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# Extension of COVID-related ERTE until March 31 and minimum wage increase in 2022

The Official Gazette of the Spanish State has recently published [Royal Decree-Law 2/2022, of February 22 \(RDL 2/2022\)](#), adopting urgent measures for the transition towards structural arrangements to preserve employment, which extends, for the seventh time and until March 31, 2022, some labor measures that have been in place against the effects of the pandemic. The aim is for companies to use this extension to initiate the procedures for the application of instruments of internal flexibility fostered by the recent Labor Reform (new types of contract suspension—ERTE—and, if applicable, the RED Mechanism).

Likewise, [Royal Decree 152/2022, of February 22](#), has been published, establishing the minimum wage for 2022, increasing it to €1,000 per month in 14 payments.

Legal Flash Labor and Employment

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## Key aspects

- Extension of COVID-related ERTE and exemptions in March 2022
- Maintenance of exceptional measures related to ERTE
- New ERTE following the extension
- MECUIDA Plan
- Minimum wage increase in 2022



## Extension of COVID-related ERTE and exemptions in March 2022

### Automatic extension of all COVID-related ERTE

- Companies still implementing a COVID-related ERTE (on the grounds of force majeure—FM ERTE—; or on the grounds of restrictions or constraints on a business activity owing to decisions taken by the labor authority; or are based on economic, technical, organizational, or production grounds—ETOP ERTE) can continue to do so until March 31, 2022, within the same scope (without this affecting the new exemption percentages provided for social security contributions, as explained below).
- As the extension is automatic, companies do **not** have to carry out **any formalities** before the labor authority **or begin a period of consultations** with the workers' legal representatives, although the latter should be informed.

### Exemptions for extended COVID-related ERTE

- In March, companies with extended COVID-related ERTE can request the following exemptions on social security contributions (which reduce their percentages against those applicable until now):
  - Exemptions for previous FM ERTE; ETOP ERTE transitioning from a previous FM ERTE; and FM ERTE due to restrictions before or after September 29, 2021 (date of entry into force of RDL 18/2021):

Previous FM ERTE - transitioning ETOP ERTE - FM ERTE DUE TO RESTRICTIONS before or after RDL 18/2021			
No. employees registered as of February 29, 2020	Offers training activities as provided under art. 3 RDL 18/2021	Exemption applicable from November 2021 to February 2022	Exemption applicable in March 2022
Companies with 10 or more employees	Yes	80%	60%
	No	40%	20%
Companies with fewer than 10 employees	Yes	80%	60%
	No	50%	30%



- Exemptions benefiting FM ERTE due to constraints before or after September 29, 2021 (date of entry into force of RDL 18/2021):

<b>FM ERTE DUE TO CONSTRAINTS before or after RDL 18/2021</b>		
<b>No. employees registered as of February 29, 2020</b>	<b>Exemption applicable from November 2021 to February 2022 during the closing period</b>	<b>Exemption applicable in March 2022 during the closing period</b>
Companies with 10 or more employees	<b>100%</b>	90%
Companies with fewer than 10 employees	<b>100%</b>	90%

- Companies already benefiting from the exemptions in force until February will be eligible for these new exemptions on social security contributions in March 2022.
- In principle, companies are not required to submit a list of workers included in the measure. They must submit one if changes are made to the list of affected workers in March.

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## **Maintenance of exceptional measures in place for COVID-related ERTE**

### **Commitment to maintain jobs**

- Companies that have already benefited from exemptions or that will benefit from the new exemptions established for March 2022 must maintain jobs of employees included in COVID-related ERTE in the terms below:
  - Companies with a commitment to maintain jobs that is still in force will continue to 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 [RDL 2/2022](#) 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 for reasons resulting from the pandemic

- Until **March 31, 2022**, companies cannot fairly terminate employment contracts based on business reasons that are protected by measures suspending employment contracts and reducing working hours as a result of the crisis caused by the COVID-19 pandemic.
- Owing to interpretation doubts and judicial discrepancies arising from this rule as to how the dismissal would be classed if the rule is breached, each case must be examined individually to determine the viability of the cause.

