

Informative Note

Main measures related to COVID-19 in the employment sphere adopted by Royal Decree Law 8/2020

18th March 2020

Regarding Royal Decree-Law 8/2020 on urgent exceptional measures to deal with the economic and social impact of COVID-19

The Government of Spain has approved the 17 March [Royal Decree Law 8/2020](#), approving urgent extraordinary measures to address the economic and social impact of COVID-19.

The regulation, which comes into force when it is published in the BOE (Official State Gazette) on 18th March, contains measures of different types and scope aimed at mitigating the effects on the production structure, demand and citizens caused by the health emergency caused by the COVID-19 pandemic and will be in force until 18 April, unless a different period is envisaged for any of them. This deadline may be extended by the Government by Decree-Law if necessary.

Below are the main new features included in the Royal Decree-Law 8/2020 on labour matters:

Preferential nature of remote working

In order to make the adoption of the necessary containment measures compatible, derived from the declaration of the State of Alarm, and at the same time guarantee the continuity of the business and work activity, a series of measures are established that favour alternative organisational systems, such as remote working.

Thus, the exceptional measures established by RD-L 8/2020 aim to guarantee business activity and labour relations, in this sense:

- Companies should adopt appropriate alternative mechanisms, in order to maintain activity, and whenever possible, through distance working. The alternative measures shall have priority over temporary cessation or reduction of activity.
- In sectors or companies where remote working is not envisaged, risk assessment shall be understood to be fulfilled exceptionally, through self-assessment carried out voluntarily by the worker himself.

Right to adapt the timetable and reduce the working day

In order to promote work-life balance, employees who can prove that they have a duty of care towards their spouse, partner and/or family members up to the second degree of kinship, shall be entitled to adapt their working hours or reduce them when there are exceptional circumstances related to actions aimed at preventing the transmission of the COVID-19, such as:



- Necessary presence of the worker for the attention of the persons mentioned above, who, for reasons of age, illness or disability, need personal and direct care as a direct consequence of the COVID-19.
- By decision of the government authority, which involves the educational centre or other nature that provides care or attention to a person who needs it.
- When the person in charge of the direct care or assistance of the people who need it, cannot continue to do so for justified reasons related to the COVID-19.

This is an individual right of each parent or caregiver. The worker may avail himself of this right, subject to justification, and if it is a reasonable and proportionate measure in view of the situation of the employer. In the event of a conflict arising from the application of this article, it shall be resolved by the social jurisdiction in the exercise of rights of conciliation.

The adaptation of the working day may refer to the distribution of time or any aspect of the working condition in order to facilitate the care and attention that is the object of this article.

Workers shall be entitled to a special reduction in the working day for the situations provided for in article 37.6 of the Workers' Statute, due to the exceptional circumstances of this article.

Said reduction must be communicated to the company 24 hours in advance, and the reduction may be up to one hundred percent if necessary, reasonable and proportionate, considering the situation of the company.

Extraordinary benefit on termination of activity for self-employed workers affected by declaration of the state of alarm

With a limited validity of one month from the declaration of the State of Alarm - or until the last day of the month in which this state of alarm ends, if it is prolonged for more than one month - self-employed workers, whose activities are suspended, by virtue of RD 463/2020 of 14 March or when their invoicing in the month prior to that in which the benefit is requested is reduced, by 75% to the average invoicing of the previous semester, will be entitled to extraordinary benefit for cessation of activity when the following requirements are met:

- Be affiliated to and registered with RETA (special tax regime for self-employed workers) or the Special Social Security Scheme for Sea Workers on the date the alarm is declared.
- Proof of a 75% reduction in turnover, if your activity has not been directly suspended by RD 463/2020.
- Be up to date with the payment of social security contributions. Otherwise, on the day of suspension of activity or reduction of turnover, the managing body may invite the self-employed worker to pay within 30 days.

The duration of the extraordinary allowance for termination of activity shall be one month, which may be extended until the last day of the month in which the alarm condition ends.

