

Informative Note

Extension of the state of alert declared by Royal Decree 463/2020, of 14th March, and new employment regulations in Royal Decree Law 9/2020, of 27th March, which adopts supplementary measures in the employment sphere to alleviate the effects of COVID-19

29th March 2020

Regarding RD-Law 9/2020, of 27th March, which adopts supplementary measures, in the employment sphere, to alleviate the effects of COVID-19

Two highly relevant regulations were published in the 28 March 2020 Boletín Oficial del Estado (official state gazette):

Firstly, the Resolution dated 25th March 2020, of the Spanish Parliament, which ordered the publication of the Agreement authorising the extension of the state of alarm declared by the 14th March Royal Decree 463/2020, extending it until **00:00 hours on 12 April 2020**.

Secondly, Royal Decree-Law 9/2020 of 27th March was published, adopting complementary measures, in the field of employment, to alleviate the effects of COVID-19 ("RDL 9/2020"), which provides for new issues and instruments from an employment perspective.

RDL 9/2020 is intended to complement RDL 8/2020 of 17th March on extraordinary urgent measures to address the economic and social impact of the COVID-19 ("RDL 8/2020"). Without prejudice to the fact that a complete and detailed reading of the regulation is recommended, the most relevant aspects of each of the implemented measures are summarised and commented on below:

Main exceptional employment measures implemented by RDL 9/2020	
What is force majeure?	Is it necessary to negotiate with unions and/or workers' representatives? Procedure Social Security Contributions
Maintenance of activity: essential services (Art. 1 RD 9/2020)	During the Alert State, the following will be considered as essential services: <ul style="list-style-type: none"> a.- The health centres, services and establishments (public, private or under management) determined by the Ministry of Health; b.- Social centres for the elderly, dependent persons or persons with disabilities under the terms set by the Ministry of Social Rights and Agenda 2030.



	<p>Due to their essential nature, the said establishments must maintain their activity and may only reduce or partially suspend it under the terms permitted by the relevant authorities.</p> <p>Otherwise, they may be sanctioned for non-compliance or resistance to compliance with this obligation.</p>
<p>Job protection (Art. 2 RD 9/2020)</p>	<p>Force majeure or economic, technical, organisational or production-related ("ETOP") causes caused exclusively by COVID-19 do not justify the termination of employment contracts or dismissal, and the internal flexibility measures of suspension of contracts/reduction of working hours should be used where appropriate. As a reminder, it is necessary to recall how RDL 8/2020 defines force majeure and ETOP causes:</p> <p>a.- Force majeure (art. 22 RDL 8/2020): losses of activity as a result of COVID-19 - including the declaration of the alarm state - would be considered force majeure. Thus, by way of illustration, the following stand out: the suspension or cancellation of activities, the temporary closure of premises with a public influx, restrictions on public transport, lack of supplies that seriously impede the continuation of the ordinary development of the activity; contagion of the workforce or the adoption of preventive isolation measures, etc.</p> <p>b.- Economic, technical, organisational and production causes (art. 23 of RDL 8/2020): related to and/or derived from the situation caused by the COVID-19 crisis.</p>
<p>Processing and payment of unemployment benefits (Art. 3 RD 9/2020)</p>	<p>Companies are required to complete a series of administrative formalities regarding the procedure for acknowledgement of the contributory unemployment benefit of workers affected by contract suspensions and/or reductions in working hours under RD 8/2020.</p> <p>a.- Collective application: the procedure will be initiated by a collective application submitted by the company, on behalf of the workers affected by the suspension and/or reduction, to the unemployment benefits management body - State Employment Service. ("SEPE") -. For this purpose, the SEPE will provide a form.</p> <p>b.- Separate information by the work centre: certain personalised information must be provided by the work centres affected.</p> <p>The above request and information must be sent electronically by the form determined by the SEPE, within 5 days from:</p> <p><u>Force majeure:</u> from the application for the Record of Temporary Employment Regulation.</p> <p><u>ETOP reasons:</u> from the moment the company notifies the relevant labour authority of its decision.</p> <p>Very important: The 5-day period for ERTE applications prior to the publication of RDL 8/2020 starts to count from its publication; that is, on 28 March 2020.</p> <p>Failure to comply with this duty to inform will be considered a serious infringement under Article 22.3 of Royal Legislative Decree 5/2000, of 4 August, which approves the revised text of the Law on Infractions and Penalties in Social Order ("LISOS").</p> <p>c.- Communication of data variation: the companies must report any variation of the data initially contained in the communication and, in any case, those variations that refer to the end of the application of the measure.</p>
<p>Interruption of the calculation of the maximum duration of temporary contracts (Art. 5 RD 9/2020)</p>	<p>In cases where the files for the suspension of contracts due to force majeure or ETOP causes arising from COVID-19 affect temporary contracts, including training, relief and interim contracts, the suspension of the contract will entail the <u>interruption of the calculation</u> of both the duration of these contracts and the reference periods, equivalent to the suspended period.</p> <p>The aim is to ensure that the above contractual arrangements can reach their maximum effective duration, taking full effect, in terms of the provision of services, the training they entail and the contribution to the business activity, during the time</p>

