

## Special Information Briefing on COVID-19 (No. 26):

Royal Decree-law 24/2020 of 26 June on social measures to stimulate employment and protect self-employed individuals and the competitiveness of the industrial sector

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Madrid, 29 June 2020

On 27 June 2020, the Royal Decree-law 24/2020 of 26 June on social measures to stimulate employment and protect self-employed individuals and the competitiveness of the industrial sector ("**RD-l 24/2020**") was published in the Official State Bulletin and came into force.

RD-l 24/2020 incorporates employment and social security measures that expand upon and augment those already adopted by means of the previously approved Royal Decree-laws, such as Royal Decree-law 8/2020 of 17 March on extraordinary urgent measures to deal with the economic and social impact of COVID-19 ("**RD-l 8/2020**") and Royal Decree-law 18/2020 of 12 May on social measures in defence of employment ("**RD-l 18/2020**"), especially with regard to the Temporary Employment Regulation Schemes ("**ERTES**") and the conditions attached thereto.

Specifically, RD-l 24/2020 establishes the following measures:

## **1. Special provisions applicable to *force majeure* based-ERTEs regulated in RD-l 8/2020**

An extension has been established for the *force majeure* based-ERTEs that were already in place before the publication of RD-l 24/2020, which will continue until 30 September 2020 at the latest. Thus, as of Saturday, 27 June 2020, no ERTEs of this nature may be submitted if they have not been submitted previously, with the exception of those included in Section 2 below.

As already established in the previous regulations, companies must reinstate the affected workers to the extent necessary for the proper operation of the business, always giving priority to reductions in working hours.

The express prohibition on overtime as well as new hiring (direct or indirect) and outsourcing of the activity by the companies is introduced. As an exception to the above, it is established that workers who provide services in the work centre concerned cannot, due to training, qualification or other objective and justified reasons, carry out the functions entrusted to them. Before opting for this decision, the relevant communication must be made to the workers' legal representatives.

Non-compliance by companies will result in sanctions after investigation of the relevant facts by the Labour and Social Security Inspectorate.

The provisions of RD-l 18/2020 are maintained with regard to the procedures to be carried out by companies. These procedures are as follows: (i) notify the labour authority of the total cancellation of the authorised ERTE within 15 days of the date on which the cancellation takes effect, (ii) notify the SEPE of the cancellation of the ERTE, the modification of the ERTE that leads to the suspension or regularisation of the payment of benefits and the variations that refer to the end of the application of the measure with

regard to all or part of the affected workforce (both with regard to their total reinstatement or to the corresponding percentage of partial activity).

## 2. **Force majeure ERTes submitted from 1 July 2020**

Only those companies that, as of 1 July 2020, are prevented from carrying out their activity by the adoption of new restrictions or containment measures at one of their work centres will be able to submit these *force majeure* based-ERTes.

This procedure will no longer be submitted in accordance with the provisions of Article 22 of RD-l 8/2020 but will have to be submitted in accordance with the ordinary rules.

## 3. **Special provisions applicable to ERTes for economic, technical, organisational and productive reasons ("ETOP")**

It is expressly provided that companies may continue to submit this type of ERTE with the details included in Article 23 of RD-l 8/2020 until 30 September 2020 (inclusive). This option may also be used by companies that have an ERTE in force due to *force majeure*, in which case it may be submitted while the latter remains in force.

On the other hand, as already provided for in RD-l 18/2020, in those cases where the negotiation of the ERTE (ETOP) is initiated after the termination of a *force majeure*-based ERTE, the date of the effects of the ERTE will be backdated to the date of termination of the *force majeure*-based ERTE.

In relation to the ERTes (ETOP) that have already been submitted and implemented in the companies, the conditions agreed and stated in the company's final communication will be maintained.

Finally, the same prohibition on overtime, new hiring, and outsourcing of activity already explained above is established for the ERTes (ETOP) that are based on *force majeure*.

## 4. **Extraordinary measures relating to protection for the unemployed**

The plans for access to unemployment benefits for workers affected by an ERTE due to *force majeure* or an ERTE (ETOP) included in RD-l 8/2020 are maintained until 30 September 2020, and it is also planned to include them in the ERTes due to *force majeure* which will only apply to companies whose activity is restricted as of 1 July (explained in Section 2).

This means that (i) the right to contributory unemployment benefits will continue to be recognised for the workers affected, even if they do not have the minimum period of contributory employment and (ii) the time in which the unemployment benefit is received at the contributory level will not be counted for the purposes of using the maximum periods of payment established.

