

Royal Decree-law 2/2021 of 26 January, on the reinforcement and consolidation of social measures to protect employment

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On 27 January 2021, Royal Decree-law 2/2021, of 26 January 2021, on the reinforcement and consolidation of social measures to protect employment (“**RDL 2/2021**”) was published in the Official State Bulletin and entered into effect.

RDL 2/2021 includes measures relating to employment and Social Security, as well as measures relating to the corporate and rental sectors, which expand and build upon the measures adopted through the various royal decree-laws previously approved due to the COVID-19 health crisis, such as 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**”), Royal Decree-law 9/2020, of 27 March, adopting additional measures in the employment sector to mitigate the effects of COVID-19 (“**RDL 9/2020**”), Royal Decree-law 11/2020, of 31 March, adopting urgent additional social and economic measures to combat COVID-19 (“**RDL 11/2020**”), Royal Decree-law 30/2020, of 29 September, on social measures in defence of employment (“**RDL 30/2020**”) and Royal Decree-law 34/2020, of 17 November, on tax matters and urgent measures to support business solvency and the energy sector, (“**RDL 34/2020**”), among others.

In this legal briefing, we analyse the main aspects of RDL 2/2021.

1. New developments in employment and Social Security

Contents	RDL 2/2021
ERTEs due to Force Majeure resulting from COVID-19	<ul style="list-style-type: none">▪ Extension of the ERTes caused by Force Majeure. The following ERTes are extended until 31 May 2021 with the following details:<ul style="list-style-type: none">- Automatic extension of the ERTes due to Force Majeure under Article 22 of RDL 8/2020.- Extension of the ERTes due to the impediment of the performance of the company activity to date.- Automatic extension of the ERTes due to restrictions on the normal performance of the company activity, under Article 2.2 of RDL 30/2020.
Applicable exemptions	<ul style="list-style-type: none">▪ Applicable exemptions:<ul style="list-style-type: none">- ERTes due to the impediment of the company activity. During the period of the closure and until 31 May 2021, the following extraordinary contribution measures provided in RDL 30/2020 will be applicable:

	<ul style="list-style-type: none"> (i) in companies with less than 50 employees as of 29 February 2020: exemptions of 100%; and (ii) in companies with 50 or more employees as of 29 February 2020: exemptions of 90%. <ul style="list-style-type: none"> - ERTEs due to limitations on the normal performance of the company activity. From 1 February 2021 the applicable exemptions for February, March, April and May will be: <ul style="list-style-type: none"> (i) in companies with less than 50 employees as of 29 February 2020: 100%, 90%, 85% and 80% respectively; and (ii) in companies with 50 or more employees as of 29 February 2020: 90%, 80%, 75% and 70% respectively. - ERTEs in ultra-protected sectors. The list of CNAEs (National Classification of Economic Activities) is expanded and, consequently, the number of companies which are entitled to exemptions either because they directly belong to ultra-protected sectors or because their company depends on them is also expanded. Between 1 February and 31 May 2021, the exemptions that apply (both to employees remaining in the ERTE and employees reinstated to their positions) are as follows: <ul style="list-style-type: none"> (i) in companies with less than 50 employees as of 29 February 2020: exemptions of 85%; and (ii) in companies with 50 or more employees as of 29 February 2020: exemptions of 75%.
<p>New ERTes due to impediments or limitations on company activity</p>	<ul style="list-style-type: none"> ▪ Requests for new ERTes due to impediments or limitations on the company activity. From 1 February 2021 and until 31 May 2021 new ERTes may be requested due to impediments or limitations on the company activity due to new restrictions or health containment measures under Article 2 of RDL 30/2020. The procedure and requirements for the exemption from Social Security contributions are those provided in the previous section. ▪ Simplification of procedures. Once there is a favourable resolution (express or implied) for the ERTE on impediment or limitation, the change from the state of impediment to limitation or vice versa, as a consequence of modifications to the health restrictions adopted by the relevant authorities, will not require the processing of a new ERTE.
<p>Extension of supplementary provisions of RDL 30/2020</p>	<ul style="list-style-type: none"> ▪ ETOP ERTes. New ETOP ERTes (on economic, technical, organisational and production grounds) linked to COVID-19 may continue to be submitted and existing ones may be extended until 31 May 2021 (based on Article 3 of RDL 30/2020). ▪ Maintaining employment: <ul style="list-style-type: none"> - In relation to the safeguard of employment, the commitment to maintain their workforce under the terms of art 5 of RDL 30/2020 is retained in circumstances where companies benefit from the aid provided for in this regulation (and it is therefore understood that these companies must maintain their workforce for a further period of 6 months).

