



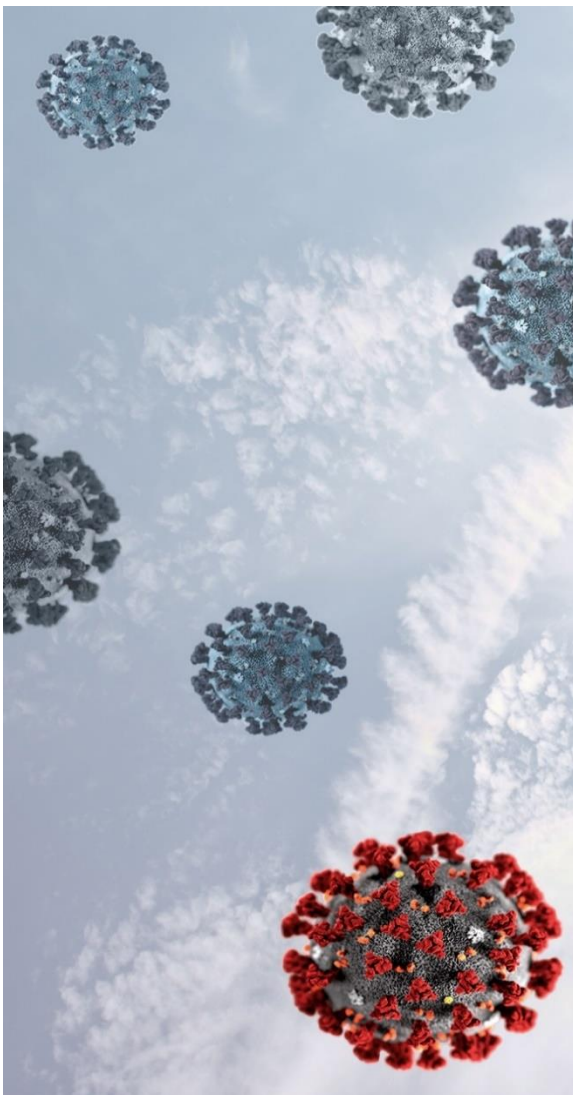
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# COVID-19: Key labor and employment issues for companies in 10 questions

Since the state of emergency was declared on March 14 to prevent the spread of COVID-19, different types of measures have been implemented in the areas of employment, social security and occupational health and safety that directly affect labor relations.

This document analyzes and offers a brief and concise summary of the key issues, depending on whether the company is affected by the suspension of business activity under Royal Decree 463/2020).

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## Topics

- 1. Businesses that are operating and are not affected by Royal Decree 463/2020, declaring the state of emergency and its extensions**
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  3. Adjustment and reduction of working hours
  4. Recovery of recoverable paid leave
  5. ERTE on objective grounds
- 2. Companies affected by the suspension of business activity under Royal Decree 463/2020, declaring the state of emergency, and any extensions to it, or deriving from the risk of infection among the workforce**
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## I. BUSINESSES THAT ARE OPERATING AND ARE NOT AFFECTED BY ROYAL DECREE 463/2020, DECLARING THE STATE OF EMERGENCY AND ITS EXTENSIONS

Companies carrying out activities that are not affected by the suspension or restrictions imposed as a result of the declaration of the state of emergency can continue to operate (the list of affected activities is available in [Legal Flash RD 463/2020](#)), while taking into account the considerations below.

### 1. Are companies obliged to implement remote working if this option is feasible?

- As long as it is technically feasible, reasonable and proportionate for the company, priority is given to remote working as an alternative to any other organizational measure to prevent the spread of coronavirus ([Legal Flash RDL 8/2020](#)).
- This priority measure will be valid for two additional months following the month after the end of the state of emergency (i.e., until August 10, 2020, if it ends on May 10, 2020) ([Legal Flash 15/2020](#)).
- In these cases, exceptionally, the obligation to assess risks will be considered fulfilled by means of a voluntary self-assessment performed by the worker.

### 2. What are the main occupational risk prevention measures companies are obliged to guarantee?

- The prevention service is responsible for managing how the business activity is resumed.
- Companies must have a contingency plan or operational protocol for COVID-19 infection, which must cover their own staff, as well as contractor companies and self-employed workers.
- Employed persons must receive training and information on health and safety measures, which must be appropriate to their position.

