

## Employment Alert

### Labour News 2021

## Updates on the extension of ERTes, riders' employment rights and the interprofessional minimum wage

September 29th, 2021

Three important employment regulations have been published today in the BOE (Official State Gazette):

- Royal Decree 817/2021, of September 28th, which sets the interprofessional minimum wage for 2021.
- Royal Decree-Law 18/2021, of September 28th, related to urgent measures for the protection of employment, economic recovery, and improvement of the labour market: VI Social Agreement in Defence of Employment.
- Law 12/2021, of September 28th, which modifies the revised text of the Workers' Statute Law, approved by the Royal Legislative Decree 2/2015, of October 23, guaranteeing the labour rights of people engaged in the delivery of digital platforms

The following table shows a summary of the main features in labour and social security matters:

MAIN NEW FEATURES	
RD 817/2021, which sets the IMW for 2021	
Amount of the minimum wage	<p>The interprofessional minimum wage with retroactive effect from September 1, is fixed at:</p> <ul style="list-style-type: none"> <li>- 32,17 euros/day;</li> <li>- 965 euros/month;</li> <li>- 13.510 euros/year.</li> </ul> <p>There is an increase of 15 euros per month in 14 payments.</p> <p>This amount includes the mandatory supplements (article 26.3 of the Employee Statute) established by the CBA and/or the contract itself (e.g., base salary, CBA bonus, seniority, etc), as well as the amount of the guaranteed increase of the salary by the time of the premium remuneration or the incentive of production.</p>
Compensation and absorption	<p>The absorption and compensation of the increase of the MW will only be made by considering the salary income that does not correspond with the complements that must be paid on the mandatory basis. Therefore, only voluntary and/or personal complements can absorb and compensate this increase in the minimum wage.</p>
Exceptions	<p>Unless otherwise is agreed, these new quantities will not be applied to:</p> <ul style="list-style-type: none"> <li>• The in-force rules of the autonomous communities, the cities of Ceuta and Melilla and all the local administration entities that use the IMW as an indicator of the income level to determinate the number of certain benefits or to access to public services.</li> <li>• Any contracts and private in-force agreements that use the IMW as a reference for any purpose.</li> </ul>



## VI Social Agreement in Defence of Employment.

Extension of the ERTE	<p>Automatic extension until November 1, 2021.</p> <p>If the Temporary Employment Regulation File (ERTE) needs to be extended beyond that date, a new application must be submitted (attaching the supporting documentation and a list of hours or days suspended or reduced during the last 3 months for each worker) to the labour authority by October 15th.</p> <p>Extensions will be authorized until February 28th, 2022</p>
New ERTE modalities	<p>All the companies affected by these new restrictions can request another ERTE due to impediments or limitations.</p> <p>Because of the sanitary restrictions adopted by the Government, there is a possibility of returning from the situation of impediment to the limitation one or vice versa without the need of processing a new temporary employment regulation file (communication to the labour authority + responsible declaration TGSS)</p> <p>New "Canarian ERTE" of force majeure for the companies affected by the volcanic eruption.</p>
ERTE exemptions from November 2021 to February 2022	<p>The exemption percentages from Social Security contributions would vary depending on whether the company carries out training activities for its staff or not:</p> <ul style="list-style-type: none"> <li>➤ ERTE due to limitations:             <ul style="list-style-type: none"> <li>- Companies with 10 or more employees:                 <ul style="list-style-type: none"> <li>○ Without training actions: 40%.</li> <li>○ With training actions: 80%.</li> </ul> </li> <li>- Companies with less than 10 employees:                 <ul style="list-style-type: none"> <li>○ Without training actions: 50%.</li> <li>○ With training actions: 80%.</li> </ul> </li> </ul> </li> <li>➤ ERTE due to impediment: 100% during the period of closure.</li> <li>➤ ERTE "Canary Islands": due to limitations 90%, due to impediment 100%.</li> </ul>
Maintaining limits and forecasts linked to ERTE	<p>The following has been maintained:</p> <ul style="list-style-type: none"> <li>- The limits and provisions related to the distribution of dividends and tax transparency.</li> <li>- The safeguarding of employment.</li> <li>- Extension of the MECUIDA plan.</li> <li>- Limits and exceptions in relation to overtime hours, new hirings, and outsourcing.</li> <li>- The causes of force majeure and the economic, organisational or production reason on which the ERTE are based, do not justify the dismissal.</li> <li>- suspensions of temporary contracts due to COVID-19 reasons interrupts the calculation of the duration as well as the reference periods is maintained.</li> <li>-</li> </ul>
Unemployment protection	<p>Protective measures are extended:</p> <ul style="list-style-type: none"> <li>➤ There is no requirement for the qualifying period or period of contributory occupation, "zero counter" of unemployment benefits enjoyed during ERTE. This is only for those who, before 1 January 2022, access to a new unemployment benefit due to:             <ul style="list-style-type: none"> <li>○ termination of a fixed term contract.</li> <li>○ dismissal, individual or collective, for economic, organisational or production reasons.</li> <li>○ dismissal for any reason declared unfair.</li> </ul> </li> <li>➤ The amount of this unemployment protection for workers included in ERTE will continue to be 70% of the regulatory base.</li> <li>➤ An extraordinary unemployment benefit is recognised for permanent-discontinuous workers and the self-employed aids are increased and</li> </ul>



	<p>extended in the following way:</p> <ul style="list-style-type: none"> <li>○ exemption in the event of cessation of activity.</li> <li>○ extraordinary allowance for cessation of activity in the event of total suspension due to restrictions.</li> <li>○ extraordinary severance benefit for seasonal self-employed workers</li> </ul>
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**Law 12/2021, of September 28, guaranteeing the labour rights of people engaged in the delivery of digital platforms**

A new section d) is introduced in Article 64.4 of the Workers' Statute granting a new right of information to Works Councils, with the following wording:

"(d) To be informed by the company of the parameters, rules and instructions on which algorithms or artificial intelligence systems are based that affect decision-making that may have an impact on working conditions, access to and maintenance of employment, including profiling."

A new twenty-third additional provision has been introduced referring to the presumption of labour relationship of "riders":

"Presumption of employment in the field of digital delivery platforms. By application of the provisions of Article 8.1, the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise business powers of organisation, management, and control directly, indirectly, or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform, is presumed to be included within the scope of this law. This presumption does not affect the provisions of Article 1.3 of this regulation".

Here are the direct links to the different regulations published today in the BOE (Official State Gazette):

- [Real Decreto 817/2021](#)
- [Real Decreto-ley 18/2021](#)
- [Ley 12/2021](#)

We hope that these comments will be useful, and, in any case, the Andersen Employment Practice is at your disposal to clarify any doubts you may have in this regard.

For further information, please contact:

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