

Special Information Briefing
on COVID-19 (Nº 37):

Royal Decree-law 18/2021, of 28 September, on urgent measures for the protection of employment and economic recovery.

On 29 September 2021, Royal Decree-law 18/2021 of 28 September on urgent measures for the protection of employment, economic recovery and improvement of the labour market (“**RDL 18/2021**”) was published in the Official State Gazette and entered into force.

RDL 18/2021 contains measures for the defence of employment and economic reactivation including the extension of Temporary Redundancy Plans (“ERTEs”) under certain circumstances, until **28 February 2022**. In addition, RDL 18/2021 expands upon and enhances measures already adopted in other Royal Decrees 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 11/2020, of 31 March, adopting additional urgent social and economic measures to address COVID-19 (“**RDL 11/2020**”) and Royal Decree-law 30/2020, of 29 September, on social measures in defence of employment (“**RDL 30/2020**”).

In addition, RDL 18/2021 provides additional protection for self-employed workers in view of the Covid-19 health crisis and includes measures for the exceptional circumstances in La Palma resulting from the volcanic eruption that started in the Cumbre Vieja area on 19 September 2021.

In this legal briefing, we analyse the main aspects of RDL 18/2021 that affect companies:

Content	RDL 18/2021
Extension of the ERTEs linked to COVID-19	<p>Extension of the ERTEs in their current form will be authorised upon submission of an application to the Labour Authority that authorised or processed the relevant file. If the application is not submitted, the ERTE will be terminated and from 1 November 2021 will no longer be valid.</p> <p>The application must be submitted between 1 and 15 October 2021 together with the following documentation: (i) the list of employees' hours or days of work suspended or reduced in July, August and September 2021 and (ii) in the event that an ERTE ETOP has been negotiated, a report from the representatives of the employees with whom it was negotiated.</p> <p>The Labour Authority will issue an affirmative decision (express or implicit) within ten (10) working days of the</p>

	<p>submission of the application by the company, and the ERTE will be extended until 28 February 2022.</p>
ERTEs due to impairment or constraints on activity	<p>Applications for new ERTEs due to impairment of or constraints on normal activity: Companies affected by new restrictions and health containment measures relating to COVID-19 which were adopted by the relevant authorities between 1 November 2021 and 28 February 2022 may apply for new ERTEs due to impairments or constraints on normal activity under the provisions of Article 2 of RDL 30/2020.</p> <p>Transitions from ERTEs due to impairment to ERTEs due to constraints on normal activity and vice versa: Companies may transition from an ERTE due to impairment to an ERTE due to constraints on normal activity and vice versa as a consequence of the changes to the health restrictions, without the need to process a new ERTE.</p> <p>In these cases, the company must (i) notify the Labour Authority of the change, the work centres and the persons affected together (ii) with a statement of compliance made to the General Treasury of the Social Security ("TGSS") for the application of the relevant exemptions according to each type of ERTE.</p>
Training activities linked to Social Security contribution exemptions	<p>Exemptions from Social Security contributions linked to the training provided to employees: Obtaining exemptions from Social Security contributions is conditional upon the company carrying out training activities for each person affected by the ERTE between 1 November 2021 and 28 February 2022. Such training must be provided during the ERTE and in any case before 30 June 2022. The minimum number of hours of training to be completed by each employee will be set according to the company's workforce: (i) 10 to 40 employees: 30 hours of training (ii) 50 or more employees: 40 hours of training.</p> <p>Employees' representatives must be informed of the training activities.</p> <p>Credit for the financing of training: Without prejudice to the exemptions provided - analysed below - companies that train persons affected by ERTEs will be entitled to an increase in credit for the financing of scheduled training activities, depending on the size of the company:</p> <ul style="list-style-type: none"> ▪ From 1 to 9 employees: 425 euros per person. ▪ From 10 to 49 employees: 400 euros per person. ▪ 50 or more employees: 320 euros per person.

