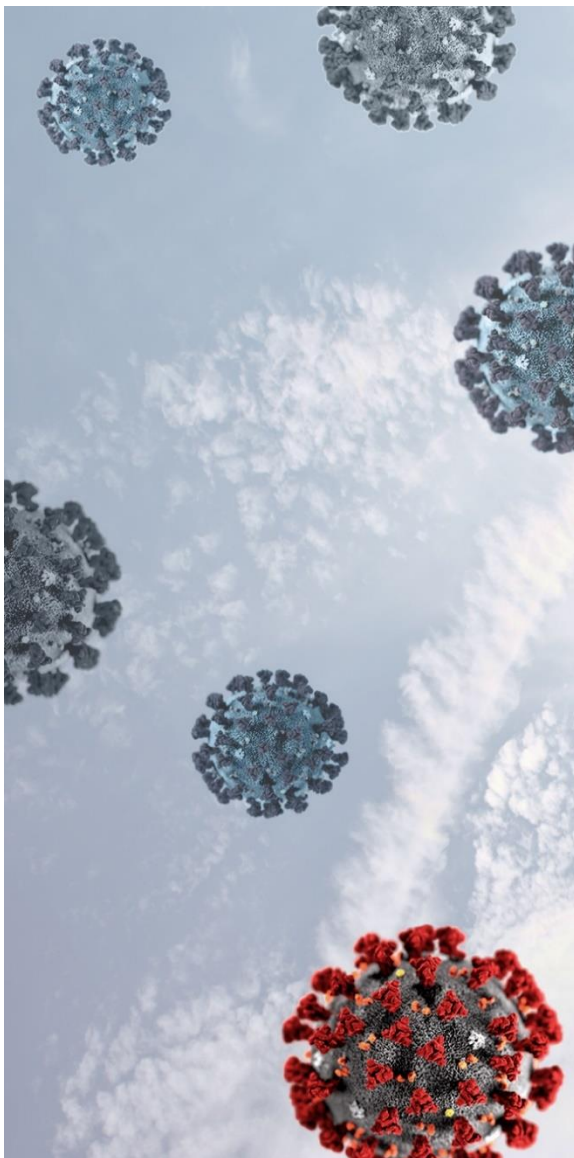

Impact of Covid-19

Royal Decree-Law 9/2020: additional employment-related measures COVID-19

Legal Flash

March 29, 2020

Royal Decree-Law 9/2020, adopting additional measures in the workplace to mitigate the effects of COVID-19 (“[RDL 9/2020](#)”), is intended to complement, amend and add new provisions to those provided under Royal Decree-Law 8/2020, of March 17 (see [Legal Flash](#)). It came into force on the same day it was published in the Official Gazette of the Spanish State, March 28, 2020.



This document analyzes the main consequences for businesses arising from the employment-related measures approved under RDL 9/2020, complementing those approved under RDL 8/2020 (see [Legal Flash](#)):

- > Measures to protect temporary and permanent contracts while the COVID-19 crisis lasts.
- > Measures related to the maximum length of temporary redundancy plans (“ERTEs”).
- > Measures related to companies’ management and processing of unemployment benefits for employees affected by an ERTE.
- > Measures bolstering the identification of requests for ERTes on the grounds of *force majeure* that are false or inaccurate, and those resulting in undue unemployment benefits.
- > Measures related to the public sector.



Entry into force and validity

RDL 9/2020 entered into force on March 28, 2020, the date of its publication in the Official Gazette of the Spanish State and will be in place during the state of emergency declared under Royal Decree 463/2020 and any potential extensions (Third Final Provision).

Extraordinary measures to protect employment

Prohibition of dismissal and termination (article 2)

- **Scope.** *Force majeure* and economic, technical, organizational, and production grounds for dismissal arising from COVID-19 do not justify the termination of employment contracts or dismissal.
- **Duration.** The regulation does not specify how long this prohibition of dismissal and termination is to be maintained: whether it will be imposed while the state of emergency is in effect as provided under the declaration (and its extensions), or whether it will apply while the temporary situation resulting from the COVID-19 crisis lasts. This situation, despite being limited and subject to a specific duration, could extend beyond the state of emergency.
- **Consequences.** If a company is able to justify that the need to reduce its staff is for structural reasons, it may resort to the termination options provided under the Spanish Workers Statute (“WS”). However, if there is no sufficient cause for termination unrelated to COVID-19, this could lead to the termination being declared contrary to law, and each case should be individually considered.

Protection of temporary employees (article 5)

- **Suspension of the calculation of the maximum duration.** To ensure that temporary contracts suspended by a temporary redundancy plan (ERTE) as a result of COVID-19 are fully completed, the calculation of the length of these contracts and the reference periods has been interrupted to make up for the suspended period in the case of employees affected by the ERTE.
- **Scope.** This applies to contracts for specific works or services and seasonal contracts; contracts covering production overload; and training, replacement, and interim contracts.
- **Non-application.** In principle, this excludes non-suspended temporary contracts. These contracts may be terminated as long as both the hiring and termination are valid under article 49.1.c) of the WS, and the cause is unrelated to the COVID-19 crisis.



