

Informative note

Barcelona, March 20th, 2020

FAQs for employers and employees during the COVID-19 alert

Royal Decree-Law 8/2022, March 17th, on exceptional measures to deal with the economic and social impact of COVID-19 includes some specific updates on employment regulations. Herein a short summary of the changes to the main questions companies may be addressing in the current environment.

What is an ERTE and what is it used for?

An ERTE (Expediente de Regulación Temporal de Empleo) is a measure set up in Article 47 of the Workers Statute in its Article 47. It is a temporary legal measure allowing companies to: (i) temporarily suspend employment contracts or (ii) temporarily reduce the working hours of their employees; whenever there are duly justified economic, organizational, technical or productive reasons (ERTE due to objective reasons) or a situation of force majeure (ERTE due to force majeure) justifying it.

An ERTE intends to mitigate the negative situation of a company by exempting it from totally or partially paying wages of the workers affected by the measure.

What is new relating COVID-19?

- Expansion of the cases in which the ERTE due to force majeure can be called upon.
- Simplification and reduction of the terms to process an ERTE, both ordinary and force majeure.
- Social security exemptions for employers.
- Universalization of unemployment benefits.
- The unemployment benefit received by the workers will not consume their rights to future benefits they could otherwise be entitled in case of a hypothetical future dismissal.

After the approval of the Royal Decree, in which cases can I apply for an ERTE due to force majeure?

Force Majeure ERTES may be filed by companies in which the interruption of employment contracts or reduction of working hours is directly caused by the direct impact of COVID-19, including of the governmental measures implemented following the declaration of the State of Alarm and which may have entailed any of the following consequences:

- Suspension or cancellation of activities
- Temporary closure of public venues



- Restrictions on transport, whether public, private or of merchandise
- Lack of supplies that hinder the regular development of the activity

Force majeure shall also be deemed to occur in all those extraordinary cases in which the activity of the undertaking must be stopped following the infection of the workforce or the preventive isolation decreed by the competent health authority.

After the recent modifications, how is the processing of the ERTes?

The processing of any kind of ERTE, ordinary or by force majeure, has been simplified by the Royal Decree.

With regard to force majeure ERTes, the need to negotiate with the workers' legal representatives are eliminated. The processing of this type of ERTes is subject to the steps below, with the effective date being that of the causal event.

- 1) Application by the company, which in turn must notify the affected workers with the supporting documentation.
- 2) Resolution by the Labour Authority within 5 days, following a report, where appropriate, from the Labour and Social Security Inspectorate.

As for the processing of Ordinary ERTes the RD has simplified the whole procedure, which is now as follows:

- 1) Application by the company. Simultaneously, the affected workers are informed and provided with the supporting documentation.
- 2) Constitution of the workers representative commission within 5 days.
- 3) Consultation period between the company and the workers representatives for a maximum period of 7 days.
- 4) If applicable, a report from the Labour and Social Security Inspectorate, within a period of 7 days.

What are the social security exemptions for employers who carry out an ERTE due to force majeure?

In all those ERTes authorized on the basis of temporary force majeure linked to Covid-19, it is foreseen that employers will be exempted from the payment of Social Security contributions for all the affected workers. The exemption is for the whole of the Social Security contribution for companies with less than 50 workers, and of 75% in companies having more than 50 employees.

However, in order to benefit from this exemption, companies must maintain employment for at least 6 months, as of the date in which the activity is restarted.



What is the situation of the affected workers?

Workers affected by ERTE, of whatever kind, will be entitled to unemployment benefits. This right is recognised for all workers, even those who do not comply with the minimum contribution period (360 days in the last 6 years). Furthermore, the period during which the benefit is received will not be credited against their total unemployment rights benefits.

To calculate the benefits corresponding to each employee, the remuneration received during the last 180 days worked will be taken into account. Should the worked time be below that figure, the number of days worked before the suspension of the contract will be considered.

Further Questions

Is the implementation of teleworking mandatory?

Not really, however, companies are encouraged to implement teleworking mechanisms, whenever possible due to the features of each job position. In order to implement this measure, a risk assessment must be carried out as established in Article 16 of the Law on the Prevention of Occupational Risks.

The above obligation shall be understood to have been fulfilled through a self-evaluation carried out voluntarily by the affected employee. The RD provides a document to enable such self-diagnose.

What can I do, in case I'm in charge of children or have dependent relatives, preventing me from working and taking care of them simultaneously?

Employees having people dependent on them for care or assistance, such as young children or grandparents, will have the right to have their working day adapted and/or reduced, provided that they can prove such circumstances.

- The flexibility may go as far as reducing/adapting the working day by 100%, with the corresponding reduction/adaptation of the salary.
- The reduction of the special working day does not require any prior notice.

CONTACT

Alfonso Maria Autuori
Labour and Employment Law
aautuori@ecijalegal.com
+ 34 933 808 255