

## Informative Note

### Application of recoverable paid leave in the industrial sector

1st April 2020

Analysis of the Ministry of Industry, Trade and Tourism explanatory note on the application of the recoverable paid leave approved by RD-Law 10/2020 of 29 March in the industrial sector

On Sunday, 29 March 2020, Royal Decree Law 10/2020 of 29 March was published in the Official State Gazette, regulating recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19 ("**RDL 10/2020**").

RDL 10/2020 establishes paid leave for unskilled workers in essential services who were still working at the date of its publication. RDL 10/2020 includes an Annex with the key sectors.

Yesterday, 31 March 2020, the Ministry of Industry, Trade and Tourism published an explanatory note for the industrial sector on the application of RDL 10/2020 (the "Note").

The Note clarifies that, by virtue of point 5 of the Annex, the **manufacturing industry** can be classified as an essential service "*insofar as its activity is necessary and is intended to provide the goods and materials necessary for the development of the essential sectors established in the Annex to the Royal Decree-Law*". This is an indirect declaration of essentiality which requires proof that the manufacturing activity being carried out is integrated into the chain of production, distribution or marketing of one of the services declared as essential for the purposes of RDL 10/2020, by means of its incorporation into the annex thereto.

**The declaration of the manufacturing industry as essential is residual.** This implies, as the Note states, that this industry may only "*employ those workers that are essential to guarantee this activity, that is, the supply of goods and materials for the activities considered essential*". Therefore, companies must apply recoverable paid leave to other workers who are not essential for these purposes.

The Note indicates that industrial activities not included in point 5 of the Annex will **not be essential although Article 4 of RDL 10/2020** will apply to them. That article covers the maintenance of the minimum essential activity, taking as a reference the activity of weekends or public holidays. The Note indicates that if the non-essential industry does not have this reference, the "*lowest production period*" must be considered. This clarification excludes periods such as maintenance stops from being taken as a reference because it must be considered as a time when the facility is in production.

The Note states that article 4 of RDL 10/2020 is especially prescribed for "*those industrial installations whose prolonged stoppage for several days causes damage that makes it impossible or difficult to restart production or that generates an accident risk*".



Finally, the Note exempts from the application of recoverable paid leave to those workers in respect of **import and export activities** *"of all types of products, goods and materials, to the extent that they are configured as key to the supply or compliance with international contract commitments"*.

We hope the information is useful and of interest. At Andersen Tax & Legal we have created a multidisciplinary team to deal with all the questions that may arise on this aspect or in relation to the COVID-19.

For more information please contact:

[Carlos Mínguez](#) | Partner in the area of Public and Regulatory Law

[carlos.minguez@andersentaxlegal.es](mailto:carlos.minguez@andersentaxlegal.es)

[José Vicente Morote](#) | Partner in the area of Public and Regulatory Law

[jvicente.morote@andersentaxlegal.es](mailto:jvicente.morote@andersentaxlegal.es)

[Carlos Morales](#) | Director in the area of Public and Regulatory Law

[carlos.morales@andersentaxlegal.es](mailto:carlos.morales@andersentaxlegal.es)

The above comments are for information purposes only and do not constitute professional opinions or legal advice, nor do they necessarily include the opinions of the authors. If you are interested in obtaining additional information or clarification of the content, please contact us by telephone on + 34 963 527 546/34 917 813 300 or by e-mail at [communications@andersentaxlegal.es](mailto:communications@andersentaxlegal.es).