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News Alert

Labour Law Department

ROYAL DECREE-LAW 30/2020, OF 29 SEPTEMBER, ON SOCIAL MEASURES IN DEFENCE OF EMPLOYMENT

Below is a summary of the main changes to Royal Decree Law 30/2020 published in the BOE (*Boletín Oficial del Estado* [Official State Gazette]) on 30 September (hereinafter, "RD-Law 30/2020"):

1. EXTENSION OF THE EXISTING ERTES (*EXPEDIENTE DE REGULACIÓN TEMPORAL DE EMPLEO* [TEMPORARY REDUNDANCY PLAN]) BASED ON FORCE MAJEURE.

ERTEs shall be **automatically extended** until 31 January 2021.

2. ERTES BASED ON FORCE MAJEURE DUE TO RESTRICTIONS OR LIMITATIONS OF ACTIVITY.

Two new types of ERTEs based on Force Majeure are established: ERTes due to restriction and ERTes due to limitation.

2.1. ERTE due to restriction

Businesses from any sector or activity may apply this type of ERTE:

- When they are restricted from carrying out activities in any of their work centres as a result of new **restrictions or health containment measures** adopted **as of 1 October 2020**.
 - When their activities have been suspended prior to the authorisation of an ERTE based on force majeure.
- These companies shall be able to benefit from an exemption of the employer contribution accrued during the closure period and up to 31 January 2021 in the following percentages:
- 100% if the company had fewer than 50 workers registered with the Social Security system or an equivalent situation as of 29 February 2020.
 - 90% exemption if the company has more than 50 workers registered with the Social Security system or an equivalent situation as of 29 February 2020.

In this case, the exemption will be applied to the payment of the employer's contribution provided for in Article 273.2 of the consolidated text of the General Social Security Act, and those relating to fees for joint collections.

2.2. ERTE due to limitations.

The following may apply this type of ERTE:

- Companies whose business activity is limited due to the decisions of the Spanish authorities.
- With prior authorisation of an ERTE due to force majeure.

In this case, the exemptions will be as follows:

If the company, as of 29 February 2020, had fewer than 50 workers and the activities of those working were suspended	October 2020	100%
	November 2020	90%
	December 2020	85%
	January 2021	80%
If the company, as of 29 February 2020, had 50 or more workers and the activities of those working were suspended	October 2020	90%
	November 2020	80%
	December 2020	75%
	January 2021	70%

In this case, the exemption will be applied to the payment of the employer's contribution provided for in Article 273.2 of the consolidated text of the General Social Security Act, and those relating to fees for joint collections.

2.3. The exemptions on the contribution will be applied by the General Treasury of the Social Security (Tesorería General de la Seguridad Social, TGSS) at the company's request, upon communication of the identification of the workers and the period of suspension or reduction of working hours and upon presentation of a statement of compliance.

This statement must refer to both the existence and the continuity of the ERTE, as well as, among others, proof of having obtained the relevant resolution from the labour authority authorising the ERTE, either expressly or constructively approved.

In order to apply the exemption, the statement of compliance must be submitted before requesting the corresponding contributions calculation for the accrual period.

The express waiver of the ERTE determines the waiver of the exemptions-- > the express waiver must be communicated to the TGSS and the Labour Authorities.

2.4. In terms of controlling exemptions, the recognition by the SEPE (*Servicio Público de Empleo Estatal* [Public Employment Service]) of the unemployment benefits for the period of suspension or reduction of working hours shall suffice.

For workers who have not been recognised as eligible for unemployment benefits, verification of being registered with the Social Security System, referred to in Article 10, shall suffice.

The above exemptions will not have any negative impact on workers, with such period remaining as one of paid contributions for all purposes.

3. **ETOPS (SUSPENSIÓN TEMPORAL DEL CONTRATO O REDUCCIÓN DE JORNADA POR CAUSAS ECONÓMICAS, TÉCNICAS, ORGANIZATIVAS O DE PRODUCCIÓN [TEMPORARY SUSPENSION OF CONTRACTS OR REDUCTION OF WORKING HOURS FOR ECONOMIC, TECHNICAL, ORGANISATIONAL OR PRODUCTION REASONS]).**

The application of the provisions established in Article 23 of Royal Decree-Law 8/2020 is maintained for ETOP-based ERTes due to COVID-19, which commenced with the entry into force of this Royal Decree and until 31 January 2021.

The processing of these files may be initiated while an ERTE based on Force Majeure exists.

When the ETOP is initiated after an ERTE based on force majeure ends, the effective date of the former shall take effect at the end of the latter.

ETOPS that are in effect when this Royal Decree enters into force shall still be applicable in terms the company's final communication.

