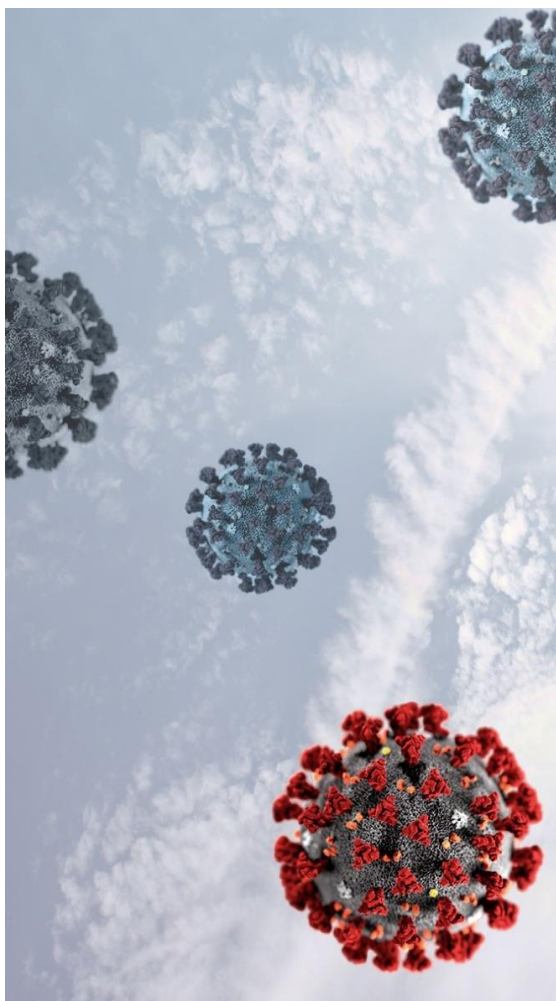




Practical guide on legal matters arising from the state of emergency (COVID-19)

Updated on May 30, 2020

As a result of the COVID-19 health crisis and the declaration of the state of emergency in Spain, many measures have entered into force in the past weeks to regulate this exceptional situation and mitigate its effects. These measures, many of which have been adopted with a clearly provisional intention, will entail profound temporary changes in the regulatory framework applicable to many sections of the population and of the productive framework, and also to entities of the third sector.



This guide aims to provide non-profit entities (“NPE”) with a systematic overview of the main measures that have been adopted in several areas and that may affect their activity.

- **Governance and annual accounts:** governing body meetings and procedures to prepare and approve the annual accounts.
- **Real estate:** leases and mortgage loans.
- **Labor and employment:** flexible management of working hours, temporary redundancy plans, recoverable paid leave, deferral of social security payments and moratorium on social security contributions.
- **Tax:** tax obligations, relationship with the tax authorities and tax incentives for patronage
- **Data protection:** measures on the protection of individuals with regard to the processing of personal data and on the movement of this data



The content of this guide is not comprehensive and it does not substitute individual, case-specific advice, but we hope it will serve as a useful summary.

Due to the temporary and changing nature of the analyzed regulations, we expect to modify the information provided in this guide in coming weeks. The provisions it is based on are listed below:

- > [Royal Decree-Law 7/2020](#), of March 12, adopting urgent measures to respond to the economic impact of COVID-19
- > [Royal Decree 463/2020, of March 14](#), declaring the state of emergency to manage the public health crisis caused by COVID-19 (“RD 463/2020”)
- > [Royal Decree-Law 8/2020 of March 17](#), on urgent extraordinary measures to face the economic and social impact of COVID-19 (“RDL 8/2020”)
- > [Royal Decree-Law 9/2020, of March 27](#), adopting additional employment-related measures to mitigate the effects of COVID-19
- > [Royal Decree Law 10/2020, of March 29](#), regulating recoverable paid leave for employees that do not provide essential services, to reduce population mobility in the fight against COVID-19 (“RDL 10/2020”)
- > [Royal Decree-Law 11/2020, of March 31](#), adopting additional emergency measures to face the social and economic impact of COVID-19 (“RDL 11/2020”)
- > [Royal Decree-Law 14/2020, of April 14](#), extending deadlines for filing and paying tax declarations and self-assessments (“RDL 14/2020”)
- > [Royal Decree-Law 15/2020, of April 21](#), adopting additional emergency measures to support the economy and employment (“RDL 15/2020”)
- > [Royal Decree-Law 17/2020, of May 5](#), adopting measures to support the cultural sector and tax measures to face the social and economic impact of COVID-19 (“RDL 17/2020”)
- > [Royal Decree-Law 18/2020, of May 12](#), on social measures to preserve employment (“RDL 18/2020”)
- > [Royal Decree-Law 19/2020, of May 26, adopting additional measures on agriculture, economic matters, employment and social security, and tax measures to mitigate the effects of COVID-19](#) (“RDL 19/2020”)
- > [Order of the Ministry of Transport, Mobility and Urban Agenda TMA 378/2020, of April 30](#), defining the criteria and requirements for lessees paying rent to lease a main residence to access the temporary financing schemes regulated under article 9 of Royal Decree-Law 11/2020, of March 31, adopting additional emergency measures to face the social and economic impact of COVID-19



- > [Order of the Ministry of the Interior 395/2020, of May 8](#), extending the period for state public-interest entities to file accounts owing to the health crisis caused by COVID-19
- > [Legal Report 17/2020, of the Spanish Data Protection Agency \(“AEPD”\)](#), on data processing in relation to COVID-19
- > [FAQ of the AEPD](#) on data processing in the framework of COVID-19



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GOVERNANCE AND ANNUAL ACCOUNTS

I. Governing body meetings and procedures to prepare and approve the annual accounts

Can entities hold assemblies and/or board of directors meetings?

Can the foundation's board of trustees hold meetings?

During the state of emergency, even if not established in the bylaws, provided all members of the governing body have the means required to do so, they may hold meetings via videoconference or conference call. The secretary must recognize the identity of the attendees and state this in the minutes, which he or she will email to all the attendees.

This measure also applies to entities not declared as entities of public interest or waiting for the declaration to be processed

During the state of emergency, can the foundation's board of trustees, its corporate bodies and commissions with delegated powers, or the board of directors of the entity reach agreements?

Yes, they can adopt agreements in writing with no meeting if so decided by the chairperson or requested by two or more members.

Has the deadline to draw up annual accounts been changed in the case of foundations and entities that audit their accounts?

Yes, the three-month period to draw up annual accounts (if there is an obligation to audit the accounts) is suspended until June 1, 2020. From June 1, 2020, the foundation or entity will have a new three-month period to draw up its accounts.

If the entity chooses to draw up its annual accounts during the state of emergency, it can either carry out the audit by the given deadline or request the two-month extension provided under article 40.4 of RDL 8/2020.

In the case of associations declared of public interest at state level, the sole article of Order of the Ministry 395/2020 must be borne in mind, stating that the accounts and the activities report for financial year 2019 can be filed within four months following the date on which the state of emergency ends. This will condition the periods to draw up and approve annual accounts provided under RDL 8/2020.

If the accounts were already drawn up on the date of the declaration of the state of emergency, when does the period begin to carry out the audit, whether mandatory or voluntary?

If, on the date the state of emergency was declared, the entity had already drawn up the annual accounts, the period will be extended by two months from the date the state of emergency ends.

What is the deadline for approving the accounts if the foundation or entity has a three-month period to draw up its accounts?

In the case of entities obliged to draw up accounts within three months from the end of the financial year, the board of trustees or governing board, as applicable, can hold a meeting within two months from the deadline to draw up the annual accounts. Therefore, the approval period will be extended by five months from June 1, 2020.

In the case of associations declared of public interest at state level, the sole article of Order of the Ministry 395/2020 must be borne in mind, as explained above.

What is the deadline for approving the accounts if the foundation or entity is not subject to the three-month period to draw up its accounts?

According to the Informative Note published by the Sole Protectorate of Foundations of the Spanish state, despite not being specifically provided, the suspension of deadlines to draw up and approve annual accounts also applies to foundations not obliged to audit their accounts. Although this Note was published before RDL 19/2020 came into force, it could be interpreted that from June 1, 2020, foundations will have an exceptional five-month period to draw up and approve their annual accounts.

In the case of associations, federations, confederations and unions of associations declared of public interest, Order INT/395/2020 provides four months from the date the state of emergency ends to file annual accounts, although it makes no specific mention to the deadline to draw up and approve them. It therefore appears that these accounts must be drawn up and approved within the four-month period from the date the state of emergency ends to comply with the accountability term required to continue being considered of public interest.

Has the deadline to file the annual accounts changed?