- Employees must be provided with personal protective equipment, including masks, gloves and uniforms suited to each case.
- Employees must keep a physical distance of at least two meters in the workplace.
- Particularly vulnerable employees must be identified and ensured reinforced protection. If it is not possible to adapt a particularly vulnerable employee's workspace or ensure adequate protection, that employee will qualify as being in a situation of temporary incapacity.
- Specific hygiene measures must be observed in the workplace, such as ventilating each facility; cleaning the premises, air filters and air conditioning systems, workstations, and frequently touched surfaces; and washing uniforms.
- If the safety measures are not fulfilled, the workers, their legal representatives or the Social Security and Labor Inspectorate could paralyze the business activity due to the imminent and serious health risk.
- If anyone has been in close contact with a potential, probable or confirmed COVID-19 case, the prevention service must place that person in preventive isolation to safeguard other employees' health.
- Companies may request their own health services to carry out *ad hoc* medical examinations (temperature monitoring) on employees as a preventive measure, after notifying their legal representatives. These measures must be carried out by authorized medical staff.

### 3. Do companies have to accept the adjustment or reduction of employees' working hours to adapt to work-life balance needs arising from COVID-19?

- Yes, they must negotiate in good faith to reach an agreement.



- > While the COVID-19 crisis lasts, employees are entitled to request the adjustment or reduction, or both, of their working hours to care for their spouses or partners, as well as blood relatives up to the second degree, when exceptional circumstances arise as a result of the health crisis, provided that the request is justified, reasonable, and proportionate with respect to the company's situation ([Legal Flash RDL 8/2020](#)).
- > When, based on the exceptional circumstances described, working hours are reduced in situations of legal custody (direct care for a child under twelve or a person with disabilities), the reduction may encompass 100% of the working day (with a proportionate reduction in salary).
- > These measures will be valid for two additional months following the month after the end of the state of emergency (i.e., until August 10, 2020, if it ends on May 10, 2020) ([Legal Flash RD 15/2020](#)).

#### 4. Can companies make up for the hours of recoverable paid leave?

- > Yes. Between March 30 and April 9, 2020, all companies not providing essential services were forced to close their facilities and work centers, and give recoverable paid leave to employees that were unable to work remotely and whose contract had not been suspended by a temporary redundancy plan ("ERTE"), or on any other grounds ([Legal Flash RDL 10/2020](#)).
- > The working hours accumulated during this paid leave can be recovered between the end of the state of emergency and December 31, 2020, in the terms agreed by the company and the workers' legal representatives (or an *ad hoc* committee made up by the employees themselves), within the limits set regarding working hours, minimum notice and work-life balance provided under applicable law.

#### 5. Under what circumstances can a company that is not directly affected by the state of emergency carry out an ERTE on objective grounds?

- > Even if the activity has not been suspended or is not affected by the state of emergency, companies can adjust their staff to the drop in demand or real production needs based on economic, organizational, and production grounds (e.g., due to the decrease in consumption).
- > To do so, they must carry out an ERTE on objective grounds, whether fully or partially, by suspending or reducing the daily working hours.
- > ERTE on objective grounds do not require the consent of the labor authority, but it does require prior negotiations with the workers' legal representatives (or with the trade unions or *ad hoc* workers' committee, if applicable). As it is related to COVID-19, affected employees will be entitled to an exceptional unemployment benefit, without a grace requirement or other benefits being used up ([Legal Flash RDL 8/2020](#)).
- > Also, it can be interpreted that the exceptional measures provided under RDL 8/2020 (simplified procedure, exemption from having to pay social security contributions and exceptional unemployment benefit) will only be in force for one month following the end of the state of emergency ([Legal Flash RDL 11/2020](#)).

#### II. COMPANIES AFFECTED BY THE SUSPENSION OF BUSINESS ACTIVITY UNDER ROYAL DECREE 463/2020, DECLARING THE STATE OF EMERGENCY AND ITS EXTENSIONS, OR DERIVING FROM THE RISK OF INFECTION AMONG THE WORKFORCE

#### 6. Under what circumstances can a company file for an ERTE on the grounds of *force majeure* and what are the advantages?



