

Alert

Companies against Covid-19 II

March 2020

On March 6th, we were preparing to analyse the legal contingencies that companies should consider in relation to Covid-19. Now, a few days later and amid a health emergency, we are preparing to analyse the measures adopted by the Government this past weekend.

The Council of Ministers of the Spanish Government declared the State of Alarm by means of the enactment of Royal Decree 463/2020, of 14 March, (hereinafter, RD 463/2020) in order to face the health emergency situation caused by Covid-19, whose effects extend to the entire national territory during the period of fifteen calendar days from its entry into force, that is, until 29th March 2020, all in accordance with the provisions of article 116.2 of the Spanish Constitution, the development of which is contained in Organic Law 4/1981, of 1 June, on the states of alarm, exception and siege.

Employment Law

Below, we highlight the most relevant aspects from a labour point of view, which are:

- During the state of alert, the freedom of movement of persons is restricted, which does not, for the time being, include travel to the workplace for work, professional or business purposes.
- Terms are suspended and time limits provided for in procedural laws are suspended and interrupted for all jurisdictional orders. The calculation of the terms will be resumed as soon as the mentioned Royal Decree or, in its case, the extensions lose their validity.

In the Labour Court the referred interruption will not be applied in the procedures of collective conflict and for the protection of the fundamental rights and public liberties regulated in the Law regulating the Labour Courts.

This is without prejudice to the fact that the Judge or Court may agree to take any legal action that may be necessary to avoid irreparable damage to the rights and legitimate interests of the parties in the process.

- Similarly, administrative deadlines have been suspended. In this sense, terms are suspended and time limits for the processing of procedures by public sector entities are interrupted. The calculation of time limits will resume when the Royal Decree or, where appropriate, any extensions thereof become invalid.



The suspension under the terms set out above will apply to the entire public sector as defined in Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations.

- Finally, the periods of prescription and expiry of any actions and rights will be suspended during the period of validity of the state of alert and, if applicable, any extensions adopted.

We also analysed these measures on Monday 16th March, in an Employment Update that you can consult in the following [link](#).

Litigation

In the area of Litigation, we analyse the effects on procedural time limits for prescription and limitation of actions.

- Suspension of procedural deadlines

Firstly, the second additional provision of RD 463/2020 provides for the suspension of terms and interruption of the periods provided for in the procedural laws of any jurisdictional order, with some exceptions that we will analyse below.

The general rule is that the calculation of the terms will be resumed at the moment that the Royal Decree, or its extensions, loses force, and the remaining days will be taken into account for the calculation of the remaining days until the State of Alarm is declared.

For its part, the Permanent Commission of the General Council of the Judiciary (hereinafter, CGPJ) agreed on the same day to suspend the scheduled legal proceedings, as well as the procedural deadlines for as long as this situation persists, guaranteeing the essential services of the Administration of Justice (*any legal action which, if not carried out, could cause irreparable damage; urgent internments of article 763 of the LEC (Code of Civil Procedure); the adoption of precautionary measures or other actions that cannot be postponed, such as the measures for the protection of minors in article 158 of the CC; and, any action that cannot be postponed such as the removal of the body, among others*).

In the area of criminal jurisdiction, the aforementioned Royal Decree provides that the suspension and interruption shall not affect *habeas corpus* proceedings; actions entrusted to the guard services; actions with detainees; protection orders; prison surveillance actions; any precautionary measure in the area of violence against women or minors; and, if expressly authorized in the investigation phase, the practice of those actions which, due to their urgent nature, cannot be postponed.

RD 463/2020 then provides that the interruption of procedural time limits provided for in the general rules for cases involving the protection of fundamental rights (formerly article 114 et seq. of the Judicial Branch Act), procedures for collective disputes and the protection of fundamental rights and public freedoms (formerly article 153 et seq. of the Criminal Code) shall not apply. and 177 and ff. of the LRJS (Law regarding the Labour Courts)); of judicial authorization for non-voluntary internment for reasons of mental disorder (ex Article 763 of the LEC (Code of Civil Procedure)); and, finally, of the adoption of measures or provisions for the protection of minors (ex Article 158 of the CC).

Likewise, and with the intention of avoiding substantial damages, which must be evaluated on a case-by-case basis and with the appropriate weighting judgment, the fourth paragraph of Additional Provision 2 provides as a closing clause that *"the judge or court may agree to the practice of any judicial proceedings that may be necessary to avoid irreparable damage to the rights and legitimate interests of the parties to the proceedings"*.