Generally speaking, the deadline for state level foundations to submit their annual accounts is ten business days following their approval. Owing to the amendment made under article 9 of Royal Decree 537/2020, extending the state of alert declared by Royal Decree 463/2020, the calculation of the five-month period to approve annual accounts will resume on June 1, 2020, which means that the deadline is November 1, 2020. Depending on the approval date within that exceptional five-month period, it will be necessary to then calculate the submission deadline in accordance with that period.

Associations, federations, confederations and unions of associations declared of public interest entered in the National Registry of Associations can file their accounts and the activities report for financial year 2019 within four months following the date on which the state of emergency ends, as provided under Order INT/395/2020.

Has the term to legalize books and records also been suspended?

Although [RDL 8/2020](#) makes no specific reference to this, with regard to commercial entities, Spain's Directorate General of Legal Certainty and Certifications has issued a resolution the content of which could be extrapolated to state level foundations.

- > "Companies that on March 14, 2020, were still within the period to draw up their annual accounts (...) must submit their books and records for legalizing within four months from the date the state of emergency ends.
- > All of the above without prejudice to companies that wish to legalize the mandatory books and records they have prepared being able to do so at any time, even if the state of emergency is still in place."

Moreover, it is worth noting that following the publication of RDL 19/2020, which states that periods will resume from June 1, 2020, the Protectorate has not published a new informative note clarifying the term to legalize books of state level foundations.

What about processes awaiting resolution from the State's Sole Protectorate of Foundations, such as a petition to register a foundation or to amend the bylaws?

Under article 9 of Royal Decree 537/2020, as a rule, all administrative suspended deadlines will start again on June 1. However, it is worth analyzing each particular case to ascertain whether, under specific regulations, it is applicable for the calculation of the period to start again on June 1.

REAL ESTATE

II. Leases and mortgage loans

Leases

On April 2, 2020, [RDL 11/2020](#) entered into force, approving measures to support workers, consumers, families and vulnerable groups, and amending several measures adopted under [RDL 8/2020](#), also on urgent extraordinary measures to face the economic and social impact of COVID-19.

This guide provides a general analysis of the current situation and the measures adopted regarding leases, both of main residences and premises, as well as mortgage loans.

It is intended for third-sector entities, i.e., non-profit foundations¹ or entities.²

Which measures could affect non-profit foundations or entities?

Are these measures applicable to any kind of lease? Which ones do they not apply to?

A non-profit foundation or entity is a body with its own legal personality, which means that it can carry out business transactions and enter into agreements with third parties. We are going to focus specifically on lease agreements that a foundation or entity has entered into with third parties. When the foundation or entity is the lessor and the lessee uses the property as a main residence, the agreement is regulated under [RDL 11/2020](#) (and any potential amendments that may be made to it). We

will also analyze the applicable regulations where the entity is the **lessee**, given that it will not use the property as a main residence.

Therefore, these lease agreements are divided into those corresponding to a property used as a main residence and those used for other purposes. The former are subject to the measures adopted under [RDL 11/2020](#) while the latter are not, as explained below.

In the case of main residence lease agreements, the following measures may be adopted:

- Suspension of eviction and foreclosure procedures due to rental arrears.

¹ A foundation is a legally constituted non-profit organization whose assets, at the will of its founders, are and will be employed for the benefit of the general public.

² An entity is a union whereby three or more individuals or companies commit to sharing knowledge and means to pursue purposes that are lawful and for the benefit of the general public.

- Extraordinary extension of agreements expiring between April 2 and up to two months after the state of emergency is lifted. This involves extending the duration of these lease agreements (up to six months).
- Automatic moratorium on paying rent is granted to those in a situation of vulnerability when the lessor is a company or public entity providing housing, or a large housing asset holder (owning over 10 urban properties or a built surface area of over 1,500 m²).
- State aid plans (guarantees or financing) are available to tenants in a situation of vulnerability in cases where the lessor is not a large housing asset holder, as long as they have not reach an agreement to reduce or defer the payment of rent, or any similar agreement.

What is a situation of vulnerability owing to COVID-19 in terms of rent? What is needed to prove this situation?

For a tenant to be considered in a situation of vulnerability owing to COVID-19 and, therefore, to be able to benefit from the above measures, he or she must fulfill **all of the following requirements**:

- That person, owing to the health crisis, **is currently unemployed or affected by an ERTE** (or has had to reduce his or her working hours to provide personal care, in the case of business owners), or other similar circumstances.
- This has led to a **loss in income** so significant that the joint family revenue, in the month **before** applying for the moratorium, did not reach, generally speaking, three times the IPREM³ threshold (i.e., €1.613,52 in 2020); which may be increased, among others, on the basis of there being dependent children, dependent family members older than 65, or family members with a disability exceeding 33%.
- The **rent of the dwelling, plus related expenses** and basic utilities (e.g., telephone, electricity and condominium association expenses) must be **equal to or higher than 35%** of the family's net income.

To substantiate this situation, the lessee must submit the following documents to the lessor:

- To prove the situation of unemployment, the lessee must submit a certificate issued by the entity managing the benefits, which must show the monthly amount received.
- Self-employed workers that cannot carry out their activity must submit a certificate issued by the tax authorities substantiating the declaration of cessation of activity.

³ IPREM is the Multi-Purpose Public Income Index, used as a reference for granting financial assistance and unemployment benefits. It is published annually under the Spanish Budget Act, and the most recently officially published value must be used. However, as the General State Budget has been postponed in recent years, the amount used as reference dates back to the 2018 budget, *vid: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-9268*. In 2020, the month IPREM is set at €537.84.

- > To prove the number of people living in the household, the family record book (libro de familia), an up-to-date census certificate and a declaration of disability or dependence.
- > If the lessee does not have one of these documents, he or she can submit a statement of compliance justifying this. The lessee will have one month from the end of the state of emergency to deliver any missing documents.

What are the requirements to apply these measures?

As mentioned above, these measures only apply to the leases of a main residence.

The measure for **the suspension of a eviction procedure** to protect vulnerable households is subject to the following requirements:

- > Application will become available once the suspension of the procedural periods has been lifted after the state of emergency has ended (given that all eviction procedures have been suspended during the state of emergency, as well as all non-urgent court proceedings).
- > Applicants must submit evidence to the court that they are in a situation of vulnerability as a result of the COVID-19 health crisis, thus preventing them from finding an alternative arrangement to live together with those residing in the same home.
- > If there is a situation of vulnerability, the suspension will only last for the time strictly necessary as indicated by the social services in a report they will submit in this regard.

The **extraordinary extension of agreements** is subject to several requirements:

- > The agreements must expire between April 2 and up to two months after the state of emergency is lifted.
- > The extension will last for up to six months, maintaining the same terms and conditions provided in the agreement being extended.
- > The lessee is obliged to ask the lessor for this extension, which the lessor must accept, although this does not prevent the parties from negotiating other terms and conditions.
- > The person making the request does not necessarily have to be in a situation of vulnerability.

Finally, as regards the **automatic moratorium on paying rent**, it is worth noting that there are two alternatives, and although the lessee must file the request, the lessor will decide which alternative to apply.

Therefore, once the lessee has requested the moratorium, the lessor has seven days to decide whether to apply:

- a 50% reduction on the rent payment the state of emergency lasts and, ultimately, for up to four months after it ends if the term is insufficient owing to the lessee's situation of vulnerability; or
- a moratorium on rent payment while the state of emergency lasts, and for up to four months after it ends if the lessee's situation of vulnerability is not resolved. The recovery of the unpaid monthly amounts or fees will be spread out over three years, and no interest will be charged on these late payments. This period will begin when the state of emergency ends or up to four months after it is lifted if the lessee is still in a situation of vulnerability.

Also, the following requirements have been set to be able to apply the moratorium (in any form):

- The lessor must be a company, a public entity providing housing, or a large housing asset holder (an individual or company owning over 10 urban properties, excluding parking lots and storage spaces, or a built surface area of over 1,500 m²), or the leases must correspond to the Spanish Social Housing Fund.
- The lessee must be in a situation of vulnerability, in the terms described above. The lessee is also obliged to prove this situation in compliance with the above requirements.
- The lessee must request the moratorium within one month from April 2, 2020.

However, it is noteworthy that even if the lessor is not a company or public entity providing housing, or a large housing asset holder, lessees in a situation of vulnerability can also request, within one month from April 2, 2020, a temporary and extraordinary moratorium on rent payment if they have not previously reached an agreement with the lessor. In this case, the lessor is under no obligation to grant a temporary moratorium or to reduce the rent.

However, if the lessor refuses to reach an agreement with the lessee, the latter can access the temporary financing schemes.

This scheme, through the Ministry of Transport and the Spanish Official Credit Institute, offers several public guarantee facilities that lessees in a situation of vulnerability can use to access bank financing, with no interest or additional costs. Financing provided by banks, and secured by the Spanish state, must be repaid within six years. Also, the financing received must be used to pay the rent and the amount will be no more than six monthly rent payments, or €5,400, (up to €900 per month).

