

FORUM ONTIER – LABOUR RELATIONS



EMPLOYMENT ISSUES ARISING FROM “REAL DECRETO 463/2020, OF 14 MARCH, WHICH DECLARES THE STATE OF ALARM TO THE MANAGEMENT AND PLANNING OF LABOUR MEASURES OF A COLLECTIVE DIMENSION

16 March 2020

On 14 March, R.D. 463/2020 was approved, declaring the state of alarm for the management of the health crisis situation caused by Covid-19, applicable throughout the national territory and with immediate effect.

The establishment of certain limitations on the freedom of movement of persons and, in particular, the suspension or restriction of the exercise of some economic and professional activities, implies very significant consequences for companies in terms of employment.

Although R.D. does not order a general halt to economic activity, it does provide for the suspension of presential educational activity at all levels (allowing the maintenance of online activities whenever possible), the suspension of the opening to the public of retail premises and establishments - except those expressly exempted in the regulation - as well as the imposition of restrictions in the transport sector, both for passengers and for goods.

The R.D. does not include the essential economic and social measures needed to facilitate the implementation of labor adjustments in companies in order to face such a serious and

exceptional situation, which, however, are expected to be approved at the next meeting of the Council of Ministers scheduled for Tuesday, March 17.

Pending the implementation of such measures and without prejudice to the possibilities of action listed in our previous newsletter, the collective measure of termination and suspension of contracts, or reduction of working hours, provided for in Articles 47 and 51 ET and developed by RD 1483/2012 of 29 October, appears to be the most recurrent and necessary.

There are two types of collective procedures depending on the cause: (i) those based on economic, organizational, technical or production causes (ETOP), and (ii) those based on force majeure.

Although historically the use of procedures based on force majeure has been very residual, the approval of Decree 463/2020 now allows many companies to opt for this legal option, being a process with many advantages over the ordinary as it is more agile, fast and objective, although it is conditioned to the concurrence of force majeure cause to be established by the labor authority.

In any case, it should be noted that pending the approval of labour measures that may specify, extend or define the concurrence of force majeure arising from the current health crisis, only those companies whose activity is directly affected - either totally or partially - by the prohibitions or restrictions included in this R.D. or by the decisions adopted by the competent authorities in implementation thereof may apply for this procedure.



ONTIER

Other companies whose activity would be indirectly affected, for example, by a reduction in the level of orders or income due to a decrease in consumption as a result of this situation, should go through the ordinary procedure based on economic, organizational or productive (ETOP) causes.

Collective measures based on force majeure have the following advantages:

1) Does not require a prior process of consultation or negotiation with the workers' representatives, although they have the status of interested parties and must communicate the application to them at the same time as it is submitted to the labour authority.

2) The request must be resolved by the labor authority within a maximum period of 5 days, limiting itself to verifying the concurrence or not of the cause of force majeure that had been alleged by the company.

3) The date of effect of the application of the measure finally agreed by the company is retroactive, from the date of the event causing the force majeure.

4) In cases of termination of contracts, it may even be agreed that all or part of the severance pay - identical in amount to that provided for objective dismissals - will be paid directly by Fogasa, without prejudice to its right to seek compensation from the employer at a later date.

5) If force majeure is alleged, the collective proceedings must always be processed regardless of the number of workers affected.

You can access the R.D. Ley [aquí](#)

Contact: Departamento de derecho laboral.

Javier Aurelio Rodríguez Pérez: jrodriguez@ontier.net

Luis Sánchez Quiñones: lsanchez@ontier.net

Sara Blanco Menéndez: sblanco@ontier.net

Eduardo González Biedma: egonzalezb@ontier.net