

Employment update

Employment developments 2021

Royal Decree-Law 2/2021, of 26 January, on the reinforcement and consolidation of social measures in defence of employment

27th January 2021

On this day, 27th January 2021, Royal Decree-Law 2/2021, of 26th January, on the reinforcement and consolidation of social measures in defence of employment ("RDL 2/2021" or "RDL") has been published in the Official State Gazette. The first title of the RDL contains the measures resulting from the IV Social Agreement in Defence of Employment between social agents and the Government ("IV ASDE"), which aim to give continuity to the measures adopted in the face of the health crisis to cushion the socio-economic effects caused by the pandemic.

The following is a summary of the main novelties included in the RDL on employment and social security matters:

Main developments	
Heading I IV Social Agreement in Defence of Employment	
<p>Prolongation of temporary layoffs based on force majeure. -art. 1 paragraph 1 of the RDL-. Related provisions: art. 22 RDL 8/2020, art. 2 RDL 24/2020 and art. 1 RDL 30/2020].</p>	<p>The current temporary redundancy plans based on Article 22 of Royal Decree-Law 8/2020 of 17th March on extraordinary urgent measures to address the economic and social impact of COVID-19 ("RDL 8/2020") will be automatically extended until 31 May 2021.</p>
<p>Extension of the temporary lay-offs due to impediment in the development of the activity due to impediment in the development of the activity authorised based on RDL 24/2020 -art. 1 paragraph 2 RDL-. [Related rules: First A.P. of RDL 24/2020].</p>	<p>The temporary redundancy plans in force, authorised based on the First A.P. of Royal Decree-Law 24/2020, of 26th June, on social measures for the reactivation of employment and protection of self-employment and competitiveness of the industrial sector ("RDL 24/2020"), will remain in force under the terms set out in the corresponding decisions, express or by silence.</p> <p>The percentages of exonerations, from 1st February to 31st May 2021, will be the same as those for temporary lay-offs -see next section-.</p>
<p>Prolongation of temporary redundancy plans for hindrance to the development of the activity authorised based on RDL 30/2020- art. 1 paragraph 3 RDL-. [Related rules: art. 2.1. RDL 30/2020].</p>	<p>The temporary redundancy plans in force, authorised based on article 2.1. of Royal Decree-Law 30/2020, of 29 September, on social measures in defence of employment ("RDL 30/2020"), shall remain in force under the terms set out in the corresponding decisions, express or by silence.</p> <p>For these purposes, it is recalled that these are those companies and entities of any sector or activity that have had the DEVELOPMENT OF THEIR ACTIVITY of any of their workplaces PREVENTED due to the adoption of new restrictions or health containment measures by Spanish or</p>



foreign authorities, after authorisation of an ERTE due to force majeure based on article 47.3 of Royal Legislative Decree 2/2015, of 23 October, which approves the revised text of the Workers' Statute Law ("WS").

These companies will be able to benefit from the following extraordinary contribution measures:

Number of workers/assimilated workers with Social Security as of 29/02/2020	Period	Percentage reduction quota
<50	From the closing date until 31 May 2021	100%
≥50	From the closing date until 31 May 2021	90%

These exemptions will be applied to the business contribution and the items of joint collection, and the procedure regulated in article 2 of Royal Decree-Law 30/2020, of 29th September, on social measures in defence of employment ("RDL 30/2020") must be followed.

Extension of the temporary lay-offs due to limitations in the normal course of business due to limitations in the normal development of the activity authorised based on RDL 30/2020
 -Article 1(4) and (5) of the RDL-
 [Related rules: art. 2.2. RDL 30/2020].

Current temporary layoffs authorised under Article 2.2 of RDL 30/2020 **will be extended until 31st May 2021.**

In this regard, it is recalled that the regulation governs temporary redundancy plans for **those companies and entities in any sector or activity that have LIMITED THE NORMAL DEVELOPMENT of their activity in any of their workplaces because of decisions or measures** adopted by the Spanish authorities, following authorisation of a temporary lay-off due to force majeure on the basis of article 47.3 of the WS.

These companies will be able to benefit from the following extraordinary contribution measures.

Number of workers/assimilated workers with Social Security as of 29/02/2020	Month	Percentage reduction Quota
<50	February	100%
	March	90 %
	April	85 %
	May	80 %
≥50	February	90 %
	March	80 %
	April	75 %
	May	70%

These exonerations will be applied to the business contribution and to the items of joint collection, and the procedure regulated in article 2 of RDL 30/2020 must be followed.

Temporary lay-offs due to impediment or limitation of activity
 -art. 2 RDL-
 [Related rules: art. 2.2. RDL 30/2020].