	initially planned, so that the emergency situation generated by the health crisis in COVID-19 does not deprive the company of its effective capacity to organise its resources.
Duration of contract suspension/reduction of working hours due to force majeure (D.A. 1ª RD 9/2020)	<p>The suspension of contracts/reduction of working hours due to force majeure -art. 22 RDL 8 /2020-, may not last longer than the declaration of the state of alarm resulting from the health crisis of the COVID-19 and its extensions.</p> <p>This limitation applies to cases of suspension of contracts / reduction of working hours due to force majeure, <u>regardless of whether they have been expressly resolved or not.</u></p>
Penalty system and reimbursement of benefits not due (D.A. 2ª RD 9/2020)	<p>In accordance with LISOS, the suspension of contracts / reduction of working hours will be sanctioned whenever they give rise to benefits not due in cases where the Company's request:</p> <p>a.- Has been made with false or incorrect data provided by the companies. b.- Contains measures that are unnecessary or insufficiently related to the causes alleged.</p> <p>In cases where undue benefits are received for <u>reasons not attributable to the worker</u>, the companies will be obliged to reimburse the undue benefit received, without prejudice to the administrative or criminal liability that may correspond. Likewise, the companies will have to pay the affected worker the salaries he or she has received, from which the amounts returned to the managing entity (SEPE) as unduly received benefits will be deducted.</p> <p>The obligation to reimburse the benefits, as an accessory penalty, could be demanded during the limitation period of the infringement committed - 4 years in accordance with LISOS.</p>
Date of effect of unemployment benefits (D.A. 3ª RD 9/2020)	<p>In cases of suspension of contracts / reduction of working hours set out in RDL 8/2020, the date on which the legal situation of unemployment will take effect is established, making a distinction between</p> <p>a.- Date of effect in the event of force majeure: <u>the date of the event causing it.</u> b.- Date of effect in cases of ETOP reasons: <u>this may be the same or later than the date on which the company notifies</u> the labour authority of its decision.</p>
Collaboration of the unemployment benefits management body and the Labour and Social Security Inspectorate (D.A. 4ª RD 9/2020)	<p>RDL 9/2020 establishes that if the managing entity, the SEPE, detects signs of fraud in any of the files for the suspension of contracts / reduction of working hours, it will inform the Labour and Social Security Inspectorate ("ITSS").</p> <p>ITSS incorporates into its action plans - better known as "Campaigns" - the verification of the existence of the causes alleged in the files for suspension of contracts / reduction of working hours arising from force majeure and ETOP causes - art. 22 and 23 RD 9/2020.</p>
Cooperatives and modifications of the RD 8/2020	<p>Finally, it is interesting to note that changes have been made in the following areas of cooperative societies, establishing a new system for adopting agreements in procedures for the total and/or partial suspension of the work of their members.</p> <p>Likewise, modifications have been implemented in RD 8/2020 regarding cooperative societies:</p> <p>a.- <u>Limitation on the application of employment regulation files (D.T. 1º RDL 8/2020)</u>: extraordinary measures regarding the untimely submission of unemployment benefit applications -art. 26 RDL 8/2020-, or extraordinary measures regarding the extension of the unemployment benefit and the annual income tax return -art. 27 RDL 9/2020- will not be applicable to files for the</p>

	<p><u>suspension of contracts / reduction of working hours derived from the COVID-19 communicated, authorised or initiated before the entry into force of RDL 8 /2020.</u></p> <p>b.- Public procurement (Final Provision 6 RDL 8 /2020): the wording of article 16 of Royal Decree Law 7/2020, of 12 March, which adopts urgent measures to respond to the economic impact of COVID-19, which was already modified by Final Provision 6 RDL 8 /2020, is modified. In the new wording, a fourth section is introduced regarding contracting abroad.</p>
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Finally, **the entry into force of the labour measures published in this RDL 9/2020** will take effect on the day of its publication in the Official State Gazette (28th March 2020) and will remain in force during the state of alarm and its possible extensions, decreed by the government through 463/2020, of 14 March, which declares the state of alert for the management of the health crisis caused by COVID-19.

You can find the Royal Decree-Law 9/2020 of 27 March, which adopts additional measures in the field of employment to mitigate the effects of COVID-19 in [this link](#).

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

For more information, please contact:

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