

Complementary measures relating to employment adopted by Royal Decree-Law 9/2020

On 28 March 2020, Royal Decree-Law 9/2020, of 27 March, was published, adopting complementary measures relating to employment, to alleviate the effects of COVID-19 (“**Royal Decree-Law 9/2020**”). In the field of employment, Royal Decree-Law 9/2020 primarily (i) provides new measures aimed at alleviating the effects of COVID-19 on workers (see Schedule I for further details); and (ii) complements and provides detail on some of the measures provided in the previous Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19 (“**Royal Decree-Law 8/2020**”) with regard to the processing of temporary workforce restructuring plans (“**ERTEs**”, see Schedule II for further details).

SCHEDULE I: DEVELOPMENTS RELATING TO EMPLOYMENT IN ROYAL DECREE-LAW 9/2020

TOPIC	ROYAL DECREE-LAW 9/2020
<p>Health centres and care centres for the elderly</p>	<p>Health centres, services and facilities, such as hospitals or outpatient clinics, and social centres for the elderly, dependent people or people with disabilities, such as care homes and day centres, whether publicly or privately owned and regardless of their management regime, that the Ministry of Health or the Ministry of Social Rights and Agenda 2030 determine to be essential services, for the duration of the state of alarm¹ and its possible extensions, can only partially reduce or suspend their activity, in the terms permitted by the competent authorities.</p>
<p>Dismissals and terminations of contracts</p>	<p>Situations of force majeure and economic, technical, organisational and productive reasons associated with the current situation of COVID-19 are not legitimate grounds for dismissals or the termination of contracts.</p>
<p>Suspension of temporary contracts</p>	<p>Suspending temporary contracts, including training, relief and provisional contracts for workers affected by ERTEs linked to COVID-19 – both due to force majeure and for economic, technical, organisational or productive reasons – will entail the interruption of the calculation of the duration thereof and the corresponding reference periods.</p>

¹Decreed by Royal Decree 463/2020, of 14 March, which declares the state of alarm for the management of the health crisis caused by COVID-19.

SCHEDULE II: FOLLOW-UP AND DEVELOPMENT BY ROYAL DECREE-LAW 9/2020
OF THE MEASURES PROVIDED FOR IN ROYAL DECREE-LAW 8/2020 REGARDING ERTES

TOPIC	ROYAL DECREE-LAW 9/2020
<p style="text-align: center;">Contributory unemployment benefit</p>	<p>Collective application by the company on behalf of the workers, using a standard form to be submitted electronically to the Public State Employment Service (“SEPE”) and which must include the following specific information² for each workplace:</p> <ul style="list-style-type: none"> ▪ Name of the company, address, tax identification number and the social security contribution account code to which the workers concerned are assigned. ▪ First and last names, tax identification number, telephone number and e-mail address of the company’s legal representative. ▪ The file number assigned by the labour authority. ▪ Details of the measures to be taken, as well as the date of the onset of effects for each of the workers. ▪ In the event of a reduction of the working day, the percentage of the temporary reduction, calculated on a daily, weekly, monthly or annual basis. ▪ An affidavit stating that authorisation for the application has been obtained from the workers. ▪ Additional information, if appropriate, as determined by the SEPE. <p>The application must be made within 5 days of: (i) the request for the ERTE due to force majeure being submitted to the Labour Authority or (ii) the Labour Authority being notified of the decision of the company as regards the ERTE for economic, technical, organisational or productive reasons. For ERTES initiated prior to the entry into force of Royal Decree-Law 9/2020, the 5-day period applies from its entry into force.</p> <p>Failure to comply with this communication is considered a serious infringement, which may result in a fine of between EUR 626 and EUR 6,250.</p>

²Any variation of the data contained in the initial application should be reported, and in any event, when it relates to the completion of the application of the measure.

<p>Duration of ERTes due to force majeure</p>	<p>The maximum duration of ERTes due to force majeure, – both those expressly granted by the Labour Authority and those granted by (positive) administrative silence – will be that of the state of alarm³ and its possible extensions.</p>
<p>Penalties and repayment of undue benefits</p>	<p>In accordance with the Labour Infringements and Penalties Law (“LISOS”), the following breaches are punishable:</p> <ul style="list-style-type: none"> ▪ Requests for ERTes that contain misrepresentations or inaccuracies in the data provided; and ▪ If a company requests measures relating to employment that are not necessary or have insufficient connection with the reasons they are based on, provided that they give rise to undue benefits being generated or received. <p>The undue recognition of benefits to workers (for reasons not attributable to them) as a result of the above breaches by the company will lead to:</p> <ul style="list-style-type: none"> ▪ The ex officio review of the act recognising such benefits. ▪ The company having to pay the managing entity the amounts received by the workers, deducting these amounts from the wages they stopped receiving that would have corresponded to them, with the limit of the sum of these wages. ▪ The administrative or criminal liability that is legally applicable. <p>The aforementioned obligation to repay benefits will be enforceable until the limitation of the offences referred to in the LISOS.</p>
<p>Effective date of the unemployment benefits</p>	<p>The effective date of the legal unemployment situation for workers affected by ERTes linked to COVID-19 will be:</p> <ul style="list-style-type: none"> ▪ The date of the event which caused the situation of force majeure, for the ERTes due to force majeure; and ▪ The date of or the date following the date of the communication of the company’s decision to the Labour Authority as regards the ERTes for economic, technical, organisational and productive reasons. <p>The cause and effective date of the legal unemployment situation must, in any case, be included in the company certificate, which will be considered a valid document for accreditation thereof.</p>

³Decreed by Royal Decree 463/2020, of 14 March, which declares the state of alarm for the management of the health crisis caused by COVID-19.

<p>Labour and Social Security Inspection Authorities</p>	<p>If the managing entity finds evidence of fraud in relation to obtaining unemployment benefits, it will inform the Labour and Social Security Inspection Authorities for the appropriate purposes.</p> <p>The Labour and Social Security Inspection Authorities, in collaboration with the State Tax Administration Agency and the State Security Forces and Bodies, will include, as one of its plans of action, the verification of the existence of the reasons alleged in the requests and communications of the ERTes linked to COVID-19 (due to force majeure and for economic, technical, organisational and productive reasons).</p>
<p>First transitional provision of Royal Decree-Law 8/2020</p>	<p>Royal Decree-Law 9/2020 amends the second section of the first transitional provision of Royal Decree-Law 8/2020 concerning the limit of the application of ERTes as follows:</p> <p><i>“2. The extraordinary measures regarding the contributions and protection from unemployment regulated by articles 24, 25, 26 and 27 shall apply to those affected by the procedures suspending contracts and reducing the working day communicated, authorised or initiated prior to the entry into force of this royal decree-law, provided they derive directly from COVID-19.”</i>⁴</p> <p>The following is therefore deleted: (i) that the late submission of applications for unemployment benefit does not reduce the duration of entitlement to the corresponding benefit.⁵; and (ii) the possibility of extending ex officio the entitlement to unemployment benefit in cases where it is subject to a six-monthly extension of the entitlement.</p>

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 28 March 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or revise its contents.

⁴The amendment introduced by Royal Decree-Law 9/2020 (with the wording of the provision as included in Royal Decree-Law 8/2020 crossed out) is shown.

⁵See “*Procedure for the recognition of contributory unemployment benefit for workers affected by ERTes linked to COVID-19*”