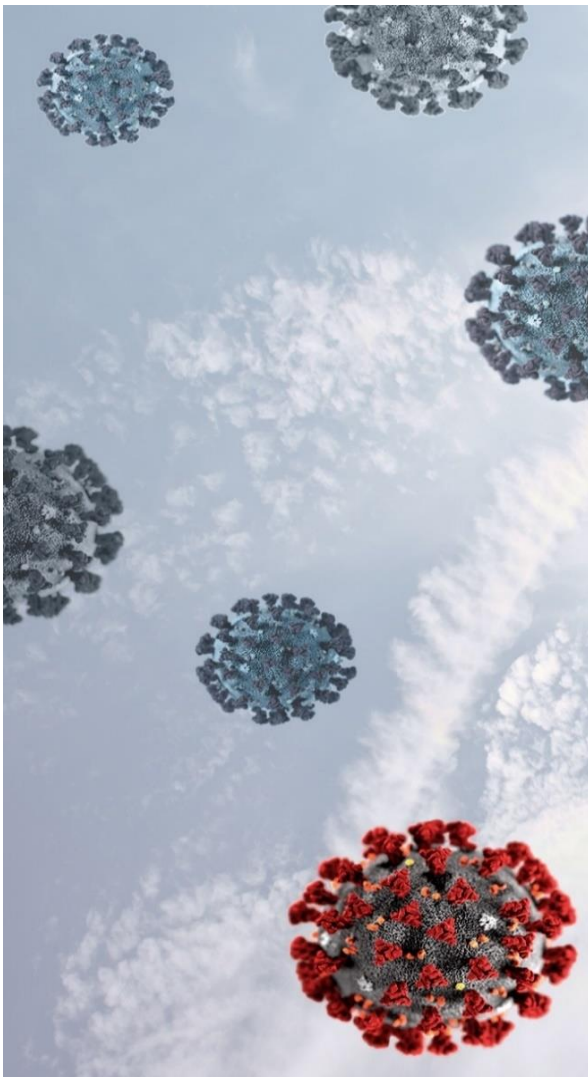

COVID-19: Social security benefits for companies in Spain

Following the deferred payment of social security contributions for March, April and May, and the moratorium on the April, May and June contributions granted to companies under RDL 11/2020, the only social security benefits currently available are exemptions from employer contributions in cases of temporary redundancy plans (“ERTE”), and allowances for permanent seasonal workers in the tourism sector. This document summarizes these benefits, which are provided under RDL 24/2020, of June 26, and RDL 25/2020, of July 3.

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I. EXEMPTION ON SOCIAL SECURITY CONTRIBUTIONS OF EMPLOYEES AFFECTED BY AN ERTE ON THE GROUNDS OF FORCE MAJEURE DUE TO COVID-19 (ARTICLE 4.1 RDL 24/2020)

1. Scope of the exemption on social security contributions

- > Companies that have carried out an ERTE on the grounds of *force majeure* owing to COVID-19 and that **partially resumed their activity** before June 27, 2020, can apply the following exemptions on employer contributions to the social security and joint collection items:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS

Employees registered on February 29, 2020	Which employees	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	35%
More than 50	Active	40%
	Non-active	25%

- > Companies that have carried out an ERTE on the grounds of *force majeure* owing to COVID-19 and that had **not yet resumed their activity** on June 30, 2020, can apply the following decreasing or transitional exemptions while they are still unable to resume their activity:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS

Employees registered on February 29, 2020	Which employees	July	August	Sept.
Fewer than 50	All those affected by the ERTE	70%	60%	35%
More than 50		50%	40%	25%

- > The company must request the exemption by submitting a statement of compliance through the RED System, introducing the corresponding inactivity codes according to each case. The exemption will be applicable until the company gives notification of its waiver of the ERTE.

