

EXTENSION OF EXCEPTIONAL LABOUR MEASURES DERIVING FROM THE CORONAVIRUS PANDEMIC IN SPAIN

The health crisis situation caused by the Covid-19 pandemic obliged the Spanish Government to adopt various exceptional labour measures, mainly in the form of Royal Decree-laws, designed to stabilise employment and prevent the massive destruction of jobs by implementing internal flexibility mechanisms and reducing social security contribution payments. Some of these measures have been updated and/or extended over these past months and maintained even after the state of emergency in Spain has ended.

Due to the uncertainty that still surrounds the evolution of the pandemic at this time, and with the possibility of there being further restrictions on certain labour activities, we see the approval of Royal Decree-law 11/2021, of 27 May, on urgent measures to guarantee employment, reactivate the economy and protect self-employed persons ("**RDL 11/2021**"), which enters into force on 1 June 2021. It extends three measures: (i) the flexibility measures adopted since the start of the pandemic, in the terms set out in Royal Decree-law 2/2021, of 26 January; (ii) the extraordinary measures granting unemployment protection to employed persons, set out in Royal Decree-law 30/2020, of 29 September, on social measures to safeguard jobs; and (iii) all supplementary job protection measures.

We summarise the most relevant aspects of RDL 11/2021 and its impact on labour relationships below:

1. ERTES DUE TO TEMPORARY FORCE MAJEURE

Temporary collective dismissal procedures ("**ERTES**") due to temporary *force majeure* that are in force at 31 May 2021 will be automatically extended until 30 September 2021.

As regards the reductions in social security contributions, several specific categories of companies are established, in connection with successive

Key issues

- ERTes due to *force majeure* will be automatically extended until 30 September 2021.
- ERTes due to impediments to performance of activity will remain in force in the terms set out in the decisions approving them.
- ERTes due to limitation of activity will be automatically extended until 30 September 2021.
- Different types of social security contribution exemptions exist, depending on the type of ERTE and activity.
- The undertaking to keep jobs in those ERTes benefiting from exemptions is extended, as are several measures such as the prohibition on overtime and on establishing new outsourcings.
- The so-called "prohibition on dismissals" for COVID-19-related ETOP reasons is extended until 30 September 2021.

provisions established previously, that may apply such reductions. They can be summarised as follows:

- companies automatically extending ERTes due to *force majeure*, in sectors with a high rate of coverage by temporary collective dismissal procedures and a low activity recovery rate, depending on whether their activities can be classified under those of Spain's Economic Activities codes (CNAE) included in the Annex to RDL 11/2021;
- companies transitioning from ERTes due to *force majeure* to ERTes due to economic, technical, organisational or production-related ("ETOP") reasons (whose activities can also be classified under those CNAE codes included); and
- companies automatically extending ERTes due to *force majeure* whose business depends, indirectly but for the most part, on the companies mentioned in the two preceding points, or that form part of their value chain.

Those companies will be eligible to apply a reduction of their social security contributions and joint tax quotas between 1 June 2021 and 31 September 2021 according to the following percentages and conditions:

1. In relation to those employees affected by an ERTE who resume their activities as from 1 June 2021, or who resumed work as of 13 May 2020:

A reduction of 85% in the amount of the company's social security contribution for the months of June, July, August and September 2021 (and up to 95% for companies with fewer than 50 employees as at 29 February 2020).
2. In relation to those employees affected by an ERTE who maintain their suspended contract:

A reduction of 75% in the amount of the company's contribution for the months of June, July and August 2021 and of 60% during September 2021 (rising to 85% and 70% for companies with fewer than 50 employees as at 29 February 2020).

ERTes due to impediments to performance of activity

ERTes due to impediments to performance of activity that are in force at 31 May 2021 will remain in force in the terms set out in the corresponding decisions approving them, whether approved expressly or following administrative silence. New ERTes due to impediments to performance of activity may be applied for between 1 June 2021 and 30 September 2021.

Companies will be able to benefit, from the time their activities cease and until 30 September 2021, from a reduction of 90% in the amount of their social security contributions and in their joint tax quota, in relation to those employees whose activities have been suspended. For companies with fewer than 50 employees at 29 February 2020, this reduction increases to 100%.