Additional measures involving ERTES

Restricted duration of ERTES on the grounds of *force majeure* (First Additional Provision)

- **Maximum duration.** It is established that the maximum duration of the suspension of contracts through ERTES on the grounds of *force majeure*, authorized either through an explicit decision or through positive administrative silence will be the length of the state of emergency declared under Royal Decree 463/2020 (see [Legal Flash](#)) and any potential extensions.
- **Consequences.** This means that on the completion of the ERTE on the grounds of *force majeure* linked to the state of emergency, companies that still have cause for suspending contracts as a result of COVID-19 must apply for an ERTE based on economic, productive or organizational grounds after negotiating with the workers' legal representatives, the unions or the employees themselves. Also, as the regulation makes no distinction between cases of *force majeure*, there is some uncertainty as to whether this restriction also applies to ERTES on the grounds of *force majeure* arising from the infection or isolation of employees, despite the *force majeure* not arising directly from the action adopted by the authority declaring the state of emergency, but from a situation resulting in employees' temporary inability to perform, which could extend beyond the state of emergency.

Extension of measures to protect ERTES requested before RDL 8/2020 (First Final Provision)

- **Retroactive application.** The First Transitional Provision of RDL 8/2020 has been amended so that the extraordinary measures concerning social security payments and unemployment protection provided under articles 24 and 25 of that rule also apply to employees affected by ERTES that were notified, authorized or initiated before March 18, 2020, as long as they result directly from COVID-19.
- **Exclusion.** Therefore, the measures established under articles 26 (late submission of applications for unemployment benefits) and 27 (extension of unemployment subsidies) of RDL 8/2020 cannot be applied retroactively.

Specialties according to the type of institution (articles 1 and 4)

- **Health care centers and nursing homes for the elderly.** Businesses such as health care centers, services and establishments; and nursing homes for the elderly, dependents and people with disabilities cannot freely and unilaterally suspend their activity or apply for



an ERTE during the state of emergency or any of its extensions without previous authorization from the competent authorities.

- **Cooperatives.** In the case of cooperatives that carry out ERTes on the grounds of *force majeure* or based on economic, technical, organizational, and production grounds, the governing board is empowered to adopt these measures if, “owing to the lack of adequate or sufficient means, the general meeting cannot be convened through virtual means.”

Measures related to unemployment benefits

Companies' collaboration in the management of unemployment benefits arising from ERTes (article 3)

- **Employers' obligation.** To ensure affected employees' access to unemployment benefits and streamline the procedure, companies that carry out an ERTE owing to COVID-19 are obliged to submit a collective request to the State Public Employment Service (*SPEE*) for the unemployment benefits of the affected employees, acting in their name and on their behalf. Failure to do so will constitute a serious infringement under article 22.13 of the Spanish Labor Infringements and Sanctions Act (“LISOS”).
- **Terms.** These are the specified terms:
 - Five days from applying for the ERTE in cases of *force majeure*.
 - Five days from the date on which the company notifies the labor authorities of its decision in cases of ERTes based on economic, technical, organizational, and production grounds.
 - Five days from March 28, 2020, if application for the ERTE on the grounds of *force majeure* was made before RDL 9/2020 entered into force.

Effective date of unemployment benefits (Third Additional Provision)

- **ERTes on the grounds of *force majeure*.** The effective date of legal unemployment in the case of *force majeure* is the date on which the event causing the emergency took place.
- **ERTes based on economic, technical, organizational, and production grounds.** The effective date of legal unemployment in the case of ERTes based on economic, organizational, and production grounds must be the same as or later than the date on which the company notified the labor authority of its decision.
- **Notice.** The company must provide that date in its application to process the unemployment benefits.



Penalties

As well as the serious infringement for not submitting a collective request for unemployment benefits mentioned above, RDL 9/2020 also specifies administrative penalties that may be imposed on companies in this context.

False or inaccurate applications for an ERTE on the grounds of *force majeure* (Second Additional Provision)

- **Serious infringements.** Any company that submits an application for an ERTE containing false or inaccurate information will face the corresponding penalties, as provided under the Act for Infractions and Penalties in the Social Order. Specifically, it is considered a serious infringement to improperly collect or take advantage of any reductions, allowances or incentives related to the amount of social security contributions.

Collecting undue unemployment benefits (Fourth Additional Provision)

- **Very serious infringements.** It is considered a very serious infringement to falsify documents so that employees can fraudulently collect or take advantage of state benefits. It could be assumed that this infringement would therefore include “*requesting employment-related measures that are unnecessary or are not sufficiently linked to the cause the measures stem from, when these measures lead to the generation or payment of undue benefits.*”
- **Repayment of benefits.** If an *ex officio* of the legal recognition of unemployment benefits review is conducted, as well as the corresponding criminal and administrative liability, the company will be obliged to repay the entity that paid the amounts collected by the employee and deduct these amounts from the unpaid salaries corresponding to the employee, capped at the sum of those salaries.
- **Collaboration.** The SPEE is expected to collaborate with the Labor and Social Security Inspectorate, with the former having to inform the latter of any cases where it detects any fraudulent attempt to collect undue unemployment benefits.

Public sector

- It amends article 16 of Royal Decree-Law 7/2020, of March 12, adopting urgent measures to respond to the economic impact of COVID-19, with the aim of extending to the whole



public sector the emergency processing for the procurement of goods or services to implement any measures to face COVID-19.

- > Also, it provides for the possibility of justifying the disbursement of any funds required to cover expenses arising from the measures adopted to protect citizens' health from COVID-19, if necessary.
- > Finally, it regulates the disbursement of any funds and payments in the context of overseas administrations to facilitate measures adopted in response to COVID-19, and no longer imposes the electronic billing obligation set out under Act 25/2013, of December 27, on impetus of the electronic invoice and accounting record of invoices in the Public Sector, on bills issued by foreign providers established abroad corresponding to the relevant procurement procedures.

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