What are the requirements to access a public guarantee facility?

The Ministry of Transport, Mobility and Urban Agenda, through Order TMA/378/2020, of April 30, has set out the requirements and procedure to access the public guarantee facility mentioned above. The requirements are listed below.

- The lessee must have a lease agreement that is in force and was entered into under the Spanish Urban Leases Act.
- The lessee's income must have decreased as a result of the spread of COVID-19.

- > The joint family revenue in the month prior to the application for the moratorium did not reach five times the IPREM threshold (€2,689.20).
- > The rent plus related expenses and basic utilities (e.g., electricity, gas, heating, and water; fixed-line and mobile telecommunications services; and condominium association expenses, as applicable) must be equal to or higher than 35% of the family's net income.

To begin the procedure, the lessee must submit the application form attached as Annex I to Order TMA/378/2020, of April 30, to the financial institution. Applications can be submitted until September 29, 2020, and must be executed before October 31, 2020.

Is any direct public financial aid available?

[*RDL 11/2020*](#) establishes a scheme offering direct state aid to those in a situation of vulnerability. Many individuals and entities will take a long time to recover from the situation of vulnerability they are in owing to COVID-19. Therefore, this scheme provides financial aid for the payment of rent to those experiencing difficulties in repaying a loan granted through a temporary financing scheme (described in the previous question).

This aid will be awarded directly and will cover up to €900 per month and up to 100% of the rent, or up to 100% of the loan (including the principal and interest).

May lessees be obliged to return any amounts at a later date or to indemnify the lessor if they benefit from any of these measures?

Anyone that has unduly benefited from the moratorium on rent payment or public financial aid, or both described above due to not having met the legal requirements necessary to be considered in a situation of vulnerability or as a result of willfully trying to draw out the situation of vulnerability, will be liable for any damages caused, as well as all expenses arising due to these exceptional measures being applied.

Also, the amount that must be returned will not be lower than the total amount that person has unduly obtained.

What should lessees do if their lease is not covered by these measures?

If the foundation or entity has entered into a non-residential property lease agreement (e.g., premises it leases to a third party from which it conducts its business, or premises leased by the entity itself from which it manages its activities), the situation will vary.

In cases where the activity or business carried out on the premises is not considered essential⁴ or cannot be carried out ensuring compliance with minimum health and safety requirements, the foundation or entity may encounter two problems:

⁴ Those established under [*Royal Decree 463/2020*](#) and [*Royal Decree-Law 10/2020*](#).

- > The foundation or entity is unable to fulfill its obligation as lessor to make the premises available to the lessee, who, in turn, cannot perform its business activity, which prevents it from obtaining income to pay the rent.
- > The foundation or entity, as **lessee** cannot perform its business activity on the premises, which prevents it from obtaining income to pay the rent.

Given the current situation, these cases, besides being analyzed on a case-by-case basis according to what is stipulated in the agreement, may be considered as *force majeure* cases. In these cases, the parties can (and often must, in order to act in good faith) renegotiate the terms of the agreement, e.g., agreeing to temporarily reduce the rent, change the term of the agreement or the terms of payment, suspend obligations, among others.

Therefore, immediately after ceasing its activity on the premises, the debtor (lessee) must contact the creditor (lessor) to make the lessor aware of this situation (which may change as new regulations are enacted by the government, which is why any changes must be notified).

Mortgage loans

What is a moratorium period for mortgage debt?

A moratorium on a mortgage debt involves the payment of that debt being suspended for a specific period of time. It is a measure that protects mortgage debtors because, while the moratorium lasts, the bank cannot claim, among others, any mortgage payments or apply any type of interest. Thus, debtors can request a moratorium on their mortgage payments and avoid losing their homes.

Which debtors are eligible?

This measure benefits mortgage debtors that meet the following requirements:

- They must be in a situation of financial vulnerability, that is, they must be experiencing great difficulties to pay the installments as a result of the COVID-19 health crisis
 - The mortgage must have been taken out for one of the following purposes:
 - To purchase a main residence.
 - To purchase real estate used for the economic activity of an entrepreneur or a professional.
 - To purchase real estate that is not the main residence and that has been leased, but for which the mortgage debtor has not been paid rent because the lessee has been affected by the state of emergency (rent that has not been paid since the state of emergency was declared and up to a month after it is lifted).
-

What is a situation of vulnerability resulting from COVID-19 in terms of a mortgage debt?

The mortgage debtor will be considered in a situation of financial vulnerability when it meets all of the requirements below, resulting from the public health emergency caused by COVID-19:

- The debtor is unemployed or, in the case of business owners or professionals, has suffered a loss of income or drop in sales of at least 40%.
- The maximum **limit of family revenue**⁵ in the month prior to the application for the moratorium cannot exceed:
 - in general, 3 times the multi-purpose public income index (“IPREM”).
 - This limit will increase on the basis of dependent children by:

⁵ A family unit is made up of the debtor, the debtor’s spouse, provided they are not legally separated, or registered partner and their children, regardless of their age, that are all members of the same household, including those linked through under a tutorship, guardianship or fostering relationship, and their not legally separated spouse or registered partner, who are all members of the same household.

- 0.1 times the IPREM per child, or
- 0.15 times the IPREM per child in single-parent families.
- This limit will increase on the basis of age by:
 - 0.1 times the IPREM per family member older than 65.
- In the case of family members with a disability exceeding 33%, and those that are dependent or have a permanent disability preventing them from performing a work activity, this limit will increase by:
 - 4 times the IPREM, without prejudice to cumulative increases for children
- The limit will be 5 times the IPREM if the mortgage debtor:
 - suffers from cerebral palsy, mental illness or an intellectual disability of 33% or above; or
 - suffers from a physical or sensory disability of 65% or above; or
 - has a serious disease preventing the debtor or his or her caregiver from performing a work activity.
- The **amount of the mortgage payment**, plus expenses and basic utilities, must be equal to or higher than 35% of the family's net income.
- The expenses and basic utilities include costs for the supply of electricity, gas, furnace fuel oil, and water; fixed-line and mobile telecommunications services; and condominium association expenses attributable to the main residence.
- Owing to the COVID-19 crisis, the family unit has undergone a **significant change in its economic circumstances** when:
 - the burden of the mortgage on the family income has multiplied by at least 1.3;
 - in the case of self-employed persons or professionals, they have suffered a loss of income or drop in sales of at least 40%.

How can circumstances of economic vulnerability be proved?

Circumstances of economic vulnerability can be proved through documentation substantiating a situation of unemployment, the cessation of activity, the number of people living in the household and the ownership of mortgaged real estate assets. These documents are described in further detail below.

How long will the moratorium apply?

The moratorium period will be in place for three months from the date of request. However this period may be extended by resolution of the Council of Ministers.

How must the request be processed?

An application for the moratorium must be submitted to the bank within 15 days following the end of the state of emergency. The request must include the following **documents**:

- > If the legal situation is one of **unemployment**, a certificate issued by the entity that manages the benefits, showing the monthly amount received as a subsidy or unemployment benefit.
- > If self-employed workers have to **cease their activity**, a certificate issued by the Spanish tax authorities or the competent regional authority, if applicable, regarding the basis of the declaration of cessation of activity made by the party concerned.
- > **Number of people living in the household**
 - > Family record book (*libro de familia*) or document substantiating non-marital partnership.
 - > A census certificate for all the people registered in the residence, which must be up to date at the time the documents are submitted and cover the six previous months.
 - > Declaration of disability, dependence or permanent disability preventing the affected person from performing a work activity.
- > **Ownership of assets**
 - > Extract from the land registry's index service for all family members.
 - > Deed of purchase of the residential property and mortgage-secured loan. In the case of real estate used to carry out a business activity, it is necessary to submit the declaration of registration substantiating that the property is used for that activity.

While the state of emergency is in force, the required document can be replaced by a **statement of compliance of the individual concerned**. Any missing documents replaced with a statement of compliance must be submitted within one month following the end of the state of emergency.

Once the request has been filed along with the corresponding documents, the bank must process it within 15 days.

When does it become effective?

The moratorium will become effective from the date the application is submitted.

What are the effects?

Requesting the moratorium results in the suspension of contractual obligations:

- > The bank cannot demand payment of the mortgage.

- > The bank cannot apply any interest while the moratorium lasts.
- > The bank cannot terminate the mortgage loan agreement on the grounds of any early termination clauses it may include.
- > The maturity date will be extended for the same time as the moratorium period.

Does the moratorium also cover guarantors of mortgage debtors?

Yes, the bank cannot use the guarantee⁶ while the moratorium is in force.

Also, guarantors in a position of financial vulnerability may require that the assets of the main debtor be used before claiming the secured debt.

