

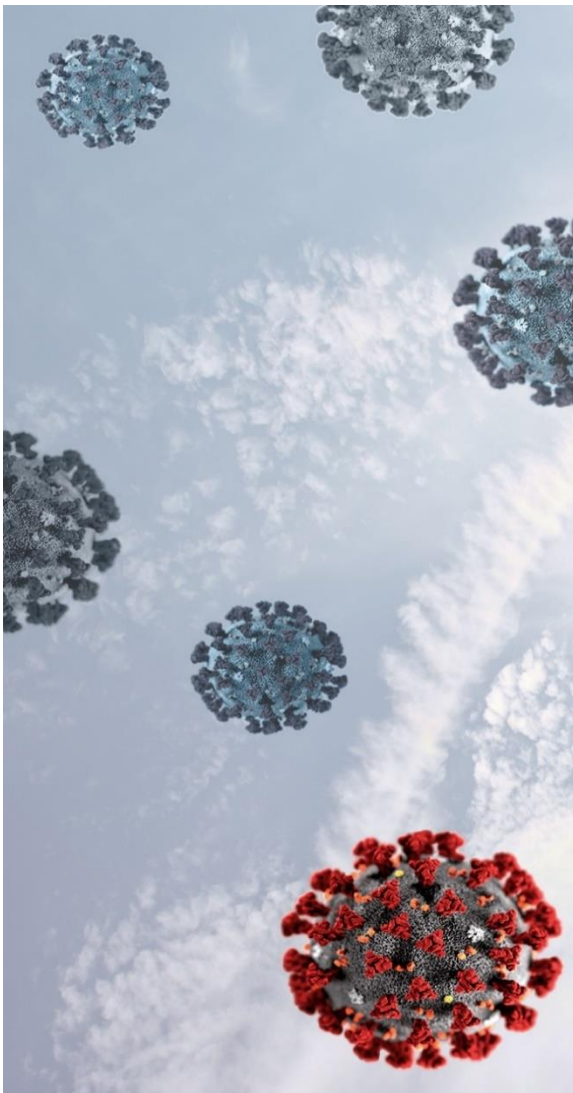
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# Recoverable paid leave for employees performing non-essential activities (COVID-19) in 10 questions

Legal Flash

March 31, 2020

**Royal Decree-Law 10/2020, regulating recoverable paid leave for employed persons who do not provide essential services (“[RDL 9/2020](#)”), aims to further tighten the restrictions on mobility of people imposed under Royal Decree 463/2020, declaring the state of emergency. It came into force on the same day it was published in the Official Gazette of the Spanish State.**



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This document analyzes the main features of the recoverable paid leave approved by the Spanish Government to face the health crisis caused by Coronavirus and its impact on businesses:

- > Scope of application of recoverable paid leave: annex of activities and employees that are not affected.
- > Alternatives to recoverable paid leave.
- > Legal framework for paid leave: duration, obligations, how and when to recover the leave taken.
- > Guarantees to resume business activity.



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## 1. When was the measure implemented and what does it aim to achieve?

- RDL 10/2020 entered into force on March 29, 2020, the same day it was published in the Official Gazette of the Spanish State.
- It aims to reduce the mobility of employed people to a minimum in an attempt to contain the spread of the virus and prevent the collapse of the health system.
- Therefore, the duration will be 12 calendar days (from March 30 until April 9), meaning that it will end on the day the Easter holiday begins.

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## 2. Which businesses are obliged to give recoverable paid leave to their employees?

- RDL 10/2020 applies to all employed persons that provide services to businesses or public or private sector entities, the activity of which has not been suspended due to the declaration of the state of emergency (see our [Legal Flash on RD 463/2020](#)).
- However, the following employees are **excluded** from its scope of application:
  - Those providing services in sectors classed as essential (summarized in the [Annex to this Legal Flash](#)), as well as their divisions and production lines.
  - Those affected by a redundancy plan suspending employment (in force or authorized while this paid leave is in effect).
  - Those on temporary disability leave or whose employment contract has been suspended for other reasons (e.g., parental leave for the birth of a child).
  - Those able to continue working normally through telework or remote working.

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## 3. What about businesses that had agreed with their employees to an irregular distribution or reduction of the working day, to suspend employment contracts or to implement remote working?

- In these cases, recoverable paid leave is not applicable, except in cases of temporary redundancy plans (“ERTEs”) reducing employee's working hours, where the recoverable paid leave will cover part of the hours remaining active.



- Under RDL 10/2020, this leave does not apply to contracts that have been suspended or to employees that provide or may provide their services remotely, or to any other services provided on a non-attendance basis.

