

Royal Decree-law 30/2020, of 29 September, on social measures to defend employment

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Pérez-Llorca

Madrid, 1 October 2020

On 30 September 2020, Royal Decree-law 30/2020 of 29 September, on social measures to defend employment (“RDL 30/2020”), was published in the Official State Bulletin. (“RDL 30/2020”).

RDL 30/2020 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 (“RDL 8/2020”), Royal Decree-law 18/2020 of 12 May on social measures in defence of employment (“RDL 18/2020”), and 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 (“RDL 24/2020”), especially with regard to the Temporary Workforce Restructuring Plans (“ERTES”) and the conditions attached thereto.

In addition, it completes, and extends the periods for the application of, certain measures relating to residential leases and essential supplies.

This information briefing analyses the main aspects of RDL 30/2020.

1. Developments relating to employment and Social Security

CONTENT	RDL 30/2020
ERTES due to force majeure (Art. 1)	Extension of ERTES due to force majeure. An automatic extension until 31 January 2021 is established for ERTES due to force majeure on the grounds referred to in Article 22 of RDL 8/2020 which remain in force at the date of publication of RDL 30/2020.
ERTES due to bans or restrictions on activity (Art. 2)	Scope of application. It will apply (i) to companies which are prevented from carrying out their activity in any of their workplaces as a result of new restrictions or health containment measures adopted from 1 October 2020 by Spanish or foreign authorities or (ii) to companies which are restricted from carrying out their activities in a normal way as a result of decisions taken or measures adopted by the Spanish authorities.

	<p>Procedure. These companies must file a new ERTE with the Labour Authorities in accordance with Article 47.3 of the Workers' Statute.</p>
<p>ERTEs for economic, technical, organisational and productive reasons ("ETOP") (Art. 3)</p>	<p>Processing of new ETOP ERTes. It is expressly provided that companies may continue to submit this type of ERTE with the details included in Article 23 of RDL 8/2020 until 31 January 2021 (inclusive). They can begin to be processed as long as an ERTE due to force majeure is in force. If, on the other hand, processing begins after the end of an ERTE due to force majeure, the effective date could be backdated to the date of the end of the ERTE due to force majeure.</p> <p>Procedure. The procedure will therefore be the fast-track procedure established in RDL 8/2020, with an elective report from the Labour Inspection Authorities and with priority given to the most representative trade unions in the sector over ad hoc committees in terms of eligibility for forming part of the negotiating committee.</p> <p>ETOP ERTes which are in force. Possible extension. It provides that the conditions agreed and included in the final communication of the company will be maintained. As a new development, it provides that an ETOP ERTE which is due to end while RDL 30/2020 is in force may be extended, provided that an agreement is reached in this regard during the consultation period. This extension must be processed with the competent labour authority that processed the ETOP ERTE which is in force.</p>
<p>Sectors that are especially affected by COVID-19 ("Special Sector") (First Additional Provision)</p>	<p>Two new categories of companies are introduced for the purposes of RDL 30/2020:</p> <p>Sectors with a high rate of ERTes and a low rate of recovery. These are companies in specific sectors that have ERTes in force which are automatically extended until 31 January 2021 and whose activity falls within the scope of one of the National Classification of Economic Activities codes listed in Annex I of RDL 30/2020.</p> <p>Companies which depend on or are part of the value chain of the above. These are companies: (i) for which at least 50% of their revenue during 2019 was generated by transactions carried out directly with those included under one of the National Classification of Economic Activities codes mentioned above, and (ii) whose actual activity is indirectly dependent on the activity effectively carried out by the companies included under the above-mentioned codes.</p> <p>The application for a declaration that a company is dependent or a part of the value chain of the above must be processed between 5 and 19 October, as follows:</p>