Does applying the moratorium require signing a new agreement?

No, the moratorium and its suspensive effects will apply automatically, without having to amend the agreement or sign a new one. However, the financial institution is obliged to formalize the suspension in a public deed and register it with the land registry.

If, for any reason, the parties agree to amend the agreement, the suspensive effects of the moratorium must be included in that amendment.

Is it necessary to go to the notary public to grant a public deed?

In line with the specifications above, the financial institution must unilaterally ask the notary public to grant a public deed to formalize the moratorium on the mortgage debt and register it with the land registry.

If the parties reach a mutual agreement to amend the contractual terms beyond the moratorium, the amendment must include the effects of the suspension, be formalized in a public deed and registered with the land registry.

Deeds formalizing the amendments to mortgage loan agreements to purchase a main residence do not accrue stamp duty, which, therefore, need not be paid.

Are any measures available to protect debtors not undergoing any circumstances of legal economic vulnerability?

No. However, legal cover has recently been provided for moratoriums on debts agreed between individuals and financial institutions that are subject to the provisions of sectorial framework agreements and that the latter can adhere to on a voluntary basis. This measure is known as *moratoria convencional* (moratorium by agreement).

⁶ It cannot ask the guarantor to pay any outstanding obligations of the main debtor.

This legal measure allows moratoriums to be granted on loans and credits of individuals who do not meet the requirements to request a *moratoria legal* (legal moratorium). However, the requesting parties must have become unemployed, have been subject to an ERTE, or be facing the cessation or a reduction in their economic activity, or in another similar situation.

In principle, moratoriums by agreement can be applied to any kind of loan, even mortgage-backed loans, and they are compatible with legal moratoriums.

In that case, can a debtor request a moratorium on credits it has taken out with financial institutions?

No. The financial institution in question must first have accepted to adhere to a sectorial framework agreement, which must be registered with the Bank of Spain. Unlike legal moratoriums, the new moratoriums by agreement give financial institutions further scope to decide on whether to enter into an agreement of this kind with their clients.

In any case, to date, only two sectorial framework agreements have been reached by associations representing financial institutions (e.g., those entered into between the Spanish Confederation of Savings Banks (CECA) and the Spanish Banking Association (AEB)), comprising the vast majority of banks and savings banks operating in Spain:

<https://www.aebanca.es/acuerdo-sectorial-de-moratoria/bancos-socios-adheridos-al-acuerdo/>

<https://www.ceca.es/de-interes-sectorial/acuerdo-sectorial-moratorias/>

Also, it must be taken into account that debtors wishing to benefit from the measures provided in the framework agreements must fulfill the requirements and conditions established in them. The agreements reached to date may be viewed through the following links:

<https://s2.aebanca.es/wp-content/uploads/2020/05/acuerdo-sectorial-sobre-aplazamiento-de-operaciones-de-financiacion-de-clientes-afectados-por-la-crisis-del-coronavirus.pdf>

<https://www.ceca.es/wp-content/uploads/2020/05/Acuerdo-sectorial-16.04.2020.pdf>

What kind of aid measures for debtors can be agreed in these kinds of agreements?

The debtor and corresponding financial institution can agree to defer the amount due by:

- redistributing payments without changing the maturity date, or
- extending that maturity date by a period equivalent to the length of the moratorium.

However, interest may continue to accrue during the period in which the moratorium is applied, unlike in the case of legal moratoriums.

Can the financial institution change the conditions of the loan as a result of granting this moratorium?

Conditions can be changed as long as these changes do not affect certain essential aspects of the agreement. Specifically, the financial institution cannot:

- > change the agreed interest;
- > collect expenses or fees other than those already agreed (except in the case of interest-free loans);
- > market the loan or add other combined products to it; or
- > establish additional guarantees, whether personal or in rem.

If, as a debtor belonging to a vulnerable group, I have been granted a moratorium, can I also request this moratorium from my financial institution?

Yes, both measures are compatible.

If, simultaneously or successively, a moratorium due to a situation of vulnerability and a moratorium due to a framework agreement are granted for the same financing transaction (i.e., a mortgage-secured loan), the effects of the latter will begin once the moratorium due to a situation of vulnerability has ended. Specifically, during the three-month moratorium due to the situation of vulnerability, no ordinary or default interest will accrue.

LABOR AND EMPLOYMENT

III. Flexible management of working hours, temporary redundancy plans, recoverable paid leave, deferral of Social Security contributions

Flexible management of working hours

Is it mandatory to set up a remote working system?

NPE are not obliged to set up remote working or distance working systems. However, the current scenario makes it advisable to set up alternative organization systems, such as remote working, provided that the activity can adapt to this system and the effort required is proportionate.

These alternative measures, particularly, remote working, will be prioritized over carrying out ERTE or similar measures. Article 15 of [RDL 15/2020](#) extends for two months, following the month after the end of the state of emergency, the preference given to remote working.

In this unprecedented context of the state of emergency, the obligation to assess risks will, exceptionally, be considered fulfilled by means of a voluntary self-assessment performed by the worker.

Who must assume the expenses of the equipment required to enable remote working?

The general rule is that the employer must pay for the necessary means and expenses arising from improving the performance of work. Therefore, in the situation arising from COVID-19, the employer must take all measures and provide all means to enable remote working and ensure that work relations continue to run normally.

Under what circumstances can employees request the adjustment or reduction of working hours on the ground of COVID-19?

In general, employees are entitled to request the adjustment or reduction, or both, of their working hours when they can prove the need to care for their spouses or partners, as well as blood relatives up to the second degree (parents, children and siblings).

There are three exceptional circumstances that justify the adjustment or reduction, or both, of employees' working hours under [article 6 of RDL 8/2020](#):

- The employee has to look after family members, who, owing to age, illness or physical disability, require special care as a direct result of COVID-19.

- > The employee's presence at home is required owing to the closure of education centers or any other centers that provide care or assistance services to those in need of them.
- > When the person in charge of directly caring for or helping the employee's spouse or a relative up to the second degree cannot continue to provide these services for justified reasons related to COVID-19.

In these circumstances, the employee can request either an adjustment of working hours or a reduction of up to 100% of the working day (in the latter case, with a proportionate reduction in salary). This right must be notified to the NPE at least 24 hours in advance.

Parents and caregivers are entitled to request the adjustment or reduction, or both, of their working hours, the purpose of which must be to equally share care commitments and avoid roles being perpetuated. This measure must be justified, reasonable, and proportionate with respect to the NPE's situation, particularly when several employees working for the same NPE make the same request.

[RDL 15/2020](#) provides a two-month extension, from the date the state of emergency is lifted, of employees' right to adjust or reduce their working hours.

Are employers obliged to grant the employee's request for the adjustment or reduction, or both, of working hours?

The NPE can reject both types of request if the employee is unable to justify the objective grounds entitling him or her to this adjustment or reduction.

Otherwise, RDL 8/2020 clearly specifies that the company and employee must endeavor to reach an agreement. If there are organizational difficulties that prevent the employer from granting the employee's request, it must justify its refusal and propose alternatives to reach a feasible solution.

What arrangements are available to adjust working hours?

The adjustment of working hours may affect the distribution of working time and any other employment conditions, including:

- > Change of shifts
- > Change of work schedule
- > Flexible working hours
- > Split or continuous shift
- > Change of workplace
- > Change of duties
- > Change in the way work is carried out (such as remote working)

- Any other changes to employment conditions the NPE can offer or than can be adopted in a reasonable, and proportionate way.

How long will the adjustment and reduction of working hours owing to the situation arising from COVID-19 last?

The adjustment or reduction of working hours as a result of COVID-19 must always be temporary and will be extended for three months from the date the state of emergency is lifted.

Can the employer ask the employee to take mandatory vacation to mitigate the effects of COVID-19?

The general rule states that vacation periods should be mutually agreed by the parties, in line with the vacation schedule established by the company, and in compliance with the applicable collective bargaining agreement.

Among the measures adopted to mitigate the effects of COVID-19, one involves reaching agreements including vacation being taken during the state of emergency.

If the parties are unable to reach an agreement, the employee can initiate specific legal proceedings.

Restrictions on terminating employment contracts

Can employees be dismissed on grounds other than COVID-19?

Specific regulations approved during the state of emergency encourage and foster the implementation of labor measures other than terminating contracts, but there is no absolute restriction on dismissing employees.

The employer can terminate employment contracts during the state of emergency for **justified reasons that are not related to COVID-19** under the conditions listed below.

- Dismissal for reasons of **structural adjustments** (articles 51 and 52.c) of the Spanish Workers Statute), provided they are properly justified. The reasons will be presumed related to COVID-19, so the justification presented must be solid.
- Fair **disciplinary** dismissal (resulting from the employee's serious and negligent breach of duty, or incompetence, or inability to adapt).
- Dismissals on the grounds of total permanent **incapacity** or total and near-total disability of the employee.

