



## **EMERGENCY MEASURES COVID-19: Royal Decree-Law 30/2020 on social measures to defend employment. Temporary lay-off schemes (ERTEs).**

**In this news alert we discuss the main regulations introduced by Royal Decree-Law 30/2020 of 29 September on social measures to defend employment, approved by the Spanish Government in the context of the global pandemic caused by COVID-19. It includes the following sections:**

- **Extension of temporary lay-off schemes.**
- **New force majeure temporary lay-off schemes due to impediment or limitation.**
- **Temporary lay-off schemes due to ETOP reasons.**
- **Extraordinary measures for stabilising employment.**
- **Measures relating to unemployment benefit.**



## **EXTENSION OF TEMPORARY LAY-OFF SCHEMES DUE TO FORCE MAJEURE IN FORCE AS AT 30 SEPTEMBER 2020**

The temporary lay-off schemes due to force majeure adopted under Article 22 of Royal Decree Law 8/2020 and in force as at 30 September 2020 will be extended **automatically until 31 January 2021** and therefore no new application is necessary.

With respect to these schemes, **exemptions from the employer's social security contributions are envisaged , provided that the companies concerned belong to sectors with a high incidence of temporary lay-off measures and a low rate of recovery of business activity.** Companies will be considered as such whose business activity is classified under one of the CNAE-09 codes referred to in the Annex to RDL 30/2020 ([click here to view full document](#)).

Companies with a temporary lay-off scheme due to force majeure **that has been extended until 31 January 2021 whose business depends indirectly and predominantly on the** companies referred to in the foregoing paragraph, or which form part of their value chain, will also be eligible for the aforementioned exemptions.

Companies that form part of the value chain or depend indirectly on the companies referred to in paragraph two will be understood to be those **whose revenue in 2019 was generated, with respect to at least fifty percent thereof, in transactions performed directly with companies having a CNAE-09 code among those listed in the Annex to RDL 30/2020**, as well as those whose activity depends indirectly on that carried out by companies operating under said CNAE-09 codes. To qualify for such value-chain member or indirect dependence status, an **application** must be filed with the corresponding **Labour Authority** between 5 and 19 October 2020.

For these purposes, the CNAE-09 code in which the business activity is classified will be the same as that used to determine the contribution rates for covering the contingencies of occupational accidents and diseases.

Specifically, the following companies will be exempted **from paying employer contributions** between 1 October 2020 and 31 January 2021:

- a) Companies with temporary lay-off schemes due to force majeure that have been extended and which are considered to belong to sectors with a high incidence of temporary lay-off measures and a low rate of business activity recovery.
- b) Companies changing from a force majeure scheme to an ETOP scheme whose business activity is among the CNAE-09 codes included in the Annex to RDL 30/2020.
- c) Companies with an ETOP temporary lay-off scheme whose business activity is covered by the CNAE-09 codes included in the Annex to RDL 30/2020.
- d) Companies classed as dependent or value-chain members which change from a force majeure scheme to an ETOP scheme.

The exemptions that will apply to persons that recommence their business on or after 1 October 2020 or have recommenced their business since 13 May 2020 are as follows:



- **85% of the employer's contribution** accrued in October, November, December 2020 and January 2021 if the company had **fewer than 50** employees or assimilated workers registered with the Social Security authorities as at 29 February 2020.
- If at 29 February 2020 a company had **fifty or more** employees or assimilated workers registered for Social Security purposes, the exemption will be **75% of the employer's contribution** accrued in October, November, December 2020 and January 2021.

