

## Employment Update

### Measures taken in the scope of Covid-19 social welfare: Availability of vested rights in pension plans

07th May 2020

Regarding the 21st April Royal Decree-Law 15/2020 on urgent additional measures to support the economy and employment

On the occasion of the publication of [21st April Royal Decree-Law 15/2020](#) on urgent additional measures to support the economy and employment ("*RDL 15/2020*"), by virtue of which numerous and relevant measures are approved in social and welfare matters, as a continuation of the general early warning on said regulation, this document deals in detail with the main legislative additions introduced in relation to the availability of pension plans -slightly modified by the **28th April Royal Decree-Law 16/2020**<sup>1</sup>-.

Such provision of pension plans in the event of unemployment or cessation of activity resulting from the health crisis caused by Covid-19 was already undertaken by the 31st March **Royal Decree-Law 11/2020** adopting additional urgent measures in the social and economic area to deal with Covid-19 ("*RDL 11/2020*").

Although prior to that regulation, new legislation had been introduced in the social and employment field as a result of the aforementioned health crisis, it was not until the publication of RDL 11/2020 that the possibility of requesting reimbursement of the rights consolidated in pension plans was included.

Specifically, the update in **Additional Provision 20** of RDL 11/2020 was introduced, which established the exceptional possibility of requesting such reimbursement, during a period of six months from the declaration of the State of Alarm, and in a series of specific cases:

- i.- Be in a legal situation of unemployment as a result of a Temporary Employment Regulation File ("*ERTE*") derived from the Covid-19 crisis (DA 20<sup>a</sup> 1.a);
- ii.- Be the owner of establishments whose opening to the public has been suspended as a result of the provisions of Article 10 of Royal Decree 463/2020<sup>2</sup>, of 14 March (DA 20<sup>a</sup> 1.b), which declares the state of alert for the management of the health crisis situation caused by Covid-19 ("*RD 463/2020*");

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<sup>1</sup> *The 4th and 5th Final Provisions extend the possibility of availability of pension plans for self-employed workers to cases in which, without ceasing their activity, they have had a reduction of at least 75 percent in their turnover as a result of the health crisis situation.*

<sup>2</sup> *Article 10. Containment measures in the area of commercial activity, cultural facilities, recreational establishments and activities, hotel and restaurant activities, and other additional activities.*



iii.- In the case of self-employed workers: to be in one of the conditions expressly set out in Additional Provision 20 (DA 20 1.c)<sup>3</sup>.

Notwithstanding the fact that RDL 11/2020 was the first to regulate this availability of pension plans, it was not until RDL 15/2020 that it was further regulated, as indicated in its Explanatory Memorandum, in order to help alleviate liquidity needs and increase the contingencies in which the aforementioned vested rights can be exercised.

Specifically, article 23 establishes the requirements and limits that must be met in order to make this power effective, including a detailed regulatory regime that regulates the exceptional availability of pension plans in situations derived from the Covid-19 crisis, the accreditation of the circumstances that give right to such availability, its term and the maximum amount that can be disposed of.

Therefore, article 23 of RDL 15/2020 develops the regulations contained in the meritorious DA 20 of RDL 11/2020, so that what is not provided for in the first, the provisions of the second will remain in force.

In this regulatory context, by virtue of the aforementioned RDL 15/2020, the rules governing the **availability of vested rights in pension plans are established**, which are summarized below:

**a.- Legitimate subjects:** Members of **(i)** pension plans of the individual and associated system, **(ii)** of the defined contribution system or mixed systems for those contingencies defined in the defined contribution system may request to make their consolidated rights effective, and **(iii)** the system of use of the defined benefit or mixed system for those contingencies defined in the defined benefit system or linked to it, in the event that they are affected by an ERTE, by the suspension of the opening to the public of establishments or the cessation of activity (derived from Covid-19), or when the pension commitment allows it and the specifications of the plan provide for it.

Likewise, beyond the above, the participants must be in one of the cases set out in section 1 of the DA 20 of RDL 11/2020, which have been previously indicated.

**b.- Supporting documentation:** the existence of the circumstances that would entitle the participant to the pension plan must be accredited by the interested party and the participant in the pension plan.

The documents that must be provided by the participant in the pension plan for the purpose of accrediting the existence of the circumstances referred to in section 1 of the DA 20 of RDL 11/2020 are those detailed below:

i.- In the event that the participant has been affected by an ERTE derived from the Covid-19 crisis situation (DA 20<sup>a</sup> 1.a), the **company certificate** that accredits the affectation and indicates the effects on the existing employment relationship;

ii.- In the case of the owner of an establishment whose opening to the public has been suspended (DA 20.1.b), the participant's **affidavit** that he meets the requirements to make his consolidated rights effective;

iii.- In the case of **self-employed workers** who have previously been integrated into a social security scheme as such, or into an alternative mutual insurance scheme, and have ceased their activity or whose turnover has been reduced by 75% as a result of the State of Alert, will be presented, as appropriate:

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<sup>3</sup> In accordance with the amendment included in the Fourth Final Provision of Royal Decree Law 16/2020, of 28 April, on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice.

