

ROYAL DECREE-LAW 9/2020

The Royal Decree-Law 9/2020 clarifies certain employment aspects relating to the extraordinary measures approved on 18 March on the occasion of the declaration of the state of alarm resulting from the health crisis caused by the COVID-19 epidemic. In addition, complementary measures are approved in relation to these extraordinary mechanisms of labour flexibilization and other aspects.

CLARIFICATION OF THE RULES ON TERMINATION OF EMPLOYMENT CONTRACTS

The Explanatory Memorandum to the Royal Decree-Law 9/2020 acknowledges the validity of the various causes for dismissal and termination of contracts provided for in the labor regulations. Such causes are foreseen for structural situations that force companies to adopt traumatic measures in relation to employment.

On the other hand, the grounds that allow companies to resource to the procedures for suspending contracts and reducing working hours established in the context of the crisis of COVID-19 are of a temporary nature and cannot therefore be used to terminate employment contracts.

INTERRUPTION OF TEMPORARY CONTRACTS' TERMS WHEN AFFECTED BY COLLECTIVE SUSPENSION PROCEDURES ARISING FROM COVID-19

The suspension of temporary contracts, including training, relief and interim contracts, because they are affected by the collective suspension procedures established in the context of the crisis of the COVID-19, will lead to an interruption of the terms of these contracts and the reference periods equivalent to the suspended period.

In accordance with the Explanatory Memorandum to the Royal Decree-Law 9/2020, the aim is to ensure that temporary contracts can reach their maximum effective duration, taking full effect, in terms of the provision of services, the training they entail and the contribution to the business activity, during the time initially planned.

LIMITATION OF THE EFFECTS OF FORCE MAJEURE SUSPENSION PROCEDURES AUTHORISED BY ADMINISTRATIVE SILENCE

It is expressly recognized that, although administrative authorization is required to implement the procedure for suspension due to force majeure arising from COVID-19, administrative silence, if the resolution is not issued within five days of the request, will be positive, in accordance with Article 24 of Law 39/2015, of October 1, on Administrative Procedure.

Notwithstanding the foregoing, the fact that the procedure is resolved by tacit resolution cannot imply a maximum duration different from that applicable to express resolutions, which are limited to the effectivity of the state of alarm. Consequently, the effects of the suspension or

reduction of working hours procedure on force majeure will be limited to the duration of the state of alarm (i.e. until 12 April and potential prorogues).

FRAUD PREVENTION MECHANISMS

The Royal Decree-Law 9/2020 reminds that, in accordance with the applicable regulations, requests submitted by the company that contain false or incorrect data will be subject to the corresponding sanctions, and that the company's conduct consisting of requesting measures in relation to employment that are not necessary or have insufficient connection with the cause that gave rise to them may also be sanctioned, provided that they give rise to the generation or receipt of undue benefits.

The undue recognition of benefits to employees as a result of any of the above breaches, shall give rise to an ex officio review of the act of recognition of such benefits. In such cases, and without prejudice to the administrative or criminal liability that may correspond by law, the company must return the amounts received by the employees.

At the same time, the labour authorities are required to collaborate with the Labour and Social Security Inspectorate in order to detect possible fraud.

OTHER MEASURES REGULATED BY THE ROYAL DECREE-LAW 9/2020

- Those affected by procedures for the suspension of contracts and reduction of working hours arising directly from the crisis of COVID-19 will be able to benefit from the extraordinary measures on social security contributions and unemployment protection in force since 18 March, even if such procedures were authorised, communicated or initiated before that date.
- During the state of alert and its possible extensions, health centres, services and establishments and social centres for the elderly, dependent persons or persons with disabilities will not be able to process procedures for the suspension of contracts or reduction of working hours.
- The procedure for recognition of the unemployment benefits for all employees affected by procedures for the suspension of contracts and reduction of working hours arising from COVID-19 will be initiated by means of a collective request submitted by the company to the labour authorities. The request will be accompanied by a communication by which the company must inform the labour authorities of various items of information and which must be sent within 5 days of the request for the authorization required for the procedures on force majeure or from the date on which the company notifies the labour authorities of its decision to suspend or to reduce working hours in all other cases.

In the case of procedures prior to the entry into force of the Royal Decree-Law 9/2020, the 5-day period will begin to be calculated from this date (28 March).

Failure to transmit the said communication will be considered a serious labour offence.

- The date of effect of the legal situation of unemployment of the employees affected to the procedures of suspension of contracts or reduction of working hours as a result of COVID-19, will be the date of the event causing the force majeure (in the case of procedures based on force majeure). In all other cases, the effective date shall be the same as or later than the date on which the company notifies the labour authority of the decision taken regarding the suspension of contracts or reduction of the working hours, upon the conclusion of the negotiation period with the employee representatives.

