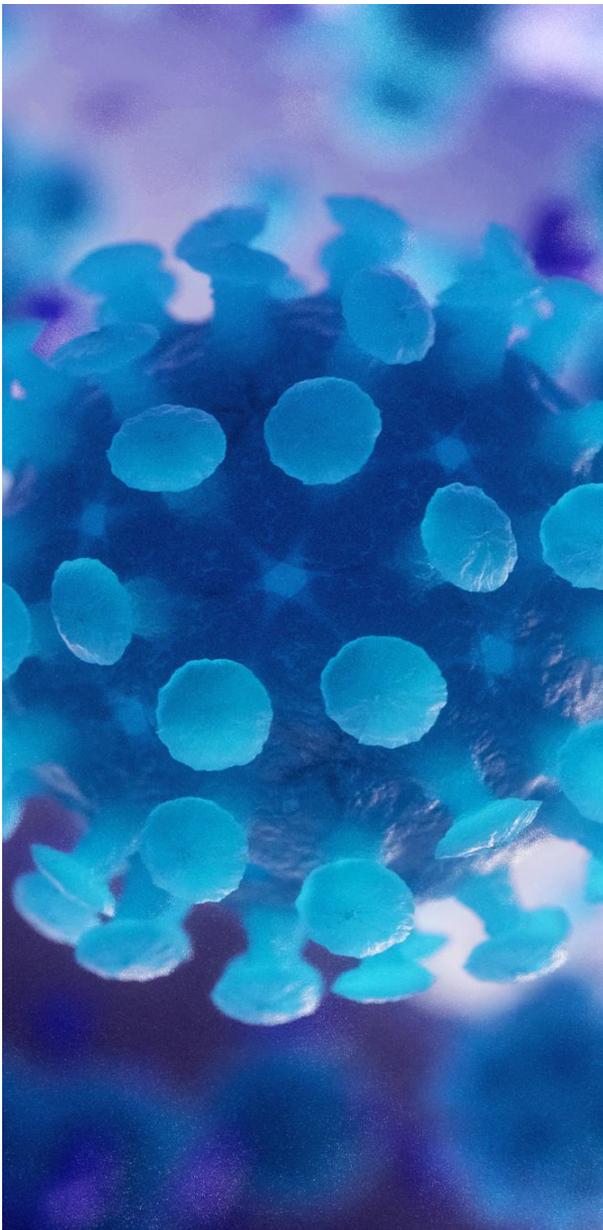


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# Labor measures in Spain to face COVID-19 are extended until September

Legal flash Labor and Employment

June 2, 2021



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## Labor measures designed to tackle the effects of the pandemic are extended until September 30

Specifically:

- The government extends conditions to suspend employment contracts (ERTE), also enabling workers to claim unemployment benefits.
- The list of sectors considered most severely affected by the pandemic to apply for exemptions on social security contributions is modified.
- Exemptions on contributions to social security on workers that resume activity are increased.
- No changes are made to restrictions on dismissals for reasons related to the pandemic, the commitment to maintain jobs, the interruption of the length of temporary employment contracts, the exclusion of overtime and outsourcing, as well as the prohibition on dividend distribution and the MECUIDA Plan.



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## Continuity of ERTE on the grounds of COVID-19 currently in force

### Automatic extension of initial ERTE on the grounds of force majeure

- ERTE on the grounds of *force majeure* (“FM ERTE”) established under article 22 of Royal Decree-Law 8/2020 (“RDL 8/2020”) that have been implemented since the first state of emergency and extended successively since then are automatically extended **until September 30, 2021**.
- Companies can maintain this measure, within the same scope and without having to carry out any formalities before the labor authority. This will not affect any exemptions on contributions they may be entitled to.

### Continuity of ERTE owing to constraints or restrictions to activity

- FM ERTE owing to new outbreaks or constraints implemented previously and still in force on May 31, 2021, will remain in force in the terms provided in the corresponding favorable decisions.
- FM ERTE owing to restrictions, implemented previously and still in force on May 31, 2021, are automatically extended **until September 30, 2021**, without the company having to carry out any formalities before the labor authority.