- > While the state of emergency is in force, private-sector companies that need to suspend work contracts or reduce working hours can file for an ERTE on the grounds of *force majeure* as long as they can prove that their loss of activity result directly from COVID-19, for example:
  - the suspension or cancellation of activities;
  - the temporary closure of public venues;
  - restrictions on public transport and on the mobility of people and/or goods;
  - lack of supplies that seriously prevent the continuation of the ordinary course of business; and
  - urgent and extraordinary situations due to infection of staff or the adoption of preventive isolation measures decreed by the health care authorities. The absence of security measures can also lead to the activity being brought to a halt.
- > Also, these companies can file for a partial ERTE on the grounds of *force majeure* with regard to the activity or part of the workforce that is affected by the state of emergency and is not considered essential ([Legal Flash RD 15/2020](#)).
- > The company can also request prior authorization from the labor authority to carry out an ERTE on the grounds of *force majeure*. The authorities have 5 business days to respond ([Legal Flash RDL 8/2020](#)), although some autonomous regions have extended this term to 10 days.
- > While the ERTE is in force, employees are entitled to the exceptional unemployment benefit (without a grace requirement or other benefits being used up).
- > Employers are obliged to request the unemployment benefits on behalf of the affected employees before the Public Service of Employment (*Servicio Público de Empleo Estatal*) ([Legal Flash RDL 9/2020](#)). Note that stricter penalties have been imposed to avoid

fraudulent attempts to gain unemployment benefits ([Legal Flash RDL 15/2020](#)).

- > Employers can request an exemption from paying social security contributions if they commit to maintaining jobs for six months from the date the activity is resumed.
- > As an alternative to implementing an ERTE, companies can adopt other internal flexibility measures such as offering remote working options, vacation time or the irregular distribution of working hours.

## 7. What can public-sector contractors do if performance of the contract is suspended?

- > Public-sector contractors must ask for the suspension of the agreement regulating the activity that has been suspended (totally or partially), and follow a set procedure before the contracting entity, as provided by law (see [Legal Flash RDL 8/2020](#)).
- > Specifically, they can ask the public entity for financial compensation associated with the term of the suspension, which comprises, among other expenses, salary expenses and social security contributions.
- > The labor authority and some public administrations consider that this public compensation system is incompatible with carrying out an ERTE.

## III. MEASURES APPLICABLE TO ALL COMPANIES

### 8. Can companies dismiss employees on the grounds of the COVID-19 crisis?

- > Not fairly. *Force majeure* and economic, technical, organizational, and production grounds for dismissal arising from COVID-19 do not justify the termination of employment agreements or dismissal ([Legal Flash RDL 9/2020](#)).
- > If there is no sufficient cause for termination unrelated to COVID-19, it is natural to assume



that the termination could be declared contrary to law.

- > Also, companies that have carried out an ERTE on the grounds of *force majeure* and have been exempt from paying social security contributions are obliged to maintain jobs for six months from the date the activity is resumed. Some terminations will not be considered a breach of the commitment to maintain jobs and the consequences of failing to fulfill it will vary depending on each case.

## 9. Can temporary contracts be terminated during the state of emergency?

- > Yes, as long as the temporary employee is not affected by an ERTE and the cause for termination is not fraudulent or related to COVID-19 (in which case, termination is prohibited).
- > In the case of temporary employees affected by an ERTE, the law provides that the length of the temporary contract and the reference periods will be interrupted (this applies to contracts for specific works or services, seasonal contracts, training, replacement, and interim contracts) for the same amount of time as the suspended period ([Legal Flash RDL 9/2020](#)).

## 10. Under what terms can companies request a moratorium on contribution payments and the deferral of social security debts?

- > On the one hand, the Social Security General Treasury is enabled to grant interest-free six-month moratoriums to companies that fulfill the requirements set out in an order issued by the Ministry of Labor, Social Security and Migrations (pending publication). The moratorium will affect social security contributions that accrue between April and June 2020 in the case of companies, if the activities they carry out have not been suspended owing to the state of emergency.

- > Also, companies that have no other deferral in effect can apply, within the 10 calendar days of the legal payment period, for deferred payment of their social security debts for which the payment period is between April and June 2020, with an applicable 0.5% interest.
- > Requesting a moratorium will suspend proceedings for recovering debts affected by the moratorium, and debtors will be considered up to date as regards their social security obligations until the corresponding ruling is handed down.
- > Both measures are incompatible ([Legal Flash RD 11/2020](#) and [Legal Flash RD 15/2020](#)).

### CUATRECASAS TASK FORCE

At Cuatrecasas, we are working non-stop to provide our clients with legal advice on everything related to the COVID-19 crisis, and we are available to give immediate answers in all legal matters. Our Knowledge and Innovation Team continues to manage our collective knowledge in the most efficient way during these uncertain times to provide top-quality, innovative legal advice to our clients in all matters related to this crisis. For more details, contact Cuatrecasas or visit our [website](#).

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