## 5. Extraordinary measures regarding contributions linked to ERTES

The exemptions in the social security contributions are maintained, but new conditions are established, as detailed below:

### A. ERTES by total *force majeure* (First additional provision, paragraph 1)

The companies and organisations that remain in a situation of total *force majeure* as of 1 July 2020 will be exempt from the payment of Social Security contributions in respect of the workers assigned to and registered in the contribution account codes of the work centres concerned, in accordance with the following:

Month of accrual of contributions	Less than 50 workers <sup>1</sup>	50 workers or more
July	70%	50%
August	60%	40%
September	35%	25%

In these cases, the provisions of Article 4(3), (4), (5) and (6) of RD-l 24/2020 regarding, *inter alia*, the submission of the statement of compliance and the control of quota exemptions will also apply.

### B. ERTES due to partial *force majeure* (Article 4(1))

Companies and organisations with an ERTE due to partial *force majeure* may benefit from the following exemptions from social security contributions:

For workers who **resume their activity** as of 1 July 2020, as well as for those who have already restarted their activity:

Month of accrual of contributions	Less than 50 workers	50 workers or more
July	60%	40%
August	60%	40%
September	60%	40%

- (i) For workers in these companies **who continue their relationship suspended** after 1 July 2020:

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<sup>1</sup> All references to the calculation of the number of workers with respect to Social Security exemptions are made taking into account those who were registered with the company on 29 February 2020.

Month of accrual of contributions	Less than 50 workers	50 workers or more
July	35%	25%
August	35%	25%
September	35%	25%

**C. New ERTes due to *force majeure* submitted as of 1 July 2020 (First additional provision, paragraph 2)**

Companies and organisations which, as of 1 July 2020, are prevented from carrying out their activities by the adoption of new restrictions or containment measures which impose this on one of their workplaces as explained in Section 2 may benefit from the following exemptions during the closure period and until 30 September:

Month of accrual of contributions	Less than 50 workers	50 workers or more
July	80%	60%
August	80%	60%
September	80%	60%

In the event that the ERTE is transformed into a partial one, the exemptions provided for in Article 4(1) explained above shall apply.

In these cases, the provisions of Article 4(3), (4), (5) and (6) of RD-l 24/2020 will also apply with regard to, *inter alia*, the presentation of the statement of compliance and the control of quota exemptions.

**D. ERTes (ETOP) (Article 4(2))**

With regard to the ERTes (ETOP), the exemptions will be those already explained in the case of ERTes due to partial *force majeure*.

**6. Restrictions on dividend distribution and tax transparency during the deconfinement process**

With the publication of RD-l 24/2020, the restrictions established by RD-l 18/2020 are extended to ERTes (ETOP) with regard to companies in tax havens and dividend distribution.

These restrictions are as follows: (i) companies that have their tax domicile in countries or territories classified as tax havens cannot implement ERTes and, (ii) no dividends can be distributed for the tax year in which these ERTes are applied, unless the companies first reimburse the social security contributions from which they have been exempted during

these procedures (in the latter case, only those companies that on 29 February 2020 had 50 or more workers registered with the social security system are applicable).

## 7. Maintaining employment

The commitment to maintain employment is extended to companies that process an ERTE (ETOP) and benefit from the exemptions in social security contributions explained in Section 5(D)

It is also specified that the six-month duration of this commitment for companies benefiting from the exemptions for the first time will start from the date of publication of RD-l 24/2020. Therefore, these companies will be bound by the commitment to maintain employment until 28 December 2020.

## 8. Limitation of extraordinary measures for the protection of employment and temporary employment

Articles 2 and 5 of Royal Decree-law 9/2020, of 27 March, adopting supplementary measures in the area of employment to mitigate the effects of COVID-19, remain in force until 30 September 2020.

The foregoing implies that: (i) situations of *force majeure* and the economic, technical, organisational and production reasons linked to the current situation caused by COVID-19 are not legitimate reasons to justify dismissals or the termination of contracts and that (ii) the suspension of temporary contracts, including training, relief and interim contracts of workers affected by ERTEs linked to COVID-19 - both due to *force majeure* and to economic, technical, organisational or production reasons - will mean the interruption of the calculation of the duration and the corresponding reference periods.

## 9. Persons included in the ERTE who are not beneficiaries of the unemployment benefit

Workers who do not receive an unemployment benefit will be considered to be in an equivalent situation for the purposes of considering the duration of the *force majeure* based-ERTE and the ERTE (ETOP) applicable to them to be contributed in the Social Security System, subject to the limitations established in Royal Decree 24/2020.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 29 June 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.