



APPLICATION OF ROYAL DECREE LAW 10/2020 OF MARCH 29TH, WHICH INCLUDES OPTION TO RECOVER PAID LEAVE FOR EMPLOYEES WHO DO NOT PROVIDE ESSENTIAL SERVICES IN THE INDUSTRY SECTOR

April 2, 2020

1.-- General measures adopted by Royal Decree Law 10/2020 of March 29th, which allows to recover paid leave for employees not providing essential services, in order to reduce population mobility in the context of the fight against COVID-19.

Royal Decree Law 10/2020 of March 29th, provides a recoverable paid leave for employees who do not provide essential services, in order to reduce the mobility of the population in the context of the fight against COVID-19 ("RDL 10/20"). This aims to reinforce the measures adopted under Royal Decree 463/2020 of March 14th, declaring the state of alert to manage the health crisis caused by COVID-19 (RD 463/20).

In this context, RDL 10/20 applies these restrictions additionally to "*all employers who provide services in companies or entities in the public or private sector and whose activity has not been paralyzed*" as a result of the state of alert of RD 463/20.

However, RDL 10/20 exempts from this paid leave, among others, "*persons providing services in the sectors classified as essential in the annex to this Royal*

Decree Law" and "*workers providing services in the divisions or production lines whose activity corresponds to the sectors classified as essential under the annex to this Royal Decree Law*".

For the other categories of workers, that is, for all those who provide services in sectors, there is no mandatory recoverable paid leave from March 30 to 9 April 9, 2020, inclusive.

2.- The "paid leave" in the Industry Sector.

Industrial companies, in general, are affected by the mandatory nature of paid leave. In the sense that RDL 10/20 establishes that such rules apply to them in the same way as to other companies.

However, the annex to RDL 10/20 excludes from this obligation, employees "*who are indispensable for the maintenance of the productive activities of the manufacturing industry that provide supplies, equipment and materials necessary for the correct development of the essential activities included in this annex*".

In other words, any industrial activity needed to maintain the activity of those classified as essential will be considered

equally essential, and will be excluded from the scope of application of RDL 10/20 and may therefore continue its normal activity, although, they will need to reduce its personnel to that which is essential to carry out the activity.

Also, Article 4 of RDL 10/20 allows companies, whether industrial or not, to "*establish the minimum number of staff or the shifts that are strictly necessary in order to maintain the indispensable activity*". In other words, in cases where total cessation of activity is not possible, it is possible to maintain this minimum activity.

The reference scale for this minimum activity is the activity that would normally take place on an ordinary weekend or public holiday, although this reference, in the industrial sector, is not entirely effective as there are many companies whose activity does not fluctuate on public holidays or weekends as a rule and is stable throughout the 365 days of the year.

3.- Interpretative note for the Industry Sector on the application of RDL 10/20.

The Spanish Ministry of Industry, Trade and Tourism has interpreted that, without prejudice to mentioning some of the points analyzed above, the RDL 10/20 introduces an important clarification in relation to persons excluded from the scope of "*compulsory paid leave*", stating that "*workers are also excluded from the application of Article 2, in relation to activities involving the import and export of all types of products, goods and materials, to the extent that they are configured as key to the supply or fulfilment of*

international contract commitments".

The ministerial note does not carry out an in-depth study into this aspect which, in principle, seems to open the door to those industrial companies which, without being subsumable within any of the categories analyzed in the previous section, can be considered as carrying out import or export activities essential for the fulfilment of international contracts, or can also be understood to be excluded from the scope of the "*compulsory paid leave*" of RDL 10/20.

In any event, this assertion may have to be further interpreted by the Ministry of Industry, as it could be interpreted broadly to mean that both industrial enterprises with international contracts and their suppliers for such contracts, whether domestic or foreign, may continue to operate without any reduction under the relevant international contract.



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