Companies and entities that, as of 1st February 2021, are affected by restrictions and health containment measures, may request a temporary employment regulation plan due to impediments or limitations on activity under the terms set out in article 2 of RDL 30/2020.



	<p>The exoneration percentages will be:</p> <p>a.- In cases of impediments to activity, the same as those indicated in the section on the "Extension of temporary employment regulation proceedings due to impediments to the development of the activity authorised on the basis of RDL 30/2020".</p> <p>b.- In cases of limitation of the normal development of the activity, the same as those indicated in the section of this Alert "Extension of the temporary employment regulation proceedings due to limitations in the normal development of the activity authorised on the basis of RDL 30/2020".</p> <p>Likewise, it is stated that once the labour authority has confirmed the existence of any of the situations of force majeure, by means of the corresponding decision, express or by silence, the change from the situation of impediment to limitation or vice versa, because of the health restrictions adopted by the health authorities, will not require the processing of a new temporary employment regulation procedure.</p> <p>Transitions from disability to activity limitations or vice versa. Companies that go from this situation of impediment to limitation or vice versa, must communicate the change of situation, the date of effect, the workers affected to the competent Labour Authority -who will communicate the change to the ITSS (Labour and Social Security Inspectorate) so that it can carry out control actions- and to the RLT. They must also make a responsible declaration to the TGSS (General Social Security Treasury).</p> <p>Without prejudice to the above, the corresponding exemption percentages will be always applicable, depending on the impeditive or restrictive nature of the force majeure in which the company finds itself.</p>
<p>Suspension and reduction procedures for economic, technical, organisational and production causes linked to COVID-19.</p> <p>- art. 3 paragraph 1 of the RDL -</p> <p>Related provisions: art. 23 of RDL 8/2020, art. 2 RDL 24/2020 and art. 3 RDL 30/2020].</p>	<p>Article 23 of RDL 8/2020 - which provides for the regime in force to date for implementing a temporary layoff for economic, technical, organisational and production causes arising from COVID-19 - shall apply to the procedures for suspension and reduction of working hours for economic, technical, organisational and production reasons ("ERTE ETOP") linked to COVID-19, initiated after the entry into force of this RDL and until 31 May 2021, with the following special features:</p> <p>a.- Initiation of ERTE ETOP during furlough due to force majeure: the processing of an ERTE ETOP may be initiated while a furlough due to force majeure is in force.</p> <p>b.- Retroactive effects: when the ETOP is initiated after the termination of a furlough due to force majeure, the effective date of the furlough scheme will be retroactive to the date of termination of the furlough due to force majeure.</p> <p>c.- ERTE ETOP in force: the ERTE ETOP in force on the date of entry into force of this RDL will continue to be applicable under the terms set out in the final communication and until the term referred to therein.</p> <p>Likewise, a file may be extended when it ends during the term of this RDL, if it is agreed.</p>



<p>Limits related to dividend distributions and tax transparency. -Article 3(2) and (3) of the RDL- [Related provisions: art. 5 RDL 24/2020 and art. 4 RDL 30/2020].</p>	<p>Again, as in RDL 24/2020 and RDL 30/2020, certain specialities in relation to tax transparency and the distribution of dividends are extended until 31st May 2021:</p> <p>1.- Companies that have their tax domicile in countries or territories qualified as tax havens will not be eligible to benefit from the temporary suspensions of the contract or reduction of working hours for economic, technical, organisational or production reasons scheme.</p> <p>2.- Companies and legal entities that avail themselves of furlough schemes due to force majeure and temporary suspension of the contract or reduction of working hours for economic, technical, organisational or production reasons that use the public resources earmarked for them may not distribute dividends corresponding to the tax year in which the furlough scheme is applied, unless they previously pay the amount corresponding to the exemption applied to Social Security contributions.</p> <p>The limitation on the distribution of dividends will not apply to those entities which, on 29th February 2020, had fewer than 50 employees.</p>
<p>Safeguarding employment -art. 3 paragraph 4 RDL-. [Related rules sixth A.P. of RDL 8/2020, art. 6 of RDL 24/2020 and art. 5 of RDL 30/2020].</p>	<p>The commitment to maintain employment shall apply in accordance with the provisions of art. 5 of RDL 30/2020 -which refers to the Sixth Additional Provision of RDL 8/2020 and art. 6 of RDL 24/2020-, in relation to previous periods and, likewise, for companies that apply the benefits set out in this regulation, with the corresponding deadlines.</p>
<p>Overtime and new externalisations of the activity during the application of the temporary application of the temporary layoffs regulated in this regulation. -art. 3 paragraph 5 of the RDL-. [Related provisions: arts. 1 and 2 of RDL 24/2020; art. 7 of RDL 30/2020].</p>	<p>The limits and exceptions foreseen for overtime, new hires and outsourcing are extended until 31st May 2021. Thus, and during the application of a furlough scheme, generally, neither overtime nor new hirings -direct or indirect- and/or outsourcing of activity may be carried out.</p> <p>Exceptionally, and after informing the legal representatives of the workers, new hires and/or outsourcing may be carried out provided that the employees affected by the Redundancy Proceedings are unable to carry out the contracted functions for objective and justified reasons (e.g., training and/or qualification).</p> <p>Failure to comply with this prohibition could lead to the imposition of sanctions by the Labour and Social Security Inspectorate.</p>
<p>Extension of the extraordinary measures for the protection of employment and the interruption of temporary contracts. -art. 3 paragraph 6 of the RDL-. Related provisions: arts. 2 and 5 of RDL 9/2020].</p>	<p>The following measures shall remain in force until 31st May 2021:</p> <p>1.- The causes of force majeure or economic, technical, organisational or productive causes ("ETOP") that COVID-19 has caused do not justify the termination of employment contracts or dismissal, and the internal flexibility measures of suspension of contracts / reduction of working hours should be used if necessary.</p> <p>2.- Interruption of the calculation of the maximum duration of temporary contracts: the suspension of contracts due to force majeure or ETOP causes derived from COVID-19 that affect temporary contracts, including training, relief and interim contracts, the suspension of the contract will imply the <u>interruption of the calculation</u>, both duration of these contracts and of the reference periods, equivalent to the suspended period.</p>



