

Measures relating to employment included in Royal Decree-law 15/2020, of 21 April, adopting additional urgent measures to support the economy and employment

Index

- A. Extension of the preferential nature of remote working and the right to adapt and reduce working hours
- B. Extension of the status of being legally unemployed in the event of termination of the employment contract during the probationary period
- C. Regulations on the possibility of exercising vested rights in pension plans as a result of situations generated by COVID-19
- D. Contributions to the Special Social Security System for the Self-Employed during the period of inactivity
- E. Suspension of the deadlines of the Labour and Social Security Inspection Authorities
- F. Penalty scheme
- G. Extraordinary benefit due to the cessation of activity of self-employed workers
- H. Unemployment benefit for permanent intermittent employees
- I. Extension of force majeure events leading to suspensions of contracts and reductions of working hours
- J. Special regulations for requesting deferrals under RDL 11/2020

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On 22 April 2020, Royal Decree-law 15/2020, of 21 April, adopting additional urgent measures to support the economy and employment ("**RDL 15/2020**"), was published in the Official State Bulletin ("**BOE**"), which establishes a new package of economic and social measures.

RDL 15/2020 incorporates measures related to employment that extend and develop those already adopted by the royal decree-laws passed in recent days, and especially those introduced by Royal Decree 463/2020 of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19 ("**RD 463/2020**"), and Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to address the economic and social impact of COVID-19 ("**RDL 8/2020**").

A. Extension of the preferential nature of remote working and the right to adapt and reduce working hours

RDL 15/2020 establishes that articles 5 and 6 of RDL 8/2020, relating to the preferential nature of remote working and the right to adapt and reduce working hours will remain in force for two months after the period foreseen by RDL 8/2020 in its Tenth Final Provision (remember that the current wording of this provision establishes that these measures will be in force for one additional month after the state of alarm ends).

B. Extension of the status of being legally unemployed in the event of termination of the employment contract during the probationary period

Employees whose employment contracts have been terminated at the request of the company during the probationary period and after 9 March will be considered legally unemployed.

Furthermore, employees who voluntarily terminated their employment relationship on or after 1 March 2020 due to an employment commitment with another company, but whose employment contracts could not be formalised as a result of COVID-19, will be considered legally unemployed and have full social security rights.

C. Regulations on the possibility of exercising vested rights in pension plans as a result of situations generated by COVID-19

The Twentieth Additional Provision of RDL 11/2020 established the requirements for members of pension plans and policyholders of assured pension plans and corporate and mutual social welfare plans to exercise their vested rights. RDL 15/2020 specifies that:

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- (i) Members of individual or associated pension plans and members of defined-contribution and hybrid schemes may exercise their vested rights for defined contribution contingencies in a defined contribution scheme.
- (ii) They can also exercise their vested rights for those contingencies defined in a defined-contribution scheme or linked to them in the event that they are affected by an ERTE, by the temporary closure of establishments that are open to the public or by a cessation of activity as a result of COVID-19 - provided that this is permitted by the pension commitment and by the specifications of the plan approved by its control commission under the conditions established thereby -.
- (iii) The documents to be submitted to the pension fund management company to prove membership are those listed in the provision.

In addition, the amounts of available vested rights are regulated according to a set of rules and the conditions for reimbursement are also regulated.

D. Contributions to the Special Social Security System for the Self-Employed during the period of inactivity

RDL 15/2020 provides that self-employed workers who have worked a maximum of 55 actual contributory working days in 2019, with effect from 1 January 2020, will benefit from a 19.11 per cent reduction in contribution quotas during periods of inactivity in 2020.

E. Suspension of the deadlines of the Labour and Social Security Inspection Authorities

Labour and Social Security deadlines are suspended in relation to the following for the duration of the validity of RD 463/2020 and its extensions:

- (i) Verification actions of the Labour and Social Security Inspection Authorities;
- (ii) Deadlines set by the Labour and Social Security Inspection Authorities for compliance with any requirements;
- (iii) Prescription periods for claiming liability in relation to compliance with any labour and social security regulations;
- (iv) all deadlines relating to the procedures for the imposition of labour infringements and penalties and for the settlement of social security contributions.

