

LABOUR AND SOCIAL SECURITY LAW: EXCEPTIONAL MEASURES

I. Home office and flexible working hours

If technically and reasonably possible, companies must set up alternative work opportunities (especially home office). Said measure must be given priority over a reduction or suspension of the activity.

In these cases, the requirements of the occupational health and safety regulations are met by a voluntary risk evaluation of the employees.

Employees who can prove that they have to care for their spouse or registered partner and family members up to the second degree have the right to adjust and/or reduce their working hours if this is due to exceptional circumstances relating to measures to prevent the spread of COVID-19. The same applies in the event of exceptional circumstances (closure of a day-care centre, etc.) due to the crisis. In this case, the content and scope of the adjustment is first proposed by the employee. The request must be justified, reasonable and proportionate. Possible adjustments may include the distribution/change of working hours, shift changes, flexible working hours, a change of place of work, a change of function, etc.

A reduction in working hours (up to 100%) may also be required, which is accompanied by a corresponding reduction in salary. This must be notified to the company 24 hours in advance. Employer and employee are obliged to find a mutually acceptable solution in view of the exceptional circumstances.

II. Suspension or limitation of working time of employment contracts (ERTE)

A basic distinction is made according to the reason for initiating the procedure: (a) either force majeure or (b) economic, technical, organisational and production reasons. Both procedures have now been simplified.

In each individual case, it must be carefully examined whether the effects which cause the company to initiate the procedure are directly caused by the corona pandemic (e.g. companies which had to cease operations due to the alarm decree) or whether they only feel the effects very directly. In order to be able to make use of the special facilitation of the procedure due to force majeure, it may be necessary to prove that the company is affected accordingly.

III. ERTE due to force majeure

Situations treated as cases of force majeure include, but are not limited to, situations resulting from a decline in business activity due to the virus and involving the following scenarios: suspension or cancellation of activities, temporary closure of premises open to the public, restrictions on public transport and general freedom of movement, shortfalls in supplies which seriously prevent the exercise of normal activity or, in urgent and extraordinary situations, due to the infection of an employee or preventive isolation measures ordered by the health authorities.

The procedure for an ERTE due to force majeure is now as follows:

1. Initiation, at the request of the company, to be accompanied by a report on the link between the reduction in activity as a result of COVID-19 and, where appropriate, supporting documents. The company must inform the employees about the application and send the report and other additional documents to the employee representation in advance.
2. The labour authority shall examine the existence of force majeure.
3. The labour authority must issue a decision on the application within five days (if necessary, a prior opinion from the Labour and Social Security Inspectorate must be obtained).
4. The company may then decide to suspend contracts or reduce working hours, with effect from the date of the event triggering the force majeure (retroactive).

5. The opinion of the Labour and Social Security Inspectorate, which is optional for the labour authority, must be issued within a non-extendable period of five days.

For the duration of an ERTE due to force majeure, the company's social security contribution will be reduced by 100% (upon application) if the company had fewer than 50 employees on 29 February 2020, or by 75% if it had more than 50 employees on the reference date.

This reduction has no effect on employees; the contributions for the period in question are deemed to have been paid in every respect.

IV. ERTE due to economic, technical, organisational and production reasons

The procedure for ERTE has also been simplified for economic, technical, organisational and production reasons. Despite the special situation, it is to be expected, based on the experience of the first few days, that the labour authorities will handle many applications under this category.

No reductions in social security contributions are possible for these ERTE

Employees will receive unemployment benefits during the ERTE (regardless of the reason for which the procedure is initiated). This also applies even if they have not yet fulfilled the minimum period for payment.

The period of the relationship of unemployment benefit due to the corona virus is not counted towards the entitlement to a later receipt of unemployment benefit.

The extraordinary measures described above in the area of labour and social security law are only applicable if the company undertakes to maintain the employment of the employees for a period of six months from the date of resumption of regular activity (6th additional provision).

SELF-EMPLOYEES

For self-employed persons whose activity has been suspended due to the state of alarm or whose turnover has fallen by more than 75% due to the crisis (comparison of month of application compared to the average of the previous six months), the procedure for suspension of activity has been facilitated (initially for one month). For this period, all contributions are considered paid and the time is not counted towards later proceedings for suspension of activities.