

January 2021

Labour Law Department

**STRENGTHENING AND CONSOLIDATING COMPANY MEASURES
TO DEFEND EMPLOYMENT**

Following Royal Decree-Law 30/2020 of 29 September on company measures to protect employment, and due to the persistence of the negative effects on businesses and employment arising from COVID-19, Royal Decree-Law 2/2021 of 26 January on strengthening and consolidating company measures to protect employment has been published.

The main measures agreed, referred to throughout RD-L 2/2021, are covered below:

I. CURRENT ERTES (TEMPORARY REGULATION OF EMPLOYMENT PLANS) DUE TO FORCE MAJEURE

- All current force majeure ERTES based on article 22 of RDL 8/2020 are automatically extended until 31/5/2021.
- All **ERTES due to impeding** the performance of the activity covered by article 2 of the first additional provision of RD-L 24/2020 and article 2.1 of RDL-30/2020. The exemptions applicable during the period of closures, between 1 February and 31 May:

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

- All **ERTES due to limiting** the performance of the activity covered by article 2.2 of RDL-30/2020. Exemptions applicable from 1 February to 31 May:

	February	March	April	May
Fewer than 50 workers	100%	90%	85%	80%
More than 50 workers	90%	80%	75%	70%

II. NEW ERTES DUE TO FORCE MAJEURE IMPEDING PERFORMANCE OF THE ACTIVITY COVERED BY ARTICLE 2

- o New ERTES due to impediment may be requested from the date this RD-L came into effect until 31 May.
- o **Processing** → in accordance with 47.3 of the Statute of Workers' Rights. Administrative silence will be interpreted as assent.
- o By workplace.
- o **Duration:** while containment measures are in force.
- o The **exemptions** applicable during the closure period:

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

III. NEW ERTES DUE TO FORCE MAJEURE LIMITING PERFORMANCE OF THE ACTIVITY COVERED BY ARTICLE 2

- o New ERTES due to limitation may be requested from the date this RD-L came into effect until 31 May.
- o **Processing** → article 47.3 of the Statute of Workers' Rights. Administrative silence will be interpreted as assent.
- o By workplace.
- o **Duration:** until 31 May 2021.
- o The **exemptions** applicable during the closure period:

	February	March	April	May
Fewer than 50 workers	100%	90%	85%	80%
More than 50 workers	90%	80%	75%	70%

IV. CHANGING FORCE MAJEURE ERTES TO IMPEDIMENT AND LIMITATION ERTES AND VICE VERSA

- o **Changing** an ERTE **from impediment to limitation or vice versa** from impediment or limitation based on a positive decision (express or implied), as a result of new restrictions, **will not require a new ERTE to be processed**.
- o The corresponding exemption percentages will apply at all times depending on

whether the force majeure situation in which the undertaking finds itself acts as an impediment or a limitation.

- o Businesses must **inform the labour authority approving the procedure and workers' legal representatives about the change of circumstances, the date it came into effect and the workplaces and persons affected and present a statement of responsibility to the General Treasury of the Social Security** so the corresponding exemption percentages in accordance with the situation of impediment or limitation of the development of the activity can be applied.

V. LIMITATIONS AND PROHIBITIONS FOR COMPANIES INVOKING THE NEW EXEMPTIONS PACKAGE

- o **The limitations on dividend distribution and fiscal transparency** will remain in place until 31 May 2021 in the terms provided for by article 4 of RD-L 30/2020.
- o **The commitment to protect jobs** for an additional 6 months by those undertakings benefiting from exemptions in accordance with the terms of article 5 of RD-L 30/2020 will remain in place.
- o **Extension of the ban on dismissals due to force majeure** or objective causes under which the ERTES linked to COVID-19 are covered in accordance with article 2 of RD-L 9/2020 until 31 May 2021.
- o **Extension of the interruption of the calculation of the duration of temporary contracts affected by Force Majeure or ETOP (economic, technical, organisational or production) ERTES reasons linked to COVID-19** of persons affected by ERTES until 31 May 2021 as provided for by article 5 of RD-L 9/2020.
- o Bans on **overtime, recruitment and outsourcing** until 31 May under the terms of article 7 of RD-L 30/2020.

VI. CNAE (NATIONAL CLASSIFICATION OF ECONOMIC ACTIVITIES CODE) ERTES

- o **New CNAES list**
- o **Exemptions** applicable to newly active workers and those who remain affected by the ERTE:

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

- o The **businesses** to which the **exemptions apply**:
 - a) Those for which the ERTE based on article 22 of RDL 8/2020 is automatically extended and whose activity involves one of the CNAEs provided for in the

annex.

- b) Those for which the ERTE based on article 22 of RDL 8/2020 is automatically extended and whose activity involves one of the CNAEs provided for in the annex and which changed between 1 February and 31 May, from a force majeure ERTE to an ETOP ERTE.
- c) Businesses covered by paragraph 3 b) and c) of the first additional provision of RD-L 30/2020, which have an ERTE under article 23 of RD-L 8/2020, entitled to exemptions and whose activity is classified as some of the CNAE-09 provided for in the Annex to RD-L 2/2021.
- d) Those for which the ERTE is automatically extended based on article 22 of RDL 8/2020 and whose business depends, indirectly and for the most part, on the undertakings referred to in the paragraphs above, or which form part of the value chain of those undertakings.
- e) Businesses which, having been classified as forming part of or being dependent on the value chain, have or will transition in the period from 1 February to 31 May from an ERTE on the grounds of force majeure (article 22 RD-L 8/2020) to an ETOP ERTE (article 3 of RD-L 30/2020).

VII. ERTES FOR ETOP REASONS

- o Will be regulated as to date, including the possibility of extension thereof as provided for by article 34 of RD-L 30/2020.

VIII. UNEMPLOYMENT BENEFIT

- o The **benefit period** is extended **(without the need for a grace period) until 31 May 2021**.
- o **The counter will be held at zero until 30 September 2020, although benefits paid from that date onwards will not be counted as having been used up for those who, before 1 January 2022, are granted unemployment benefit** either due to the termination of a fixed-term employment contract, for an individual or collective redundancy due to economic, technical, organisational or production reasons, or for a dismissal for any reason declared unfair.
- o **It will not be necessary to present a new collective application** for workers who were already receiving unemployment benefit as a result of applications for benefits under article 8.2 of RD-L 30/2020.
- o **Continuing extraordinary benefits for permanent seasonal workers** or those carrying out fixed and regular work repeated on certain dates under article 9 of RD-L 30/2020 until 31 May 2021.
- o When it is incompatible with unemployment benefit payments based on a part-time work ERTE **the proportional part of the time worked shall not be deducted from the amount of the benefit**.