For cases (i) and (ii), the deadlines will not be suspended when the actions of the Labour Inspection Authorities derive from situations which are closely linked to the facts justifying the state of alarm or because they are essential for the protection of the general interest.

F. Penalty scheme

The control and penalty mechanisms of the penalty scheme implemented by Royal Decree-law 9/2020, of 27 March, adopting complementary measures relating to employment to alleviate the effects of COVID-19 (“**RDL 9/2020**”) have been reinforced.

Specifically, RDL 15/2020 extends the very serious infringement of article 23.1 c) of the Labour Infringements and Penalties Law to include *“making false or inaccurate statements or providing, communicating or recording data that result in employees obtaining or receiving undue benefits”* as punishable behaviour.

It specifies that a company requesting to apply employment measures that are not necessary or have insufficient connection to the grounds that give rise to them, will also be considered punishable conduct when said circumstance is the result of false or incorrect data being provided by them, and provided that undue benefits are generated or received, or that undue deductions to social security contributions are made.

As regards the undue recognition of benefits to employees for reasons not attributable to them, which will lead to the unduly generated benefits needing to be repaid, it is clarified that, in such cases, the company must pay the amounts received by the employee to the Social Security Authorities.

It also states that the employee will still have the right to receive the corresponding salary for the initially authorised ERTE period, discounting any amounts received as unemployment benefits.

G. Extraordinary benefit due to the cessation of activity of self-employed workers

Paragraph 7 of article 17 of RDL 8/2020 is amended to establish that self-employed workers who have not used the option provided in article 83 of the Spanish Social Security Act must file a request before a mutual insurance company which collaborates with the Social Security Authorities in order to be entitled to this benefit. From this moment, the above-mentioned option will be deemed to have been used with effect from the first day of the month in which entitlement to the extraordinary benefit due to cessation of activity is acquired. Together with the request for the extraordinary benefit, applicants must sign their membership with the chosen mutual insurance company.

H. Unemployment benefit for permanent intermittent employees

Protection of permanent intermittent employees and those who carry out seasonal work, repeated on certain dates, is strengthened by RDL 15/2020. Should they not resume working on the foreseen dates as a result of the situation caused by COVID-19, the coverage regulated in RDL 8/2020 is extended, in particular, to the following:

- (i) Those affected by an ERTE;
- (ii) Those not affected by an ERTE but have had to stop working for certain periods as a result of the situation caused by COVID-19 during which, if not for such situation, they would have ordinarily been working and, specifically because of the situation caused by COVID-19, such employees become beneficiaries of the unemployment benefit;
- (iii) Those who demonstrate that, as a result of the situation caused by COVID-19, they have been unable to resume work on the foreseen dates and who were, at that moment, beneficiaries of unemployment benefits, will not have their entitlement to that benefit suspended;
- (iv) Those whose activity has been interrupted or who have not been able to resume working as a result of the situation caused by COVID-19 and who have not worked for a sufficient period to qualify for the current unemployment benefit may receive an exceptional 90-day contributory benefit.

I. Extension of force majeure events leading to suspensions of contracts and reductions of working hours

The concept of force majeure set out in article 22.1 of RDL 8/2020 may be partial and does not need to be extended to the entire workforce in those companies that carry out activities considered essential during the COVID-19 crisis. Therefore, it is stipulated that force majeure, as set out in the above-mentioned article, will justify the suspension of contracts or reductions of working hours for employees working for a company which is obliged to maintain part of its activity during the state of alarm but who carry out non-essential activities.

J. Special regulations for requesting deferrals under RDL 11/2020

Article 35 of RDL 11/2020 is amended and exceptional provisions are introduced in relation to requesting deferrals of social security debt payments for the months of April to June 2020.

- (i) The deferral will be granted by means of a single resolution, regardless of the months covered, and the deferred debt will be settled by monthly payments over a period of 4 months for each monthly payment deferred, as from the month following that in which the resolution was issued, and not exceeding a total of 12 monthly payments.

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- (ii) The request for the deferral will result in the suspension of the collection procedure as regards the debts affected by the deferral. Additionally, the request will cause the debtor to be considered to be in compliance with their social security obligations until the resolution is issued.

Finally, it is specified that a deferral and a moratorium cannot be granted simultaneously for the same period.

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