
Royal Decree-Law 24/2020: new extension of ERTE and other employment measures in Spain

Legal flash

June 27, 2020

On June 27, 2020, the Official Gazette of the Spanish State published Royal Decree-Law 24/2020, of June 26, approving employment measures to reactivate employment and protect self-employment and competitiveness in the industrial sector ("**RDL 24/2020**"), which contains the 2nd Social Agreement for the Preservation of Employment, signed by the Spanish government, trade unions and employer association representatives. RDL 24/2020 came into force on June 27.



RDL 24/2020 aims to facilitate a smooth transition, allowing business activity to gradually resume in the coming months, adjusting the measures adopted under Royal Decree-Law 8/2020 (which will be valid until June 30), and adapting them to the present circumstances. These measures include the following:

- Extending until no later than **September 30, 2020**, the duration of **temporary redundancy plans ("ERTE") on the grounds of *force majeure*** that have been requested.
- Eliminating the distinction between ERTE on the grounds of total and partial *force majeure* and creating **transitional ERTE** and **exceptional ERTE** if new restrictions or contention measures are imposed.
- **Gradually reducing exemptions from employer contributions** in the case of companies that have not resumed their activity on June 30, 2020.
- Extending the **exemption on social security contributions, the commitment to maintain jobs and the restriction on distributing dividends among shareholders** to companies that have carried out an **ERTE based on objective grounds**.
- Extending until **September 30, 2020**, the **prohibition against dismissals on the grounds of COVID-19 and the suspension of the period computed for temporary contracts**, for all companies.



ERTE on the grounds of *force majeure* from July 1

COMPANIES THAT HAVE PARTIALLY RESUMED ACTIVITY

- > **ERTE on the grounds of *force majeure*** requested before June 27 under article 22 of RDL 8/2020 (known as “partial ERTE” since May 13 until now), are extended **until September 30, 2020** in the case of companies that **call back some of their employees**.
- > Under RDL 24/2020, these companies and entities must call employees affected by the ERTE back to work, to the extent necessary to **carry out their activity**, prioritizing adjustments relating to the reduction of working hours.¹
- > The extension follows the current trend towards granting higher subsidies to companies based on the employees they have called back to work rather than those who are still subject to the ERTE **from July 1, 2020**.²

PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS		
No. employees registered as of February 29, 2020	Employees covered by the employer contribution	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	35%
More than 50	Active	40%
	Non-active	25%

- > The company must give the following notifications:
 - If all of its employees return to work, it must previously notify the Public State Employment Service (“SEPE”), and it must inform the labor authority within 15 days of the **complete waiver** of the ERTE.
 - If it **calls back some of its employees** subject to an ERTE, whether on a full-time or part-time basis, the company must previously notify the SEPE.

¹ The Labor Ministry and the General Treasury of Social Security (TGSS), through several communications and gazettes of the RED System, have taken a stand in favor of giving companies greater flexibility to applying the measures approved in the same terms under RDL 18/2020, allowing them greater room for maneuver to renew their activity and call employees back to work, which does not grant any exemption to companies on having to give an objective justification for the decisions they take, which the Labor Inspectorate and courts may review at a later date.

² Companies can request these exemptions through the RED System, and by previously submitting a statement of compliance, for each contribution account number and month of accrual, and previously identifying affected employees, as well as notifying the period of suspension or reduction of working hours.



COMPANIES CARRYING OUT A TOTAL ERTE THAT HAVE NOT RESUMED THEIR ACTIVITY

- > A **transitional ERTE** is created for companies that, owing to their geographic location or sector, or to extraordinary circumstances, are still **facing difficulties to resume their activity** on **June 30, 2020** (e.g., companies in the hotel sector owing to restrictions on international mobility). This ERTE affects all company employees.
- > In these cases, exemptions will decrease:

PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS				
No. employees registered as of February 29, 2020	Employees covered by the employer contribution	July 2020	August 2020	September 2020
Fewer than 50	All those affected by the ERTE	70%	60%	35%
More than 50		50%	40%	25%

- > As employees are gradually called back to work, the companies can apply the exemptions provided in the above section on companies that have partially resumed activity.