Exceptional measures in the field of unemployment protection

-art. 4 of the RDL-

[Related provisions: Articles 25 of RDL 8/2020 and Articles and 9 of RDL 30/2020].

Some of the measures provided for in Article 8 of RDL 30/2020 are extended until 31st May 2021, notably that:

1.- The recognition of the right to contributory unemployment benefit for workers affected by a furlough scheme is maintained, even if they do not have the minimum qualifying period required for this. Likewise, the terms and deadlines of RDL 30/2020 will remain in force, which, since 30th September 2020, calculate the period in which contributory unemployment benefit is received for the purposes of using up the maximum periods of receipt established by law.

However, as already provided for in RDL 30/2020, the unemployment benefits of workers affected by a furlough scheme will not be counted as having been used up when they obtain a new entitlement, **before 1st January 2022**, because of the termination of a fixed-term contract, an individual or collective dismissal for economic, technical, organisational or production reasons, or a dismissal for any reason declared unfair.

2.- Companies that are affected by the extensions of the temporary lay-off procedures based on force majeure and those that are applying a temporary lay-off procedure based on ETOP (economic, technical, organisational or production) reasons, **will not have to apply for a new collective application from the workers affected by the measure.**

3.- Unemployment protection measures are maintained for permanent workers who are discontinuous or in permanent or regular jobs until 31st May 2021.

4.- The exceptional measures envisaged for: (i) the protection of workers who are not beneficiaries of unemployment benefits -art. 10 RDL 30/2020-; and (ii) on the compatibility of unemployment benefits with part-time work, will be applicable until 31 May 2021 both for persons affected by the ERTES referred to in RDL 30/2020 and for those affected by the ERTES regulated in this RDL.

**Support measures for the self-employed
Heading II**

Extra benefit for self-employed workers in the event of cessation of activity

-arts. 5, 6, 7 y 8 of the RDL-

1.- From 1st February 2021, self-employed workers who are forced to suspend all their activity because of a decision taken by the competent authority as a measure to contain the spread of COVID-19 may be entitled to an extraordinary termination benefit, provided they meet certain conditions.

2.- Likewise, those self-employed workers who are not entitled to the extraordinary severance benefit referred to in the previous point, nor to the general severance benefit - regulated in articles 327 et seq. LGGS (General Social Security law)-, will be able to access an extraordinary severance benefit, again subject to certain requirements.

3.- There is the possibility of accessing the unemployment benefit in a way that is compatible with self-employment, provided, among other stipulations, that a reduction in taxable income of more than 50% can be demonstrated.