What consequences may follow from dismissing employees while the state of emergency is in force?

NPE can take any necessary measures provided by law and under the applicable collective agreement, including the termination of employment contracts, when the appropriate requirements are met. The consequences are determined according to the general regulations in force, depending on the circumstances of the case (on whether the dismissal is fair, unfair or null).

The only specific restriction applies to certain dismissals the cause of which is directly related to COVID-19. Specifically, [RDL 9/2020](#) specifies that economic, technical, organizational, and production grounds arising from COVID-19 that may determine the application of an ERTE do not justify dismissals. In this case, dismissals will not be considered fair, but may be classified as unfair or null in view of the surrounding circumstances of each case. This restriction has been extended until June 30, 2020, under RDL 18/2020.

What is the situation of dismissals on grounds related to COVID-19 dating from before RDL 9/2020 entered into force?

[RDL 9/2020](#) came into force on March 28, 2020, with no retroactive effects, so dismissals effective before that date will be governed by regulations in force at the time. It will be necessary to ascertain whether there are sufficient grounds to justify these dismissals.

Procedure for the suspension and temporary reduction of work contracts (temporary redundancy plans or “ERTEs”)

What is an ERTE?

ERTE (temporary redundancy plan) is a colloquial term referring to a mechanism enabling NPE to carry out temporary personnel adjustments (suspensions or reduction of working hours) on the grounds of *force majeure* or based on economic, technical, organizational, and production grounds (“ETOP”) for as long as temporary difficulties for the activity exist. The purpose of the ERTE is to get through the temporary situation without having to terminate employment contracts.

What types of ERTE are there?

There are basically two types: (i) ERTE on the grounds of *force majeure* or (ii) ERTE based on ETOP grounds.

Moreover, within both types of ERTE, two types of measures may be applicable: suspending employment contracts and reducing working hours. Both measures may be applied in the same ERTE to different employees.

What kind of ERTE is applicable when the need to suspend contracts arises from COVID-19?

The type of ERTE that must be requested will differ depending on the circumstances affecting the NPE.

In this regard, cases of *force majeure* owing to COVID-19 which would allow to warrant an ERTE on the grounds of *force majeure* are the following:

- > All activities directly suspended under article 10 and the Annex of RD 463/2020.
- > The temporary closure of public venues.
- > Restrictions in public transport and, in general, of the mobility of people or goods, or both.
- > Lack of supplies that seriously prevent the continuation of the ordinary course of business.
- > Urgent and extraordinary situations due to infection of staff or the adoption of preventive isolation measures decreed by the health care authorities.

On the other hand, an ERTE based on ETOP grounds can be requested when the NPE has economic, technical, organizational or production reasons obliging it to suspend work contracts or reduce working hours to guarantee its viability. Specifically, organizational or production reasons are likely to arise given that the NPE’s production has decreased, which leads to organizational issues, such as an excess of staff if there is a lower demand of services/products.

How long will an ERTE related to the COVID-19 crisis last?

The maximum duration of the suspension of contracts within the framework of an ERTE on grounds related to COVID-19 will be determined by the specific effects the pandemic has on the entity's activity.

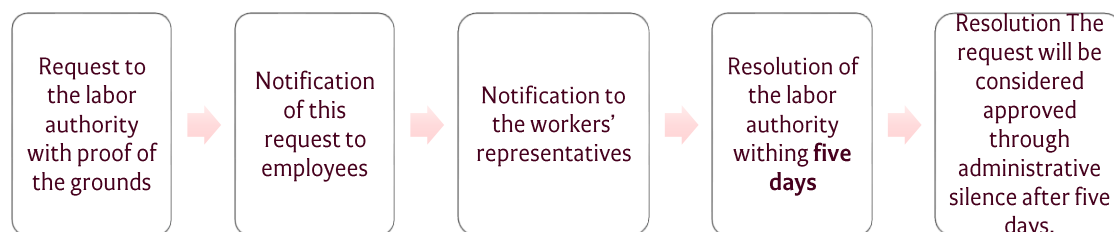
This special ERTE, regulated under [RDL 8/2020](#), will be in force for as long as the extraordinary situation arising from COVID-19 lasts.

RDL 18/2020 has extended until June 30, 2020, the length of ERTE on the grounds of *force majeure* regardless of the duration of the state of emergency, while the cause persists. Moreover, the Council of Ministers may decide to extend this period further depending on the activity restrictions imposed on each sector.

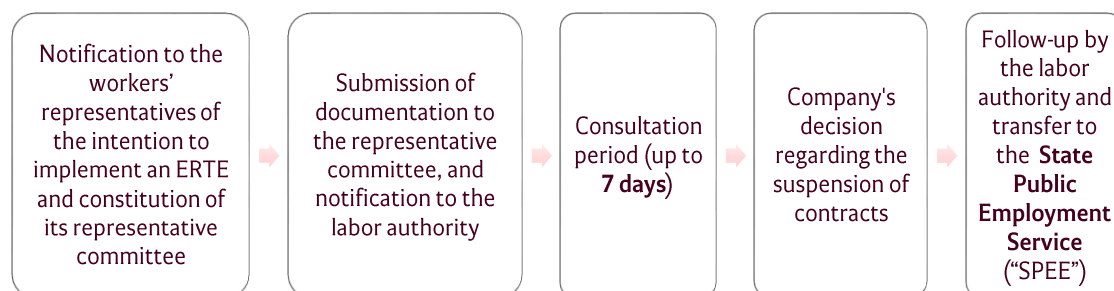
What is the procedure to request an ERTE?

[RDL 8/2020](#) has reduced the periods and simplified the procedure to process ERTE on the grounds of *force majeure* and ETOP grounds, resulting from COVID-19, initiated or notified after this Royal Decree-Law entered into force:

> ERTE procedure on the grounds of *force majeure*



> ERTE procedure based on economic, technical, organizational or production grounds



Businesses such as **health care centers 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, as they are considered essential services for these purposes.

What specificities have been included for ERTE on the grounds of *force majeure* owing to COVID-19 with regard to an “ordinary” plan?

	Ordinary ERTE on the grounds of <i>force majeure</i>	Specificity COVID-19
Start of procedure	Request by the NPE to the labor authority with any proof of the grounds it considers necessary.	Request by the NPE to the labor authority, attaching a report explaining the link with the suspension of activity owing to COVID-19 (art. 10 and Annex RD 463/2020) and, if applicable, documents proving this.
Notification of the request	The NPE must simultaneously notify the workers' legal representatives that it has made the request.	The NPE must simultaneously notify the employees that it has made the request and, if there are representatives, it must submit the above report and documents to them.
Social Security and Labor Inspectorate report	Mandatory request. No given deadlines.	Optional request by the labor authority. Resolution within five days .

What specificities have been included for ERTE based on ETOP grounds owing to COVID-19 with regard to an “ordinary” plan?

	Ordinary ERTE based on economic, technical, organizational, and production grounds	Specificity COVID-19
Negotiating body: when there are no representatives	The employees can choose to set up a workers' committee within the NPE itself (elected democratically) or a committee made up of members appointed by the most representative trade unions and representatives of the sector. In both cases, up to three members. Term of 15 days.	Priority is given to setting up a committee made up of members appointed by the most representative trade unions and representatives of the sector. If this is not possible: three employees of the staff elected democratically. Term of 5 days .
Consultation period	Term of 15 days.	Term of 7 days .
Social Security and Labor Inspectorate report	Mandatory request by the labor authority.	Optional request by the labor authority. Resolution within seven days .
Cooperatives and labor companies	Resolution within 15 days.	Procedure set out under RD 42/1996, excluding consultation period and facultative Social Security and Labor Inspectorate report. If the general meeting cannot be held, the governing board will assume responsibility.

To which entity or authority should the request for an ERTE be made?

Before the corresponding labor authority, as established in [article 25](#) of Royal Decree 1483/2012.

The Spanish Ministry for Labor and Social Economy has the authority to process ERTE affecting employees that provide services in work centers located in more than one autonomous region. There is one exception: when an ERTE affects employees that provide services in work centers located in more than one autonomous region, if at least 85% of the total staff works at centers located in one autonomous region and there are employees affected in this region, the corresponding regional authority will process the request. In cases of NPE with work centers located in a single autonomous region, the labor authority will be the one determined for that region.

What other options are there for NPE that have been granted an ERTE on the grounds of *force majeure*, but still need to maintain the suspension of contracts after the state of emergency is lifted?

Once the ERTE on the grounds of *force majeure* has expired—due to the end of the state of emergency—NPE that still have cause for suspending contracts as a result of COVID-19 must apply for an ERTE based on ETOP grounds, after negotiating with the workers' legal representatives, the unions or employees chosen as representatives.