This payment shall be incompatible with any other social security benefit.

Exceptional measures in relation to procedures for the suspension of contracts and reduction of working hours due to force majeure

In order to prevent a situation such as that generated by Covid-19 from having a negative structural impact on employment, a series of measures have been adopted to make employment regulation procedures more flexible and rapid, and to improve coverage for both workers and employers.

Firstly, those situations that would fall within the concept of "force majeure" are defined, for the purposes of the suspension of employment contracts, as provided for in Article 47 of the Workers' Statute. In this sense, and according to the literal wording of the rule, it could be refuted as force majeure the suspensions of contracts or reductions of working hours, with direct cause in losses of activity because of the COVID-19, that is:

- Due to the declaration of the state of alarm, and consequent suspension and cancellation of activities, temporary closure of premises of public affluence, restriction of public transport and in general of the mobility of persons and/or goods.
- Lack of supplies, because of COVID-19 that prevent the serious continuation of the activity.
- Urgent and extraordinary situations regarding the contagion of the staff, or adoption of preventive isolation measures that are duly accredited.

Secondly, a series of measures have been established to speed up the process of regulating employment in the event of a situation of force majeure, including the following:

- Initiation of the procedure at the request of the company, addressed to the competent labour authority, and accompanied by a report on the link between the loss of activity and the situation generated by the COVID-19. All workers must be informed of the start of the procedure and, if there is legal representation in the company, the report and documentation provided must be forwarded to them.
- Confirmation by the labour authority, within 5 days of the request, of the existence or not of force majeure.
- Once the existence of force majeure has been confirmed, the suspension or reduction of the working day will take effect from the date of the event causing the force majeure.

Exceptional measures in relation to the procedures for suspension and reduction of working hours on economic, technical, organisational and production grounds

RD 8/2020 establishes a series of measures relating to the procedures for suspending and reducing the working day, when these are based on economic, technical, organisational or production reasons, derived from the situation created by COVID-19:

- In those cases where the Company does not have legal representation of the workers, the negotiating committee for the measure will be made up of the most representative unions in the sector. The workers' representative commission must be constituted within a maximum and non-renewable period of 5 days.
- The consultation period will have a maximum duration of 7 days.
- The report of the Labour and Social Security Inspectorate, if applicable, must be issued within 7 days.

Exceptional measures in relation to contributions in connection with the procedures for the suspension of contracts and reduction of working hours due to force majeure relating to COVID-19

In cases of force majeure, duly accredited as referred to in Article 22, and at the request of the employer, the obligation of the Company to contribute is waived, when on February 29, 2020:

- Staff of less than 50 employees: 100% exemption of the company's contribution.
- Staff of 50 or more employees: 75% exemption of the company contribution.

Exceptional measures in the field of unemployment protection

A series of extraordinary measures are established in the area of unemployment protection in those procedures for the temporary suspension/reduction of employment contracts covered in the current situation:

- The minimum contribution period is abolished.
- The period in which the unemployment benefit is received will not be counted.

These measures are conditional upon the commencement of the employment relationship prior to the date of approval of the Royal Decree Law.

The term of effect of these measures is conditioned by the maintenance of the extraordinary situation caused by the COVID-19.

Safeguarding employment

The extraordinary measures in the field of employment provided for in the Royal Decree-Law **shall be subject to a commitment by the company to maintain employment for a period of six months** from the date of resumption of activity.

Entry into force of the measures

The special characteristics provided for in this Royal Decree-Law shall not be applicable to procedures for the suspension of employment contracts or for the reduction of working hours, initiated or notified prior to the entry into force of this Royal Decree, even when they are based on the situations or causes provided for in the same.

In this same sense, extraordinary measures in the area of contributions or unemployment protection will only apply to workers affected by procedures initiated or notified after the entry into force of this Royal Decree-Law.

We hope the information is useful and of interest to you. 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.

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