### Continuity of ERTE based on business (ETOP) grounds

- ERTE based on economic, technical, organizational, or production (“ETOP”) grounds in force on May 31, 2021, will still be applicable in the terms provided in the company's final notification and for the term specified in that notification.
- Also, only in the case of ERTE on ETOP grounds implemented before May 28, the possibility of agreeing to a fast-track extension of those ETOP ERTE is maintained until September 30, 2021, after a period of consultations with the workers' legal representatives, which must be notified to the labor authority.



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## Possibility of new ERTE due to COVID-19

### New ERTE owing to constraints or restrictions

- Companies affected by new **public health risk mitigation measures** adopted by the authorities have between **June 1 and September 30, 2021**, to apply to the labor authority for an FM ERTE due to constraints or restrictions in the following circumstances:
  - The ERTE will be due to **constraints on the activity** when the public health measure adopted forces the company's activity to stop (e.g., the closure of restaurants). For these purposes, measures adopted by Spanish and foreign authorities will be admitted as being on the grounds of *force majeure*.
  - The ERTE will be due to **restrictions on the activity** when the public health risk mitigation measure adopted does not prevent the activity from being carried out, but only restricts it (e.g., reducing the opening times or capacity). In this case, only measures adopted by Spanish authorities will be admitted as being on the grounds of *force majeure*.
- The procedure in these cases will still be the ordinary procedure for ERTE on the grounds of *force majeure* regulated under article 47.3 of the Workers Statute.
- In cases where, as a result of the public health risk mitigation measures being made more flexible or tougher, the *force majeure* goes from being a restriction to being considered a constraint or vice versa, the company will still be responsible for managing the transition from one measure to the other, which will be applied without any break in continuity.

### New ERTE based on ETOP grounds

- Companies applying for a new ERTE ETOP on grounds related to the COVID-19 crisis will be still be subject to the **procedural rules and special rules** provided under article 23 of RDL 8/2020 until **September 30, 2021**.

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## Exemptions on social security contributions

- The following companies are entitled to exemptions on social security contributions corresponding to **June, July, August and September 2021**:
  - Companies applying an FM ERTE that has been extended or an ETOP ERTE with exemptions that is still in force, and that operate under one of the economic activity codes (CNAE) included in the list of sectors most severely affected by the health crisis.



- Companies still applying a previous FM ERTE due to a new outbreak, constraints or restrictions, or that implement a new ERTE, regardless of their CNAE.

**Exemptions for ERTE extended in most severely affected sectors**

- Companies fulfilling the following requirements can continue to benefit from exemptions on social security contributions by submitting the corresponding statement of compliance:
  - Companies still validly implementing a **previous FM ERTE under article 22 of RDL 8/2020**, that has been extended until September 30, 2021; or an **ETOP ERTE under article 23 of RDL 8/2020, enabling them to benefit from exemptions.**
  - They must carry out an activity classified under one of the **CNAE codes listed in the Annex** of new RDL 11/2021, or it must be substantiated that their business depends on companies included in that list, in accordance with RDL 30/2020.
- The new system and amounts of applicable exemptions improve exemptions on contributions for workers resuming their activity compared to those whose activities remain suspended; specifically, 10% in June, July and August, and 25% in September, as shown below:

ERTE UNDER ARTS. 22 AND 23 RDL 8/2020 (EXTENDED OR IN FORCE): PERCENTAGE OF EMPLOYER CONTRIBUTIONS ENTITLED TO AN EXEMPTION					
No. employees registered as of February 29, 2020	Workforce	June 2021	July 2021	August 2021	Sept. 2021
Fewer than 50	Returning to work from June 1, 2021, or from May 13, 2020	95%	95%	95%	95%
More than 50		85%	85%	85%	85%
Fewer than 50	Contract still suspended	85%	85%	85%	70%
More than 50		75%	75%	75%	60%

- New exemptions on contributions envisaged for these ERTE are incompatible with the exemptions applicable to FM ERTE due to constraints or restrictions to activity shown below.