COMPANIES SUBJECT TO NEW RESTRICTIONS OR CONTENTION MEASURES

- > In exceptional cases where, from July 1, the company is unable to carry out its 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), the company must file for a new **ERTE on the grounds of force majeure** under article 47.3 of the Workers Statute and articles 31 to 33 of RD 1483/2020.
- > In these cases, the company can benefit from the following **exemptions from employer contributions** until September 30, 2020:

PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS		
No. employees registered as of February 29, 2020	Employees covered by the employer contribution	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	80%
More than 50	Active	40%
	Non-active	60%



ERTE on objective grounds

- > ERTE based on **economic, technical, organizational, or production (“ETOP”) grounds in force on June 27, 2020**, will still be applicable in the terms provided in the company's final notification and until the date given in that notification.

ERTE on ETOP grounds arising from COVID-19 initiated **before and after RDL 24/2020 entered into force**—if, in the latter case, it immediately follows an **ERTE on the grounds of force majeure**—and **until September 30, 2020**, can apply:

- o the procedural rules provided under article 23 of RDL 8/2020 (simplified procedure and special rules applicable to legal representatives during negotiations: see [Legal Flash](#)), and
- o the same conditions concerning exemptions on contributions applicable to ERTE on the grounds of *force majeure*:

PERCENTAGE OF EXEMPTED EMPLOYER CONTRIBUTIONS		
No. employees registered as of February 29, 2020	Employees covered by the employer contribution	July, August and September 2020
Fewer than 50	Active	60%
	Non-active	35%
More than 50	Active	40%
	Non-active	25%

- > The company may start negotiating the ERTE on ETOP grounds **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 the ERTE on ETOP grounds **will be retroactive to the date that ERTE ended**.

Restrictions affecting companies that carry out an ERTE

- > While any of the ERTE regulated under RDL 24/2020 are in force, companies cannot request **overtime** from their employees, **outsource** the activity, or **hire new employees**, whether directly or through a temporary work agency, except to carry out tasks that their own employees are unable to fulfill (and provided they have informed the workers' legal representatives).



- > Companies that apply for the exemption from social security contributions while an **ERTE arising from COVID-19** is in force, regardless of the type (including an ERTE on ETOP grounds), must **maintain jobs** in the company in the terms provided under the Sixth Additional Provision of RDL 8/2020, during **six months following** the total or partial return to work of employees affected by an ERTE.³ In the case of companies benefiting **for the first time** from the extraordinary measures on contributions from the date RDL 24/2020 entered into force, the six-month period will begin from **June 27, 2020**.
- > Companies with 50 or more employees as of February 29, 2020, **cannot distribute dividends** among shareholders corresponding to the tax year in which these ERTE were carried out (whether on the grounds of *force majeure* or on ETOP grounds), unless they previously pay back the exempted contributions.⁴
- > Companies whose tax domicile is located in a **tax haven** cannot apply for any of the ERTE regulated under RDL 24/2020.

Prohibition against dismissals and temporary contracts

- > Until **September 30, 2020**, all companies must comply with:
 - the **prohibition against dismissal** on the grounds of COVID-19, and
 - the **suspension of the period computed for temporary contracts** affected by an ERTE involving suspension.
- > In both scenarios, consequences arising from non-compliance will require a case-by-case analysis.

Unemployment benefits

- > The exceptional measures on unemployment protection provided in sections 1 to 5 of article 25 of RDL 8/2020 will be in force until **September 30, 2020**.

³ Companies that breach the commitment to maintain jobs must pay the full amount of exempted employer contributions, together with a 20% surcharge and the applicable late payment interest.

⁴ A case-specific analysis is required of the dividend distributions to shareholders included in this scenario, as well as the consequences 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.



- > Unemployment protection measures for **permanent seasonal workers** will be in force until **December 31, 2020**.
- > The **SEPE will extend the benefits** if, during these three months, no notification is given of the waiver of the ERTE, thus obliging companies to previously inform the SEPE of any benefits no longer required for employees that cease to be affected by ERTE.

Self-employed workers

The 2nd Title of RDL 24/2020 approves the extension of a series of support measures for self-employed workers by gradually exempting them from contributions they paid in July, August and September 2020, as well as the special regulation of benefits due to cessation of activity.

For additional information, please contact Cuatrecasas.

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