

Royal Decree-law 11/2021 of 27 May on urgent measures for the protection of employment, economic recovery and the protection of self-employed individuals

On 28 May 2021, Royal Decree-law 11/2021 of 27 May on urgent measures for the protection of employment, economic recovery and the protection of self-employed individuals ("RDL 11/2021") was published in the Official State Bulletin and entered into force.

RDL 11/2021 includes employment and Social Security measures, with the aim of protecting employment and guaranteeing the future viability of companies by expanding the flexibility measures adopted since the beginning of the COVID-19 crisis, as well as the continuation of the extraordinary measures regarding unemployment protection for workers and the various additional measures, all of which were adopted through various royal decree-laws, 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 employment measures to alleviate the effects of COVID-19 ("RDL 9/2020"), Royal Decree-law 11/2020 of 31 March adopting urgent additional social and economic measures to address COVID-19 ("RDL 11/2020"), Royal Decree-law 30/2020, of 29 September, on social measures to protect employment ("RDL 30/2020") and Royal Decree-law 2/2021, of 26 January, on the reinforcement and consolidation of social measures to protect employment ("RDL 2/2021"), among others.

RDL 11/2021 also establishes protection measures for self-employed individuals in light of the continuing health crisis.

In this legal briefing, we analyse the main aspects of RDL 11/2021 which relate to companies:

1. NEW DEVELOPMENTS IN THE AREAS OF EMPLOYMENT AND SOCIAL SECURITY

Contents	RDL 11/2021
<p>ERTEs due to force majeure arising from COVID-19</p>	<ul style="list-style-type: none"> <li>• <b>Extension of ERTEs due to force majeure.</b> The following ERTEs are extended until <b>30 September 2021</b> with the following specific details:                             <ul style="list-style-type: none"> <li>- Automatic renewal of the <b>ERTEs due to force majeure</b> under Article 22 of RDL 8/2020.</li> <li>- Extension of the <b>ERTEs due to the impediment of the operation of the existing activity</b> to date.</li> <li>- Automatic extension of the <b>ERTEs due to limitations on the normal operation of the activity</b> under Article 2.2 of RDL 30/2020, or Article 2.1 of RDL 2/2021.</li> </ul> </li> </ul>