One of the new aspects is that an **ETOP that ends while this Royal Decree is in force, may be extended** provided an agreement is reached within the consultation period.

The extension must be processed with the labour authority that received the final communication of the proceedings, pursuant to the procedure established in Royal Decree 1483/2012 with the specific provisions of Art. 23 of Royal Decree 8/2020.

4. **COMPANIES BELONGING TO SECTORS WITH A HIGH RATE OF COVERAGE BY ERTE AND A LOW RATE OF RECOVERY OF ACTIVITY.**

4.1. Definitions

Specific social security payment contribution exemptions are established for certain companies.

Specifically for companies in sectors with a high rate of coverage and a low rate of recovery of activity that have ERTes automatically extended through to 31 January 2021, and whose activity is classified in any of the codes set forth in the Annex of this standard upon its entry into force.

Those forming part of the value chain or those indirectly dependent on the companies shall also be entitled to the exemption, with these understood to be companies in which at least 50% of their turnover during 2019 was generated in transactions directly carried out with those included in any of the CNAE-09 activity codes referred to in the annex of the Royal Decree, as well as those whose actual activity is indirectly dependent upon that effectively carried out by the companies actually included in such CNAE-09 codes.

For such purposes, the CNAE-09 code in which the Company's activity is classified shall be the one applicable for establishing the social security contribution rates for the coverage of workplace accidents and illness with regard to the settlement of contributions presented in September 2020.

4.2. Procedure

The request for a declaration of being a dependent company or one forming part of the value chain, must be filed between 5 and 19 October 2020, and it shall be processed and settled according to the following procedure:

- It will be initiated by means of a request by the company to the authority that has issued the ERTE resolution (express or tacit). The request will contain a detailed report or statement of the relevant circumstances and supporting documentation proving such circumstances.
- The company must notify the workers of the start of the procedure and submit the report to the Workers' Labour Representatives (if any).
- The competent authority will issue the resolution within 5 days of the submission of the request for a report by the ITSS (*Inspección de Trabajo y Seguridad Social* [Labour and Social Security Inspection Authorities]), and shall be limited to confirming the status of the company as part of the value chain or one that is indirectly dependent on the company. The ITSS report will be granted within 5 days.
- If a resolution is not issued within the deadline, the request will be deemed constructively approved.

In all matters not provided for in this section, the standards contained in Title II of the Regulation on the procedures for collective redundancy and suspension of contracts and reduction of working hours, approved by Royal Decree 1483/2012, of 29 October, shall apply.

4.3. Exemptions

The following companies shall be exempted between 1 October 2020 and 31 January 2021, from the payment of the employer's contribution to the Social Security and as well as those relating to joint contributions:

- a) Companies in which an ERTE based on Force Majeure is extended and which are deemed to belong to sectors with a high rate of coverage by ERTE and a low rate of recovery of activity.
- b) Companies transitioning from an ERTE based on Force Majeure to an ETOP during the term of this standard, whose activity falls within one of the CNAE codes in the Annex.
- c) Companies that had an existing ETOP prior to Royal Decree 24/2020 or which was being processed after the effective date of that standard and which replaces a previous ERTE based on Force Majeure, whose activity falls within one of the CNAE codes in the Annex of this Royal Decree.
- d) Companies that are part of the value chain or are indirectly dependent on it and that transition from an ERTE based on Force Majeure to one due to ETOP causes.

The companies listed above will be exempted:

A) With regard to workers affected by an ERTE and who return to work as of 1 October 2020 or have returned to work since the entry into force of Royal Decree 18/2020; they shall be entitled to exoneration for periods and percentages of hours worked as of 1 October 2020, and

B) With regard to workers whose activities have been suspended between 1 October 2020 and 31 January 2021, in the following terms:

If the company, as of 29 February 2020, has fewer than 50 workers registered or in an equivalent situation	October 2020	85%
	November 2020	85%
	December 2020	85%
	January 2021	85%
If the company, as of 29 February 2020, has 50 or more workers registered or in an equivalent situation	October 2020	75%
	November 2020	75%
	December 2020	75%
	January 2021	75%

4.4 Incompatibility of exemptions:

The above exemptions are incompatible with those set forth for ERTes based on Force Majeure or due to activity limitations or restrictions.

5. LIMITS RELATED TO THE DISTRIBUTION OF DIVIDENDS AND FISCAL TRANSPARENCY.

The limits in force to date for the processing of an ERTE, established in Art. 5 of Royal Decree 24/2020, are maintained in respect of those companies and entities domiciled in tax havens, as well as those in force in relation to the distribution of dividends for companies and corporations subject to certain temporary employment regulation measures.

These limits will also apply to ERTes due to activity limitations and restrictions.

