

Informative Note

Main employment-related measures in relation to COVID-19 adopted by the 21st April Royal Decree Law 15/2020

23rd April 2020

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

In today's 22nd April 2020 Official State Gazette, the 21st April [Royal Decree Law 15/2020](#) on urgent supplementary measures to support the economy and employment ("*RDL 15/2020*") was published. This law regulates various matters, focusing from the labour and social security point of view on reinforcing, complementing, and extending those previously adopted in the wake of the Covid-19 crisis.

Thus, RDL 15/2020 is supplementary to the rules adopted at the time of the crisis caused by Covid-19, and in particular with regard to (i) the 17th March Royal Decree-Law 8/2020 on extraordinary emergency measures to deal with the economic and social impact of COVID-19 ("*RDL 8/2020*"); (ii) the 27th March Royal Decree-Law 9/2020 adopting supplementary measures in the field of employment to mitigate the effects of COVID-19 ("*RDL 9/2020*"); and, finally, (iii) the 31st March Royal Decree Law 11/2020 adopting additional urgent measures in the social and economic field to deal with COVID-19 ("*RDL 11/2020*").

The most relevant aspects of each of the measures implemented in the labour and social security field are summarised below. All of this is without prejudice to the fact that a complete and detailed reading of the RDL is recommended.

MAIN MEASURE IMPLEMENTED BY RDL 15/2020	
Measures	Content of the measures
<p>Extension of the validity of the preference for remote working and the right to adapt and/or reduce the working day regulated in articles 5 and 6 of RDL 8/2020 (Article 15 RD 15/2020)</p>	<p>The measures contained in Articles 5 - remote working - and 6 - adaptation rights and reduction of working hours - of RDL 8/2020 are extended. The application of the provisions of these precepts will be extended during the two months following the fulfilment of the validity foreseen for RDL 8/2020 -which extends to one month after the end of the declaration of the state of alert-.</p> <p>To this end, it should be recalled that, with regard to remote working, RDL 8/2020 Article 5 establishes that companies must, as a matter of priority, adopt the appropriate measures to maintain the continuity of their activity and, consequently, alternative mechanisms must be established to achieve this end. Through remote working, whenever possible: (i) technically and reasonably possible; and (ii) the adaptation effort required is proportionate.</p> <p>On the other hand, and in relation to adaptation rights and/or reduction of the working day, RDL 8/2020 Article 6 recognized a series of exceptional rights for those workers who demonstrate</p>



	<p>duties of care with respect to their spouse or common-law partner, as well as with respect to family members by blood up to the second degree, when "exceptional circumstances" related to the actions necessary to avoid the transmission of Covid-19 occur.</p>
<p>Measures in relation to the legal situation of unemployment (RDL 15/2020 Article 22 and D.F. 8 of)</p>	<p>A range of measures is established in relation to the legal situation of unemployment:</p> <p>a.- Termination during the trial period while the state of alarm is in force: the termination of the employment relationship during the trial period at the request of the company produced from 9th March 2020 will be considered a legal situation of unemployment, regardless of the cause for the termination of the previous employment relationship. This development involves the amendment of Article 267.1.a).7 of the 30th October Royal Legislative Decree 8/2015, which approves the revised text of the General Law on Social Security ("LGSS").</p> <p>b.- Voluntary termination of the employment relationship due to a secure hiring commitment: workers who have voluntarily terminated their last employment relationship as of March 1st 2020 due to a firm promise to sign an employment contract by another company, will be in a legal situation of unemployment and in an equivalent situation to that of discharge, if the latter has withdrawn from the contract as a result of the crisis arising from Covid-19.</p> <p>c.- Permanent-seasonal workers: protection for this group is improved by amending RDL 8/2020 Article 25.6. In this way, different measures are foreseen according to the different cases: (i) permanent-seasonal workers affected by an ERTE; (ii) permanent-seasonal/periodic workers on the date on which they are called upon; (iii) permanent-discontinuous workers whose services are interrupted; (iv) permanent-discontinuous workers who have not been called upon to resume their activity; and (v) permanent-seasonal workers who use their unemployment benefits up before the date on which they take up their post and do not pay sufficient contributions for the recognition of a new right. All these situations must be a result of the Covid-19 crisis.</p>
<p>Rules on exceptional availability of pension plans in situations arising from the health crisis caused by COVID-19 (Article 23 of RDL 15/2020)</p>	<p>A broad regulatory regime is established to regulate the availability of pension plans, developing and extending the regulation contained in A.D. 20 of RDL 11/2020, which made it possible, exceptionally and for a period of 6 months, to apply for the reimbursement of the rights consolidated in pension plans, assured pension plans, corporate social security plans and mutual social security associations.</p>
<p>Suspension of deadlines in the field of action of the Labour and Social Security Inspectorate (A.D. 2ND RD 15/2020)</p>	<p>It is established that the period of duration of the alarm state and its possible extensions will not count: (i) for the purposes of the duration of the verification actions of the Labour and Social Security Inspectorate; and, (ii) for the calculation of the duration of the deadlines set by the officials of the Labour and Social Security Inspectorate System for the fulfilment of any requirements.</p> <p>Exceptions to the above measure are the verification actions and those requests and orders of suspension derived from situations closely linked to the facts justifying the state of alert, or those which,</p>

