

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

On 27 June 2020, Royal Legislative Decree (RDL) 24/2020 on social measures to reactivate work, protect self-employment and industrial competitiveness entered into force. In particular, the RDL introduces innovations in the area of short-time work and modifies the provisions made in the Royal Legislative Decrees issued since the beginning of the health crisis.

The RDL extends the procedures for short-time work (ERTE) due to force majeure until 30 September 2020 at the latest for those companies that cannot resume operations due to these circumstances. On the other hand, companies that are able to resume all or part of their activities have to do so (giving the authorities at least 15 days' notice).

Furthermore, companies whose tax domicile is in tax havens can not benefit from the extension of ERTE due to force majeure and companies receiving state aid due to the extension of ERTE may not distribute dividends in the tax year in which the ERTE took place, unless they reimburse the saved social security contributions.

New provisions for ERTE due to force majeure in accordance with RDL 8/2020

It is clearly stated that priority must be given to the resumption of activity and that companies must re-employ at least some of their employees. Preferably, all employees should be partially reactivated, rather than individual employees being fully reactivated and at the same time employment contracts still being completely suspended.

It is also stipulated that overtime and new hirings (direct or indirect) to cushion the demand for labour resulting from short-time work are prohibited. Violations of this will be sanctioned.

ERTE due to force majeure from 1 July 2020

Since 1 July, new ERTE procedures can only be initiated in cases of force majeure if the company is unable to continue its activities due to new restrictions. Moreover, these procedures are not subject to the simplified procedural rules of Art. 22. of RDL 8/2020, but to the normal rules.

ERTE for economic, technical, organisational and productive reasons (ETOP)

It is explicitly stated that companies may continue underake this type of ERTE procedure until 30 September 2020 in accordance with the provisions of Art. 23 of RDL 8/2020. Companies which were previously in ERTE due to force majeure can switch directly to an ETOP (and start the procedure still during the previous ERTE). If the negotiations for an ETOP start after the termination of ERTE due to force majeure, the ETOP can start retroactively to the termination of ERTE due to force majeure.

Social security contributions

a) ERTE due to force majeure (complete)

Companies whose activity is still completely suspended due to force majeure may deduct 70% of the social security contributions for July, 60% of the quotas for August and 35% for September if they have less than 50 employees, and 50% of the quotas for July, 40% of the quotas for August and 25% for September if they have more employees.

b) Partial ERTE due to force majeure

Companies that resume/continue their activities with reduced working hours can deduct 60% of the social security contributions for July, August and September if they have less than 50 employees, and 40% of the quotas if they have more employees.

Companies that resume/continue their activities with reduced working time but continue to suspend individual employees' contracts can deduct 35% of the social security contributions for July, August and September for those with less than 50 employees and 25% of the quotas if they have more employees.

The contribution exemptions thus favour reductions in working hours over suspensions.

c) New ERTE due to force majeure (complete)

Companies that completely suspend their activities from July onwards (for the first time or again) can deduct 80% of the social security contributions for July, August and September if they have less than 50 employees, and 60% of the quotas if they have more employees.

d) ETOP

Companies that suspend their activities with an ETOP can deduct 60 % of the social security contributions for July, August and September if they have less than 50 employees, and 40 % of the quotas if they have more employees.

Employment maintenance requirement

The requirement to maintain employment for six months (from resumption of activity) continues to apply. If this requirement is violated, the social security contributions saved for all employees must be reimbursed. For companies that benefit from the exemptions for the first time from July onwards, the deadline runs from the entry into force of RDL 24/2020, i.e. terminations are only permitted from 28 December 2020 on.



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