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#### 4. Can businesses continue to process a temporary redundancy plan (“ERTE”) while the recoverable paid leave is in force?

- Based on the wording of RDL 10/2020 and the declarations of the Minister of Labor following the extraordinary Council of Ministers meeting in which the RDL was approved, it is possible to sustain that any business potentially affected by recoverable paid leave may choose to process a temporary redundancy plan. Until it is requested, the employees will be on compulsory paid leave.
- If the ERTE is already in process, recoverable paid leave would only be compulsory until the suspension of the employment contracts became effective.
- Also, it is reasonable to assume that RDL 10/2020 does not suspend the periods to constitute negotiating bodies, or to negotiate or apply an ERTE based on economic, organizational, and production grounds, as provided under RDL 8/2020, of March 17, approving extraordinary urgent measures to face the economic and social impact of the COVID-19 coronavirus (see our [Legal Flash](#)), as that rule has not been repealed or amended.

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#### 5. Can a business affected by RDL 10/2020 maintain a minimum level of productive activity or services?

- Yes, but restrictions apply. The regulation states that “*a minimum number of staff*” or “*shifts that are strictly necessary to keep indispensable activities running*” must be established to “*keep indispensable activities running*,” based on “*the activity in place on ordinary weekends or public holidays*.”

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#### 6. How long will the recoverable paid leave last?

- This paid leave, which is compulsory for all employees in its scope of application, must be taken between **Monday, March 30 and Thursday April 9** inclusive.
- This means that it will run into the day the Easter holiday begins.



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## **7. What are the implications for businesses and employees?**

- During this period, employees are not allowed to offer services or go to their workplace.
- The company must pay the full salary to the employees (including basic salary and pay supplements) and pay social security contributions, as if the employees had been providing services on a regular basis.

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## **8. How and when will it be possible to make up for the hours of recoverable paid leave?**

- Working hours can be recovered between the day following the end of the state of emergency and December 31, 2020. Thus, the leave will operate as a real “pool of work hours.”
- The ways of recovering the hours have been left open, and include the irregular distribution of the working day and subtracting the days from those of paid vacation.

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## **9. How and when should businesses determine the way to recover working hours ?**

- This must be negotiated through collective bargaining with the workers' legal representatives in a consultation period lasting up to seven days.
- In companies without workers' legal representatives, the company must negotiate with the most representative trade unions or the most representative trade unions of the sector to which the business belongs and that are entitled to be part of the negotiating body for the applicable collective agreement; or, failing that, with an *ad hoc* committee consisting of three company employees (chosen as provided under article 41.4 of the Workers Statute).
- The negotiating body must be set up within a non-extendable period of five days.
- As well as regulating the majority regime, RDL 10/2020 states that the agreement may regulate: (i) the recovery of all or part of the working hours taken during paid leave, (ii) the minimum notice that must be given to employees of the date and time to carry out the work, and (iii) the reference period for recovering unfulfilled working hours.
- If no agreement is reached, the company must notify, within seven days from the end of the period, of its decision on the recovery of the working hours that were not fulfilled during the leave.



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## 10. Which limits must the recovery of paid leave observe?

- The minimum rest periods established by law and in the collective bargaining agreement. These are the minimum rest periods established under article 34.2 of the Workers Statute:
  - Daily: 12 hours between the end and beginning of the working day or the greater or lesser period provided for under [Royal Decree 1561/1995, on special working hours](#).
  - Weekly: 1.5 days on average every 14 days, or the period provided, if applicable, under [Royal Decree 1561/1995, on special working hours](#).
- The minimum five-day notice period provided under article 34.2 of the Workers Statute.
- The maximum number of annual working hours established in the collective bargaining agreement.
- Employees rights related to a work-life balance (e.g., reduction and adjustment of working hours).

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## Annex

### Summary of activities not subject to recoverable paid leave (Annex and transitional and additional provisions of RDL 10/2020)

Below is a list of the main business activities not affected by the recoverable paid leave under the Annex to RDL10/2020:

- **Activities that must continue operating under RD 463/2020**, declaring the state of emergency, and under the legislation approved by the competent authority and the delegated competent authorities; including the following:
  - **Retail establishments** selling food, beverages, basic products and necessities, pharmaceutical and medical products; health facilities; veterinary centers or clinics; establishments selling optical and orthopedic products, sanitary products; newsagents; stationery shops; petrol stations; tobacconists; providers of technological and telecommunications equipment, pet food, commerce online, by telephone and by mail order; dry cleaners; laundries; and mobile hairdresser services.
  - **Restaurants and catering home delivery services.**
  - **Transport of goods** for the supply and delivery of products acquired online, by telephone or by mail order.
  - **Supply of electricity**, petroleum products and natural gas.
  - **Key operators of essential services** and business and suppliers that, despite not being considered key operators, are essential to ensure the supply to the population and the provision of essential services.