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	<ul style="list-style-type: none"> - Regarding the limits and provisions relating to (i) the distribution of dividends and (ii) the tax transparency referred to in Article 4 of RDL 30/2020, these will remain in force until 31 May 2021, for all cases authorised prior to or pursuant to RDL 2/2021. - The limits and exceptions regarding overtime, new hires and outsourcing referred to in Article 7 of RDL 30/2020 will remain in force until 31 May 2021 and will apply to all cases authorised by RDL 2/2021. - Similarly, the provisions of Articles 2 and 5 of RDL 9/2020 remain in force until 31 May 2021. This means that: <ul style="list-style-type: none"> (i) situations of force majeure and economic, technical, organisational or production grounds linked to the current COVID-19 situation are not legitimate reasons to justify dismissals or termination of contracts; and (ii) the suspension of temporary contracts, including training, relief and interim contracts of employees affected by ERTes linked to COVID-19 - due to both force majeure and on economic, technical, organisational or production grounds - shall involve the suspension of the calculation of the term and the corresponding reference periods.
<p>Extension of the protection measures for employees included in RDL 30/2020</p>	<ul style="list-style-type: none"> ▪ Unemployment benefits are extended until 31 May 2021 without the requirement of a minimum period of contribution under the terms provided for in RDL 30/2020. ▪ The non-replacement of benefits (reset at zero) is maintained until 30 September 2020, although the benefits received from that date will not be included for those who, before 1 January 2022, access unemployment benefits due to the termination of a fixed-term contract, due to an individual or collective dismissal on economic, technical, organisational or production grounds, or due to a dismissal which is declared unfair for any reason. ▪ It will not be necessary to file a new collective application for employees to receive unemployment benefits. ▪ The extraordinary benefit is maintained for permanent seasonal employees or employees who perform temporary and seasonal full-time jobs that are repeated on certain periods of time. ▪ When an unemployment benefit resulting from an ERTE is combined with a part-time job, the part that corresponds to the time worked will not be deducted from the amount of the benefit.
<p>Extension of the period of validity of Article 6 of RDL 8/2020</p>	<ul style="list-style-type: none"> ▪ The period of validity of Article 6 of RDL 8/2020, which regulates the MECUIDA Plan and which establishes the right to a flexible working day for the care of dependent persons, is extended.

2. New developments in the corporate sector

Article 3 of RDL 34/2020 established the option that, during 2021, and even if not provided for in the company's bylaws, shareholders' meetings or assemblies of companies, associations, non-profit entities or cooperative companies could be held by videoconference or by multiple telephone conference provided that all persons entitled to attend, or their representatives, have the necessary means to do so, the secretary of the management body confirms their identity, and records this in the minutes, which will be immediately sent to the e-mail addresses of the attendees.

RDL 2/2021 adds a paragraph 4 to Article 3 of RDL 34/2020, extending to the management bodies of associations, non-profit and commercial companies, and the governing council of cooperative companies, the option of holding their meetings by videoconference or by multiple telephone conference, under the same terms as those that provide for the meetings or assemblies of shareholders in Article 3 of RDL 34/2020 indicated above. RDL 2/2021 adds that the same rule shall apply to the delegated committees and other mandatory or voluntary committees that they may have set up, and that the meetings shall be deemed to be held at the domicile of the legal entity.

Furthermore, the second paragraph of Article 40 of RDL 8/2020 provided for the option that, until 31 December 2020, and even if the company's bylaws had not so provided, the resolutions of the management bodies of associations, of non-profit and commercial companies, of the governing council of cooperative companies and of the board of trustees of foundations, could be adopted by written vote and without a meeting whenever so decided by the chairman and should be so adopted when so requested by at least two of the members of the body.

RDL 34/2020 did not extend this option beyond 31 December 2020, but RDL 2/2021 does, so that during 2021, even if the company's bylaws have not so provided, the resolutions of the management bodies of associations, of civil and commercial companies, of the governing council of cooperative societies and of the board of trustees of foundations may be adopted by written vote and without a meeting, provided that the chairman so decides and they must be adopted when so requested by at least two of the members of the body.

3. New developments in relation to residential leases

RDL 11/2020 provided for certain measures regarding residential leases, which we analyse in detail in the legal briefing that can be found [here](#).

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In relation to these measures, RDL 2/2021 extends the following provisions until the end of the current state of alarm, namely, until 9 May 2021:

- (i) the term in which tenants may request the extraordinary extension of lease agreements of a primary residence for a maximum period of six (6) months¹; and
- (ii) the term in which tenants of lease agreements of a primary residence in a situation of economic vulnerability may request the application of a payment deferral or partial reduction of the rent when the lessor is a great property holder (*gran tenedor*) or public entity.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document has been prepared on 28 January 2021 and Pérez-Llorca does not assume any commitment to update or revise its contents.

¹ RDL 2/2021 also provides that the lessor, when it is a natural person, will not be obliged to accept the extension, in circumstances where the lessor has communicated within the terms and conditions established in Article 9.3 of Law 29/1994, of 24 November 1994, on Urban Leases, the need to occupy the leased dwelling to use it as a permanent dwelling for himself or his immediate family or his spouse in the event of a final judgment of separation, divorce or marriage annulment.