

FORUM ONTIER – LABOUR RELATIONS



EMPLOYMENT ISSUES ARISING FROM “REAL DECRETO – LEY 9/2020, DE 27 DE MARZO, AND REAL DECRETO 10/2020, DE 29 DE MARZO”, ADOPTING COMPLEMENTARY MEASURES, IN THE LABOUR FIELD, TO MITIGATE THE EFFECTS CAUSED BY COVID-19

28 March 2020

The Government has approved “R.D. Ley 9/2020” on supplementary measures published on 28 March 2020, which comes into force on the same day, and which will remain in force during the state of alarm –R.D Ley 463/2020 -, and its possible extensions, and “R.D. Ley 10/2020” regulating recoverable paid leave for employees who do not provide essential services, in order to reduce the mobility of the population.

In this sense, “R.D. Ley 9/2020” establish the following employments implications:

A) Maintenance of the activity of health centres and centres for the care of the elderly (Article 1)

It is forbidden, - under administrative sanction in case of resistance or non-compliance - to modify the activity regime of these centres without prior administrative authorisation during the effective state of alarm of R.D. 463/2020 and its possible extensions, unless authorised by the competent authority.

B) Extraordinary measures for the protection of employment (Article 2)

The causes set out in Articles 22 and 23 of R.D. 8/2020 of 17 March for the procedure of “ERTE” will not be considered as justifying dismissals or the termination of contracts.

C) Extraordinary measures to implement Article 25 of R.D. 8/2020 of 17 March to speed up the processing and payment of unemployment benefits (Article 3)

(i) The recognition of the contributory benefit of having been

affected by an ERTE, is processed by means of a collective application presented by the company to the managing entity;

(ii) Likewise, a communication must be provided individually by each work centres, including:

(a) Name or business name of the company, address, tax identification number and social security contribution account code to which the workers whose workday suspensions or reductions are requested are assigned.

b) Name and surname, tax identification number, telephone number and e-mail address of the company's legal representative.

c) File number assigned by the labour authority.

d) Specification of the measures to be taken, as well as the starting date on which each employee will be affected by them.

e) In the event of a reduction in the working day, determination of the percentage of temporary reduction, calculated on a daily, weekly, monthly or annual basis.

f) For the purpose of proving the representation of employees, a responsible declaration stating that authorisation has been obtained from the employees for its presentation.

(g) Any additional information determined by decision of the Directorate-General of the Public State Employment Service.

(iii) The communication must be sent within 5 days from the request of an ERTE due to force majeure, and in the case of an ERTE due to ETOP causes, from the date the company notifies the labour authority of its decision. For those cases in which it has been requested before this R.D., it will be 5 days from March 28th.

(iv) The lack of communication will constitute a sanction for serious infraction (article 22.13 Ley sobre Infracciones y Sanciones en el Orden



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Social).

D) Extraordinary measure applicable to cooperative societies for the adoption of resolutions in the procedures of total and/or partial suspension, in the terms provided for in Articles 22 and 23 of R.D. 8/2020 of 17 March (Article 4)

In case of lack of virtual means to convene the General Assembly of the cooperative societies, the Governing Council shall assume the competence to approve the total or partial suspension of the work of its members, issuing the certification for its processing, under the terms provided in articles 22 and 23 R.D. 8/2020.

E) Suspension of the maximum duration of temporary contracts (Article 5)

The suspension of temporary contracts for the reasons set out in articles 22 and 23 of R.D. 8/2020 of 17 March will interrupt the calculation of the duration of the contract as well as the reference periods equivalent to the suspended period.

F) Limitation of an ERTE duration based on the causes of force majeure of art 22 of R.D. 8/2020 (1st A.P.)

Its maximum duration will be that of the state of alarm decreed by R.D. 463/2020, of 14 March, which declares the state of alarm for the and its possible extensions, regardless of whether it has been resolved expressly or by administrative silence.

G) Penalty system and reimbursement of undue benefits (2nd A.P.)

(i) Any application containing false or incorrect data, as well as any conduct by the company consisting of requesting measures in relation to employment which are not necessary or have insufficient connection with the cause of the application, shall be subject to administrative sanction under the “Ley sobre Infracciones y Sanciones en el Orden Social”, provided that it results in the generation or receipt of undue benefits;

(ii) Undue recognition of benefits may be reviewed ex officio, and the company may be required to pay the amounts received to the managing entity, in addition to the corresponding administrative penalty.

H) Date of effect of the unemployment benefits derived from an ERTE regulated by articles 22 and 23 of R.D. 8/2020 of 17 March (3rd A. P.)

(i) In case of force majeure, from the date of the causal event;
(ii) For ETOP reasons, from the moment the labour authority is notified of the ERTE's request;
(iii) The cause and date of effects of the unemployment situation must be included in the company certificate, being considered a valid document for its accreditation.

I) Collaboration of the managing entity of unemployment benefits and the Labour and Social Security Inspectorate (4th A.P.)

(i) If fraud is detected in order to obtain unemployment benefits from the managing entity, it shall inform the Labour and Social Security Inspectorate;
(ii) The Labour and Social Security Inspectorate and the State Tax Administration Agency, may verify the existence of the causes alleged in the ERTE's request due to force majeure and ETOP reasons of art. 22 and 23 R.D. 8/2020.

J) Modification of the second section of the 1st Transitory Provision of R.D. 8/2020, of March 17 (1st F.P.)

The limitation established by the 1st transitional provision is restricted, thus allowing the application of the extraordinary measures in matters of contribution and unemployment (art. 22 and 25 R.D.8/2020) also to those ERTE authorized or initiated before the entry into force of R.D. 8/2020.

On the other side, “R.D. Ley 10/2020” regulate recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility, establish the following employments implications:

A) Article 1: will apply to all employees in the public or private sector whose activity has not been paralysed as a result of RD 463/2020 with the exception of i) sectors qualified as essential or employees providing services on production lines qualified as essential under the terms of the R.D.-Ley 10/2020; ii) those affected by ERTE; iii) employees on leave or with the employment contract suspended; iv) those who carry out their services in a non-presential manner or through teleworking.

B) Article 2: a recoverable paid leave is established, valid from 30 March to 9 April, with those affected maintaining their ordinary remuneration.

C) Article 3: the compensation of the hours will take place from the end of the alarm state until December 31, 2020. The terms of such compensation shall be agreed by means of a consultation period for seven days, which if it ends with agreement, will allow the Company to implement the decision it takes on such recovery - without the terms on which such recovery is agreed being able to infringe the minimum rest periods between days-.

D) Article 4 and 5: without prejudice to recoverable paid leave, undertakings may establish a minimum number of workforce or work shifts in order to maintain the essential activity, and these shall be fixed in accordance with the rules laid down for weekends

The activities covered by this paid leave may be amended by decision of the Ministry of Health.

E) 1st Transitory Provision: the 30th of March is specially authorized to organize the paid leave, allowing the provision of services during that day.

F) Appendix: includes the activities that are excluded from the scope of the “RD-Ley 10/2020”.

Both rules can be accessed [aquí](#) y [aquí](#)

Contact: Javier Rodríguez Pérez

jrodriguez@ontier.net

Eduardo González Biedma

egonzalez@ontier.net

Sara Blanco Menéndez

sblanco@ontier.net

Luis Sánchez Quiñones

lsanchez@ontier.net