

# Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment - Analysis

23 April 2020

*The Government of Spain has recently approved the Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment (the [Royal Decree-Law 15/2020](#)).*

*The following is a summary of the package of employment related measures established in that regulation which, in the terms of the Explanatory Memorandum, "reinforces complements and extends those previously adopted and focuses on support for businesses and employees".*

## **Partial Force Majeure enabling the ERTE**

In Royal Decree-Law 8/2020 of 17 March ([RDL 8/2020](#)), different measures were adopted regarding the temporary suspension of contracts and reduction of working hours ([ERTEs](#)) with the aim of preventing a situation such as the current health crisis from having a negative structural impact on employment. One of these measures consists of the possibility of using ERTEs due to force majeure resulting from the health crisis. Specifically, article 22 of RDL 8/2020 defines force majeure for these purposes as the cause of the suspension of contracts or reduction of working hours that is directly related to the loss of activity as a result of COVID-19, "including the declaration of the state of alarm, involving the suspension or cancellation of activities, temporary closure of premises of public affluence, restrictions on public transport and, in general, on the mobility of persons and/or goods, lack of supplies that seriously impede the continuation of the ordinary development of the activity, or in urgent and extraordinary situations due to contagion of the workforce or the adoption of preventive isolation measures decreed by the health authority".

The Explanatory Memorandum explains that, unlike what happens with other catastrophic events, the force majeure described in article 22 of RDL 8/2020 is linked to specific circumstances of a changing nature [that are decided in each case by law](#).

In line with the above, Royal Decree-Law 15/2020 introduces the concept of "partial force majeure", foreseeing the possibility that the event amounting to force majeure does not affect the entire workforce of those companies that carry out activities considered essential during the

crisis. Consequently, in the terms of the Explanatory Memorandum, partial force majeure would be that which occurs *"in the part of the activity or in the part of the workforce not affected by that essential character"*.

## **Extension of the preferential nature of remote work and of the right to adapt working hours and reduce working hours regulated in RDL 8/2020**

The preferential status of remote working is extended by two months, as well as the right to adapt the timetable and reduce the working day established in favour of employees who can prove that they have a duty of care towards their spouse or unmarried partner, as well as towards family members by blood up to the second degree, due to exceptional circumstances related to the actions necessary to prevent the community transmission of the COVID-19.

As a consequence of this extension, these measures will be in force until three months after the end of the state of alarm. Further extensions are expectable.

## **Suspension of deadlines in relation to the labour and social security inspectorate**

The period of validity of the state of alarm, as well as its possible extensions, will not count for the purposes of the duration of the verification actions of the Labour and Social Security Inspectorate. Likewise, such period shall not count towards the duration of the deadlines set by the officials of the Labor and Social Security Inspection System for compliance with any requirements, nor for the statute of limitation of those conducts that could have been sanctioned.

Exceptions to the above rule are cases where the intervention of such a body is necessary to ensure the protection of the general interest or because they are related to the COVID-19.

## **Legal situation of unemployment due to termination of employment during the probationary period or resignation with job offer frustrated by the health crisis**

The termination of the employment relationship during the probationary period at the request of the company, which takes place from 9 March 2020, will be considered as a legal situation of unemployment regardless of the reason for the termination of the previous employment relationship.

Likewise, employees who voluntarily terminated their last employment relationship on or after March 1, 2020, because they had a firm offer to sign an employment contract with another company, will be in a legal situation of unemployment, if the failing company had withdrawn from the offer as a result of the crisis arising from COVID-19.

## **Anti-fraud measures**

Royal Decree Law 9/2020 of 27 March (**RDL 9/2020**) developed a penalty regime adapted to current circumstances with the implementation of the necessary control and penalty mechanisms to prevent fraudulent behaviour in the receipt of public benefits. Royal Decree-Law 15/2020 reinforces these control and sanction mechanisms.

## Control mechanisms and reimbursement of benefits: clarification of situations

The second additional provision of RDL 9/2020 regulates the infringement incurred by companies that submit applications for employment measures (such as ERTes) that contain falsehoods, or that apply for such measures when they are not necessary or have insufficient connection with the cause that gave rise to them (when such circumstance can be deduced from the falsehoods or inaccuracies in the data provided by them). In such cases, the undue recognition of benefits to the employees for a cause not attributable to them gives rise to the reimbursement of the benefits unduly generated by the company, which must pay to the Social Security the amounts received by the employee in accordance with the provisions of the revised text of the Law on Social Order Infringements and Penalties (**LISOS**).

Royal Decree-Law 15/2020 amends the wording of the second additional provision of RDL 9/2020 to clarify, among other aspects that, in the events described above, the employees shall retain the right to the salary corresponding to the period of employment regulation initially authorized, less any amounts received as unemployment benefit.

## Applications containing false or inaccurate data: additional measures

The novelty introduced consists in the objectification of the infraction: the previous wording of this article punished the *"fraudulent"* machination by the Company that resulted in the *"fraudulent"* enjoyment of benefits by the employees. These subjective elements of the infraction description disappear in the new wording, so that it is sufficient to record *"inaccurate"* data resulting in the *"improper"* enjoyment of benefits.

It is understood that the company commits an offence for each of the employees who have applied for, obtained or enjoyed Social Security benefits improperly.

The company is jointly and severally liable for the reimbursement of the amounts unduly received by the employees. Furthermore, as an additional novelty, the company will be directly liable for the reimbursement of the amounts unduly received by the employee, provided that there is no malice or fault on his/her part.

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