## Restrictions on dividend distribution

- Companies that benefit in March 2022 from exemptions on contributions within the framework of a COVID-related ERTE (whether on FM or ETOP grounds) will still be subject to restrictions on distributing dividends corresponding to the year in which the exemption was granted.
- The General Treasury of Social Security will inform the tax authorities which companies have applied exemptions on social security contributions, and the tax authorities will inform the General Treasury of Social Security which companies have violated the prohibition on dividend distribution.
- The interpretation of this regulation is complex and requires an in-depth analysis.

## Length of temporary contracts

- The suspension of the length of temporary contracts of workers affected by a COVID-related ERTE will apply until **March 31, 2022**.

## Overtime and outsourcing

- The prohibition on overtime, outsourcing and using external staff still applies to COVID-related ERTE in force (with some exceptions).

## Extension of exceptional unemployment protection

- Until **March 31, 2022**, there is no requirement as to a minimum contribution period to be eligible for unemployment benefits.
- Also, as with the previous extension, this new month in which unemployment benefits are received during an ERTE will count and will be considered used up (note that the former rule of “setting the counter to zero” became inapplicable in October 2021), except in the following cases:
  - When unemployment benefits are requested after January 1, 2027 (this date replaces the previous date set for October 1, 2026, thus extending social security cover).
  - When unemployment benefits are requested before January 1, 2023 (this date replaces the previous date set for January 31, 2022, thus extending social security cover) due to (i) the termination of a temporary contract, (ii) an individual or



collective dismissal based on ETOP grounds, or (iii) any other dismissal alleged to be unfair.

- Companies with a COVID-related ERTE in force that has been extended are not required to submit a new collective request for unemployment benefits for employees included in that request.
- The amount of the unemployment benefits will still be determined by applying 70% to the regulatory basis until March 31, 2022, without prejudice to the application of the maximum and minimum amounts provided.
- Exceptional unemployment benefits awarded to permanent seasonal workers under article 7 of RDL 18/2021 are extended until **March 31, 2022**.

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### New ERTE following the extension

- Companies that need to maintain the suspension of work contracts or reduced working hours after March 2022 due to the direct or indirect effects of the health crisis must follow the corresponding procedure to apply for one of the internal flexibility measures introduced under the recent Labor Reform (new ERTE or RED Mechanism introduced under [RDL 32/2021](#), once the Spanish government has activated it), the legal system of which is summarized in the following [Legal Flash](#).
- With the same aim of facilitating internal flexibility measures, [RDL 2/2022](#) amends the Spanish General Social Security Act, establishing that, in the case of ERTE on the grounds of temporary *force majeure* or due to restrictions or constraints on the company's normal business activity owing to decisions taken by the competent public authority (new arts. 47.5 and 6 of the Workers' Statute, introduced under [RDL 32/2021](#)), affected workers will be entitled to unemployment benefits amounting to 70% of the regulatory basis—without prejudice to the application of the maximum and minimum amounts provided while the ERTE is in force—without the resulting benefit being used up and even if the workers do not meet the previous contribution period requirements.

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### MECUIDA Plan

- Workers' 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 or quarantine of dependent relatives) is extended until **June 30, 2022**.



## Minimum wage increase in 2022

- [Royal Decree 152/2022](#), of February 22, sets the minimum wage increase for 2022, effective from January 1, 2022.
- The new approved figures represent a 3.63% increase over the last figures in force from September 1 to December 31, 2021. The new figures are shown in the table below:

	2021 <i>(September 1 to December 31)</i>	2022
Daily minimum wage	€32.17	<b>€33.33</b>
Monthly minimum wage (14 payments)	€965	<b>€1,000</b>
Annual minimum wage	<ul style="list-style-type: none"><li>• Companies only paying the minimum wage increase: €13,370</li><li>• Companies exceeding the new minimum wage increase: Compensation and absorption limit: €13,510</li></ul>	<b>€14,000</b>
Minimum wage/legal workday (for occasional and temporary workers whose services for a single company do not exceed 120 days)	€45.70	<b>€47.36</b>
Hourly minimum wage (for hourly domestic employees)	€7.55	<b>€7.82</b>

- The new €1,000/month minimum wage increase is obligatory from January 1, 2022, until December 31, 2022.
- If a company's overall wages as calculated on an annual basis exceed the new minimum wage increase, it can cancel out the approved increase, the only restriction being that the worker's salary on an annual basis cannot be lower than €14,000.
- Note that the regulated increase refers to workers' cash remuneration (any salary in kind cannot affect the gross amount of the minimum wage increase).

For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.



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