It is worth noting that ERTE on the grounds of *force majeure* can remain in force, if the cause persists, until June 30, 2020, and another temporary extension may be applied, through a Council of Ministers agreement, while there is still reason to do so.

ERTE based on ETOP grounds can be negotiated while the ERTE on the grounds of *force majeure* is still in force. If negotiations begin after the ERTE on the grounds of *force majeure* has ended, the effects of measures involving the suspension work contracts or reduced working hours will be retroactive to the date that ERTE ended.

What are the benefits for employers that implement ERTE owing to COVID-19 instead of dismissing employees?

These benefits are listed below:

- > The NPE will not have to pay its employees' salaries on a temporary basis (likewise, employees will not be required to provide services). If the ERTE implements measures involving the reduction of working hours, the NPE will only have to pay the proportion of salaries corresponding to the hours worked.
- > Compensation costs arising from measures involving termination does not apply to ERTE.
- > Moreover, NPE that request an ERTE on the grounds of *force majeure* owing to COVID-19, can also apply for an exemption on social security contributions while the ERTE is in force for all affected

employees (this period will still count as a contribution period for employees) ([art. 24 RDL 8/2020](#)). Specifically:

- NPE with fewer than **50 employees registered** as of February 29, 2020, will benefit from a **full exemption** from payment of employer contributions. This exception will be extended until the months of May and June 2020 if, during those months, the NPE was still affected by total *force majeure* (i.e., no employees subject to the ERTE have been able to return to work).
- Non-profit entities with **50 or more workers registered** as of February 29, 2020, will benefit from a **75% exemption** from payment of employer contributions. This exception will be extended until the months of May and June 2020 if, during those months, the NPE is still affected by total *force majeure*.

Also, RDL 18/2020, to foster the return to activity, extends the exemption from employer contributions to the social security for employees that have returned to work whose contracts are still suspended. The applicable percentages vary according to the month in which the employment contract was restored and the size of the company.

PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS			
No. employees registered as of February 29, 2020	Employees covered by the employer contribution	May 2020	June 2020
Fewer than 50	Those returning to work	85%	70%
More than 50		60%	45%
Fewer than 50	Those still suspended	60%	45%
More than 50		45%	30%

The exemption from having to pay contributions will be subject to the NPE’s commitment to maintain jobs for six months from the date the activity is resumed, as long as the employees returning to work were affected by the ERTE. That is, for six months from the date the NPE’s activity is resumed, it is not possible to dismiss employees or terminate their contracts if they were subject to an ERTE on the grounds of *force majeure*.

The adoption of ERTE on ETOP grounds resulting from COVID-19 does grant an exemption from employer contributions to the social security.

What should an NPE do if it can partially resume activity after applying an ERTE?

RDL 18/2020 specifies that NPE that can partially resume activity should bring employees affected by an ERTE back to work “to the extent necessary,” prioritizing adjustments relating to the reduction of working hours (i.e., with the reduction of working hours taking precedence over a full return to work to reduce time exposure in the workplace).

The procedure will vary depending on the circumstances:

- If the company completely waives the ERTE, it must notify the Public State Employment Service (“SEPE”), and it must inform the labor authority within 15 days.
- If it applies a partial ERTE, the company must notify the SEPE of any changes to the information on employees included in the ERTE.

What requirements do employees affected by an ERTE on the grounds of *force majeure* have to fulfill to be entitled to unemployment benefits?

Employees affected by an ERTE owing to COVID-19 are entitled to unemployment benefits, regardless of whether they meet minimum contribution period requirements, and without other future benefits being used up, provided that: (i) their employment relationship began before RDL 8/2020 entered into force (March 18, 2020), and (ii) they are among the employees included in [article 264](#) of the revised text of the Spanish General Social Security Act (*Ley General de la Seguridad Social*).

[RDL 15/2020](#) has extended unemployment protection in any of the following cases: (i) an employment relationship is terminated during the trial period at the company’s request as of March 9, 2020, and while the state of emergency is in force; (ii) voluntary leave from March 1, 2020, and while the state of emergency is in force, if there was a firm commitment from another company to enter into an employment contract and then that company later could not meet that commitment as a result of the COVID-19 crisis; and (iii) greater protection is afforded to permanent seasonal workers, extending special unemployment benefits to workers unable to return to work on the scheduled dates as a result of COVID-19.

Until when can employees subject to an ERTE benefit from the extraordinary unemployment measures provided under RDL 8/2020?

RDL 18/2020 establishes that the exceptional measures (without minimum contribution period requirements or other future benefits being used up) will be in force until June 30, 2020. From that date onwards, unless this term is extended, ordinary unemployment benefits will apply.

Unemployment protection measures for permanent seasonal workers will be in force until December 31, 2020.

Which authority is in charge of processing unemployment benefits?

To ensure affected employees’ access to unemployment benefits and streamline the procedure, NPE that carry out that an ERTE owing to COVID-19 **are obliged to submit a collective request to the SEPE** for the unemployment benefits of affected employees, acting in their name and on their behalf, based on the template provided by the managing entity ([article 3 of RDL 9/2020](#)).

What is the deadline for NPE to submit a request for unemployment benefits to the SEPE on behalf of affected employees?

- > Five business days from the date the ERTE was requested in cases of *force majeure*.
- > Five business days from March 28, 2020, if the request for the ERTE on the grounds of force majeure was made before that date.
- > Five days from the date on which the NPE notifies the labor authorities of its decision in cases of ERTE based on ETOP grounds.

What consequences would arise if the collective request for unemployment benefits is not submitted to the SEPE?

Failure to submit a collective request will constitute a serious infringement under article 22.13 of the Spanish Labor Infringements and Sanctions Act (“LISOS”), punishable with a fine of between €626 and €6,250.

Also, if the request **submitted is in any way false or inaccurate**, this will be considered a serious or very serious infringement under articles 22.9 and 23.1. of the Spanish Labor Infringements and Sanctions Act.

When will the unemployment benefits be paid?

There is currently no exact date for payment of unemployment benefits. The amount of requests for these benefits is unprecedented in Spain, although the authorities are making every effort to make these payments as soon as possible.

How is the unemployment benefit amount calculated?

These benefits are calculated using a reference regulatory basis. The regulatory basis for the unemployment benefit is the average social security contribution base for the last 180 contribution days or, failing this, for the shorter period of time immediately before the legal unemployment situation arose.

The benefit will amount to 70% of the regulatory basis for the first 80 days and 50% from day 181.

Maximum and minimum thresholds have been set for unemployment benefits. For example, the maximum amount granted to employees that do not have children is €1,098.09 per month. The minimum amount in this same case is €501.98 per month.

The family situation is not included in the form provided by the SEPE for the collective management of unemployment benefits for ERTE owing to COVID-19 because to streamline payments to beneficiaries, the authorities will first pay minimum benefits (as if there were no children) and later adjust the amounts.

What obligations do employers have after authorizing or negotiating an ERTE?

After authorizing or negotiating an ERTE, the employer must fulfill the following requirements:

- > It must inform the labor authority to which the ERTE has been submitted of the measure it will adopt.
- > It must notify each of the affected employees individually that their contract has been suspended or their working hours reduced, specifying the date the measure will take effect. In the case of ERTE on the grounds of *force majeure*, the effects will be retroactive to the event that caused that *force majeure*, i.e., the date on which the state of emergency entered into force (March 15) or the activity was suspended, resulting in the inability to provide services. In the case of ERTE based on ETOP grounds, the measure will be implemented after mandatory negotiations are held with the workers' representatives.
- > The employee's consent is required for the NPE to submit the request for the unemployment benefit to the SEPE.
- > It must manage the unemployment benefits of affected employees by filing a collective request with the SEPE on behalf of all the employees, including a statement of compliance stating that it has the consent of all of them, together with the reference number of the ERTE (see questions 19 and 20).
- > It must notify both the labor authority and the SEPE if it completely waives the ERTE, and the SEPE alone if it partially waives the ERTE (if the employees are able to return to work) in the case of ERTE on the grounds of *force majeure*.

Are self-employed workers entitled to any benefits if they have to cease their activity as a result of COVID-19?

Yes. Article 17 of RDL 8/2020 establishes that self-employed workers whose activities are suspended or who can justify a decrease in their invoicing of at least 75% will have access an *extraordinary* benefit due to cessation of activity. The measure will last for one month (extensible if the state of emergency is extended), regardless of whether they have reached the minimum contribution entitling them to this benefit. This period will be considered a contribution period and will not reduce any benefit period due to cessation of activity to which the beneficiary might be entitled in the future.

What circumstances must self-employed workers prove to be able to benefit from the extraordinary benefit due to cessation of activity?