In line with the above, at the plenary session this Monday, the Constitutional Court has agreed to suspend the procedural deadlines, although this does not affect the normal functioning of this Court, which will continue to issue resolutions and precautionary measures that may be necessary to guarantee the constitutional system.

- Suspension of limitation and prescription periods

Together with the suspension of procedural deadlines, the 4th additional provision of RD 463/2020 provides for the suspension of the periods of expiry and prescription of any type of action and right during the period of validity of the State of Alarm and, where appropriate, any extensions adopted.

In other words, the limitation and lapse periods will not run until the end of the state of alarm, which makes it possible to guarantee that the actions and rights that may correspond to the interested parties are not prejudiced during the period of validity of the state of alarm.

Public & Regulatory Law

In the field of Administrative Law, it is necessary to consider what implications the enactment of Royal Decree 463/2020 has had.

- Procedural deadlines

As in the case of other jurisdictions, the procedural deadlines have been suspended under the second additional provision. This means that the calculation of time limits is suspended and will be resumed when Royal Decree 463/2020, or any extensions thereto, ceases to be in force.

This does not mean that the time limits will be counted again from the beginning, but rather that the days that have elapsed until Royal Decree 463/2020 comes into force must be taken into account - and consequently counted - when the rule ceases to be in force.

In the same sense, the General Council of the Judiciary pronounces itself in its agreement of suspension of the judicial proceedings and procedural deadlines in all the national territory, guaranteeing the essential services, dated March 14th 2020.

However, this suspension of the procedural deadlines will not apply when a procedure for the protection of the fundamental rights of the person is involved, regulated in Article 114 and following of Law 29/1998, of 13th July, regulating the jurisdiction of the administrative courts, nor the processing of the authorizations or judicial ratifications of Article 8.6 of the same legal body.

These authorizations and judicial ratifications are those related to the following cases:

- The entry into homes and other places whose access requires the consent of the owner, provided that this is appropriate for the enforcement of acts of public administration, except in the case of the implementation of measures for the protection of minors agreed by the public entity with jurisdiction in the matter;
- Those relating to measures that the health authorities consider urgent and necessary for public health and which involve deprivation or restriction of freedom or another fundamental right; and
- Authorizations for the entry and inspection of homes, premises, land and means of transport that have been agreed upon by the National Competition Commission, when, requiring such access and inspection the consent of its owner, the latter opposes it or there is a risk of such opposition.

This is also provided for in the aforementioned agreement of the General Council of the Judiciary, in which only the maintenance of the essential services of the Administration of Justice is agreed upon, guaranteeing, as regards the contentious-administrative jurisdictional order, urgent and undelayable health entry authorisations, fundamental rights whose resolution is urgent, urgent precautionary and preventive measures, and electoral appeals.

Likewise, the judge or the court can agree, if it considers it necessary, the practice of any judicial action to avoid irreparable damage to the rights and legitimate interests of the parties in the process.

- Administrative deadlines:

In the same way that procedural time limits are suspended in the judicial sphere, the same is true for administrative time limits before any public administration. Therefore, the time limits will also be resumed when Royal Decree 463/2020 or its possible extensions expires. All of this will not affect the procedures and resolutions referring to situations closely linked to the facts justifying the state of alarm.

In accordance with article 2 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, this affects the General State Administration, the Administrations of the Autonomous Communities, the Entities that make up the Local Administration and the institutional public sector.

As in the jurisdictional reach, the competent administrative body may also agree, by means of a reasoned decision, on the measures of organisation and instruction strictly necessary to avoid serious damage to the rights and interests of the interested party in the procedure and provided that the interested party agrees, or when the interested party agrees that the deadline should not be suspended.

- Prescription and expiration periods:

In line with the above, the limitation and lapse periods of any actions and rights - including infringements, penalties or sanctioning procedures - shall also be suspended for the duration of the state of alert and, where appropriate, any extensions adopted.

- Suspension of non-urgent trials, hearings and appearances:

Finally, and following the agreement unanimously adopted by the judges of the Contentious Administrative Court of Barcelona in their meeting held on March 12th, 2020, all non-urgent trials, hearings and appearances are suspended from March 13th, 2020 until April 13th, 2020, both inclusive, without prejudice to reducing or extending this period depending on the evolution of circumstances.

However, each Magistrate-Judge is delegated the decision to maintain the indications of those actions that are considered urgent and offers the parties of the abbreviated procedures that are affected by the suspension the possibility to urge the processing by the means foreseen in the last paragraph of article 78.3 of the Law of Contentious-Administrative Jurisdiction, that is, in writing and without holding a hearing.

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