

September 2020

Labour Law Department

**EXTENDING SOCIAL MEASURES TO PROTECT EMPLOYMENT IN THE FACE OF DEVELOPMENTS IN THE HEALTH CRISIS ARISING FROM COVID-19**

Following Royal Decree-Law 24/2020 of 26 June, on social measures to reactivate employment, protect self-employment and the competitiveness of the industrial sector (see commentary in AJ July 2020) and due to the persistence of the negative effects of Covid-19 on businesses and employment, **Royal Decree-Law 30/2020, of 29 September, on social measures to protect employment** (Official State Gazette 30 September 2020, which comes into force on the same day) has been published.

The main measures agreed to, referred to throughout RD-L 30/2020, are as follows:

**I. FORCE MAJEUR ERTE, ARISING FROM COVID 19, IN FORCE (Article 22 RD-L 8/2020)**

- **Extension:** automatically extended to **31 January 2021**.
- **Quota waiver:** Applies only to businesses belonging to "*sectors with a high coverage rate per ERTE and a low rate of activity recovery*" (*ANNEX according to National Classification of Economic Activities*), as well as those companies whose business depends (indirectly and for the most part), on the former or which are part of their value chain (in this case, it will be necessary to file a declaration that it is a business dependent on or forming part of the value chain with the Labour Authority between 5 and 19 October).

<b><u>Fewer than 50 workers</u></b>	<b><u>85%</u></b>
<b><u>More than 50 workers</u></b>	<b><u>75%</u></b>

**II. FORCE MAJEURE DUE TO IMPEDIMENT OR LIMITATION OF THEIR ACTIVITY**

- **Due to impediment:** businesses which are prevented by the new restrictions or health containment measures adopted from 1 October 2020 onwards from conducting their business in any of their workplaces.

- **Processing:** article 47.3 of the Workers' Statute.
- **Duration:** while the new restrictions or containment measures are in force.
- **Exemptions:** workers within the ERTE, during the period of closure and, as a maximum, up to 31 January 2021.

<b>Fewer than 50 workers</b>	100%
<b>More than 50 workers</b>	90%

- **Due to limitation:** businesses which as a result of decisions or measures taken from 1 October 2020 onwards, suffer limitations to conducting their business in any of their affected workplaces.

- **Processing:** article 47.3 of the Workers' Statute.
- **Duration:** while the decisions or measures taken are in force.
- **Exemptions:** workers with an ERTE, during the period of suspension of the activity and, as a maximum, up to 31 January 2021.

	<b>October</b>	<b>November</b>	<b>December</b>	<b>January</b>
<b>Fewer than 50 workers</b>	100%	90%	85%	80%
<b>More than 50 workers</b>	90%	80%	75%	70%

- **Contribution waiver (specific cases):** Applies only to businesses belonging to "sectors with a high coverage rate per ERTE and a low rate of activity recovery", as well as those companies whose business depends (indirectly and for the most part), on the former or which form part of their value chain (in this case, it will be necessary to file a declaration that it is a business dependent on or forming part of the value chain with the Labour Authority). This is incompatible with the exemptions mentioned above.

<b>Fewer than 50 workers</b>	85%
<b>More than 50 workers</b>	75%

- **Unemployment protection by ERTes due to force majeure:**
  - Attribution of contributions, even in the absence of the minimum paid occupation period required for this purpose, is extended until 31 January 2021.
  - Unemployment benefit payments are used up so long as RD-L 30/2020 applies, however this will not affect new benefit payments starting on or after 1 October 2020 (thus retaining the so-called "counter set to zero").

Likewise, until 1 January 2022, workers affected by an ERTE shall keep the "counter set to 0" when their employment contracts are terminated due to objective or other reasons, where dismissals are declared unfair.

  - It is necessary to submit a collective application for unemployment benefit prior to 20 October 2020.

### III. ETOP ERTE LINKED TO COVID 19

- **In force at the time of publication of RD-L 30/2020:**
  - **They will continue to apply.**
  - **Duration:** until the end of the term that was agreed at the time.
  - **Extension:** those ending while RD-L 30/2020 is in force may be extended provided this is agreed during a consultation period and reported to the Labour Authority.
- **Starting due to the publication of RD-L 30/2020:**
  - **Processing:** article 23 of RD-L 8/2020.
  - **Duration:** until 31 January 2021.
  - **Peculiarities:** they will possibly be processed during the term of the extension of the FM ERTes due to Covid-19 and will be retroactively effective from the end of the latter.
- **Contribution waiver (specific cases):** Applies until 31 January 2021 only to businesses belonging to "sectors with a high coverage rate per ERTE and a low rate of activity recovery", as well as those companies whose business depends (indirectly and for the most part) on the former or which form part of their value chain (it will be necessary to file a declaration that it is a business dependent on or forming part of the value chain with the Labour Authority).

Fewer than 50 workers	85%
More than 50 workers	75%

- **Unemployment protection:**

- Attribution of contributions, even in the absence of the minimum paid occupation period required for this purpose, is extended until 31 January 2021.
- Unemployment benefit payments are used up so long as RD-L 30/2020 applies; however this will not affect new benefit payments starting on or after 1 October 2020 (thus retaining the so-called "counter set to zero").

Likewise, until 1 January 2022, workers affected by an ERTE shall keep the "counter set to 0" when their employment contracts are terminated due to objective or other reasons, where dismissals are declared unfair.

- It is necessary to submit a new collective application for unemployment benefit prior to 20 October 2020 for any ERTES previously in force.
- It is necessary to submit a collective application for unemployment benefit within 15 days for ERTES processed arising from RD-L 30/2020.

#### IV. OTHER ADDITIONAL MEASURES

Other additional measures, referred to in RD-L 30/2020 applicable to any form of ERTE, are as follows:

- **Upholding caps regarding dividend distributions and fiscal transparency.**
- **Upholding employment safeguards:**
  - The commitment to uphold employment for six months remains in force under the terms regulated by RD-L 8/2020 and RD-L 24/2020.
  - Regarding businesses receiving exemptions under RD-L 30/2020, these shall be subject to a further six-month employment safeguarding period in accordance with the terms regulated by RD-L 8/2020.
  - Regarding businesses already affected by the commitment and which continue to receive exemptions under RD-L 30/2020, the start of the new six-month period will occur when the previous one comes to an end.
- **Ban on dismissals during an ERTE due to Covid-19** (until 31 January 2021), for all businesses.

- **Extension of the interruption of the calculation of the maximum duration of temporary contracts**, for those businesses that have implemented an ERTE.
- **Extension of the ban on overtime and recruitment.**
- **Protection for permanent seasonal contracts:** An extraordinary unemployment benefit shall be granted to workers who have been affected by an ERTE during their periods of activity and to those not previously affected by an ERTE who have exhausted the benefits or subsidies to which they are entitled.
- **Compatibility of unemployment benefits with part-time work for workers included in an ERTE:** the proportional part for the time worked shall not be deducted from the amount of the benefit; if it has been deducted, financial compensation shall be paid.
- **Priority training for workers affected by an ERTE.**