	<p>The company must notify the TGSS of the employees who participate in the training activity, as well as their period of suspension or reduction of working hours. This notification will constitute a statement of compliance, as well as a commitment that the company will carry out the training activities. This notification must be submitted before requesting the cancellation of contributions corresponding to the period of accrual of the first contributions affected by these declarations.</p>
Contribution benefits	<p>Applicable exemptions:</p> <ul style="list-style-type: none"> ▪ ERTEs due to constraints on normal activity: During November and December 2021, and January and February 2022, the following exemption percentages for Social Security contributions will be applicable: <ul style="list-style-type: none"> (i) <i>Companies with 10 or more employees or those considered registered as employees on 29 February 2020:</i> (a) 40% in the event that the company does not carry out training activities for the employees whose contracts are suspended or whose working hours are reduced (the “Affected Persons”); (b) 80% in the event that the company carries out training activities for the Affected Persons. (ii) <i>Companies with less than 10 employees or those registered as employees on 29 February 2020:</i> (a) 50% in the event that the company does not carry out training activities for the Affected Persons; (b) 80% in the event that the company carries out training activities for the Affected Persons. ▪ ERTEs in sectors especially affected by Covid-19 (i.e. sectors with a high rate of coverage by ERTEs, sectors with a low rate of recovery, subsidiaries or components of the value chain) or that transition from one of these ERTEs to an ERTE ETOP: The same exemption percentages as in the previous section will apply. ▪ ERTEs due to impairments to normal activity: From November 2021, during the closure period and until 29 February 2022, companies may benefit from an exemption of 100% of the employer's contribution to the contributions. <p>The exemptions apply to employees whose activities are suspended between 1 November 2021 and 28</p>

	<p>February 2022.</p>
Extension of complementary contents of RDL 30/2020	<ul style="list-style-type: none"> ▪ ERTEs due to Force Majeure (“FM”) to ERTEs due to economic, technical, organisational and productive grounds (“ETOP”): Companies that on 31 October 2021 are applying an ERTE due to FM may process an ERTE ETOP under the provisions of Article 23 of RDL 8/2020, and may backdate the effective date of the latter to the date of termination of the FM ERTE. ▪ The dividend distribution limits and forecasts established in Article 4 of RDL 30/2020 are maintained until 28 February 2022. ▪ The obligation to maintain employment will continue to apply. ▪ The limits and exceptions for overtime, as well as those relating to new hires and outsourcing referred to in Article 7 of RDL 30/2020 are maintained. ▪ The grounds for FM and ETOPs covered by the measures for the suspension of contracts and reduction of working hours provided for in Articles 22 and 23 of Royal Decree-law 8/2020 may not be interpreted as justifying the termination of the employment contract (i.e. the “restriction/prohibition” on dismissal due to COVID is maintained until 28 February 2022). ▪ The interruption of the calculation of the maximum duration of temporary contracts in the event of suspension due to an ERTE is maintained.
Extension of the protection measures for employees included in RDL 30/2020	<ul style="list-style-type: none"> ▪ Unemployment benefits are extended without the requirement of a minimum period of contributory employment until 28 February 2022 under the terms provided in RDL 30/2020. ▪ The calculation of unemployment benefits at 70% is maintained until 28 February 2022. ▪ In the event of the authorisation of the extension of an ERTE, the company must make a new collective application for unemployment benefits within fifteen (15) working days of 1 November 2021 or the date of notification of the express decision of the Labour Authority. ▪ Extraordinary benefits are maintained for permanent intermittent employees [<i>trabajadores fijos discontinuos</i>] or employees who perform permanent and seasonal work [<i>trabajos fijos y periódicos</i>] that is repeated on certain dates. Similarly, the company must submit a collective application for extraordinary benefits.

**Extension of the validity of
Article 6 of RDL 8/2020
(Eighth additional provision)**

- The validity of Article 6 of RDL 8/2020, which governs the MECUIDA Plan and which establishes the right to a more flexible working day in order to care for dependent persons, is extended.

This Briefing was prepared by Isabel Moya, Partner of the Employment practice area. This information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 1 October 2021 and Pérez-Llorca makes no commitment to update or revise its contents.

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