ERTes due to limitation of the normal level of activity

ERTes due to the limitation of the normal level of activity, in force at 31 May 2021, will be automatically extended until 30 September 2021.

These companies will benefit from reductions in the amount of their social security contributions and in their joint tax quota, for those employees whose activities have been suspended, as follows:

A reduction of 75% in the amount of the company's contribution for the months of June and July 2021 and of 65% for August and September 2021. Those figures rise to 85% and 75%, respectively, in the case of companies with fewer than 50 employees at 29 February 2020.

In addition, those companies affected by restrictions and virus containment measures may apply for an ERTE due to impediments to, or limitation of, activity until 30 September 2021. The transition from an impediment situation to that of a limitation or viceversa will not require a new ERTE application.

2. ERTES FOR ECONOMIC, TECHNICAL, ORGANISATIONAL OR PRODUCTION-RELATED REASONS

ERTEs for ETOP reasons in force at 31 May 2021 will remain in force in the approved terms.

An extension to 31 September 2021 may be approved for ERTEs for COVID-19-related ETOP reasons from before 28 May 2021, using the simplified procedure in force to date. The same procedure will apply to new ERTEs for COVID-19-related ETOP reasons that are processed.

3. EMPLOYMENT GUARANTEE, RESTRICTIONS ON DISMISSALS AND OTHER EXTRAORDINARY MEASURES

Companies that wish to avail themselves of the exemptions for social security payments in the context of one of the aforementioned collective suspension procedures will remain subject to the following restrictions and exclusions, which have been extended to 30 September 2021:

- Companies that have their registered address in countries or territories classified as tax havens under the legislation in force cannot apply for the ERTEs regulated in RDL 11/2021;
- The companies that use these temporary collective suspension procedures cannot distribute dividends for the year in which the exemptions apply;
- Moreover, such companies undertake to keep their employees on for six months as from the resumption of activities. In the case of companies already subject to a prior undertaking, the new six-month period will start when the previous period elapses;
- Companies using these procedures cannot have their employees work overtime, establish new outsourcing of their activity or make new hires (direct or indirect) during the application of the ERTEs regulated in RDL 11/2021, except for certain specific cases for which there are objective and justified reasons.

Valid grounds to terminate contracts and suspension of the term of temporary contracts

The exclusion of *force majeure* and COVID-19-related ETOP reasons as valid grounds to terminate employment contracts (which has been incorrectly

categorised as a "*prohibition on dismissals*" on those grounds) has been extended to 30 September 2021.

There is contradictory case law from the High Courts of Justice on the consequences (invalidity or unfairness) of dismissals justified by, or deemed to be grounded in, such reasons. As a result, until the Spanish Supreme Court sets a doctrine, the basis for dismissals carried out during this period will have to be meticulously analysed.

The suspension of the term of temporary contracts affected by suspensory ERTes will likewise remain in force until 30 September 2021.

4. MECUIDA PLAN

The right to request the adaptation or reduction of working hours to address work-life balance needs owing to the health crisis has been extended to 30 September 2021.

CONTACTS



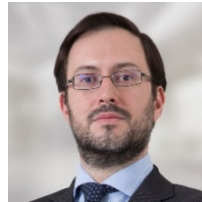
Juan Calvente
Counsel

T +34 91 590 7546
E juan.calvente@cliffordchance.com



Efraína Fernández
Lawyer

T +34 91 590 9464
E efraina.fernandez@cliffordchance.com



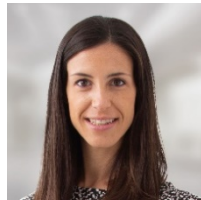
Jorge Martín-Fernández
Lawyer

T +34 91 590 4101
E jorge.martin-fernandez@cliffordchance.com



Cristina González
Lawyer

T +34 91 590 2259
E cristina.gonzalez@cliffordchance.com



Isabel Palacios
Lawyer

T +34 91 590 4186
E isabel.palacios@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Paseo de la Castellana 110,
28046 Madrid, Spain

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