

POST COVID-19 GLOBAL EMPLOYMENT PLAN BACK TO THE OFFICE



Employment Law
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POST COVID-19 GLOBAL EMPLOYMENT PLAN

The importance of an accurate employment-law strategy

More than two months after the declaration of the State of Alarm, the statement can already be made that the spread of COVID-19 is the **most relevant health crisis in recent Spanish history**.

The epidemic and the measures adopted for the containment of COVID-19 are having a **very negative impact on the economic activity and the job market**, with a sharp and immediate effect on the level of unemployment registered, the number of employees hired, and the number of registrations before the Social Security.

It is common knowledge that companies have been compelled to adopt measures against the immediate consequences of the pandemic, with more than three hundred thousand temporary layoff procedures (ERTE) having been conducted to date, and different decisions having been adopted as a result of the need to adjust to these current extraordinary circumstances.

The IMF has advanced that the Great Confinement will cause a 3% fall in the global GDP in 2020, which is a much greater fall than the fall experienced during the financial recession of 2008-2009. It has likewise announced a wealth loss of 8% for Spain, with unemployment expected to reach 20,7% this year.

The Bank of Spain has made statements along the same lines anticipating a contraction for the Spanish GDP that ranges from 6.6% in the most benign scenario to 13.6% in the most adverse one. The less favourable forecasts issued by this body point at a recovery of 70% of the loss suffered this year by 2021, whereas the more optimistic forecasts set this recovery at 80%.

Circumstances now are completely different from circumstances only two months ago. Current circumstances demand from companies to swiftly adapt their strategies if they want to overcome the challenges ahead and get out of this situation stronger than before.

Indeed, since the State of Alarm was declared, the confinement adopted has had a direct impact on the activity of companies which has led to falls that range from 10 to 80% depending on the sector.

That being said, the higher Institutions of the State, the Government and the social partners are focusing on preparing a return to the so-called 'new normal', as well as on driving plans to stimulate and ordinate a fast recovery of the production activity and the economy in general.

All this notwithstanding, it cannot be denied that we are facing a completely different scenario from the scenario early this year and that this new scenario is **demanding a swift adaptation from Companies** with regard to their policies, organisation and strategies so as to overcome new challenges and get out of this current situation stronger than before.

After a first stage that focused on the processing of temporary layoffs through contract suspension and work schedule reductions due to force majeure and/or economic, production, organisational and technical reasons (ETOP), **the need arises now to work on return plans for companies to fully resume their production activity**, although we are aware of the many questions and controversies that currently exist and will doubtlessly appear during the coming months.

To that end, our **employment law department in the Firm** has driven a cross-sectional employment law advisory service based on highly technical and sophisticated knowledge, relying, for any question that may arise with regard to the design and the management of social welfare solutions, we will rely on **AON**, a leading company in global professional services that offers a wide range of solutions from its retirement area.

Several **specialisation areas** have been defined within our advisory services that may be summarised, pursuant to the expertise accumulated to date, as follows:



1.- Return Plan:

- What basic regulations do I need to take into account at the time to design and implement my Return Plan?
- How can regulations be applied in order to achieve a swift and smooth return?
- What are the legal or social disadvantages and obstacles that I may encounter and how can I solve them?
- What is the view of the unions on how to address this reopening? Frequent difficulties.
- What are the more frequent precautions requested by the Administration?
- Can I establish an obligation to report back to the office and stop remote working?
- Do I have to reward workers who worked from the office during the confinement?
- Would the employer be obliged to cover the cost incurred by workers as a consequence of remote working (Internet, phone, etc.)?
- Would it be possible to establish changes with regard to the workers' shifts and work schedules as part of the return so as to avoid crowds and respect the minimum interpersonal security distance at the workplace?
- Would it be possible to request from workers to travel during the State of Alarm and during the different phases of the de-escalation?

2.- Update on employment regulations regarding COVID-19:

- Updated information with its corresponding updates given the great number of regulations issued to date in terms of regulating novelties (either at state or regional level), official letters, guidelines, criteria and recommendations issued by the different authorities in terms of employment law, Social Security, Health and Safety and social welfare (pension plans), etc.
- Special monitoring of the Employment Law Reform announced by the government with an analysis of each of the proposals and their specific impact on companies.
- When is it possible to terminate fixed-term contracts of workers affected by a temporary layoff?
- Under what circumstances can the company be exempt from the payment of social security contributions and by what percentage? Does this vary depending on the months and/or other factors?
- What are the requirements and the conditions to file a request, and be eligible for exceptions on social security contributions?
- What are the extraordinary measures in terms of unemployment protection linked to COVID-19?

