

Royal Decree-law 18/2020 on Social Measures in Defence of Employment

The duration of **ERTEs (Temporary Redundancy Plans) due to force majeure derived from COVID-19 will no longer be linked to the duration of the state of alarm, rather they will be extended while the causes that impede the restart of their activity still exist**, and under no circumstances beyond 30 June 2020, all of the aforementioned without prejudice to new extensions taking place if restrictions on the activity of companies persist due to health reasons.

On the other hand, in order to allow the partial return of workers affected by a suspension, **the figure of the ERTE due to partial force majeure is established, whose duration is also extended until 30 June 2020**, which allows companies that see part of their activity reactivated during this period to go from an ERTE of suspension to an ERTE of reduction in working hours.

With regard to ERTes due to economic, technical, organisational or productive reasons (hereinafter "ETOP"), **all companies which process the aforementioned prior to 30 June may benefit from the extraordinary measures provided for in article 23 of the Royal Decree-law 8/2020**, which includes the measures aimed at simplifying the procedures and shortening the periods for suspension and/or reduction in working hours. Likewise, it is stipulated that the effects of the measures of reduction in working hours or suspension of contracts take back their effects on the end date of ERTes due to force majeure, if applicable.

With respect to the measures regarding Social Security contributions in connection with ERTes due to force majeure derived from COVID-19, **exemption of 100% (in the case of companies with fewer than 50 workers on 28/02/2020) or 75%** (in companies with more than 50 workers on the aforementioned date) **is maintained for all companies which have started an ERTE due to force majeure or which are unable to resume their activity**. The aforementioned exemption shall be extended until 30 June 2020.

However, in order to encourage the resumption of activity and the return of workers to their jobs, the Royal Decree-law states that **companies which have started an ERTE due to force majeure and are able to partially reactivate their activity, may benefit from an exemption from Social Security contributions throughout the months of May and June, without this affecting workers**. A greater business exemption is established for any disaffected workers who return to work, whose exemption will reach 85% in May 2020 and 70% in June 2020 (for companies with fewer than 50 workers) and an exemption of 60% in May 2020 and 45% in June 2020 (for companies with more than 50 workers). On the other hand, business exemption will be less for any workers who remain with suspended contract, specifically, this will reach 60% in May and 45% in June (for companies with fewer than 50 workers) and 45% and 30% (for companies with more than 50 workers).

The exemptions indicated will be applied by the General Treasury of the Social Security, although companies must previously, by means of statement of compliance, communicate the situation of total or partial force majeure, and identify the workers affected and the period of suspension or reduction in working hours.

It should be pointed out that **any trading companies or other legal entities which have started an ERTE due to force majeure or which have benefited from exemption or reduction in Social Security contributions**, may not access the distribution of dividends corresponding to the tax year in which the ERTE has been applied, unless they previously

pay back the amount corresponding to the exemption applied. The aforementioned limitation **will not be applied to companies which, on 29 February 2020, had fewer than 50 workers, or persons with equivalent status, who are registered with Social Security.**

The alteration of the sixth additional provision of the Royal Decree-law 8/2020 specifies that only the extraordinary measures provided for in article 22 of the aforementioned decree will be subject to the commitment of the company to maintain jobs, in other words, the measures related to the procedures of suspension of contracts and reduction in working hours due to force majeure. Therefore, the companies which have started an ERTE due to ETOP reasons are not obliged to maintain jobs during the aforementioned period of six months.

Furthermore, **the Royal Decree-law 28/2020 has clarified the consequences that would be implied for the company if it were to fail to comply with maintaining jobs.** To this effect, it is stated that, in the face of failure to comply, the company must pay back all contributions whose fees have been exempt, with the corresponding surcharges and late payment interest. **The consequences indicated in the previous paragraph refer to all workers affected by the ERTE due to force majeure and not only to workers who have been dismissed**, which was not made clear with the previous wording of the Royal Decree-law 8/2020 although it may be deduced considering the purpose of the regulation.

Moreover, **in order to protect any sectors which have been affected to a greater extent by the health crisis and the majority of whose activity is concentrated in a particular period of the year (hospitality, tourism, etc.), the commitment of job maintenance has been relaxed**, as it has been agreed that said commitment will be assessed based on the characteristics of the various sectors, taking into account the specific nature of the companies which a high number of seasonal jobs.

Lastly, it is important to emphasize that **the job commitment will not apply to any companies which are at risk of being in a state of insolvency**, under the terms laid down in article 5.2 of the Insolvency Act.

Updated on 18.5.20