

COVID-19 UPDATE WORK LAW – NEW DEVELOPMENTS IN THE FIELD OF SHORT TIME WORK

On 12 May 2020, the Council of Ministers adopted the Royal Legislative Decree (RDL) 18/2020 on social measures in defence of employment, which contains a series of measures on employment that have initiated in the Royal Legislative Decrees adopted since the beginning of the health crisis.

The RDL extends the procedures for short-time working (ERTE) due to force majeure until 30 June 2020 for those companies that are unable to resume operations due to the same circumstances. Companies that are able to resume all or part of their activities may do so (this must simply be notified to the authorities with at least 15 days' notice).

Enterprises whose tax domicile is in tax havens are excluded from the extension of ERTE due to force majeure. In addition, companies receiving state aid as a result of the extension of ERTE may not distribute dividends in the tax year in which the ERTE took place, unless they repay the social security contributions saved.

Guarantee of jobs

The RDL also amends the sixth additional provision of Royal Legislative Decree 08/2020 of 17 March, which required undertakings to guarantee employment for a period of six months from the date of resumption of the companies activities. This clause is now made more flexible, even though it has not been completely deleted. The relevant point in time is the actual return to work of the workers concerned (whether on an hourly basis or by part of the workforce). The obligation to guarantee the employment relationship is deemed not to have been fulfilled when a worker affected by ERTE is dismissed, with exceptions (dismissal for disciplinary reasons, resignation, death, retirement, total or absolute invalidity or serious disability and the termination of a temporary employment contract because of the end of its validity or the end of the work or service object of the contract). In the event of non-compliance, companies must reimburse all contributions from which they were exempted, with surcharge and interest on arrears.

The obligation to guarantee jobs does not apply to those companies that risk being considered insolvent under the conditions set out in Article 5.2 of the Bankruptcy Act.

Compared to the previous regime, the job guarantee has also been weakened for seasonal activities, such as tourism. It is now stated that the guarantee "must be assessed in accordance with the specific characteristics of the various sectors and the applicable labour legislation, taking into account in particular the specific characteristics of companies with highly variable or seasonal employment".

Partial ERTE procedure due to force majeure

It is now also possible to maintain ERTE while resuming operations. To this end, the figure of partial ERTE due to force majeure has been introduced. The exemptions from contributions applicable to this figure give preference to reductions in working hours over suspensions.

Companies that resume activity with reduced working hours can deduct 85% of the social security contributions for May and 70% of the quotas for June if they have fewer than 50 employees, and 60% of the quotas for May and 45% of the quotas for June if they have more employees. Companies which resume operations but continue to suspend employees' contracts may deduct 60% of the May quotas and 45% of the June quotas if they have fewer than 50 employees, 45% of the May quotas and 30% of the June quotas if they have more employees.

If you have any questions, please contact us:



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