<p style="text-align: center;"><b>Applicable exemptions</b></p>	<ul style="list-style-type: none"> <li>• <b>Applicable exemptions:</b> <ul style="list-style-type: none"> <li>- <b>ERTEs due to the impediment of the activity. During the closure period and until 30 September 2021,</b> the following extraordinary contribution measures provided for in RDL 30/2020 will be applicable:           <ul style="list-style-type: none"> <li>(i) in companies with fewer than 50 workers as of 29 February 2020: 100% exemptions; and</li> <li>(ii) in companies with 50 or more workers as of 29 February 2020: 90% exemptions.</li> </ul> </li> <li>- <b>ERTEs due to limitations on the normal operation of the activity. From 1 June 2021 and until 30 September</b> the applicable exonerations will be:           <ul style="list-style-type: none"> <li>(i) in companies with fewer than 50 employees as of 29 February 2020: 85% in June and July and 75% in August and September; and</li> <li>(ii) in companies with 50 or more employees as of 29 February 2020: 75% in June and July and 65% in August and September.</li> </ul> </li> <li>- <b>ERTEs in ultra-protected sectors.</b> The list of CNAEs (<i>National Classification of Economic Activities</i>) in and, consequently, the number of companies entitled to exemptions either because they belong directly to ultra-protected sectors or because their business depends on such sectors, is amended. <b>Between 1 June and 30 September 2021,</b> different exemptions will apply for workers remaining in the ERTE and for workers reinstated in their jobs. These differences are as follows:           <ul style="list-style-type: none"> <li>(i) For workers who restart their activity from 1 June 2021:               <ul style="list-style-type: none"> <li>i. in companies with less than 50 workers as of 29 February 2020: 95% exemptions; and</li> <li>ii. in companies with more than 50 workers as of 29 February 2020: 85% exemptions.</li> </ul> </li> <li>(ii) For workers who remain in an ERTE between 1 June and 30 September 2021:               <ul style="list-style-type: none"> <li>i. in companies with less than 50 workers as of 29 February 2020, exemptions applicable to June, July, August and September: 85%, 85%, 85% and 70%; and</li> <li>ii. in companies with more than 50 employees as of 29 February 2020, exemptions applicable to June, July, August and September: 75%, 75%, 75% and 60%.</li> </ul> </li> </ul> </li> </ul> </li> </ul>
<p style="text-align: center;"><b>New ERTes due to impediment or limitations on business activity</b></p>	<ul style="list-style-type: none"> <li>• <b>Application for new ERTes due to impediment or limitations on the activity. From 1 June 2021 and until 30 September 2021,</b> new ERTes may be requested due to impediment or limitations on the activity due to new restrictions or health containment measures under Article 2 of RDL 30/2020. The procedure and requirements for exemption from Social Security contributions are those provided in the previous section.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Simplification of procedures.</b> Once a favourable resolution (express or tacit) has been passed in the ERTE of impediment or limitation, the change from the status of an impediment to limitation or vice versa, as a consequence of changes to the health restrictions adopted by the relevant authorities, will not require the processing of a new ERTE.</li> </ul>
<p style="text-align: center;"><b>Extension of additional contents of RDL 30/2020</b></p>	<ul style="list-style-type: none"> <li>(i) <b>ETOP ERTEs.</b> New ETOP ERTEs linked to COVID-19 may continue to be submitted and existing ERTEs may be extended until 30 September 2021 (under Article 3 of RDL 30/2020).</li> <li>(ii) <b>Maintenance of employment:</b> <ul style="list-style-type: none"> <li>• Regarding the safeguarding of employment, the commitment to maintain employment under the terms of Article 5 of RDL 30/2020 is retained, meaning that the companies that avail of the aid provided for in this regulation must maintain their workforce for a further period of 6 months.</li> <li>• The limits and provisions relating to (i) dividend distribution and (ii) tax transparency referred to in Article 4 of RDL 30/2020 will remain in force until 30 September 2021 for all cases authorised prior to this date or under RDL 11/2021.</li> <li>• The limits and exceptions concerning overtime, new hires and outsourcing referred to in Article 7 of RDL 30/2020 shall remain in force until 30 September 2021 and shall apply to all cases authorised by RDL 11/2021.</li> <li>• Similarly, the provisions of Articles 2 and 5 of RDL 9/2020 remain in force until 30 September 2021. The above means that:           <ul style="list-style-type: none"> <li>▪ situations of force majeure and economic, technical, organisational and production issues linked to the current situation of Covid-19 are not legitimate grounds to justify dismissals or contract terminations and that,</li> <li>▪ the suspension of temporary contracts, including training, relief and interim contracts of workers affected by ERTEs linked to COVID-19 - whether due to force majeure or because of economic, technical, organisational or production issues - will entail the interruption of the calculation of the duration and the corresponding reference periods.</li> </ul> </li> </ul> </li> </ul>
<p style="text-align: center;"><b>Extension of the protection measures for workers included in RDL 30/2020</b></p>	<ul style="list-style-type: none"> <li>• Unemployment benefits are extended without the requirement of a minimum period of contributory employment <b>until 30 September 2021</b> under the terms of RDL 30/2020.</li> <li>• The non-restoration of benefits (counted from zero) is maintained until <b>30 September 2021</b>, although <b>benefits used from that date will not be taken into account</b> for those individuals who, <b>before 1 January 2022</b>, access unemployment benefits due to the termination of a fixed-term contract, due to an individual or</li> </ul>

	<p>collective dismissal for economic, technical, organisational or production reasons, or due to dismissal for any reason declared unjustified.</p> <ul style="list-style-type: none"><li>• It will not be necessary to submit a new collective application for workers to receive unemployment benefits.</li><li>• The extraordinary benefit is maintained for permanent seasonal workers or those who carry out temporary and seasonal full-time work that is repeated on certain dates.</li><li>• When an unemployment benefit arising from an ERTE is combined with a part-time job, the part proportional to the time worked will not be deducted from the amount of the benefit.</li></ul>
<b>Extension of the validity of Article 6 of RDL 8/2020 (Third additional provision)</b>	<ul style="list-style-type: none"><li>• The validity of Article 6 of RDL 8/2020, which regulates the MECUIDA Plan and which establishes the right to a flexible working day in order to care for dependent persons, is extended.</li></ul>

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