ROYAL DECREE-LAY 10/2020

Royal Decree-Law 10/2020 aims to restrict mobility as much as possible in order to stop the spread of the COVID-19 virus. To this end, it regulates a compulsory paid leave of absence that can be recovered, so that the hours of work that are no longer provided during its validity (until 9 April) must be recovered in favour of the company throughout the year 2020.

RECOVERABLE PAID LEAVE

In order to further restrict mobility and contain the spread of the COVID-19 virus, Royal Decree-Law 10/2020 regulates a compulsory recoverable paid leave for all employees between 30 March and 9 April 2020 inclusive.

Under this leave, all employees will cease to provide services for their companies and will retain the right to remuneration for the duration of the leave.

Companies, if necessary, may set the minimum number of staff or the shifts strictly necessary in order to maintain the indispensable activity. This indispensable activity and this minimum number of staff or shifts will have as a reference that maintained in an ordinary weekend or on holidays.

EXCEPTIONS

Compulsory paid leave is not applicable to certain groups: (i) employees providing services in the sectors classified as "*essential*" or in the divisions or production lines of such services; (ii) employees hired by (a) companies that have requested or are applying a temporary suspension of employment contracts (b) those that are authorized to apply a temporary suspension of employment contracts during the validity of the paid leave; (iii) employees who are on temporary disability leave or whose contract is suspended for any other reasons; and (iv) employees who can continue to work through any non-presential forms of service provision, such as teleworking.

Essential services

Employees providing services in the sectors classified as "*essential*" cannot use the compulsory paid leave.

With the clarifications contained in the [annex to Royal Decree-Law 10/2020](#), "*essential services*" means the following (i) minimum services guaranteed during the validity of the state of alarm (energy supply, customs transit, etc.); (ii) activities participating in the market supply chain and in services of production centres for essential goods and services; (iii) hospitality and restaurant activities providing home delivery services; (iv) production and distribution chain of materials necessary for the provision of health services; (v) maintenance activities to guarantee essential services; (vi) transport services not affected by the declaration of the state of alarm; (vii) services in penal institutions, civil protection, maritime rescue, rescue and fire prevention and suppression, mine safety, and traffic and road safety and essential activities of private security companies; (viii) maintenance of equipment and material of the armed forces; (ix) activities of health, welfare and funerary centres, services and establishments; (x) animal health care; (xi) press and media; (xii) essential financial services; (xiii) telecommunications and audiovisual companies and essential computer services; (xiv) services related to the protection and care of victims of gender violence; (xv) activities necessary for the performance of non-suspended judiciary actions; (xvi) urgent services of legal offices and consultants, administrative and social graduate agencies, and external and internal services for the prevention of occupational hazards;

(xvii) essential notary and registry services; (xviii) cleaning, maintenance and surveillance and waste management services; (xix) activities of centres for the reception of refugees, centres for the temporary stay of immigrants and international protection and humanitarian aid organisations; (xx) water supply, purification, conduction, treatment and sanitation activities; (xxi) essential meteorological service activities; (xxii) universal postal service; (xxiii) import and supply of health care material; (xxiv) distribution and delivery of products acquired through distance commerce; (xxv) other services that have been considered essential.

The ministry of Health can modify or specify the activities that will be affected by the paid leave.

RECOVERY OF WORKING HOURS

Working hours not worked by employees during the days of paid leave may be recovered by the companies from the day after the end of the state of alarm until 31 December 2020.

The recovery process must be negotiated between the company and the employee representatives, during a negotiation process that will last a maximum of seven days.

The employees' representative committee (which must be set up within five days of the start of the negotiation process for the recovery of working hours) may have a different composition, depending on whether there is legal representation of the employees or not, as is the case with the negotiating committee to be set for the temporary suspension of employment contracts for economic, technical, organisational or productive reasons arising from COVID-19.

During the negotiation process, the parties must negotiate in good faith, with a view to reaching an agreement. This agreement may regulate the recovery of all or part of the working hours not performed by employees during the paid leave, the minimum notice with which the employee must know the day and time for the provision of the working hours to be recovered, as well as the reference period for the recovery.

If no agreement is reached, the company may unilaterally decide on the recovery of the working hours not performed during the paid leave. However, in any case, the recovery of the working hours may not lead to non-compliance with the minimum daily and weekly rest periods provided for by law and by the collective agreement, the establishment of a notice period of less than five days, or the exceeding of the maximum annual working time provided for in the applicable collective bargaining agreement. Likewise, the legally and conventionally recognised rights to reconcile personal, working and family life must be respected.

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