

March 2020

Employment Law Department

**FORCE MAJEURE IN PROCEEDINGS REGULATING TEMPORARY
EMPLOYMENT BASED ON THE OFFICIAL LETTER OF THE MINISTRY OF
LABOUR AND THE DECLARATION OF A STATE OF ALARM DUE TO COVID-
19**

On 14 March 2020, **Royal Decree 463/2020, of 14 March, declaring a state of alarm in order to manage the healthcare crisis situation caused by COVID-19 ("RD 463/2020")** was published in the Official State Gazette. RD 463/2020 includes all actions aimed at protecting the health and safety of all citizens, containment of disease progression and further strengthening of the public healthcare system. To this end, the Government **establishes some containment measures in certain areas where activity is suspended.**

Meanwhile, the Ministry of Labour has drafted an **Internal Note on suspending and reducing work days due to Covid-19**, which refers both to Proceedings Regulating Temporary Employment ("ERTE"), whether suspension or reduction of working time for economic, productive, organisational and technical reasons, and to those of "*force majeure*". It sets out that three cases may be understood as being covered by the concept of temporary force majeure

"a) Situations where there is a loss of activity due to various government or sanitary containment measures adopted as a result of Covid-19, including the declaration of a state of alarm by Royal Decree 463/2020 of 14 March, involving or which may involve, among other things, the suspension or cancellation of activities, temporary closure of premises where there is an influx of public, restrictions on public transport and, in general, the mobility of people and/or goods. For this purpose, all activities included in the annex of the royal decree mentioned above are considered to be affected by temporary force majeure.

b) Those due to the urgent and extraordinary situations caused by personnel being infected or the adoption of preventive isolation measures, which can be duly justified; or those due to

c) A lack of supplies severely impeding the regular continuance of the activity or which impose the suspension of certain work activities, provided that it is based on the exceptional measures decreed by the governmental authority or recommended by the healthcare authorities, in both cases linked to Covid-19."

In short, the Ministry of Labour considers the possibility of proceeding to submit an application for Proceedings Regulating Temporary Employment either due to objective reasons or "*force majeure*", in both cases arising from the current crisis situation. However, processing the latter is very different; it requires less documentation and the timeframes are much shorter in the case of force majeure (i.e., there is no consultation period and it comes into effect from the moment at which there is a case of "*force majeure*"), than in conventional proceedings regulating temporary employment.