The exemptions regulated in this section **are incompatible with the exemptions for temporary lay-off schemes due to force majeure involving a limitation or impediment (see below).**

## **NEW TEMPORARY LAY-OFF MEASURES DUE TO FORCE MAJEURE THAT IMPEDES OR LIMITS BUSINESS ACTIVITY**

### **Impediment to the performance of the business activity**

All companies which, as a result of new restrictions or containment measures adopted as from 1 October 2020, are **prevented** (in whole or in part) from carrying out their activities in all or some of their work centres, may benefit from the following exemption rates in respect of workers whose **employment has been suspended** at said centres, **subject to authorisation of temporary lay-off proceedings due to force majeure**. The exemptions will be as follows:

- 100% of the employer's contribution accrued during the closure period and until 31 January 2021 if the company had fewer than 50 employees or assimilated workers registered with the Social Security authorities as at 29 February 2020.
- If at 29 February 2020 a company had fifty or more employees or assimilated workers registered for Social Security purposes, the exemption will be 90% of the employer's contribution accrued during the closure period and until 31 January 2021.

### **Limitation on the performance of the business activity**

Similarly, companies whose business activities have been **limited** (in whole or in part) at all or some of their work centres as a result of new restrictions or containment measures adopted as from 1 October 2020 **may benefit, in respect of workers** whose activity has been **suspended**, and subject to authorisation of a temporary lay-off scheme due to force majeure, from the following exemptions:



MONTH	< 50 workers at 29/02/20	> 50 workers at 29/02/20
OCTOBER	100%	90%
NOVEMBER	90%	80%
DECEMBER	85%	75%
JANUARY	80%	70%

### Aspects common to both schemes

The duration of these schemes and, consequently, the exemptions linked to them, are restricted to the **duration of the new restrictions or measures and, unless otherwise provided for, until 31 January 2021**.

The exemption applies - as has been the case until now - to the payment of the employer's contribution and the joint collection contributions and will be applied at the request of the company **after submitting the requisite signed statement to the Social Security authorities**, which must be filed through the RED System prior to requesting the calculation of the contribution payments.

The discontinuance of the temporary lay-off scheme will entail the **termination** of the exemptions from the effective date thereof.

### TEMPORARY LAY-OFF SCHEMES DUE TO ECONOMIC, TECHNICAL, ORGANISATIONAL AND PRODUCTION REASONS (ETOP)

Temporary lay-off schemes due to ETOP reasons linked to COVID-19 initiated from 30 September 2020 until 31 January 2021 will comply with the rules laid down in Royal Decree Law 8/2020.

These schemes may be processed while a temporary lay-off scheme due to force majeure is in effect, but if they are processed after the termination of a force majeure scheme, their effects will be **backdated** to the termination of the force majeure scheme.

Likewise, the ETOP temporary lay-off schemes in force at 30 September 2020 will continue to be governed until their completion by the conditions set out in the company's final notification and may be extended provided that an agreement is reached to this effect. Any such extension must be reported to the corresponding Labour Authority.

### MEASURES TO STABILISE EMPLOYMENT

- Safeguarding employment: The **commitment by companies to maintain employment for a period of six months** from the date of resumption of their business activity is maintained.



Companies **receiving exemptions** under the new RDL 30/2020 will be committed to **a new six-month period of safeguarding employment**. If a company is already subject to a previously acquired commitment to maintain employment, this second commitment will commence when the first ends.

- The measure laid down in Article 2 of RDL 9/2020 to the effect that force majeure and ETOP reasons alleged in temporary lay-off schemes may not be taken to justify the termination of employment contracts or dismissals has been **extended until 31 January 2021**.
- Likewise, **the interruption of the term of temporary contracts**, including training, relief and interim contracts, suspended by temporary lay-off measures due to force majeure or ETOP reasons, as provided for in Article 5 of RDL 9/2020, is extended until 31 January 2021.
- **Overtime may not be worked, nor may any new outsourcing be implemented or any new hires be taken on** during the application of the temporary lay-off schemes, unless persons who already work for the company are unable, due to training, qualifications or other objective reasons, to carry out the functions to be undertaken by newly hired employees or by working overtime.
- The restrictions on the processing of these schemes in companies domiciled in tax havens, as well as on the distribution of dividends in companies with a temporary lay-off scheme in force, will remain in effect.