	<ul style="list-style-type: none"> (i) The company must submit an application to the competent Labour Authority which resolved the ERTE extension, accompanied by a report or memorandum explaining the existence of the situation. (ii) This application must be forwarded to the employees and to the workers' representatives. (iii) The Labour Authority's decision will be issued within 5 days, following the request for a report from the Labour Inspection Authorities, and will be limited to stating whether the company is part of the value chain or a dependent company. (iv) If an express resolution is not issued, the company can consider the request to have been granted by administrative silence. 						
Exemptions	<p>Exemptions for companies in the Special Sector. Between 1 October 2020 and 31 January 2021, companies in the following circumstances will be exempt from paying company contributions and collective contributions:</p> <ul style="list-style-type: none"> (i) ERTE due to force majeure which has been extended, if the company is in a Special Sector. (ii) ETOP ERTE if the company is in a Special Sector. (iii) ERTE due to force majeure that becomes an ETOP ERTE if the company is in a Special Sector. <p>The exemptions for these companies are as follows:</p> <ul style="list-style-type: none"> (i) Employees who resume their activity from 1 October 2020, as well as those who have already resumed their activity since 12 May, will be exempted in the terms set out in the table below for the periods and percentages worked as from 1 October. (ii) For employees of these companies whose relationship continues to be suspended after 1 October 2020: <table border="1" data-bbox="725 1066 2009 1161" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #d9e1f2;">Month of accrual of contributions</th> <th style="background-color: #d9e1f2;">Less than 50 employees¹</th> <th style="background-color: #d9e1f2;">50 employees or more</th> </tr> </thead> <tbody> <tr> <td>October, November, December and January</td> <td style="text-align: center;">85%</td> <td style="text-align: center;">75%</td> </tr> </tbody> </table> <p>ERTEs due to a ban from 1 October 2020. They may benefit from the following exemptions in respect of the periods and</p>	Month of accrual of contributions	Less than 50 employees ¹	50 employees or more	October, November, December and January	85%	75%
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¹ All references to the calculation of the number of employees with respect to Social Security exemptions are made taking into account those who were registered with the company on 29 February 2020.

<p style="text-align: center;">Exemptions (cont.)</p>	<p>percentages of the day affected by the suspension. For these exemptions to apply, companies must communicate the persons concerned, their period of suspension or the reduction of working hours and submit an affidavit prior to the calculation of the corresponding contribution settlement.</p> <ul style="list-style-type: none"> (i) Companies with less than 50 employees: 100% of the company's contribution during the period of closure until 31 January 2021. (ii) Companies with more than 50 employees: 90% of the company's contribution during the period of closure until 31 January 2021. <p>ERTEs due to restrictions on carrying out the activity in a normal way. They may benefit from the following exemptions in respect of the periods and percentages of the day affected by the suspension. For these exemptions to apply, companies must communicate the persons concerned, their period of suspension or the reduction of working hours and submit an affidavit prior to the calculation of the corresponding contribution settlement.</p> <table border="1" data-bbox="734 726 1980 986"> <thead> <tr> <th>Month of accrual of contributions</th> <th>Less than 50 employees</th> <th>50 employees or more</th> </tr> </thead> <tbody> <tr> <td>October</td> <td>100%</td> <td>90%</td> </tr> <tr> <td>November</td> <td>90%</td> <td>80%</td> </tr> <tr> <td>December</td> <td>85%</td> <td>75%</td> </tr> <tr> <td>January</td> <td>80%</td> <td>70%</td> </tr> </tbody> </table>	Month of accrual of contributions	Less than 50 employees	50 employees or more	October	100%	90%	November	90%	80%	December	85%	75%	January	80%	70%
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<p style="text-align: center;">Bans and restrictions (Arts. 4 to 7)</p>	<p>Distribution of dividends and tax transparency. The prohibitions established by RDL 24/2020 remain in force and apply to ERTes authorised under Article 2 of RDL 30/2020, in accordance with the following:</p> <ul style="list-style-type: none"> (i) Companies with tax residence in countries or territories that are considered to be 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, it is only applicable to companies that on 29 February 2020 had 50 or more employees registered with 															

