

informative note

Barcelona, 2 July 2020

Spanish Government approves extension of ERTes until 30 September 2020

The Spanish Government approved last Friday, June 26, the Royal Decree-Law 24/2020 extending the temporary layoff procedures “ERTE”.

After a long and difficult negotiation with social and economic parties, **the Government finally agreed to extend the validity of ERTes of force majeure until September 30**, without any exclusion concerning the activity or industrial sector of the requesting companies, as apparently intuited at the beginning of the negotiation.

This implies that **all companies that before the entry into force of RDL 24/2020 had an ERTE of force majeure in place, will be able to maintain it until 30 September 2020**, although with lower percentages of exemption from contributions to the social security.

Specifically, **companies that remain in a situation of ERTE of total force majeure**, that is to say, that have not reincorporated even partially employees since the beginning of their ERTes, **will pass from the 100% exemption** (75% for companies with 50 or more employees) **to a 70% exemption in July, 60% in August and 35% in September** (50%, 40% and 25% respectively in companies with 50 or more employees).

On the other hand, **companies that have passed or will pass to an ERTE of partial force majeure**, considering as such the ERTE where employees have been reincorporated, even partially (turning a suspension into a reduction in working hours), **will be entitled to an exemption of 60% in July, August and September for the employees reincorporated** (40% in companies with 50 or more employees) **and 35% for the same months for the employees not reincorporated** (25% in companies of 50 or more employees)¹.

However, it must be borne in mind that **as of the entry into force of RDL 24/2020, June 26th, new ERTes of force majeure may not be processed, but only ERTE ETOP** (for economic, technical or organizational reasons derived from Covid-19), although it is provided that **if future outbreaks of Coronavirus would impose new restrictions, companies that are prevented from carrying out their activity may benefit from an exemption of 80% of social security contributions** (60% for companies with 50 or more employees).

For its part, the **ERTes ETOP that were in force before June 26, 2020 will continue to apply** in the agreed terms and until the date established therein.

One of the greatest novelties of RDL 24/2020, initially unexpected, is the **extension of the social security exemptions for ERTes due to force majeure, with the percentages detailed above, to**

¹ (Please note that in May and June these exemptions were 85% and 70%, respectively, for reincorporated employees, and 60% and 45%, respectively, for non reincorporated employees (60% - 45% and 45% - 30% for companies with 50 or more employees).



the ERTE ETOP, both those that were already in force as of 26 June as those that are processed after this date and until 30 September 2020. However, **the option for such exemptions implies the application to the beneficiary companies of the obligation to maintain employment for 6 months**. We recall in this sense that the breach of said commitment, due to the execution of dismissals, entails the obligation to return the total of the amounts saved as a result of the exemptions.

Another novelty involves an explicit **prohibition for companies with ERTes of force majeure or ETOP in force, relatively to the realization of overtime hours, hiring of employees, either directly or through temporary work agencies, and outsourcing of activities**. Regarding the prohibition of new hires or outsourcing, an exception is established which is that the employees of the company affected by ERTE cannot, due to qualifications, skills or other objective and justified reasons, carry out the functions that the company requires and pursues through the new hires.

The prohibition of dismissal justified in Covid-19 is also expressly extended, which means that the dismissals will be declared unfair. Likewise, it is prolonged the prohibition on distributing dividends for companies that have applied ERTes COVID.

Lastly, it should be mentioned that **RDL 24/2020 extends the extraordinary measures regarding unemployment protection for workers affected by ERTes COVID**, both Force Majeure and ETOP, until 30 September 2020.

We are at your disposal for any clarification or query.

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