- Is it possible for the Employment and Social Security Inspection Authorities to inspect a temporary layoff linked to COVID-19?
- Is there any circumstance under which the company will be obliged to return the benefits received for workers affected by a temporary layoff linked to COVID-19?
- What is the nature and what are the economic effects of a temporary incapacity as a consequence of COVID-19? Is it compulsory to pay the voluntary contribution upgrade envisaged by the applicable collective bargaining agreement?
- Employment protection: What start date ('dies a quo') needs to be considered for the purposes of the calculation of the six-month period as the date of resumption of the activity?
- Under what circumstances is this commitment to retain employees deemed as not breached?
- Are there limits in terms of dividend distribution for companies that have conducted a temporary layoff in relation to COVID-19? Are such limits applicable to all types of temporary layoffs (force majeure and/or ETOP)?

3.- Internal and external flexibility measures:

- How long can a temporary layoff due to force majeure be in force? And what happens with 'ETOP' temporary layoffs (temporary layoffs for Economic, Technical, Operational or Production reasons-ETOP)?
- What are the differences between a full force majeure (fuerza mayor total) and a partial force majeure (fuerza mayor parcial)? How can it be established if a company is in one situation or the other?
- How long and by what percentage will the exemption be maintained with regard to the contribution of workers affected by a temporary layoff due to force majeure, be it full or partial?
- Can a temporary layoff due to force majeure and a temporary layoff for ETOP reasons coexist?
- What are the limitations for companies in order to conduct individual or collective dismissals during the validity of a temporary layoff (either a temporary layoff due to force majeure or a temporary layoff for ETOP reasons)?
- Can a measure of contract suspension under a temporary layoff (either due to force majeure or for ETOP reasons) become a measure of short-time working? And vice versa?
- Can a temporary layoff (due to force majeure or for ETOP reasons) be declared partially void so that a portion of the workers affected by the temporary layoff may report back to work and become affected by the temporary layoff once again at a later time?



- How must the make-up hours corresponding to the paid leave between 30 March and 9 April be managed and what are the limits thereof?
- Can modifications be made on the work conditions for workers such as the work schedule, the distribution of the work week, or the modification and/or suppression of continuous shifts in order to minimise the impact of COVID-19?
- Can I renegotiate the collective bargaining agreement that existed before COVID-19?

4.- Occupational Health and Safety:

- What are the basic principles that the company needs to be aware of in order to guarantee its workers' health and safety vis-à-vis the risk of infection by COVID-19? Does the company need to apply the biological risks regulation?
- Is the company obliged to keep its workers remote working as a health and safety measure?
- Can a worker refuse to go back to their workplace on the grounds that a remote working system offers more guarantees in terms of health and safety?
- How does the employer need to arrange the return of workers to the workplace after the remote working period?
- What specific documents need to be drafted by the company in order to organise a de-escalation or return plan? Is it enough to merely update the risk assessment? Is there an obligation for the company to inform and/or consult the legal representatives of the workers?
- Is there an obligation for the company to provide precise training to its workers on the new preventive measures adopted with regard to COVID-19? What requirements need to be met?
- With regard to contractors and subcontractors, do companies have any specific obligation towards the workers of such contractors or the workers of their clients?
- Does the employer have an obligation to provide its workers with specific Personal Protection Equipment ('PPE') at the time to report back to their workplace after the confinement period? Is it compulsory for the employer to provide them with gloves and face masks? Where appropriate, what types of PPE need to be provided? Would any type of face mask serve in order to meet health and safety requirements at the workplace?
- Who is entitled to carry out the tests? Can the company force workers to undergo such tests?
- How must the company act if a worker shows symptoms of infection? Can the company require this worker to leave the workplace?
- Can the company measure the body temperature of workers at the entry of the workplace? Can the company refuse a worker access to the workplace if the worker shows a high body temperature?

