

RocaJunyent Reports

Labour Law Department
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Legislative news: COVID ERTE [Expediente de Regulación Temporal de Empleo (Temporary Redundancy Plan)] Extension until 31 March and the SMI [Salario Mínimo Interprofesional (Minimum Wage)] increase for 2022.

On 23 February 2022, two Royal Decrees have been published in the BOE [Boletín Oficial del Estado (Official Gazette)] number 46 that will condition the labour market across the board:

1. *Royal Decree-Law 2/2022, of 22 February, which adopts urgent measures for the protection of self-employed workers, for the transition to structural employment defence mechanisms, and for the economic and social recovery of the island of La Palma, and extends certain measures to address situations of social and economic vulnerability ([RD-L 2/2022](#)).*
2. *Royal Decree 152/2022, of 22 February, which sets the minimum wage for 2022 ([RD 152/2022](#)).*

1. **RD-L 2/2022: THE EXTENSION OF THE COVID ERTE.**

The introduction of [RD-L 2/2022](#) points out the following points to consider:

- COVID ERTE: Extension of extraordinary measures related to ERTE in terms of quotation and unemployment, exemptions until March 2022 and new ERTes following the extension.
- Self-Employed: Exemptions, exonerations and extraordinary provisions.
- “MECUIDA” plan until June 2022 and the economic and social recovery of the island of La Palma.

1.1.- COVID ERTE: EXTENSION OF THE EXTRAORDINARY MEASURES RELATED TO ERTE IN TERMS OF QUOTES AND UNEMPLOYMENT, EXEMPTIONS UNTIL MARCH 2022 AND NEW ERTES FOLLOWING THE EXTENSION.

The following ERTes are automatically extended until 31 March 2022 in force until 24 February 2022:

- COVID-19 ERTE (Article 1 RDL 18/2021).
- ERTE due to impediment or limitations to normalised activity (Article 2 RDL 18/2021)
- ERTE due to force majeure related to COVID-19 that have been able to process an ERTE until 28 February 2022 for economic, technical, organisational or production reasons related to the pandemic (Article 5.1 RDL 18/2021), including those authorised in accordance with the single transitory provision of RDL 18/2021.

This implies that, without prejudice to the analysis of the specific case, for the companies and workers affected, to date:

- **Maintenance of the known “ban on dismissal” and maintenance of employment:**
 - Until 31 March 2022, the prohibition of terminating contracts for causes linked to COVID-19 that could be subsumed within the measures of suspension or reduction of employment contracts in the context of the pandemic remains in effect.
 - Those companies that have accessed or access exemptions until March 2022 must maintain the jobs of those working persons included in the COVID ERTE for six months, calculating said period according to the specific case of restarting the activity.
- **Main implications of the extension for companies and for the employee affected by a COVID ERTE:**
 - Suspension of the duration of temporary contracts of the affected workers.

- Prohibition of overtime, subcontracting and hiring external personnel (although the specific case study must be done, to determine if it is possible to apply any type of exception).
 - Unemployment benefits: non-requirement of a minimum period of quoted occupancy.
 - The unemployment protection measures for fixed discontinuous are extended until 31 March 2022.
- Exonerations for Social Security.
- *Previous COVID FM ERTE and ETOP that came from a previous COVID FM ERTE, as well as for COVID FM ERTE due to limitation prior to and after 29 September 2021.* Reduction by 20% with respect to previously applicable exemptions, depending on the number of workers on staff and if they carry out training activities, in accordance with Article 3 of [RDL 18/2021](#).
 - *ERTE FM due to restriction.* The 100% exemption disappears, becoming 90% during the closing.
 - Automatic application of the above measures, in accordance with the criteria in force to date.
- New ERTes following the extension.
- Transition of exceptional COVID regulations to the new legal framework contained in Article 47 and 47bis ET, applicable to the new temporary employment regulation files after the reform operated by [RD-L 32/2021](#). *Vid.*, in this sense our informational alert in which we detail the [Network Mechanism](#).
- Limitation of the distribution of dividends.
- The limits on dividend distribution and tax transparency are extended.

1.2.- SELF-EMPLOYED: EXEMPTIONS, EXONERATIONS AND EXTRAORDINARY PROVISIONS.

The main objective of this aid package is the reactivation of the activity of the self-employed workers who are especially affected by the COVID-19 pandemic, establishing exemptions in social contributions over the next four months.

In particular, the self-employed workers who have been receiving the extraordinary provisions associated with the [RDL 18/2021](#) pandemic up to now, provided that they remain registered in the RETA until June 2022, an exemption from their Social Security contribution and for professional training of 90% in March, 75% in April, 50% in May and 25% in June will be applied.

Fundamentally, the standard regulates:

- Exemption from the obligation to quote in favour of self-employed workers who have received any form of provision for cessation of activity under the provisions of [RDL 18/2021](#).
- Extraordinary provision due to cessation of activity for self-employed workers affected by a temporary suspension of all activity as a result of a resolution by the competent authority as a containment measure for the spread of COVID-19.
- The requirement to reduce invoicing shall be deemed to be proven provided that the average daily number of workers with activity affiliated with the Social Security system in the corresponding economic activity (CNAE, Clasificación Nacional de Actividades Económicas), during the period to which the provision corresponds, is lower by more than 7.5% than the average daily number corresponding to the second half of 2019.

1.3.- “MECUIDA” PLAN UNTIL JUNE 2022 AND THE ECONOMIC AND SOCIAL RECOVERY OF THE ISLAND OF LA PALMA.

- The MECUIDA Plan, contained in Article 6 of [RD-L 8/2020](#), which regulates the right to adapt and/or reduce the working hours of the workers to attend to the duties of care as a result of COVID-19 extends its validity until 30 June 2022. It will be necessary to analyse the impact of this on the telecommuting policies of the companies.
- On the other hand, the ERTes authorised for companies affected by the eruption of the Cumbre Vieja [volcano] are automatically transformed into Force Majeure ERTE without companies having to process a new application, until 30 June 2022. In this regard, in addition to the granting of extraordinary provisions contained in Article 10 of [RD-L 20/2021](#), deferments and moratoriums may be requested in the payment of Social Security fees.

2. RD 152/2022: €1,000 PER MONTH IN THE INCREASE OF THE SMI.

[RD 152/2022](#) establishes, with retroactive effect from 1 January 2022, the minimum interprofessional salary for the all of 2022.

To keep in mind:

- 3.63% increase compared to those in force until 31 December 2021. The new gross amount of the SMI is €1,000 per month, paid in 14 instalments (€14,000 per year), without prejudice to the non-monetary amounts granted to the employee.
- The increase in the SMI will not have an impact on those salaries greater than the amount referenced.

- However, the minimum amount set by the SMI is expected to continue to increase. The new SMI still does not reach the Government's commitment to promote the SMI up to 60% of the average salary prior to the end of 2023, as stated in point 1.4 of the [Government coalition agreement](#).