<p style="text-align: center;">Bans and restrictions (Arts. 4 to 7)</p>	<p>the social security system).</p> <p>Maintaining employment. The commitment to safeguarding employment provided for in RDL 8/2020 and 24/2020, i.e. 6 months after the activity restarts, is maintained.</p> <p>In addition, companies that benefit from the exemptions provided for in RDL 30/2020 will be subject to a new 6-month commitment to maintain employment in the same terms as provided for in the previous Royal Decrees. This commitment may be in addition to the period to which the company had already committed, in which case the new 6-month period will begin to be counted after the end of the current commitment to maintain employment.</p> <p>Limitation of extraordinary measures to protect employment and in relation to temporary employment Articles 2 and 5 of Royal Decree-law 9/2020, of 27 March, which adopted complementary measures relating to employment to mitigate the effects of COVID-19, remain in force until 31 January 2021. The foregoing implies that:</p> <ul style="list-style-type: none"> (i) 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, and (ii) Suspending temporary contracts, including training, relief and provisional contracts for employees 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>Overtime and outsourcing. The express prohibition on overtime as well as new hiring (direct or indirect) and outsourcing of the activity is maintained for companies who are applying the ERTes foreseen in RDL 30/2020. It establishes an exception to the above for when employees who provide services in the workplace 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’ representatives of the employees.</p> <p>Non-compliance by companies will result in penalties after investigation of the relevant facts by the Labour and Social Security Inspection Authorities.</p>
<p>Unemployment protection</p>	<p>Maintenance. The provisions regarding access to unemployment for employees affected by an ERTE up to 31 January 2021</p>

<p>(Art. 8)</p>	<p>are maintained, regardless of whether it is an ERTE due to force majeure or an ETOP ERTE under RDL 8/2020, or an ERTE due to a ban or restrictions on activity, with regard to the recognition of the right to contributory unemployment benefits for the affected employees, even if they do not have the minimum period of contributory employment.</p> <p>Consumption of days. However, from 30 September 2020, the time in which the contributory unemployment benefit is received will begin to be counted for the purposes of reaching the established maximum periods thereof. This situation will not apply to persons who access unemployment before 1 January 2022 as a result of the termination of their temporary contract, or an individual or collective dismissal for economic, technical, organisational and productive reasons, or as a result of an unfair dismissal.</p> <p>Procedure. Companies that have applied an ERTE due to force majeure which has been automatically extended or an ETOP ERTE must submit a new collective application for unemployment benefits by 20 October 2020. For new ERTEs, the same communication procedure as previously foreseen is maintained.</p>
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2. Developments relating to residential leases

RDL 11/2020 provided for certain measures related to residential leases, which have been analysed in detail in the legal briefing which can be viewed [here](#).

In relation to these measures, RDL 30/2020 extends until 31 January 2021:

- (i) the time limit to be able to request the extraordinary extension of residential lease agreements for the primary residence;
- (ii) the maximum period of suspension of eviction procedures for vulnerable households with no alternative housing arrangement; and
- (iii) the possibility of requesting the automatic application of the rent moratorium in the case of great property holders (*grandes tenedores de viviendas*).

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3. Developments relating to essential supplies

A new category of consumer considered vulnerable for the purposes of receiving the discount electricity rate and protection against the interruption of supply is introduced, with a temporary validity limited until 30 June 2021. In particular, family units in which one of their members is unemployed, suffered an ERTE or, in the case of a business owner, has had his or her working hours reduced for reasons of care or other similar circumstances involving a substantial loss of earnings, provided that the household's total income is below the thresholds set by the regulation, will be entitled to receive the discount electricity rate.

It also regulates the consequences of wrongfully applying the right to receive the discount electricity rate when the requirements provided for in the regulation for this new category of vulnerable consumers have not been met. In particular, it provides that the holder of the point of supply will be liable for the damages incurred, as well as for the expenses generated by the application of the exceptional measures.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 1 October 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.