

## Employment Update

# Recoverable paid leave for employees of non-essential services during COVID-19

30th March 2020

Royal Decree Law 10/2020 of 29th March 2020 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

Approved by the exceptional Council of Ministers held on Sunday 29th March 2020, and published in the BOE (official state gazette) on the same day, Royal Decree-Law 10/2020 regulating recoverable paid leave for employees in non-essential services (hereinafter "RDL 10/2020"), adopts a measure of special relevance in the field of employment, which is the implementation of recoverable paid leave that is mandatory for all those workers providing services in those sectors considered as non-essential.

In order to facilitate a better understanding of the measure introduced by RDL 10/2020, a systematized analysis of it is made below:

### 1.- Subjective area of application

RDL 10/2020 will be applicable to "all persons employed by companies or entities in the public or private sector whose activity has not been paralysed as a result of the declaration of a state of alarm established by Royal Decree 463/2020 of 14th March" (art. 1.1 of RD 10/2020).

Notwithstanding the above, the following shall be exempted from the scope of application and, therefore, shall not be applicable:

- a.- Workers providing services in the sectors classified as essential in the annex to RDL 10/2020, or workers providing services in the divisions or production lines whose activity corresponds to those special sectors [Article 1.2(a) and (b) of RDL 10/2020].
- b.- Workers hired by (i) companies that have applied for or are applying for a temporary suspension of employment regulation and (ii) companies that are authorised to apply for a temporary suspension of employment regulation during the period of validity of the permit [Article 1.2(c) of RDL 10/2020].

It should be noted that, when the law speaks of "authorised", it may be thought that it refers to cases of suspension of employment contracts due to force majeure, since these are the only ones that currently require authorization by the Employment Authority (not those based on economic, technical, organizational or production causes).



- c.- Workers who are on leave due to temporary incapacity or whose contract is suspended for other legally established reasons at the time the regulation comes into force [article 1.2 d) of RDL 10/2020].
- d.- Workers who can continue to carry out their activity normally by means of teleworking or any of the non-presential forms of service provision [Article 1.2 e) of RDL 10/2020].

It should therefore be noted that those employees who can continue to carry out their activities remotely (or have already done so) will not be covered by the measure provided for in RDL 10/2020.

Notwithstanding the above, Article 4 of the RDL provides a safeguard for companies that must apply the new recoverable paid leave. This is because "if necessary" they may "establish the minimum number of staff or the shifts strictly necessary in order to maintain the indispensable activity".

Finally, the delimitation of the subjective scope of the referenced rule, ends with the first to fifth additional provisions, in which the specificities in (i) public employees, (ii) personnel with their own specific legislation, (iii) essential services in the Administration of Justice, (iv) activities contracted under article 120 of Law 9/2017, on Public Sector Contracts (a precept that regulates the emergency processing in the event of catastrophic situations or serious danger); and (v) persons working for companies awarded contracts for public sector works, services and supplies that are indispensable for the maintenance and safety of buildings and the adequate provision of public services.

## **2.- Compulsory paid leave: duration and salary**

The duration of the compulsory paid leave to be recovered shall run from 30th March to 9th April 2020 inclusive. However, the first and second transitional provisions provide for very exceptional cases in which services may be provided on Monday 30th March. Essentially, those cases in which "it is impossible to interrupt the activity immediately" and "for the sole purpose of carrying out the tasks necessary to enable the paid leave to be recovered without irremediably or disproportionately prejudicing the resumption of business activity".

During the period of compulsory paid leave, workers shall be entitled to receive their remuneration as if they had continued to provide services, including additional pay.

## **3.- Recovery of hours not worked**

Article 3 of RDL 10/2020 establishes the rules both for setting the recovery period for hours not worked and how to carry it out. Specifically, it provides for the following:

#### a.- Time frame

The recovery of the hours can be done between the day after the end of the alarm state until December 31<sup>st</sup> 2020.

#### b.- Procedure

For the purposes of determining how the days of paid leave are to be made up, a period of consultation between the employer and the legal representation of the employees of a maximum duration of 7 days shall be required in all cases. Consequently, the nature of recuperation of working hours will require, in any case, prior negotiation (no agreement) either with the workers' representatives in those companies that have them, or through a representative committee (which must be constituted within the 5-day period) made up of the most representative trade unions of the sector to which the company belongs and with the legitimacy to form part of the negotiating committee of the applicable collective agreement or, in the absence of such a committee, through the company's own workers elected in accordance with the provisions of Article 41. 4 of the Workers' Statute (a similar formula is established as that already arbitrated in Article 23 of Royal Decree Law 8/2020 for cases of suspension of contract or reduction of the working day for economic, technical, organisational and production reasons related to the COVID-19).

If no agreement is reached during the consultation period, within seven days of the end of the consultation period, the company will notify the workers and the representative commission of the decision on the recovery of the working hours not worked during the application of this leave.

#### c.- Non-waivable basic rights

In any case, and whether or not an agreement has been reached with the social aspect, the recovery of hours must respect a series of requirements, such as (i) the minimum daily and weekly rest periods provided for by law and the collective agreement, (ii) not exceeding the maximum annual working hours provided for in the applicable collective agreement, (iii) the rights to reconcile personal, working and family life recognized by law and by convention, and (iv) at least five days' notice prior to the day on which the hours are to be recovered.

### **4.- Entry into force**

Finally, the entry into force of this RDL 10/2020 will be from the very day of its publication in the Official State Gazette, i.e. 29th March 2020.

You can find Royal Decree-Law 10/2020 of 29th March 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 at [this link](#).

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 further information, please contact:

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