

Special Information Briefing COVID-19 (No.10): Restrictions on movement and recoverable paid leave for employees who do not provide essential services

On 29 March 2020, Royal Decree-law 10/2020, of 29 March 2020, regulating recoverable paid leave for employees who do not provide essential services in order to reduce the movement of the population in the context of the fight against COVID-19 (“RDL 10/2020”), was published in the Official State Bulletin (“BOE”).

RECOVERABLE PAID LEAVE FOR EMPLOYEES WHO DO NOT PROVIDE ESSENTIAL SERVICES

DEVELOPMENT	ROYAL DECREE-LAW 10/2020
Recoverable paid leave for employees who do not provide essential services	<p>Employees working for companies or entities in the public or private sector, whose activity has not been halted as a result of the state of alarm established by Royal Decree 463/2020, of 14 March, which has declared a state of alarm for the management of the health crisis caused by COVID-19 (“RD 463/2020”) will be granted compulsory recoverable paid leave.</p> <p>The leave will mean that these employees will retain the right to the wages they would have been entitled to if they were providing services as usual, including their base salary and salary supplements.</p>
Duration of the leave	From 30 March to 9 April 2020 inclusive.
Excluded persons	<p>The recoverable paid leave will not apply to:</p> <ul style="list-style-type: none"> a) Those working in the sectors which are identified as essential in the schedule to RDL 10/2020. b) Those working in divisions or on production lines in sectors identified as essential in the schedule to RDL 10/2020. c) Employees of (i) companies that have requested or are implementing temporary workforce restructuring plans to suspend contracts and (ii) companies for which a temporary workforce restructuring plan to suspend contracts is authorised during the period of the leave provided for in RDL 10/2020. d) Employees who are on temporary incapacity leave or whose contract is suspended on another legal basis. e) Employees who can continue to carry out their activity as usual by working remotely.

<p>Recovery of working hours not worked during the paid leave</p>	<ol style="list-style-type: none"> 1. <u>Term.</u> From the day following the end of the state of alarm until 31 December 2020. 2. <u>Consultation period.</u> The recovery of these hours must be negotiated in a period of consultation between the company and the workers' representatives, which will last for a maximum of 7 days. 3. <u>Representative Commission</u> <ul style="list-style-type: none"> - In the event that there are no workers' representatives, the representative commission will be composed of the most representative trade unions of the sector the company belongs to and which have standing to be part of the negotiating commission of the applicable collective bargaining agreement. - In the event that this representation is not possible, the commission will consist of three of the company's employees, elected in accordance with article 41.4 of the Workers' Statute. - In any event, the representative commission must be established within a non-extendable period of 5 days. 4. <u>End of the consultation period</u> <ol style="list-style-type: none"> a) Agreement reached. b) No agreement reached. The company will notify the employees and the representative commission of the decision on the recovery of the working hours not worked during the paid leave within 7 days of the end of the consultation period.
<p>Minimum essential activity</p>	<p>It provides that companies can establish the minimum number of staff or the work shifts that are strictly essential in order to maintain the essential activity, using the activity carried out on a normal weekend or on public holidays as a reference.</p>
<p>Adaptations of activities</p>	<p>There is a possibility that the activities affected by the paid leave may be modified or specified by the necessary orders of the Minister of Health.</p>
<p>Guarantees of the resumption of business activity</p>	<p>It foresees the possibility of services being provided on 30 March 2020 for the sole purpose of carrying out the tasks needed to be able to grant the paid leave without it being irremediably or disproportionately detrimental to the resumption of business activity.</p>
<p>Continuity of transport services</p>	<p>In the field of transport, it provides that the recoverable paid leave can be initiated after the end of the current service, including, where appropriate, the corresponding return service.</p>

Public sector employees	In order to maintain the functioning of public services which are considered essential, any instructions and decisions needed to regulate the provision of services of public sector employees may be issued by the Ministry of Territorial Policy and Public Service and the competent authorities in the autonomous communities and local entities.
Staff with their own specific legislation	Similarly, any instructions and decisions needed to determine the applicable legal regime may be issued, both as regards the essential nature of the services and the specific organisation of the services ¹ .
Essential services in the Administration of Justice	Judges, public prosecutors, court clerks and other staff serving the court will continue to serve the proceedings not suspended by RD 463/2020 (with any adaptations that may be necessary in light of the provisions of RDL 10/2020). The essential services of the Civil Registry will also continue to be provided in accordance with the instructions of the Ministry of Justice.
Continuation of activity	Activities not included in the schedule and which have been contracted through the procedure established in article 120 of Law 9/2017, of 8 November, on public sector contracts (“LCSP”) will continue.
Staff of companies holding public sector contracts	The recoverable paid leave will not apply to employees of companies which have been awarded contracts for public works, services and supplies which are essential for the maintenance and safety of buildings and the adequate provision of public services (including remote working).
Entry into force	RDL 10/2020 will enter into force on the same day as its publication in the BOE.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 30 March 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or revise its contents.