- Are workers who have a risk pathology automatically classified as extremely vulnerable from COVID-19 without the need of a processing? What are the implications for the company if a worker is considered as a person that is extremely vulnerable from COVID-19?
- Do workers that are extremely vulnerable from COVID-19 need to remain at home for the sake of precaution or, if this is possible, are they able to work? Can they request from the employer to keep providing their services to the employer under a remote working regimen?
- How can the employer know if a worker has come in contact with someone who is infected with COVID-19? How must the company act if there is a case of close contact?
- What risks am I facing as an employer if a worker gets infected at my workplace?
- Should the company decide to continue to operate under the modality of remote working, is it obliged to guarantee the health and security of workers who are working from home? Would any accident or incident suffered by the worker at home during the remote working period be considered as a work accident? What consequences could arise for the company? What palliative or risk mitigation measures could the company adopt?

5.- MECUIDA Plan (CARESFORME Plan). Additional protection measures:

- What measures regarding the adaptation of the work schedule are included within the MECUIDA Plan? Shift changes? Modifications of the work schedule? Flexible schedules? Remote working?
- Is this an automatic right for the worker? Does the worker need to provide evidence of some kind of necessity?
- Who is responsible for initially specifying the schedule or the work modality? Is it the worker? Is it the company?
- If the worker decides to subject themselves to the MECUIDA PLAN, is it possible for them to move to another workplace? And, is it possible for their duties to be modified?
- Could the worker request a reduced work schedule? If such was the case, would this reduced work schedule entail an apportioned wage reduction?
- Is there a maximum limit with regard to the work schedule reduction that a worker can request? Can it reach 100% of their ordinary work schedule?
- Is the employer obliged to grant the worker the work-family balance measure requested by the worker in order to take care of any family member, even when such family member carries out a remunerated activity? Does this measure include civil partnerships? Does it include children over 12 years old? Does it include other family members such as the father or the mother?



- Do workers have a right to remote working during the closure of schools?
- Could a company reject a request for adaptation of the work schedule for organisational reasons?
- If a worker requests to work remotely, is the company obliged to make some type of investment when there is a lack of the material resources needed to accept such a request?
- Does the worker need to provide prior notification in order to request an adaptation or a reduction of their work schedule?
- If the worker had already been provided an adaptation or a reduction of their work schedule, can they subject themselves to the MECUIDA Plan now?
- Is this adaptation of the work schedule unlimited or is it time-limited?
- Can a worker ask for an adaptation of their work schedule regardless of the size of the company?

6.- Social Welfare:

- In case of a temporary layoff as a result of the health crisis originated by COVID-19, can workers request to make withdrawals from their pension plans by way of exception?
- Does the reimbursement of the amount of the vested rights apply with regard to any type of plan? Are there limitations?
- What is the deadline to submit the request?
- What documents need to be submitted by workers included in the pension plan before the pension fund managing company? Does the company need to provide any document?
- What is the maximum amount they will be allowed to withdraw as a consequence of the pandemic?
- If the worker has several plans, does this economic limitation apply to each of the plans individually or to all of them as a whole?
- Does the COVID-19-related withdrawal made by way of exception qualify as earned income and, if so, is it therefore subject to taxation?

Employment Law

The Employment Department of the firm has a broad team of professionals with a vast experience in Employment Law, Social Security, Health and Safety, and Social Welfare, with a comprehensive coverage of each of its specialisations. Our principles and our values are as follows:



Rigour and experience: commitment and engagement going back more than 30 years in major matters within the employment law sector make us a first-class firm.

Technical speciality and skill: we exhaustively study and constant seek out excellence and perfection when advising our clients. We boast specialists for each industry and for each discipline within the employment practice.

Responsiveness and availability: without compromising on quality and innovation in the solutions we offer. We are aware of the importance of a swift response, and the commitment and accessibility of our lawyers.

Unwavering concern to understand the needs of our clients and their industry: it is our hallmark to offer highly qualified, sophisticated advisory services, taking a bespoke approach to each matter and cultivating trust with our clients.

Recognitions:



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Andersen Tax & Legal is an international firm that provides legal and tax advisory services through a broad and highly multi-disciplinary team composed of specialised legal practitioners and advisers from different branches of corporate law and/or business law necessary to operate in a global market.

The Firm is part of Andersen Global, which operates at international level through more than 160 offices in 70 countries.

Our main office in Spain is located in Madrid, calle Velázquez nº 108-110.