Self-employed workers wishing to request the extraordinary benefit due to cessation of activity must fulfill the following requirements:

- > They must be registered with the Special Social Security Scheme for Self-employed and Freelance Workers or, if applicable, the Special Social Security Regime for Seafarers.

- > If the activity has not been directly suspended due to the state of emergency, proof that its turnover has dropped by at least 75% with respect to the average turnover in the previous six months.
- > Their social security contributions must be up to date.
- > They cannot be receiving any other social security benefit.

What happens if the term of a temporary contract expires while an ERTE owing to COVID-19 is still in force?

If the NPE has been able to provide effective work to the employees with a temporary contract and, therefore, these employees have not been affected by an ERTE, the length of the temporary contract will follow its usual course and terminate as provided under the contract.

If the employee is affected by an ERTE, (i) the contract will not expire because it reaches the end of its term while the ERTE is in force, and (ii) the full length of the contract will be extended for the time equivalent to the time during which the contract was suspended. It is necessary to inform the employee of that extension when he or she returns to work, as provided under article 8.5 of the Workers Statute and article 2.2.b of Royal Decree 1659/1998.

How should an ERTE be submitted online to the ministry?

Access the Ministry's website to submit an ERTE COVID-19 on the grounds of *force majeure* here [\(registration of request\)](#).

Access the website to submit ERTE COVID-19 based on ETOP grounds online here [\(online procedures\)](#).

Recoverable paid leave

What is recoverable paid leave ?

This measure became automatically applicable between March 30 and April 9, 2020, and it involved imposing an extraordinary paid leave during which, despite employees not providing services and not going to the workplace, the employer continued to pay their salary in full (including basic salary and pay supplements). The employee must recover the hours not worked between the date on which the state of emergency ends and December 31, 2020.

Which sectors does this affect?

All public and private sectors involved in an activity not classed as essential under annex 1 of [RDL 10/2020](#), regulating recoverable paid leave for employees that do not provide essential services, to reduce population mobility in the fight against COVID-19, as long as the NPE has not carried out an ERTE and the employees are unable to provide services through remote working.

What kind of agreement must be reached to recover these hours of leave?

The company and the workers' legal representatives must negotiate the recovery of the working hours during the given consultation period. In NPE without workers' legal representatives, negotiations must be carried out with the most representative trade unions of the sector. If this committee cannot be formed, it will be made up of three employees of the company itself, chosen as provided under article 41.4 of the Workers Statute. The consultation period will last up to seven days.

Any agreement will require the approval of the majority of the workers' legal representatives or the negotiating body, as long as they represent the majority of staff affected by recoverable paid leave.

In any case, it is compulsory to (i) respect the minimum daily and weekly rest periods; (ii) comply with the maximum number of annual working hours; (iii) give employees at least five days' notice; and (iv) respect legally and conventionally recognized work-life balance rights.

When should the working hours accumulated during this paid leave be recovered?

Before December 31, 2020.

If it is not possible to make up these hours before this deadline, negotiations should work towards adopting another type of complementary measure, such as the irregular distribution of working hours or adjusting vacation time.

Measures for the deferral of social security debts and moratorium on social security contributions

Is it possible to request a moratorium on or deferral of social security contributions as a result of COVID-19?

Yes, it is possible to request the deferred payment of social security debts and a moratorium on social security contributions.

[RDL 11/2020](#) establishes the following for companies:

- > Under article 34, an interest-free six-month moratorium on the payment of social security employer contributions and joint collection items that accrue between April and June 2020.
- > Under article 35, deferred payment of social security debts for which the payment period is between April and June 2020, with an applicable 0.5% interest.

Under https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4554RDL 15/2020 the same NPE cannot request both a moratorium and a deferral.

Who is entitled to request these measures?

Companies and self-employed persons affected by COVID-19 that meet a set of requirements that will be defined at a later date through a Ministerial Order yet to be published by the Ministry of Inclusion, Social Security and Migration.

What payments or obligations are affected by the moratorium or deferral of payments requested as a result of COVID-19?

The moratorium will affect social security employer contributions that accrue between April and June 2020 in the case of businesses, and between May and July 2020 in the case of self-employed workers, as long as the activities they carry out have not been suspended owing to the state of emergency. The moratorium will not apply to contribution account numbers by companies granted exemptions on employer contributions and joint collection items due to procedures for the suspension of contracts and reduction of working hours on the grounds of *force majeure*.

Also, companies and self-employed workers 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.

How and where to request the moratorium

Companies must request the moratorium through the Social Security's online data submission system (RED system) regulated under Order ESS/484/2013. Self-employed workers should also use the RED

system or the electronic means provided by the State Secretariat of Social Security's electronic office ("SEDESS").

The State Secretariat of Social Security can enable any other electronic means other than the RED and SEDESS systems for filing requests. In this case, it will provide information on the process.

Is there a deadline to request the moratorium on social security contributions?

Yes, requests for a moratorium must be notified to the General Treasury of Social Security within the first 10 calendar days of the legal payment period. No moratorium will be granted on contributions the legal payment period of which has expired before the date of the request.

Is there a deadline to request the deferred payment of social security debts?

Yes, requests for deferral must be made within the first 10 calendar days of the legal payment period.

The table below summarizes moratoriums and deferrals.

Employer contributions	Deferral or moratorium?	Deadline
March	Deferral	Until April 10
April	Deferral or moratorium	From May 1 to May 10
May	Deferral or moratorium	From June 1 to June 10
June	Moratorium	From July 1 to July 10

TAX

IV. Tax obligations and relationship with the tax authorities

This section refers to issues related to state taxes. For more information on regional and local taxes, please consult the provisions approved by each autonomous region or council within the scope of their tax jurisdiction.

Have the periods to submit declarations and self-assessments been suspended?

Generally speaking, the period granted to fulfill tax obligations has not been suspended or modified, despite some exceptions (we will explain those with most practical relevance in the following sections). The vast majority of obligations will maintain the usual deadlines established by law. One new feature is that [RDL 14/2020](#) has extended the deadlines of tax declarations and self-assessments the submission deadlines of which are between April 20 and May 20, 2020, in the case of entities with a business volume not exceeding €600,000.

Does this mean that I have to pay taxes as usual if the legal period to pay them coincides with the state of emergency (e.g., VAT)?

- As a rule, yes, whether in the usual period or, if entitled to do so, in the extended period explained in the previous question.

Has a special deferral system been approved?

Yes, it is possible to request an automatic six-month deferral, without having to provide security and without default interest accruing for the first three months, as long as the following requirements are met:

- The debtor is a small-sized entity for VAT purposes (with a business volume not exceeding €6,010,121.04 in 2019);
- The total amount of debt deferred by the debtor does not exceed €30,000; and
- The self-assessment period for debts included in the request for deferral is between March 13 and May 30, 2020.

The tax authorities have issued instructions on how to request a deferral, available at: [Tax Agency instructions on requesting a deferral.](#)

How does the state of emergency affect the payment of deferrals or payment in installments?

- > Payments in installments or of deferrals already granted is one of the procedures that has been extended as a result of the health crisis.
- > Payments in installments and deferrals granted before March 18, 2020, that are due on March 20, April 5 or April 20, have been extended until May 30.
- > Payments in installments or of deferrals that have already been granted and are notified after March 18, 2020, the payment of which is due on March 20, April 5 or April 20, have been extended until May 30.

What should I do if I receive a payment order from the tax authorities that falls due during the state of emergency?

- > In this case, if the payment order was received before March 18, 2020, and the deadline is before April 30, 2020, the period is extended until May 30, 2020.
- > If the payment order was received after March 18, 2020, the period is extended until May 30, 2020, unless the period established under general tax regulations (regardless of those imposed under the state of emergency) ends on a later date, in which case the latter will apply.
- > In both cases, if the order is paid before these dates, the order will be considered fulfilled for all purposes.

What should I do if I received an order of attachment before the declaration of the state of emergency and I have not responded yet? What if I received it during the state of emergency?

It is possible to respond to the order of attachment and also pay the seized amounts on May 30, 2020, depending on whether the notification was made before or after March 18, 2020. In any case, the order or attachment will be fully effective from the date it is received, which means that seizure can be carried out on unpaid amounts from that time (not fulfilling the order, for example, by paying a supplier or employee, would imply a case of liability).

What is the period for bringing appeals and administrative and economic-administrative claims against proceedings or rulings notified before March 14, 2020?

All periods for bringing appeals and claims that (i) had still not ended on March 14, 2020, or (ii) began after March 14, 2020, will be given a new period, beginning on May 30, 2020.

What about statute of limitations periods and deadlines for rights and actions?

- > All statute of limitations periods and the deadlines for any actions and rights provided under Spanish tax legislation are suspended from March 14 to April, 30 2020.
- > The suspension of statute of limitations periods and deadlines affects procedures, claims and formalities processed by the Spanish Tax Agency or by tax authorities of autonomous regions and of local governments.