2. Commitment to maintain jobs

- > To benefit from the exemption on contributions, companies must commit to maintaining jobs for six months from the date the activity is resumed (Sixth Additional Provision of RDL 8/2020).
- > Therefore, if during that six-month period a company terminates contracts on objective grounds or carries out any unjustified disciplinary dismissals of employees affected by an ERTE on the grounds of *force majeure*, that company will be obliged to pay any unpaid contributions plus a 20% surcharge and Interest.

3. Prohibition on dividend distribution

- > Companies with 50 or more employees as of February 29, 2020, **cannot distribute dividends** among shareholders corresponding to the tax year in which the ERTE on the grounds of *force majeure* was carried out, unless they previously pay back the exempted contributions.
- > A case-specific analysis is required of the dividend distribution to shareholders that would be included in this scenario, as well as the extent of non-compliance. Also, to avoid the lack of distributed dividends resulting in the shareholders' right of separation under article 348bis.1 of the Spanish Companies Act, the year in which the company does not distribute dividends will not be taken into account for these purposes.



II. EXEMPTION ON SOCIAL SECURITY CONTRIBUTIONS IN THE CASE OF AN ERTE ON THE GROUNDS OF FORCE MAJEURE DUE TO NEW OUTBREAKS (SECTION 2 OF THE FIRST ADDITIONAL PROVISION OF RDL 24/2020)

1. Scope of the exemption on social security contributions

- > Companies that, from July 1 to September 30, 2020, are unable to carry out their activity as a result of **new restrictions or contention measures** (e.g., being forced to close the work center) due to a new outbreak of the pandemic, can file for an **ordinary ERTE on the grounds of force majeure** under article 47.3 of the Workers Statute, and articles 31 to 33 of RD 1483/2020, requesting the following exemptions on employer contributions to the social security:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS		
Employees registered on February 29, 2020	Which employees	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	80%
More than 50	Active	40%
	Non-active	60%

2. Limits

- > In this case, the law does not impose the commitment to maintain jobs or the prohibition on dividend distribution. Caution is advised until the Labor Ministry or the courts resolve the issue of how these limits apply, given that they use up the same public funds as other COVID-19 ERTE that qualify for exemptions.

III. EXEMPTION ON SOCIAL SECURITY CONTRIBUTIONS OF EMPLOYEES AFFECTED BY AN ERTE BASED ON ETOP GROUNDS OWING TO COVID-19 (ARTICLE 4.2 RDL 24/2020)

1. Scope of the exemption on social security contributions

- > Companies that initiated an **ERTE based on ETOP grounds owing to COVID-19** before RDL 24/2020 entered into force on June 27, 2020, or after that date but following a previous ERTE on the grounds of *force majeure*, can apply the same exemptions as companies carrying out an ERTE on the grounds of *force majeure* that have resumed their activity:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS		
Employees registered on February 29, 2020	Which employees	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	35%
More than 50	Active	40%
	Non-active	25%

- > In the case of employees that have been called back to work, the only exemptions applicable are for those returning to work after July 1, 2020.

2. Commitment to maintain jobs

- > These companies are bound for six months by the same commitment to maintain jobs of employees affected by the ERTE, although if it is the first time they will benefit from the exemptions, **the six-month term will start from June 27, 2020**, so they must take into account any terminations occurring after that date before requesting exemptions on contributions.



3. Prohibition on dividend distribution

- > Also in these cases, companies with 50 or more employees as of February 29, 2020, cannot distribute dividends corresponding to the tax year in which the ERTE on the grounds of *force majeure* was carried out, unless they previously pay back the exempted contributions.

IV. CONTRIBUTION ALLOWANCES FOR PERMANENT SEASONAL WORKERS IN THE TOURISM SECTOR

1. Scope of the allowances

- > Companies dedicated to activities in the tourism sector, or to business and

hospitality activities linked to that sector, can request, in **July, August, September and October 2020**, a **50% allowance for employer contributions to the social security**.

- > In exchange, permanent seasonal workers must be recruited or their jobs must be kept during these months, which means their employment will extend for several months after the end of the tourist season.

2. Compatibility

- > These allowances are compatible with exemptions on employer contributions, up to 100% of the contributions companies would have had to pay.

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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