

15 April 2021

News Alert

Labour Law Department

Published Law 3/2021, of 12 April, which adopts complementary measures, in the workplace, to alleviate the effects derived from COVID-19

The main new developments of Law 3/2021, of 12 April, which adopts complementary measures, in the workplace, to alleviate the effects derived from COVID-19 (hereinafter, "Law 3/2021") are summarised below.

1. MAINTENANCE OF ACTIVITY AND EMPLOYMENT IN HEALTH AND SOCIAL CENTRES.

During the validity of the state of alarm decreed by Royal Decree 463/2020, of 14 March, which declares the state of alarm for the management of the health crisis situation caused by COVID-19 and its possible extensions (hereinafter, "RD 463/2020"), the following will be understood as essential services, regardless of ownership or management regime:

- The sites, services and health establishments determined by the Ministry of Health.
- The centres, services and social establishments dedicated to childcare and adolescent care, elderly care, and care of people in dependent situations, of people with disabilities, of people with addiction or drug addiction problems, or of people at risk or situation of social exclusion and of people without home, in the terms specified by the Ministry of Social Rights and the 2030 Agenda.

2. 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.

The **extension** of Articles 2 and 5 of Royal Decree-Law 9/2020 to **31 May 2021**.

- 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.

3. PROCEDURE FOR THE RECOGNITION OF UNEMPLOYMENT CONTRIBUTION BENEFIT FOR PERSONS AFFECTED BY TEMPORARY EMPLOYMENT OR FORCE MAJEURE REGULATION RECORDS PROVIDED FOR IN ARTICLES 22 AND 23 OF RD-LAW 8/2020, OF 17 MARCH.

The Companies, acting on behalf of the persons affected by ERTes (Temporary Redundancy Plan [Expediente de Regulación Temporal de Empleo]) ETOP (Economic, Technical, Organisational or Production Causes [Causas Económicas, Técnicas, Organizativas o de Producción]) or force majeure, must initiate the procedure by means of a collective application, completing the model provided by the SPEE (State Public Employment Service [Servicio Público de Empleo Estatal]), also including the following information personalised for each affected workplace:

- Name or company name of the company, address, tax identification number and contribution account code for Social Security to which the working persons whose requested suspensions or reductions of working hours are assigned.
- First and last names, tax identification number, telephone number and email address of the company's legal representative.
- File number assigned by the labour authority.
- Specification of the measures to be taken, as well as the start date on which each of the working persons will be affected by them.
- In the event of reduced working hours, determination of the percentage of temporary reduction, calculated on a daily, weekly, monthly or annual basis.
- Responsible statement stating that authorisation has been obtained from the legal representation of the workers for their submission.
- Supplementary information that, where appropriate, is determined by resolution of the General Directorate of the State Public Employment Service.

The aforementioned communication must be submitted by the company within 5 days of the ERTE request of force majeure referred to in Article 22 of RD-Law 8/2020, of 17 March, or from the date on which the company notifies the competent labour authority of its decision in the case of the ERTes regulated in Article 23 of the same standard.

Failure to comply with the above communication shall be considered a serious violation in accordance with the provisions of Article 22.13 of the restated text of the Law on Violations and Sanctions in the Social Order (hereinafter, "LISOs").

4. ADOPTION OF AGREEMENTS IN TEMPORARY EMPLOYMENT REGULATION FILES IN COOPERATIVE COMPANIES

When, due to the lack of adequate or sufficient means, the General Assembly of cooperative companies cannot be called to hold it through virtual means, the Governing Council may assume the competence to approve the total or partial suspension of the provision of work of its partners and partners and issue the corresponding certification for its processing, under the terms provided for in Articles 22 and 23 of Royal Decree-Law 8/2020, of 17 March.

5. TEMPORARY LIMITATION OF THE TEMPORARY EMPLOYMENT REGULATION FILES PROVIDED FOR IN ARTICLE 22 OF RD-LAW 8/2020.

The ERTes duration provided for in Article 22 of RD-Law 8/2020 may not be extended beyond the period in which the state of alarm decreed by Royal Decree 463/2020 remains in force.

6. SANCTIONING REGIME AND REIMBURSEMENT OF IMPROPER BENEFITS.

In accordance with LISOs, the following may be subject to sanction:

- Applications submitted by the company that contained falsehoods or inaccuracies in the data provided by the company.
- The request for measures in relation to employment that are not necessary or have not had sufficient connection with the cause that originates them, when said circumstance is deduced from the falsehoods or inaccuracies in the data provided by them and provided that they give rise to the generation or receipt of undue benefits or the application of undue deductions in Social Security fees.

The improper recognition of benefits to the employee for reasons not attributable thereto, as a result of any of the breaches provided above, will result in the **return of the benefits improperly generated** and, likewise, the employee will retain the right to the salary corresponding to the period of employment regulation, with the discount of the economic amount received as unemployment benefit.

7. DATE OF EFFECTS OF UNEMPLOYMENT BENEFITS DERIVED FROM THE OTHERS REGULATED IN ARTICLES 22 AND 23 OF RD-LAW 8/2020, OF 17 MARCH.

- In force majeure ERTes: the date of effects will be the date of the event causing it.
- For ETOP-related ERTes: the effective date will be the same or later than the date in the company, inform the labour authority of the decision taken.

8. ENTRY INTO FORCE AND EFFECTIVENESS OF THE STANDARD

This standard comes into force on the same date of its publication in the Official State Gazette, 13 April 2021.

➡ Law 4/2021, of 12 April, has been published, which regulates a recoverable paid leave for salaried workers who do not provide essential services in order to reduce the mobility of the population in the context of the fight against COVID-19 and which does not modify anything of the repealed Royal Decree-Law 10/2020, of 29 March, which regulates a recoverable paid leave.