

June 2020

Labour Law Department

**COMPANY MEASURES TO REACTIVATE EMPLOYMENT, PROTECT SELF-EMPLOYMENT AND THE COMPETITIVENESS OF THE INDUSTRIAL SECTOR**

Royal Decree-Law 24/2020, of 26 June, on company measures to reactivate employment, protect self-employment and the competitiveness of the industrial sector ("RD-L 24/2020") was published on 27 June 2020 - <https://www.boe.es/boe/dias/2020/06/27/pdfs/BOE-A-2020-6838.pdf> .

The principal measures agreed on, referred to throughout this regulation, are set out below (they have been classified in accordance with each of the forms of Temporary Regulation of Employment Plans, hereinafter "ERTE"):

**I. FORCE MAJEURE ERTE**

- **Extension:** Any ERTes (complete or partial) due to Force Majeure are extended **until 30 September 2020 provided, they were requested prior to the coming into force of Royal Decree Law 24/2020.**

Once RD-L 24/2020 came into force, should any circumstances take place preventing the activity from being carried out due to the adoption of new restrictions or containment measures in any workplace, the ERTE **must be processed by the company concerned in accordance with article 47.3 of the Workers' Statute** (an ordinary ERTE).

- **Disapplication:** The regime already provided for in the previous legislation continues to apply, i.e.:
  - Affected workers will be reinstated in their jobs, taking into account the company's need for carrying out the activity, **adjustments in terms of reducing working time being prioritised.**
  - Likewise, the disapplication/full abandonment of the **ERTE**, must be communicated to the relevant labour authority within 15 days from the date it became effective.

**II. ERTE FOR ECONOMIC, TECHNICAL, ORGANISATIONAL OR PRODUCTIVE REASONS ("ETOP")**

- **New ETOP ERTes:** These may be negotiated until 30 September 2020 under the abbreviated procedure provided by article 23 of Royal Decree Law 8/2020 [Ref. AJ March 2020], trade unions being prioritised over *ad hoc* committees.

- **ETOP ERTES currently in force**: ERTES for ETOP reasons in force on the date this Royal Decree-Law came into force **will remain applicable on the same terms and up to the date provided for in that communiqué**.
- **"Fit" with the above FM ERTE**: Processing an ETOP ERTE **can commence during the term a force majeure ERTE is in force**; when an ERTE due to ETOP starts to run following the completion of an FM ERTE, **its effects will apply retrospectively from the end date of the FM ERTE**.

### III. EXEMPTIONS FROM CONTRIBUTIONS

During the months of July, August and September, the contribution exemption scheme will apply as follows:

**III.1 Partial ERTES**, that is, those due to Force Majeure or caused by ETOP reasons that have been put in place prior to the coming into force of this Royal Decree – Law, together with those cases in which the ETOP ERTE starts to run following the completion of an ERTE due to Force Majeure, **regarding working people restarting their activity from 1 July onwards**:

(i) Those workers re-initiating activity, for employers that have:

- Less than 50 workers as of 29 February 2020: 60%
- More than 50 workers as of 29 February 2020: 40%

(ii) Workers who remain within the ERTE, in companies with workforces of:

- Less than 50 workers as of 29 February 2020: 35%
- More than 50 workers as of 29 February 2020: 25%

**III.2 Complete Force Majeure ERTES as of June 30, 2020**, continuing in the aforesaid situation from that date onwards:

(i) Less than 50 workers as of 29 February 2020:

- In July they will have a 70% exemption
- In August they will have a 60% exemption
- In September they will have a 35% exemption

(ii) More than 50 workers as of 29 February 2020:

- In July they will have a 50% exemption
- In August they will have a 40% exemption
- In September they will have a 25% exemption

**III.3 Force Majeure ERTES taking place from 1 July 2020 onwards**, that is, those cases in which the Company is prevented from conducting its business

due to the adoption of new restrictions or containment measures imposed on it in one of its workplaces:

- (i) Less than 50 workers as of 29 February 2020: 80% exemption during closure and until 30 September.
- (ii) More than 50 workers as of 29 February 2020: 60% exemption during closure and until 30 September.

For the exemptions to apply, the company must inform the General Treasury of Social Security (TGSS) and the Public Employment Service (SEPE) of the situation of complete or partial force majeure and indicate the persons concerned and the suspension or the period of reduction in working time. This must be accompanied by a liability declaration from the employer.

Furthermore, the exemptions provided for in paragraphs III.2 and III.3 are incompatible with those provided for in paragraph III.1.

#### **IV. LIMITATIONS APPLICABLE TO ERTES**

- During the application period of ERTES due to reasons of force majeure or ETOP, (i) no further outsourcing of the activity, (ii) overtime or (iii) new contracts (direct or indirect) may be undertaken.

An exception to the above is where regulated persons providing services in the workplace affected, direct or indirectly, by the **new hires** or **outsourcing**, cannot, for training, professional development or other objective and justified reasons, perform the roles entrusted to them, provided that the workers' legal representatives are informed beforehand.

- Any ERTES due to Force Majeure or arising from ETOP reasons regulated by this RD-L may not be applied to those companies whose registered address is in a tax haven. Likewise, they may not distribute dividends for the tax year in which these ERTES are applied, unless the amount corresponding to the exemption applicable to social security contributions is paid in advance or it is an entity with fewer than 50 workers as of 29 February 2020.
- (i) The ban on dismissals or contract terminations due to the Force Majeure or ETOP reasons described in RD-L 8/2020 and (ii) the interruption of the calculation of the maximum duration of temporary contracts until 30 September 2020, as provided for by articles 2 and 5 of RD-L 9/2020 respectively, remain in force.