Waivers and other measures of interest

	<p>Companies in sectors with low recovery rates</p> <p><i>*Note: According to the Explanatory Memorandum, these are companies belonging to sectors with a high rate of coverage by redundancy plans - calculated as a percentage of 15% of the total number of employees registered in the Social Security system - and a low rate of recovery of activity - defined as at least 70% of the total number of employees in that sector or CNAE being affected by a lay off. Annex I lists the CNAE of the companies located in these sectors.</i></p>	<p>Companies belonging to sectors with a high coverage rate and a low activity recovery rate are those which:</p> <p>i.- have lay off scheme automatically extended until 31st May 2021, in accordance with the provisions set out in this RDL –vid. art. 1–; and</p> <p>ii.- whose activity is classified in one of the codes of the National Classification of Economic Activities ("CNAE") set out in the Annex to the RDL (for the purposes of the provisions of this First A.P., the CNAE-09 in which the company's activity is classified shall be considered to be that which results from the application for the determination of the contribution rates for the coverage of AT (work accident) and EP (professional illness) contingencies as at September 2020).</p>
<p>Exemptions for companies in sectors with a high redundancy coverage rate and a low rate of recovery of activity.</p> <p>-First A.P.-</p> <p>Related provisions: First A.P. RDL 30/2020].</p>	<p>Companies that can apply for exemption</p>	<p>1.- Companies in sectors with a low recovery rate due to ERTE and a low activity rate where a lay off scheme has been automatically extended due to force majeure. –ex art. 22 RDL 8/2020–.</p> <p>2.- Companies in sectors with a low recovery rate that, between 1 February and 31st May, transition from a force majeure ERTE to an ETOP ERTE.</p> <p>3.- Companies holding an ERTE ETOP of article 23 of RDL 8/2020 prior to RDL 24/2020.</p> <p>4.- Companies that have transitioned from an ERTE due to force majeure to an ERTE ETOP while RDL 30/2020 is in force.</p> <p>5.- Companies qualified as subsidiaries or members of the value chain - in the terms provided for in section 2 of RDL 30/2020 - which:</p> <p>a.- have moved from an ERTE due to force majeure to an ERTE ETOP during the validity of RDL 30/2020;</p> <p>or,</p> <p>b.- in the period from 1 February to 31 May to move from a force majeure ERTE to an ETOP ERTE.</p>
	<p>Exemptions</p>	<p>When they restart their activity as from 1st February 2021 - or if they have restarted their activity since the entry into force of RDL 18/2020 (13th May 2020) - they will be exempt between 1st February 2021 and 31st May 2021, from the payment of the employer's contribution to the Social Security contribution and for joint collection concepts, in the percentages and under the conditions listed below.</p>



		Exemptions	
		Percentage reduction quota	Number of workers/assimilated to the Social Security system on 29/02/2020
		85 %	<50
		75%	≥50
		These exemptions are incompatible with the exemptions in Articles 1 and 2 of this RDL; however, they will be governed by the regime set out therein.	
<p>Extension of the MECUIDA Scheme -Third A.P.-</p> <p>[Related standards: art. 6 of RDL 8/2020]</p>		Article 6 of RDL 8/2020, which regulated the MECUIDA Scheme, is extended until 31st May 2021.	
<p>Minimum contribution bases for 2021 -Fifth A.P.-</p>		It is established that, until the royal decree setting the minimum interprofessional wage is approved, the minimum social security bases applicable during 2021 will be those in force on 31st December 2019.	
<p>Modification of the content of the revised text of the Law on Offences and Penalties in the Social Order, approved by Royal Legislative Decree 5/2000 of 4th August 2000. -Third F.P.-</p>		Article 53 of the revised text of the Law on Offences and Penalties in the Social Order, approved by Royal Legislative Decree 5/2000, of 4 August, which regulates the content of the minutes , is amended to add that: <i>"Infringement reports issued by the Labour and Social Security Inspectorate shall reflect: (...) in the case of reports issued in the framework of automated administrative proceedings, the facts constituting the offence committed"</i> .	
<p>Other relevant new measures</p>		<p>These measures include, among others, the following:</p> <p>1.- Royal Legislative Decree 8/2015, of 30th October, which approves the revised text of the General Social Security Law is amended in aspects relating to the duty of information, provision of information to the Social Security Administration, data confidentiality and electronic headquarters, among other matters -see fifth F.P.-.</p> <p>2.- The measures to support the cultural sector and artists in public performances - see Fourth A.P., Fifth T.P. and Sixth F.P. - are extended.</p>	

This RDL will come into force on the same day of its publication in the Official State Gazette, i.e., today, 27th January 2021.

We hope that the above comments are useful, and we remain at your disposal to expand on, comment on or clarify any issue that may be required.

The full Royal Decree can be read on [this link](#).



For more information please contact:

Alfredo Aspra | Partner at the Labour department
alfredo.aspra@es.Andersen.com

Pedro Alonso | Partner at the Labour department
pedro.alonso@es.Andersen.com

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