the prohibition on dismissal for reasons of a temporary nature derives from principles of Spanish labour law, so that the loss of validity of Article 2 of RDL 9/2020 should in no case be interpreted as allowing dismissal for reasons related to Covid-19. Royal Decree-Law 15/2020 amends the wording of the second additional provision of RDL 9/2020 to clarify, among other things, that in the cases described above, the employee shall retain the right to the salary corresponding to the period of suspension or reduction of the employment initially authorized, deducting any amounts received as unemployment benefit.

## Contacts



**Luis Enrique de la Villa**  
Partner  
T +34 91 349 80 04  
[luisenrique.delavilla@hoganlovells.com](mailto:luisenrique.delavilla@hoganlovells.com)



**Jesús García**  
Senior Associate  
T +34 91 349 80 04  
[jesus.garciasanchez@hoganlovells.com](mailto:jesus.garciasanchez@hoganlovells.com)

**[www.hoganlovells.com](http://www.hoganlovells.com)**

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com). Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.  
© Hogan Lovells 2020. All rights reserved.