#### **V. PROTECTING EMPLOYMENT**

The commitment to protecting employment provided for in the Sixth Additional Provision of RD-L 8/2020 extends to companies and entities applying a temporary regulatory plan based on the reasons under article 23 of that rule and benefiting from the extraordinary measures in the field of work referred to in paragraph III.1.

For companies beginning to benefit from the abovementioned extraordinary measures from the date this Royal Decree Law came into force, the six-month period will begin to run from the date this Royal Decree-Law came into force.

## VI. MEASURES TO SUPPORT SELF-EMPLOYED WORKERS

- A contributions waiver is provided with effect from 1 July 2020 onwards for self-employed workers affiliated under the Special Regime of Self-Employed Workers (hereinafter, "**RETA**") or the Special Social Security Scheme for Marine Workers (hereinafter, "**RESSTM**") who were registered on 30 June and were already receiving the cessation of business benefit provided for in RD-L 8/2020 on that date:
  - July 2020: 100% of contributions
  - August 2020: 50% of contributions
  - September 2020: 25% of contributions
- Self-employed workers who received, as of 30 June 2020, the cessation of business benefit provided for in article 17 of RD-L 8/2020 may apply for the cessation of ordinary activity benefit, if the following applies:
  - They can prove a reduction in turnover during the third quarter of 2020 of at least 75% compared to the same period in 2019
  - They have not obtained yields in excess of 5,818.75 euros during the same period.
  - The remaining requirements provided for in article 330 of Royal Legislative Decree 8/2015, of 30 October, approving the consolidated text of the General Law on Social Security (hereinafter, "**LGSS**"), with the exception of proving that there is a legal situation of cessation of activity, a signed commitment of activity and active evidence of availability for returning to the labour market.

From 30 September 2020 it will be necessary to prove all the requirements laid down in the LGSS in order to continue receiving this benefit.
- An extraordinary cessation of activity benefit is provided for seasonal workers:
  - **Amount**: 70% of the minimum contribution base corresponding to the activity carried out.

- **Maximum duration**: between 1 June and 30 September 2020, provided it is requested during the first 15 calendar days of July.
- **Social Security Contributions**: Receiving it entails the absence of an obligation to pay contributions,
- **Incompatibilities**: It is incompatible with working for third parties and other Social Security benefits, unless they are compatible with carrying out self-employed work, as well as with self-employment if the income received from that activity exceeds €23,275.

## VII. OTHER ADDITIONAL MEASURES

Additional measures, referred to in the additional provisions of RD-L 24/2020 applicable to any form of ERTE, are as follows:

- **Preserving the Extraordinary Measures on Unemployment Protection**: In other words, keeping the counter at zero and not requiring a period of grace, until 30 September 2020, with 90 days unemployment benefit for permanent seasonal contracts until 31 December 2020.
- **People covered by ERTES who are not receiving unemployment benefit**: They will be treated as if they were registered for the purpose of taking into account the suspension or reduction periods as if contributions had been paid, which is set out with retroactive effect from the commencement of the contribution exemption periods until these end on 30 September 2020.
- **Tripartite Committee [CEOE and CEPYME/ UGT and CCOO/ Government]**: Its role has been modified since **RD-L 24/2020** came into force; it now covers assessing the measures contained in the latter and the evolution of economic activity and employment, as well as analysing possible future measures to protect employment.
- **Unemployment dialogue**: The Ministry of Labour and the Social Economy, CEOE, CEPYME, UGT and CCOO have committed to meeting as soon as possible to discuss the issues relating to unemployment benefit recognised during Covid-19 temporary regulation of employment plans for persons with multiple part-time contracts, and possible solutions to the depletion, during the state of alert, of unemployment benefits and subsidies for persons not affected by temporary regulation of employment plans.
- **Employment pact**: The Government, CEOE, CEPYME, Comisiones Obreras CC.OO. and UGT undertake, through four roundtables established with the President of the Government, to incorporate measures aimed at creating employment.

- **Committee to monitor measures in the field of Social Security to support the recovery of the activity of self-employed workers:** A monitoring committee has been set up to follow up the measures in the field of Social Security to support the recovery of the activity of self-employed workers. It is composed of the Ministry of Inclusion, Social Security and Migration, the Asociación de Trabajadores Autónomos (ATA), the Unión de Profesionales y Trabajadores Autónomos (UPTA) and the Unión de Asociaciones de Trabajadores Autónomos y Emprendedores (UATAE).

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**SUMMARY TABLE OF CONTRIBUTION EXEMPTIONS IN ROYAL DECREE-LAW 24/2020**

Situation		No. employees (*)	July	August	September
FM total original		<50 employees	70%	60%	35%
		>/=50 employees	50%	40%	25%
FM subsequent		<50 employees	80%	80%	80%
		>/=50 employees	60%	60%	60%
Partial FM	Disapplied	<50 employees	60%	60%	60%
		>/=50 employees	40%	40%	40%
	Affected	<50 employees	35%	35%	35%
		>/=50 employees	25%	25%	25%
ETOP	Disapplied	<50 employees	60%	60%	60%
		>/=50 employees	40%	40%	40%
	Affected	<50 employees	35%	35%	35%
		>/=50 employees	25%	25%	25%

(\*) As of 29 February 2020