1.- the **certificate issued** by the State Tax Administration Agency or the competent body of the Autonomous Community, where appropriate, based on the declaration of **cessation of activity** declared by the person concerned; or,

2.- the **accounting information** that justifies the **reduction in sales revenues** by providing the accounting information that justifies it such as: the copy of the register of invoices issued and received; the daily book of income and expenses; the register of sales and income; or the book of purchases and expenses. In the case of self-employed workers who are not required to keep books certifying the volume of activity, they must provide proof of the reduction of at least 75% required by any legally accepted means of proof<sup>4</sup>.

iv.- If the above-mentioned documents cannot be provided, their provision may be replaced by a responsible statement including express justification of the reasons preventing their provision.

In relation to this last alternative, once the State of Alert and its extensions have ended, a period of one month will be available for the provision of those documents that have not been provided.

**c.- Amount:** the amount of vested rights available shall be that justified by the participant, with a maximum of the lower of the following two amounts, for all the pension schemes of which he is a member:

**First amount:**

It will depend on the case of those included in section 1 of the DA 20<sup>a</sup> of RDL 11/2020, in which the participant is located, so that:

i.- If the participant is affected by an ERTE stemming from the crisis caused by Covid-19 (DA 20<sup>a</sup> 1.a): *"the **net salaries not received while the ERTE remains in force, with a maximum calculation period equal to the validity of the state of alert plus one additional month, supported by the last payslip prior to this situation**";*

ii.- If the participant is a business owner of establishments whose opening to the public has been suspended as a result of the provisions of Article 10 of RD 463/2020 (DA 20<sup>a</sup> 1. b): *"the **estimated net income that has ceased to be received due to the suspension of opening to the public, with a maximum calculation period equal to the validity of the state of alert plus one additional month, justified by the presentation of the annual declaration of Personal Income Tax corresponding to the previous year and, if applicable, the payment in instalments of Personal Income Tax and the self-assessments of Value Added Tax corresponding to the last quarter**".*

In addition to the above information, which must be duly justified, a responsible declaration must be provided quantifying the monthly amount of the reduction in income.

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<sup>4</sup> In accordance with the amendment included by the Fifth Final Provision of Royal Decree Law 16/2020, of 28th April, on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice.

iii.- If the participant is a self-employed worker who has previously been integrated into a Social Security scheme as such, or into an alternative mutual insurance scheme, and has ceased his activity or whose turnover has been reduced by 75% as a result of the State of Alarm decreed by the Government (D.A. 20<sup>a</sup> 1. c)<sup>5</sup> : ***"the net income that has not been received during a maximum calculation period equal to the validity of the state of alert plus one additional month, estimated by means of the annual declaration of Personal Income Tax corresponding to the previous year and, if applicable, the fractioned payment of Personal Income Tax and the self-assessments of Value Added Tax corresponding to the last quarter"***.

As in the previous case (ii), in addition, a responsible declaration must be provided quantifying the monthly amount of the reduction in income.

#### **Second amount:**

The result of apportioning the annual Public Revenue Index ("*IPREM*") for 12 payments in force for the year 2020 multiplied by three, in the proportion corresponding (i) to the period of duration of the ERTE, (ii) to the period of suspension of the opening of the establishment to the public, or (iii) to the period of cessation of the activity, depending on the assumption of DA 20 of RDL 11/2020 in which the participant is located.

In any case, in all three cases the maximum period to be calculated is the duration of the State of Alert, plus one additional month.

1.- **Paperwork authenticity:** the participant will be responsible for the authenticity of the documentation accrediting the occurrence of the event required to apply for the benefit, as well as the accuracy in the quantification of the amount to be received.

2.- **Reimbursement:** in general, it must be made within a maximum period of seven working days from the date the participant submits the complete supporting documentation.

In the case of employment pension plans, this period will be 30 working days from the presentation of the complete supporting documentation.

Finally, it should be remembered that article 23 of RDL 15/2020 determines that, in the cases not provided for therein, the provisions of DA 20 of RDL 11/2020 shall remain in force and, additionally, that the door is open to the possible modification of the amounts and documentation indicated therein by means of a Royal Decree.

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<sup>5</sup> In accordance with the amendment included by the 28th April Fifth Final Provision of Royal Decree Law 16/2020, on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice.

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