

September 2021

Labour Law Department

FURTHER EXTENSION OF TEMPORARY REGULATION OF EMPLOYMENT FILES

On 29 September 2021 [Royal Decree-Law 18/2021, of 28 September, on urgent measures for the protection of employment, economic recovery and improving the labour market](#), whose main aim is to extend many of the measures implemented beforehand, either through Royal Decree-Law 30/2020 ([see AJ September 2020](#)), Royal Decree-Law 2/2021 ([see AJ January 2021](#)), or Royal Decree-Law 11/2021 ([see AJ May 2021](#)), was published. However, it also introduces a series of new features that we cover below:

I. EXTENDING FORCE MAJEURE ERTES

1st phase. - Automatic extension

- If an **ERTE was in force as of 30 September 2021** it is automatically extended until 31 October 2021, in accordance with the regime contained in Royal Decree-Law 11/2021.
- If an **ERTE was approved or communicated between 1 and 31 October**, it is also extended, in accordance with Royal Decree-Law 11/2021.

During the month of October, the exemption percentages that were being applied, or those that would have corresponded to them during the month of September 2021, will be applied.

2nd phase. - "Reasoned" extension

- **ERTES due to force majeure**, based on articles 1 and 2 of Royal Decree-Law 11/2021 **until 28 February 2022**, shall be extended, upon submission of a request to that effect, provided that the required documentation has actually been submitted.
- The application must be submitted to the labour authority that authorised or processed the corresponding file, between 1 and 15 October 2021. The labour authority will send it to the Labour and Social Security Inspectorate, for the purposes that may subsequently be relevant.
- Where there is no express resolution within 10 days, positive silence shall be understood.
- The application must be accompanied by a list of the working time or workdays suspended or reduced from July to September 2021 for each of the workers, duly identified in relation to every workplace.

II. NEW ERTE DUE TO IMPEDIMENT OR LIMITATION

- A new **ERTE can be requested due to impediment or limitations regarding the standard activity**, in the terms of article 2 of Royal Decree-Law 30/2020, provided that it is affected by new restrictions and health containment measures linked to COVID-19 issued **between 1 November 2021 and 28 February 2022**.
- The transition between a situation where there is a limitation to one where there is an impediment or vice versa will not require the processing of a new ERTE, but informing the labour authority and the workers' legal representatives of the change taking place, the effective date and the workplaces and workers affected, together with the presentation of an affidavit to that effect, before the General Treasury of the Social Security.

III. EXTENDING ERTE BASED ON ECONOMIC, TECHNICAL ORGANISATIONAL AND PRODUCTION (ETOP) GROUNDS

- **ERTES based on the ETOP grounds** in accordance with article 23 of Royal Decree Law 8/2020, may be extended **until 28 February 2022**, upon the submission of a request to that effect.
- The application must be submitted to the labour authority that authorised or processed the corresponding file, between 1 and 15 October 2021. The labour authority will send it to the Labour and Social Security Inspectorate, for the purposes that may subsequently be relevant.
- The application must be accompanied by a list of the working time or workdays suspended or reduced from July to September 2021 for each worker, duly identified in relation to every workplace; furthermore it shall include a report from the workers' representatives with whom the ERTE was negotiated.
- Companies that, as of 31 October 2021, are applying an ERTE due to force majeure related to Covid-19 may process an ERTE on ETOP grounds related to Covid-19, during the validity of the latter.

IV. EXEMPTIONS and TRAINING

1st phase. - During October 2021

- **During the month of October 2021, the exemption regime remains** for the Social Security contributions in force during the month of September 2021.

2nd phase. - From 1 November 2021 to 28 February 2022

- The **exemptions in terms of contributions applicable due to LIMITATIONS of normalised activity**, regarding workers who have their activities suspended, include a relevant novelty consisting of the attribution of different benefits to companies undertaking training activities in favour of the workers affected by the ERTE. These exemptions are as follows:

	No training activity	With training activity
>/= 10 workers	40%	80%
< 10 workers	50%	80%

() The training activities, which involve higher exemption levels, will work as follows: (i) they must be undertaken through any of the types of training provided for in Law 30/2015; (ii) the deadline for effectively providing training activities will end on 30 June 2022, and, (iii) a minimum number of training hours must be offered in accordance with the size of the company, from 10 to 49 workers it shall be 30 hours, and if there are more than 50 people on staff it shall be 40 hours.*

Likewise, companies that train personnel affected by ERTES will be entitled to an increase in credits for funding activities in the field of scheduled training in respect of the amount [of workers], depending on the size of the company and as indicated below:

From 1 to 9 workers	425 euros / person
From 10 to 49 workers	400 euros / person
With more than 50 workers.	320 euros / person

- The **exemptions in the field of contributions applicable due to IMPEDIMENTS affecting the normalised activity**, regarding workers who have their activities suspended, are as follows:

From November 2021	During suspension	Until February 2022
100%		

() There is no specification in this type of ERTE regarding training activities.*

V. National Classification of Economic Activities Code ERTES ("highly-protected")

- Aid for **ERTES in sectors especially affected by Covid-19**. These are (i) sectors with a high rate of coverage by ERTES; (ii) sectors with a low recovery rate; as well as (iii) businesses dependent on or forming part of the value chain.
- The same exemption percentages will be applied in the corresponding phases [those set out in section IV above of this AJ].

VI. OTHER MEASURES

The following are retained and continue to apply:

- The limits and provisions relating to **dividend distribution and fiscal transparency**.
- The prohibition of the use of overtime and new outsourcing.
- **Employment protection**.
- The interruption of the computation of the **maximum duration of temporary contracts**.
- The right to **contributory unemployment benefit**, even if the claimant does not have the minimum necessary contribution occupation period (the amount will be determined by applying to the regulatory base, the percentage of 70%).
- The **non-exhaustion of unemployment benefit** during the time the worker is on ERTE (the so-called "counter set to zero").
- The extension of the **Plan MECUIDA** until 28 February 2022.

A Specific ERTE for businesses affected by the volcanic eruption registered in the Cumbre Vieja area of the island of La Palma. This will take effect from the date of the event causing the force majeure and will remain in place until 28 February 2022. Businesses will benefit from exemptions of up to 100% of social security contributions where their activity is entirely impeded and up to 90% where it is limited.