## MEASURES RELATING TO UNEMPLOYMENT BENEFIT

- a) **Workers affected** by temporary layoff schemes due to force majeure in force as at 30 September, due to ETOP reasons or due to an impediment or limitation, will be subject to the measures provided for in paragraphs 1 a) and 2 to 5 of Article 25 of RDL 8/2020, which include the recognition of contributory unemployment benefit even if they have not completed the minimum contribution period. These measures will apply until 31 January 2021.
- b) Workers affected by a temporary lay-off scheme due to force majeure in force on 30 September, due to ETOP reasons or due to an impediment or limitation, will not be subject to the measure provided for in Article 25. 1 b) of RDL 8/2020; therefore, henceforth **the period during which unemployment benefit is received will be included for the purposes of the maximum periods for receiving such benefit**.



- Λ However, the periods during which unemployment benefit is received from 1 October 2020 will not be discounted for the purposes of new unemployment benefits starting as from 1 October 2026.
  - Λ In any event, and notwithstanding the points set out in the foregoing paragraphs, the unemployment benefits received during the temporary lay-off schemes indicated in the first paragraph (due to force majeure in force as at 30 September, due to ETOP reasons and due to an impediment or limitation on business activity), for workers qualifying for unemployment benefit before 1 January 2022 as a result of the termination of a fixed-term contract or a dismissal due to ETOP reasons or due to a dismissal on any grounds declared to be unfair, will not be calculated as having been consumed.
- c) Companies affected by the extension of temporary lay-off schemes due to force majeure in force as at 30 September 2020 or which are applying a scheme due to ETOP reasons on the same date must file **a new collective application for unemployment benefits by 20 October 2020**.
  - d) Companies that remove some or all of their employees from such schemes or decide to completely and definitively discontinue a temporary lay-off scheme **must notify the Management Entity of the discontinuance of said employees' benefits**.
  - e) The amount of unemployment benefit received by workers affected by a temporary lay-off scheme of the kind mentioned in point **a)** will be determined by applying a rate of **70% until 31 January 2021** to the calculation base pertaining to the employment relationship affected by the scheme, notwithstanding the maximum and minimum amounts stipulated in Article 270 of the General Social Security Act.
  - f) For the purposes of regularising unemployment benefits in cases in which periods of work activity and inactivity alternate, as well as in cases where working hours are reduced or in cases where both are combined (days of inactivity and reduction in working hours), the company must report the days worked in the previous calendar month at the end of the month through the notification of active working periods in the certific@2 application.
  - g) RDL 30/2020 provides for an extraordinary benefit for workers with permanent non-continuous contracts or who perform permanent and periodic work that is repeated on certain dates, who have been affected by temporary lay-off proceedings, at the time when they are no longer affected by it because their work activity has terminated.
  - h) From 30 September 2020, **unemployment benefits** recognised as a result of temporary lay-off schemes due to force majeure in force as at 30 September, due to an impediment or limitation and due to ETOP reasons will be **compatible with the performance of part-time work** not affected by the suspension measure. Accordingly, the part which is proportionate to the time worked will not be deducted from the amount of the benefit.



- i) The recipients of unemployment benefit under Article 25.1 of RDL 8/2020 **that has been reduced in proportion to the time worked**, in accordance with Article 282.1 of the General Social Security Act, because they were in part-time employment at the time of the initial recognition of the benefit, will be **entitled to receive financial compensation equivalent to the amount that they did not receive as a result of the deduction made**.

This compensation will be provided in a single payment upon application by the worker concerned by 30 June 2020.

## ENTRY INTO FORCE

The measures contained in the Royal Decree-Law on social measures to defend employment came into force on **30 September 2020**.

To consult the full text of Royal Decree-Law 30/2020, click [here](#).

*The professionals that regularly work with your company are at your disposal for any clarification or additional information you may require in relation to the content of this News Alert. Please contact us by telephone at 934 677 414.*

Yours sincerely,  
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