	<p>due to their gravity or urgency, are indispensable for the protection of the general interest, in which case due reasons shall be given, and the interested party shall be informed of the reasons.</p> <p>Finally, it is clarified that the time limits established in the 14th May Royal Decree 928/1998, which approves the general regulations on procedures for the imposition of sanctions for breaches of social order and for cases in which social security contributions are paid, are affected by the suspension of administrative time limits provided for in the 3rd A.P. of the 14th March Royal Decree 463/2020, which declares the state of alert.</p>
<p>Measures in the area of self-employed workers regarding the option of a mutual company collaborating with the Social Security (A.P. 10th, 11th and 8th of RDL 15/2020)</p>	<p>A.P. 10 of the RD 15/2020 establishes a period of three months from the end of the state of alert for those self-employed workers who have not exercised the option provided for in article 83.1.b) LGSS. This precept of the LGSS establishes that self-employed workers must formalize the coverage of the protective action due to professional contingencies, temporary incapacity and cessation of activity with a mutual company that collaborates with the Social Security, having to opt for the same mutual company for all the indicated protective action and establishes a procedure in this regard.</p> <p>On the other hand, A.P. 11 states that the self-employed worker shall choose the collaborating mutual insurance company that provides him with the right to receive the extraordinary benefit for cessation of activity under article 17 of RDL 8/2020, and shall assume the protection and responsibility for payment of said benefit, as well as the other benefits derived from the contingencies for which the coverage has been formalized, including the temporary incapacity subsidy whose medical leave is issued after the date of formalization of the protection with said mutual insurance company, even when said leave is derived from a relapse of a previous temporary incapacity process covered with the managing entity.</p> <p>Finally, the 8th decree modifies article 17.7 of RDL 8/2020 to state that self-employed workers who have not exercised the option provided for in article 83.1.b) LGSS to be entitled to the extraordinary benefit for cessation of activity derived from the COVID-19 must opt for a collaborating mutual insurance company.</p>
<p>Amendments to 4th August Royal Legislative Decree 5/2000, approving the revised text of the Law on Infractions and Penalties in Social Order (Decree 3 RD 15/2020)</p>	<p>These control and sanction mechanisms are reinforced. Specifically, Articles 23 and 43 of Royal Legislative Decree 5/2000, of 4 August, approving the revised text of the Law on Infractions and Penalties in Social Order ("LISOS"), are amended:</p> <p>It is thus established that as a very serious infringement, provided for in Article 23.1 c) of LISOS, making statements, or providing, communicating or consigning false or inaccurate data that result in workers obtaining or unduly enjoying benefits, as well as colluding with their workers or other beneficiaries to obtain benefits that are undue or greater than those applicable in each case, or to avoid compliance with the obligations that correspond to any of them in terms of benefits.</p>

	<p>It is clarified that the company incurs an infringement for each of the workers who have fraudulently requested, obtained, or enjoyed Social Security benefits. This infringement would entail penalties ranging from <u>6,251 to 187,515 euros</u>.</p> <p>Likewise, Article 43 of the LISOS is amended to establish that the company, in addition to the sanctions, will be directly liable for the reimbursement of the amounts unduly received by the worker, <u>provided that there is no fraud or fault on his part</u>.</p> <p>Finally, it is established that the employers, the training entities or those that assume the organization of the training actions programmed by the companies, in the falsification of documents or in the simulation of the execution of the training action, including the tele-training, for the obtaining or undue enjoyment of the allowances in the matter of professional training for employment, will respond jointly and severally of the refund of the amounts unduly enjoyed by each training action.</p>
<p>Temporary lay offs: Modification of the concept of partial force majeure in companies engaged in essential activities (D.F. 8 of RDL 14/2020)</p>	<p>Article 22.1 of RDL 8/2020 is amended by introducing that, in relation to those activities that must be maintained in accordance with the declaration of the state of alarm, other rules of legal rank or provisions issued by the delegated authorities, it will be understood that force majeure occurs with respect to contract suspensions and reductions in working hours applicable to the part of the activity not affected by the conditions of maintenance of activity.</p> <p>Thus, undertakings carrying out activities considered essential for that part of the activity or that part of the workforce not affected by such essential character shall be eligible for force majeure temporary lay-offs.</p>
<p>Modification of the sanctioning regime and reimbursement of undue benefits included in the 2nd A.D. of the RDL 9/2020 (D.F. 9^a RD 15/2020)</p>	<p>RDL 9/2020 established that the undue recognition of benefits to the working person for reasons not attributable to him will result in the reimbursement of the benefits unduly generated. In such cases, the company must pay to the managing entity the amounts received by the worker in accordance with the provisions of LISOS.</p> <p>The novelty lies in the fact that the possibility of deducting the salaries not received by the workers from the amounts to be returned to the managing body is eliminated. However, since workers will retain the right to their wages, the company will be able to deduct from each worker's wages the amounts they would have received as unemployment benefit.</p> <p>Likewise, RDL 9/2020 A.P. 2 is completed by stating that the obligation to return the benefits set out in this regulation will be enforceable until the statute of limitations for the offences referred to in the LISOS Act - 4 years from the date of the offence -.</p>
<p>Deferral of Social Security debts (D.F. 10 of RDL 15/2020)</p>	<p>Article 35 of RDL 11/2020 is amended to specify the terms and conditions for deferment of payment of social security debts. Thus, it is possible for those companies and self-employed workers included in any Social Security scheme, provided that they do not have another deferral in force, to defer payment of debts for which</p>