- **Production and distribution of basic goods and services**, including food, beverages, animal food, hygiene products, medicinal products, medical devices and any product necessary for the protection of health.
- **Production and distribution of health care goods and services**, including health technology, medical materials, protective equipment, health care and hospital supplies, and any other materials necessary for the provision of health care services.
- **Industrial manufacturing sector**: Those essential for providing the supplies, equipment and materials necessary to properly operate the essential activities listed in the Annex to RDL 10/2020.
- **Transport**: Transport services, for both passengers and goods, that have continued to operate since the declaration of the state of emergency, and those required to ensure the maintenance of the means used for this purpose. The transitory provision clarifies that transport services providing services not included in RDL 10/2020 at the time it entered into force must begin recoverable paid leave once the service under way has been completed, including as part of the service, if applicable, any corresponding return journeys.
- **Civil protection and private security: Correctional, civil protection, maritime rescue, fire rescue and prevention, mining safety, and traffic and highway safety institutions**; as well as private security firms providing security transport services, alarm response services, patrol or discontinuous surveillance services, and the performance of security services to guarantee essential services and supply to the population.
- Maintenance of the **materials and equipment of the armed forces**.
- **Health care centers**: Centers, services and health care establishments, and individuals that care for the elderly, minors, dependents or persons with disabilities, and companies and centers involved in R+D+I and biotechnology related to COVID-19; the animal facilities associated with them and the maintenance of minimum services at the facilities associated with them, and the companies supplying the products required for that research.
- **Funeral services** and other related activities.
- **Animal health care** centers, services and establishments.
- **Press and media**: Press outlets, media organizations and news agencies, and printing and distribution facilities.
- **Financial services (banking, insurance and investment services)** for the provision of indispensable services and activities specific to **payment infrastructures and financial markets**.
- **Telecommunications, audiovisual and essential computer services firms**, and any networks or facilities that support them and the sectors or subsectors necessary for their proper functioning.
- Protection and care of **victims of gender violence**.
- **Lawyers, court agents (procuradores), labor law specialists, translators, interpreters and psychologists** who attend procedural actions not suspended by Royal Decree 463/2020, to fulfill the essential



services determined by mutual agreement between the Ministry of Justice, the General Council of the Spanish Judiciary, the Public Prosecutor's Office and the autonomous regions with powers in this area and set out in the resolution handed down by the Secretary of State for Justice on March 14, 2020.

- **Law and advisory services firms, administrative services and labor law specialist offices**, and external and in-house occupational risk prevention services, in urgent matters.
- **Notaries' offices and registries** to fulfill the essential services specified by the Directorate-General for Legal Certainty and Attestation ("*Dirección General de Seguridad Jurídica y Fe Pública*").
- **Cleaning, maintenance, urgent breakdown repair, and surveillance services, services involving the collection, management and treatment of hazardous waste**, or hazardous or non-hazardous urban solid waste, the collection and treatment of wastewater, decontamination activities and other services for waste management and the transport and removal of byproducts, or at any of the entities belonging to the public sector.
- **Water**: Supply, cleansing, transport, purification and treatment of water.
- **Meteorological services** for weather forecasting and observation, and the associated processes of maintenance, surveillance and control of operating procedures.
- **Universal postal service**.
- **Health care materials**: Services involving the import or supply of health care materials (logistics, transport, and storage companies, forwarding agents and, generally speaking, any companies participating in health care corridors).
- **E-commerce**: Distribution and delivery of products acquired online, by telephone or by mail order.
- **Any others providing services classed as essential**.

Below is a list of activities that, under the additional provisions of RDL 10/2020, are likewise not affected by recoverable paid leave:

- **Urgent public procurement**: Activities not included in the annex that have been subject to procurement through the procedure established in article 120 of Act 9/2017, of November 8, on Public Sector Contracts, may continue.
- **Companies awarded public sector contracts**: This recoverable paid leave is not applicable to employees of companies awarded public sector works, services and supply contracts that are essential for the maintenance and safety of buildings and the proper provision of public services, including services provided on a non-attendance basis, all without prejudice to article 34 of Royal Decree-Law 8/2020, of March 17, approving extraordinary urgent measures to face the economic and social impact of COVID-19.



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