## Exemptions benefiting previous or new ERTE due to constraints

- Companies applying an FM ERTE due to a new outbreak or constraints that was implemented previously and is still in force on May 31, 2021, as well as those applying a new FM ERTE due to constraints, regardless of their CNAE code, may benefit from the following exemptions on contributions:

PREVIOUS ERTE OR NEW ERTE DUE TO CONSTRAINTS PERCENTAGE OF EMPLOYER CONTRIBUTIONS ENTITLED TO AN EXEMPTION		
No. employees registered as of February 29, 2020	Workforce	June to September 2021
Fewer than 50	Only if contract is still	100%
More than 50	suspended	90%

## Exemptions benefiting previous or new ERTE due to restrictions

- Companies applying an FM ERTE due to restrictions that was implemented previously and is still in force on May 31, 2021, and that was automatically extended, and companies applying a new FM ERTE due to restrictions, regardless of their CNAE code, may request the following exemptions on contributions:

PREVIOUS ERTE OR NEW ERTE DUE TO RESTRICTIONS PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS					
No. employees registered as of February 29, 2020	Staff	June 2021	July 2021	August 2021	Sept. 2021
Fewer than 50	Only if contract is still	85%	85%	75%	75%
More than 50	suspended	75%	75%	65%	65%

## Restrictions on dismissal are extended

### Commitment to maintain jobs

- Companies that have already benefited from exemptions or that will benefit from the new exemptions established **until September 30, 2021**, must maintain jobs in the terms below:
  - Companies with a commitment to maintain jobs that is still in force will still be bound to this commitment until the applicable six-month term has expired. It will be necessary to determine on a case-by-case basis when the calculation of this term should begin.



- Companies applying for the exemptions on contributions provided under new RDL 11/2021 will be subject to a new six-month commitment to maintain jobs from the date on which they resume their activity.
- If the company is already subject to a previous commitment, the new six-month commitment to maintain jobs will begin on the day following the end of the previous one.

### Restrictions on dismissals on grounds related to COVID-19

- **Until September 30, 2021**, companies cannot fairly terminate employment contracts based on business reasons related to the crisis caused by the COVID-19 pandemic.
- Owing to interpretation doubts and judicial discrepancies arising from this rule, each case must be examined individually to determine the viability of the cause, as well as how the dismissal would be classed if the rule is breached.

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## Extension of other commercial and labor measures

### Restrictions on dividend distribution

- **Restrictions** are extended on the **distribution of dividends**. This affects companies that have benefited from an exemption on contributions within the framework of a COVID-related ERTE (whether on FM or ETOP grounds), and restrictions apply to dividends corresponding to the year in which the exemption was granted.

### Length of temporary contracts

- The suspension of the length of temporary contracts of workers affected by a COVID-related ERTE will still apply **until September 30, 2021**.

### Overtime and outsourcing

- The **prohibition on overtime and outsourcing** will still apply to any COVID-related ERTE in force.

### MECUIDA Plan

- Employees' right to request a special adjustment or reduction of working hours to deal with greater needs for work-life balance as a result of the health crisis (e.g., the confinement of dependent relatives) are extended **until September 30, 2021**.



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## Exceptional unemployment protection

- Until September 30, 2021, there is still **no requirement as to a minimum contribution period** to be eligible for unemployment benefits.
- The time during which unemployment benefits are received **will now count** and will be considered used up (the former rule of “setting the counter to zero” no longer applies), with some exceptions.
- Companies with an ERTE in force that has been extended and that already submitted a collective request for unemployment benefits **are not required to submit a new collective request** for employees included in that request.

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For additional information, please contact Cuatrecasas.

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