	<p>the statutory deadline for payment is between April and June 2020, under the following conditions</p> <ol style="list-style-type: none"> 1.- interest of 0.5% will be applied; 2. Requests for deferment must be made before the first 10 calendar days of each of the regulatory periods; 3.- the deferment will be granted by means of a single resolution and will determine a period of amortization of 4 months for each monthly payment requested, starting from the month following that in which the resolution was issued, without exceeding a total of 12 months; <p>The request for postponement shall result in the suspension of the collection procedure and the debtor shall be considered to be up to date with his social security obligations;</p> <ol style="list-style-type: none"> 5.- the postponement will be incompatible with the moratorium on social security contributions regulated in Article 34 of RDL 11/2020.
<p style="text-align: center;">Measures in the regulations of the Civil Service Pensión Scheme</p>	<p>Due to the attribution of powers foreseen in the Royal Decree 2/2020, of 12 January, which restructures the ministerial departments, the organization of the new Ministry of Inclusion, Social Security and Migration makes some normative modifications necessary to make effective the integration of the Passive Classes Regime in the mentioned Ministry:</p> <ol style="list-style-type: none"> a.- legal assistance -D.A. 5th of RDL 15/2020-: as a consequence of the assumption of the management of the State Passive Class Regime by the National Institute of Social Security ("INSS") and the assumption of functions by the General Directorate of Social Security Management, the legal assistance service will be provided to the latter body by the Legal Service of the Social Security Administration; b.- normative adaptation of the legislation of the Civil Service Pensión Scheme – 6th A.P. of RDL 15/2020-; c.- State financing of expenses attributable to the management of the Passive Classes Regime -A.P. 7 of RDL 15/2020-: the State will transfer to the Social Security the amount necessary to finance all the expenses incurred by certain bodies in the management of the State Pension Fund Scheme; d.- transitional regime in the management of the Passive Classes Scheme - 2nd T.P. of RDL 15/2020-: certain rules are established on a transitional basis to enable the INSS and the General Treasury of the Social Security ("TGSS") to take over the management of the benefits of the Civil Service Pension Scheme; e.- amendment of the revised text of the State Civil Service Pension Scheme Law, approved by the 30th April Royal

	Legislative Decree 670/1987, -1st decree RDL 15/2020-: certain provisions of this regulation are amended.
Other measures of interest in the employment field	<p>In addition, the following measures of relevance from an employment point of view are listed:</p> <p>a.- exceptional measure to temporarily make the use of the Cooperative Promotion and Education Fund more flexible in order to alleviate the effects of COVID-19 - article 13 of RDL 15/2020-;</p> <p>b.- extraordinary measure to extend the period set out under Article 1.2.b) of Law 44/2015 dated 14 October on Labour Companies and subsidiaries - Article 14 of RDL 15/2020;</p> <p>c.- measures in the state ports sector - Articles 16, 17, 18, 19, 20 and 21 of RDL 15/2020;</p> <p>d.- contributions in a situation of inactivity in the Special System for Employed Agricultural Workers established in the General Social Security Scheme - Article 25 of RDL 15/2020-;</p> <p>e.- management by the Directorate-General for Social Security of certain public benefits - Article 8 of RDL 15/2020-;</p> <p>f.- verification of the requirements for incorporation into the Special System for Self-Employed Agricultural Workers-TP. 5th of RDL 15/2020-;</p> <p>g.- modification of article 324 LGSS in relation to the Special System for Own-Account Agricultural Workers - D.F..6^a of RDL 15/2020-;</p> <p>h.- modification of article 324 LGSS in relation to the Special System for Own-Account Agricultural Workers - 6TH Decree of RDL 15/2020-.</p>

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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