6. SAFEGUARDING EMPLOYMENT

The commitments to maintain employment established in the sixth additional provision of Royal Decree-Law 8/2020 and Article 6 of Royal Decree-Law 24/2020 are maintained.

Companies that apply the exemptions contained in the standard set out herein undertake to safeguard employment for a new period of six months. The content, requirements and calculation shall be carried out in accordance with the Sixth Additional Provision of Royal Decree Law 8/2020 (resumption of activity).

As an exception to the foregoing, if the company that makes use of this Royal Decree is already affected by a commitment to safeguard employment, the start period will begin when the previous commitment ends.

7. EXTENSION OF ARTICLES 2 AND 5 OF ROYAL DECREE-LAW 9/2020, OF 27 MARCH, ADOPTING ADDITIONAL MEASURES IN THE WORKPLACE TO MITIGATE THE EFFECTS ARISING FROM COVID-19.

Articles 2 and 5 of Royal Decree-Law 9/2020 shall remain in effect until 31 January 2021.

We remind you that:

- Article 2 establishes the so-called “dismissal prohibition”, with the understanding that contract terminations and dismissals shall be considered unjustified based on objective grounds that justify the suspension of contracts based on force majeure or on objective grounds
- Article 5 sets out the interruption of the calculation of the maximum length of time for temporary contracts in the event of suspension of the contract by ERTE.

8. OVERTIME AND OUTSOURCING OF ACTIVITIES DURING THE IMPLEMENTATION OF THE ERTES REGULATED IN THIS STANDARD.

The prohibition regarding carrying out overtime, establishing new outsourcing of activities or new direct or indirect recruitment during the implementation of the ERTE is maintained.

This prohibition may be waived in the event that the regulated persons who provide services in the work centre affected by new direct or indirect hiring or outsourcing cannot, due to training, qualification or other objective and justified reasons, carry out the functions entrusted to them, after the company has informed the workers' legal representative.

Failure to comply with this article may constitute a violation if deemed as such by the ITSS.

9. EXTRAORDINARY MEASURES FOR UNEMPLOYMENT PROTECTION.

9.1. Certain unemployment protection measures applicable to date are extended, such as access to benefits even if they do not have the minimum period of contributory employment required or those concerning business partners and co-operatives for workers affected by the various types of ERTes based on Force Majeure and ETOP until 31 December 2020.

9.2. Companies affected by extensions of an ERTE due to FM and those applying an ETOP-based ERTE due to COVID-19 as of the effective date, must submit a new collective application for unemployment benefits before 20 October 2020.

Companies must notify the Employment Management Body of the withdrawal of benefits for those who are no longer affected by the suspension or reduction measures before they become effective.

Companies that choose to waive the temporary employment regulation scheme fully and definitively must still perform the above-mentioned communication.

9.3. ETOP-based ERTE after the entry into force of Royal Decree-Law 30/2020: The Company must submit a collective request for unemployment benefits to the SEPE on behalf of the workers, electronically.

The deadline for submission of the application will be 15 days from the occurrence of the unemployment situation.

The duration of the recognised benefit will be extended until 31 January 2021.

9.4. The amount of the recognised unemployment benefit for workers affected by ERTes in this Royal Decree is 70% of the regulatory base until 31 January 2021. This is without prejudice to the maximum and minimum legally established amounts.

When, during a calendar month, there are alternating periods of activity and inactivity, and in cases of reduced working hours, and in cases where both are combined, days of inactivity and days with reduced working hours, the company must report, monthly and at the end of the month, through the communication of periods of activity of the certific@2 application, the days worked in the previous calendar month.

For days worked with reduced working hours, the hours worked will be converted into full days of activity. Therefore, the total number of hours worked in the month will be divided by the number of hours that make up that person's normal working hours before applying the reduced working hours.

9.5. The communication referred to above is notwithstanding the Company's obligation to inform the Management Entity, in advance, of withdrawals of benefits and any variations in the suspension and reduction of working hours.

9.6. Regarding the consumption of unemployment benefits of individuals affected by ERTes, it should be noted that this consumption of benefits shall begin to accrue as of 1 October 2020. However:

- The reduction of benefits consumed from 1 October 2020 will not affect new benefits starting on 1 October 2026.
- Under no circumstances shall unemployment benefits enjoyed by those workers who access a new benefit before 1 January 2022, as a consequence of the termination of a temporary contract, or as a consequence of a dismissal - individual or collective - for economic, technical, organisational or production reasons, or as a consequence of unfair dismissal, be taken into account as consumed unemployment benefits.

10. EXTRAORDINARY BENEFITS FOR PERSONS WITH PERMANENT SEASONAL CONTRACTS OR THOSE WHO PERFORM FIXED AND PERIODIC WORK WHICH IS REPEATED ON CERTAIN DATES.