¹ These instructions and decisions will be issued, in their respective fields, by the competent authorities of Parliament, of the other Constitutional Bodies of the state, by the Ministry of Defence, by the Ministry of Home Affairs, by the Ministry of Justice, by the National Intelligence Centre and by the Bank of Spain and the Deposit Guarantee Fund.

SCHEDULE

The paid leave regulated in RDL 10/2020 will not apply to the following employees:

1. Those carrying out the activities which must continue according to articles 10.1, 10.4, 14.4, 16, 17 and 18 of RD 463/2020 and the regulations approved by the competent authority and the delegated competent authorities.
2. Those carrying out activities relating to the market supply chain and the operation of the services of the production centres of essential goods and services, including food, beverages, animal feed, health products, medicines, medical products or any products necessary for the protection of health, to allow distribution thereof from the origin to the final destination.
3. Those working in the hospitality and catering sector that provide home delivery services.
4. Those working on the production and distribution chain of goods, services, health technology, medical equipment, protective equipment, health and hospital equipment and any other materials needed for the provision of health services.
5. Those that are essential to maintain the productive activities in the manufacturing industry that provide the supplies, equipment and materials needed to carry out the essential activities listed in this schedule correctly.
6. Those carrying out transport services, both of persons and of goods, that have continued following the declaration of the state of alarm, as well as those that must ensure the means used to do so are maintained, under the regulations approved by the competent authority and the competent authorities delegated since the declaration of the state of alarm.
7. Those working in penitentiary institutions or providing services related to civil protection, maritime rescue, fire rescue, prevention and extinction, mine safety, and traffic and road safety. Similarly, those working for private security companies that provide security transport, alarm response, patrol or discontinuous surveillance services, and those needed to carry out security services to ensure essential services and provision to the population.
8. Those that are essential to support the maintenance of the material and equipment of the armed forces.
9. Those working in health centres, services and facilities, as well as those who (i) care for the elderly, minors, dependant persons or persons with disabilities, and those who work in R&D&I and biotechnology companies and centres linked to COVID-19, (ii) the animal research facilities associated with them, (iii) the maintenance of the essential services of the associated facilities and the companies supplying the products necessary for such research, and (iv) those working in funeral services and other related activities.

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10. Those working in animal health centres, services and facilities.
11. Those working for press outlets and for publicly and privately owned media or news agencies, including the printing or distribution thereof.
12. Those working for financial services companies, including banking, insurance and investment firms, for the provision of essential services and the activities related to payment infrastructures and financial markets.
13. Those working for telecommunication and audiovisual companies and those providing essential information technology services, as well as those working for networks and facilities that support them and the sectors or subsectors necessary for them to function correctly, especially those that are essential for the adequate provision of public services and to enable public sector employees to work remotely.
14. Those providing services related to the protection and care of victims of gender-based violence.
15. Those working as lawyers, court agents, employment law consultants, translators, interpreters and psychologists who are attending any proceedings not suspended by RD 463/2020 and, in this way, comply with the essential services established by consensus by the Ministry of Justice, the General Council of the Judiciary, the Office of Public Prosecution and the Autonomous Communities with jurisdiction in this area and set out in the Resolution of the Secretary of State for Justice dated 14 March 2020, and any adaptations that may be agreed.
16. Those providing services in law firms and consultancies, administrative and employment law agencies, and external and in-house occupational risk prevention services, in relation to urgent matters.
17. Those working in notary offices and registries for the fulfilment of the essential services as outlined by the Directorate-General for Legal Security and Public Trust.
18. Those providing cleaning, maintenance, urgent breakdown repair and surveillance services; as well as those providing services in relation to the collection, management and treatment of hazardous waste, as well as hazardous and non-hazardous solid urban waste; the collection and treatment of waste water; decontamination activities; other waste management services and the transport and removal of by-products; or those working for any other entity belonging to the Public Sector, in accordance with the provisions of article 3 of the LCSP.
19. Those working in Refugee Reception Centres and Migrant Temporary Stay Centres, as well as privately managed public entities subsidised by the Secretariat of State for Migration and operating within the framework of International Protection and Humanitarian Assistance.
20. Those working on the supply, purification, transportation and treatment of water.
21. Those that are essential for the provision of weather forecasting and observation services and the associated processes of maintenance, monitoring and control of operational processes.

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22. Those employed by the operator designated by the State to provide the universal postal service, in order to carry out the services of collection, handling, transport, sorting, distribution and delivery for the exclusive purpose of guaranteeing the universal postal service.
23. Those providing services in sectors or subsectors involved in the import and supply of health material, such as logistics, transport, storage, customs transit (freight forwarding) companies and, in general, all those that are involved with health intermediaries.
24. Those working on the distribution and delivery of products purchased from internet-based, telephone or mail order businesses.
25. Any others providing services that have been considered essential.