Tax incentives for donors

Can individuals and companies that make donations to help tackle the health crisis, whether monetary or in kind (health care materials, consumables, medical staff or support staff for research teams), benefit from a specific tax deduction?

RDL 17/2020 amends the general deduction percentages provided under [Act 49/2002, of December 23, on the tax regime of non-profit organizations and tax incentives for patronage](#):

- > Irrevocable gifts and donations made purely and simply by an individual or a company to the following organizations and bodies gives rise to the right to deductions provided under Title III of Act 49/2002: public-interest foundations or associations that provide hospital or health care services, or that conduct scientific and technological research; and state and regional governments, or town councils. Irrevocable gifts and donations made purely and simply to public-interest foundations or associations that pursue aims of general interest unrelated to health care and research (e.g., educational and cultural aims) are also eligible for tax deductions.
- > As well as monetary donations, tax incentives are granted to the donation of medicinal products, ventilators, protective screens, respirator masks for health care professionals, coronavirus testing kits, hand sanitizers and health care equipment.
- > If the donor is an individual, the personal income tax deduction is 75% on the first €150 donated and 30% for donations exceeding that amount. RDL 17/2020 establishes that, from January 1, 2020, the deduction will be 80% on the first €150 donated and 35% for donations exceeding that amount. The base of this deduction cannot exceed 10% of the taxpayer's net taxable income.
- > Companies making these donations will be entitled to apply a 35% deduction to their corporation tax due after adjusting the expense as non-deductible.

What if the individual's or the company's donation consists of forgiving the rental charge of the premises the foundation or entity uses for its activity?

This would qualify as the free transfer of a right, which would be eligible for a tax deduction, according to the general tax deduction regime provided under [Act 49/2002](#), with amendments to the types of deduction described above.

What if the individual's or the company's donation consists of providing a free service or training to the foundation's employees?

- > The free provision of services does not give any right to a tax incentive.
- > It may be worth referring to the business collaboration agreement as regards general-interest activities.

DATA PROTECTION

V. Personal data protection obligations

Processing employees' personal data

Can an NPE ask employees for information on their health status with regard to COVID-19?

Yes. The legal basis is to fulfill the legal obligation to protect the health and safety of employees, as provided under ([article 22 of Act 31/1995, of November 8, on the Prevention of Occupational Risks](#), or "LPRL"). In any case, questions should be restricted to ascertaining whether the employee has any symptoms, has had COVID-19, or has been put in quarantine. It would go against the principle of data minimization to distribute detailed and extensive health questionnaires, or questionnaires raising issues not related to COVID-19.

Can an NPE process its employees' personal data to ascertain whether they have COVID-19 or are at risk of becoming infected?

NPE can ask employees whether they have COVID-19 if they have symptoms related to the disease, and which countries they have visited recently. The Spanish Data Protection Agency has stated that the data controller can ascertain whether employees' health status may pose a risk to themselves, to other employees, or to other people related to the company, as a health surveillance measure to protect employees, as provided under the LPRL.

However, questions should be restricted to ascertaining whether the employee has any symptoms, has had COVID-19, or has been put in quarantine. As far as the countries the employee has visited recently, they should only refer to countries at risk the employee has visited during the incubation period (14 days).

Can an NPE inform other employees about the personal data of people affected by the virus?

No, as it would go against the principle of limitation of purposes for data processing (article 5.1.b of the GDPR) and of confidentiality of personal data (article 5.1.f of the GDPR). This information can only be shared with the occupational risk prevention services or, if applicable, health and safety representatives.

Can an NPE conduct temperature screening tests on employees?

From a data protection perspective, the legal basis for this processing would be for the employer in charge of processing the data to fulfill its legal obligation (article 6.1.c of the GDPR) to protect the health and safety of employees, as provided under article 22 of the LPRL. According to the Spanish Data Protection Agency, this obligation would be an exception, allowing the processing of health data, as provided under article 9.2 of the GDPR.

Taking into consideration all of the above and the criteria of the Spanish Data Protection Agency, we assume that the company can screen the temperature of its employees, as long as (i) this has been determined by the prevention service; (ii) the workers' legal representatives have been previously informed; (iii) a Data Protection Impact Assessment ("DPIA") is carried out previously, ensuring adequate guarantees; and (iv) all other data protection requirements are met (particularly, the information required from those affected as provided under article 13 of the GDPR).

In any case, following the Spanish Data Protection Agency's criteria, this measure should be implemented by the entity's medical staff. Also, any personal data processing must be limited to the specific purpose of preventing the spread of coronavirus, and the data can only be stored for the time required to fulfill that purpose.

Personal data processing of others (beneficiaries, users, suppliers and service providers, and outside visitors)

Can a company ask visitors that are unrelated to it whether they have symptoms or have been with anyone suffering from the disease?

Yes. The legal basis is to fulfill the legal obligation to protect the health and safety of employees ([article 22 of the LRPL](#)). The information requested must comply with the principle of proportionality.

Can an NPE conduct temperature screening tests on third parties (suppliers, employees of other companies, self-employed workers)?

From a data protection perspective, the legal basis would be the same (fulfillment of the legal obligation to protect the health and safety of employees), which would also be an exception to process the health data of third parties. However, it will be necessary to weigh up the impact on the rights of clients and users, and the level of protection afforded to employees, following the criteria of the health authorities at all times (yet to be established). It is necessary to analyze the circumstances of each case. For example, the measure would be justified when employees are at greater risk—owing to the number of visitors, the maximum permitted capacity and any difficulties to ensure the two-meter safety distance—than when sufficient distance can be guaranteed between employees and third parties, and all health and safety measures imposed by the health authorities can be fulfilled (e.g., personal protection equipment). The company must bear in mind that the more lenient the health and safety measures monitoring third parties' access to the workplace, the stricter those that must be applied inside the building.

In brief, the possibility of conducting temperature screening tests on third parties that are not company employees is, in our opinion, more limited. This will require a case-by-case analysis to assess the circumstances and determine whether this measure can be considered necessary to fulfill the obligation to protect the health and safety of employees. The guidelines must be drawn up by the occupational risk prevention services (whether internal or external) and a DPIA should be conducted to set proper guarantees and to fulfill all data protection requirements. Consent is not valid.

Can an NPE conduct temperature screening tests on third parties (e.g., clients, visitors and users)?

From a data protection perspective, it may be difficult to justify the application of the legal basis related to the obligation to protect the health and safety of employees (article 22 of the LRPL), owing to third parties scarcely accessing the workplace, particularly in the case of sporadic visitors. Each case must be analyzed individually, focusing on the proportionality of temperature screening, as well as on the existence of any other efficient safety measures to measure the risk of infection, and the guidelines provided by the company's occupational risk prevention services.

On April 30, 2020, the Spanish Data Protection Agency published a Notice on temperature screening by businesses, work centers and other establishments, available [here](#).

ANNEX

VI. ANNEX

Spanish Tax Agency websites and telephone numbers

Below is a list of the websites and telephone numbers of the different regional tax authorities to contact if you have any queries on regional taxes:

[Spanish Tax Agency \(Agencia Estatal de la Administración Tributaria estatal\)](#)

Telephone: 901 335 533

[Tax Agency of Andalusia](#)

Telephone: 954 544 350

[Tax Agency of the Government of Aragon](#)

Telephone: 976 715 209

[Tax Services of the Principality of Asturias](#)

Telephone: 985 668 700

[Tax Agency of the Balearic Islands](#)

Telephone: 901 201 530

[Tax Agency of the Canary Islands](#)

Telephone: 922 470 012

[Council for Economy and Public Administrations of Cantabria](#)

Telephone: 942 39 55 63

[Taxes of Castile and León](#)

Telephone: 983 324 862

[Council for Tax and Public Administrations of Castile-La Mancha](#)

Telephone: 967 55 82 00

[Tax Agency of Catalonia](#)

Telephone: 932 142 124

[Tax Agency of Valencia](#)

Telephone: 963 866 000

Council for Tax and Public Administrations of Extremadura

Telephone: 924 005 194

Tax Agency of Galicia

Telephone: 981 182 300

Tax Agency of the Autonomous Region of Madrid

Telephone: 901 50 50 60

Tax Agency of the Region of Murcia

Telephone: 900 878 830

Tax authorities of Navarre

Telephone: 948 50 51 52

Department of Taxes and Economy of the Basque Government

Telephone: 945 018 000

Government of La Rioja

Telephone: 941 898 868

Autonomous Agency of Tax Services of Ceuta

Telephone: 956 52 80 92

Autonomous city of Melilla

Telephone: 952 97 62 41

For additional information on the contents of this document or any related queries, please consult our publications on our webpage [Cuatrecasas coronavirus task force](#) or write to ProBonoCovid19@cuatrecasas.com

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