10.1. An extraordinary benefit is established with the distinction of two scenarios:

Scenario 1

- Workers with permanent seasonal contracts and;
- Those who perform fixed and periodic work which is repeated on certain dates.

In both cases, the workers must have been affected during all or part of the last period of activity due to an ERTE based on Force Majeure and ETOP and are no longer affected by the ERTE as a result of having reached the end date of the activity period.

The recognition of the benefit will require the company to submit a collective request for extraordinary benefits, containing the list of persons with permanent seasonal contracts or fixed and periodic work repeated on certain dates, who are no longer affected by the ERTE.

Scenario 2

Likewise, workers (in the above situations) shall be recognised who, having been in the situations outlined in paragraphs b) and d) of Article 25.6 of the Royal Decree-Law 8/2020, have received any of these measures, provided, once they have run out, that they remain unemployed and are not entitled to receive contributory or non-contributory unemployment benefits, or they use these up before 31 January 2021.

It shall be the workers themselves who shall be required to apply for the extraordinary benefits established in the article.

10.2. Workers in the situations outlined in paragraphs b) and d) of Article 25.6 of Royal Decree-Law 8/2020 and when they have received any of these measures, shall also be entitled to the same benefits provided, once they have run out, they remain unemployed and are not entitled to receive contributory or non-contributory unemployment benefits, or they use these up before 31 January 2021.

In this case, it is the worker who must request the extraordinary benefit.

10.3. As regards the deadline before which the requests must be submitted, this shall be the term set out in Article 268 of the consolidated text of the General Social Security Act. For situations that occur before the effective date of this standard, the term shall be 15 days from the entry into force of this royal decree-law.

10.4. In relation to the duration of the benefit, it will be extended from the end of the measure provided for in Article 25.6 of Royal Decree-Law 8/2020, until 31 January 2021.

However, the benefit may be interrupted by the temporary reincorporation of the worker into their activity:

- If the worker is temporarily reincorporated into their activity. In this case, the Company must notify the Management Entity.
- If the worker starts working on a self-employed basis or starts a job in another company, this worker shall be required to inform the Management Entity of the withdrawal of the benefits.

In all cases, the extraordinary benefit may be resumed upon request by workers who provide proof of the inadvertent termination of their work on a self-employed basis or if they are once again in a legal situation of unemployment, provided it is submitted before 31 January 2021.

10.5. This benefit will be compatible with work carried out on a part-time basis that is maintained at the date on which the right arises or which is subsequently provided, upon deduction of the amount for the proportional part of the time worked.

10.6. The benefit will be paid for monthly periods and for the same amount as the last contributory unemployment benefit received by the affected person or, if applicable, the minimum amount of the contributory benefit.

11. WORKERS INCLUDED IN ERTES THAT ARE NOT BENEFICIARIES OF UNEMPLOYMENT BENEFITS.

11.1. Workers included in an ERTE (restrictive or limiting) or which affects companies in sectors with a high rate of coverage by ERTE and a low rate of recovery of activity, and which are not beneficiaries of unemployment benefits during the periods of contract suspension or reduction of working hours and in which the company is not required to pay the employer's contribution, shall be considered to have a status equivalent to active enrolment with the social security system during such periods for the purposes of considering these as effectively covered.

11.2. The contribution basis to be taken into account during periods of suspension or reduction of working hours will be the average of the six-month contribution basis immediately preceding the start of such situations.

11.3. The terms set forth in this provision shall only be applicable during the period of application of the contribution exemptions established in this Royal Decree-Law 30/2020.

12. COMPATIBILITY OF UNEMPLOYMENT BENEFITS WITH PART-TIME WORK IN CERTAIN SCENARIOS.

From the effective entry into force of the aforementioned Royal Decree, when the unemployment benefits recognised in the scope of the various ERTes are compatible with part-time work not affected by suspension measures, the proportional part of the time worked shall not be deducted from the benefit.

13. FINANCIAL COMPENSATION IN CERTAIN CASES OF COMPATIBILITY OF CONTRIBUTORY UNEMPLOYMENT BENEFIT WITH PART-TIME WORK.

Beneficiaries of the ERTE unemployment benefit based on Force Majeure and ETOPs, the amount of which has been reduced in proportion to the time worked, as a result of maintaining at the time of the initial recognition one or more part time labour relations not affected by the ERTE procedures, shall be entitled to receive financial compensation, the sum of which shall be equivalent to the amount not received for the deduction made.

14. SUPPORT MEASURES FOR SELF-EMPLOYED WORKERS.

Extraordinary benefits are established for self-employed and seasonal workers with the entry into force of the Royal Decree.