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Employment Law Department

**MEASURES TO RENDER MECHANISMS MORE FLEXIBLE FOR PROVISIONAL
ADJUSTMENTS TO BUSINESS ACTIVITIES AS A RESULT OF
COVID-19**

The awaited Royal Decree-Law 8/2020, of 17 March, on extraordinary measures to deal with the economic and social impact of COVID-19 has been published and extends the measures already in place, adding in an additional set of exceptional extraordinary economic and social measures. The main purpose of this law is to avoid prolonged detrimental impact on the economy beyond the current health crisis.

RDL 8/2020 mainly seeks to reinforce the fight against the disease, protect workers, families and vulnerable groups, and also to support production continuity without people having to lose their jobs.

Specifically, it establishes **a block of employment and Social Security measures related to rendering the mechanisms already in force for provisional adjustments to business activities more flexible for as long as the extraordinary scenario that has arisen from COVID-19 continues**. These new measures are described below

I. LAYOFFS [ERTES] DUE TO FORCE MAJEURE ARISING FROM COVID-19

1.1 Legal Ground

"*Force majeure*" is defined in similar terms to the description in the announcement two days ago from the Ministry of Labour (see previous commentary in AJ March 2020), and the types of layoffs or reduced working days involved are those caused directly by:

- i. Loss of business as a result of Covid-19 (including the State of Emergency declaration) brought about due to suspension or cancellation of business activities; temporarily closing business premises to the public; public transport restrictions and, in general, restrictions on the movement of persons and/or goods.
- ii. Supply chain shortages seriously preventing businesses from carrying on ordinary day-to-day trading.
Urgent and/or extraordinary scenarios arising from infection of the workforce or preventive self-isolating measures imposed by the health authorities.

1.2 Procedure

- Companies must submit an application to the Employment Authority attaching a Report confirming the reduced business activities as a result of Covid-19 also attaching, as the case may be, documents as evidence of the drop in business.
- Any employees that may be affected must be notified of the application. If the company has a workers' representative, he or she must be provided a copy of the report and accompanying documentary evidence.
- The Employment Authority may seek information from the Employment and Social Security Inspectorate, which is obliged to provide that information within a non-extendable **5 day** deadline.
- The Employment Authority will officially confirm the existence of force majeure and must decide to approve or disallow the application within 5 days from the application date, subject to a prior report from the Employment and Social Security Inspectorate, if required.
- In all cases, it is up to the company concerned to apply the measure, effective from the date of the event that brought about the force majeure scenario.
- Special scenarios referred to in legal provisions for the suspension of employment contracts or reduction of the working day, either already in place or notified prior to the date on which this RDL 8/2020 comes into force, no longer apply.

II. 'ERTES' ON FINANCIAL, PRODUCTION-RELATED, ORGANISATIONAL OR TECHNICAL GROUNDS DERIVING FROM COVID-19

2.1 Grounds

- Financial grounds* mean when the company results arise from a negative financial situation, such as when a company has current or foreseeable losses, or a persistent reduction in the ordinary level of revenue or sales. In all cases, a reduced level of revenue or sales is defined as a lower level during two consecutive three month periods compared to that recorded for the same three month period of the previous financial year
- Technical grounds* mean when there are changes, inter alia, having to do with production resources or instruments.
- Organisational grounds* mean when changes occur, inter alia, having to do with systems and methods involved in work carried out by personnel or the way production is organised.
- Production grounds* means when changes occur, inter alia, to demand for products or services the company wishes to place on the market.

2.2 Procedure

- A consultation period of no longer than 7 days must be implemented.

- The consultation period must be negotiated with the legal representative of the workers, or if none exists, a Workers Representative Committee must be set up with members from (i) the most representative trade unions for the company sector, with due legitimate interest to sit on the Collective Bargaining negotiating committee in question (one person from each Trades Union). Resolutions shall be agreed by corresponding representative majorities or (ii) 3 workers from the company elected in accordance with Article 41 Workers' Statute.

The committee must be convened within an un-extendable deadline of 5 days.

- The Employment and Social Security Inspectorate report, which is a compulsory requirement for the Appointment Authorities, must be completed within the un-extendable period of seven days.
- Special scenarios referred to in legal provisions for the suspension of employment contracts or reduction of the working day, either already in place or notified prior to the date on which this RDL 8/2020 comes into force, no longer apply.

In all matters not expressly provided, Article 47 Workers' Statute and Article 16 et seq. of the Regulation on collective dismissal procedures, suspension of contract and reduction of the working day shall apply.

III. EXTRAORDINARY MEASURES

3.1. Regarding national health and Social Security contributions, during an ERTE on the basis of force majeure due to Covid-19

- Companies are exempted from paying 100% of the company portion of national health and Social Security contributions whenever the company, as at 29 February 2020, employed fewer than 50 workers registered with Social Security and in the case of companies with 50 workers registered with Social Security, a 75% exemption applies.
- Companies are exempted from paying the company portion of contributions in relation to "joint provisions" during the period that employees are suspended or the workforce is reduced.
- Workers are deemed to have paid their contributions in full and to all purposes for the period during which the worker was receiving benefits.
- Business owners must apply to the General Treasury of the Social Security for the aforementioned exemption from payment of contributions, duly identifying the suspension or reduction periods. The information must be checked against and exemption from contributions ascertained according to SEPE rules on terms and conditions for corresponding benefit payment periods for the specific benefit requested.
- The aforementioned extraordinary measures apply to persons affected by the measures notified, authorised and instigated prior to the entry into force of RDL 8/2020, whenever grounds arise directly from Covid- 19.

3.2 On unemployment protection, common to all types of ERTE caused by Covid-19

- Unemployment benefit will be paid workers for the period concerned, even to persons who have not been in their jobs for the minimum required contribution period.
- The time period during which contributions-related unemployment benefit is paid (in these regards) will not be deducted against the established maximum unemployment benefit entitlement periods.
- The special scenarios of reference apply to affected workers even if, at the time the business decision is taken, the person concerned had previously been suspended from entitlement to unemployment benefit or income support, as if the worker had not been paid the minimum unemployment benefit period not previously received unemployment benefit.
- At all events, a new entitlement to contribution-based unemployment benefit is recognised (i) calculated on the Regulatory Basis of average contributions over the most recent one 180 days the worker paid contributions, or by default, the shorter period immediately preceding the legal unemployment period, worked within the same employment relationship affected by the extraordinary circumstances and (ii) payable over the entire period until the contract suspension terminates.
- Entitlement to this unemployment benefit shall not be reduced even if applications for initial registration for or recommencing unemployment benefit are submitted out of time.
- The aforementioned extraordinary measures apply to persons affected by the measures notified, authorised and instigated prior to the entry into force of RDL 8/2020, whenever grounds arise directly from Covid-19.

It is important to point out the provision to safeguard employment, arising as a consequence: **all employment-related measures established in RDL8/2020 are subject to the company undertaking to maintain employment levels for six months from the date business activities recommence.**