
New extension of temporary redundancy plans in Spain due to COVID-19 until January 31, 2021

The [*Official Gazette of the Spanish State of September 30, 2020*](#), has published Royal Decree-Law 30/2020, of September 29, on social measures to protect employment (“RDL 30/2020”). The regulation enters into force on September 30, 2020, aiming to extend until January 31, 2021, most labor measures adopted in recent months to tackle the COVID-19 crisis in Spain. However, it also introduces some significant restrictions that will prevent companies in sectors that are not severely affected by the crisis from accessing certain benefits.

RDL 30/2020 focuses on the new temporary redundancy plans (“ERTE”) on the grounds of *force majeure* arising from the new health risk mitigation measures approved by national or foreign authorities, which are granted higher exemptions. The commitment to maintain jobs is renewed, and the prohibition to dismiss employees and suspend the length of temporary contracts will remain in force until January 31, 2021. Also, unemployment benefits that were previously not used up will now be taken into account, except in specific cases.

September 30, 2020



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I. ERTE PRIOR TO OCTOBER 1, 2020

- > Any ERTE on the grounds of *force majeure* in place since the state of emergency was first declared under article 22 of Royal Decree-Law 8/2020 (“RDL 8/2020”) are **automatically extended** until January 31, 2021.
- > Companies that have carried out an ERTE on the grounds of *force majeure* under article 22 of RDL 8/2020 can **negotiate an ERTE for business reasons**.
- > As a new feature, companies do not need to negotiate a new ERTE if, on October 1, 2020, they were still applying an ERTE for business reasons resulting from COVID-19, the expiry date of which is approaching. In this case, **they are only required to reach an agreement to extend the previous ERTE in a consultation period for this purpose** and file this extension with the labor authority.

- > The new extension to ERTE on the grounds of COVID-19 will allow **companies that fulfill the following requirements to keep benefiting from exemptions on contributions**:

1. The company must (i) have an ERTE on the grounds of *force majeure* automatically extended or (ii) **change the grounds of the ERTE from *force majeure* to economic, technical, organizational, or production (“ETOP”) reasons; or (iii) have an ERTE based on ETOP grounds in force.**

2. The company must belong to a sector “**seriously affected by the pandemic**”, a situation faced by the following companies according to RDL 30/2020:

- Companies carrying out an **activity classified under one of the Spanish National Classification of Economic**

Activities (CNAE-09) codes listed in the annex of RDL 30/2020.

- Companies whose business **depends, indirectly and mainly, on companies included in that annex, or that belong to these companies’ value chain** (because their turnover in 2019 generated at least 50% of the transactions carried out directly with companies in these sectors). The labor authority will substantiate these circumstances once it receives the **company’s request**, which must be submitted **between October 5 and October 19, 2020**. The workers and their representatives must be informed of this situation. The labor authority will have five days to reach a resolution and must request a **report from the Labor Inspectorate**. If no resolution is issued within this term, the company can assume that the request has been approved through **administrative silence**.

- > Exemptions granted between **October 1, 2020, and January 31, 2021**, will be applied based on the following percentages:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS

Employees registered on February 29, 2020	Which employees	October 2020 - January 2021
Fewer than 50	All	85%
More than 50	All	75%

- > Companies carrying out an **ERTE on the grounds of a “new outbreak” that is still in force, and authorized under First Additional Provision (2) of RDL 24/2020**, can continue to benefit from contribution exemptions from October 1, 2020, to January 31, 2021, based on the same



exemption percentages established for ERTE on the grounds of *force majeure* owing to the activity being prevented.

II. ERTE STARTING AFTER OCTOBER 1, 2020

A) ERTE ON THE GROUNDS OF FORCE MAJEURE OWING TO NEW CONSTRAINTS AND RESTRICTIONS TO ACTIVITY

- Companies affected by new health risk mitigation measures adopted **from October 1, 2020**, can apply for an ERTE on the grounds of *force majeure* from the labor authority, following the general procedure specified in **article 47.3 of the Workers Statute**.
- The regulation distinguishes between two situations when it comes to considering health risk mitigation measures adopted by foreign authorities, and to determine the exemption percentages applicable:

- 1. ERTE on the grounds of *force majeure* due to the activity being prevented.** In this case, if the public health measure adopted forces the company's activity to stop (e.g., the closure of night clubs), the measure adopted by Spanish and foreign authorities will be admitted as being on the grounds of *force majeure*, and the contribution exemptions available to that company will be the following:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS		
Employees registered on February 29, 2020	Which employees	October 2020 - January 2021
Fewer than 50	Suspended	100%
	Not suspended	0
More than 50	Suspended	90%
	Not suspended	0

- 2. ERTE on the grounds of *force majeure* due to the activity being restricted.** In this case, if the health risk mitigation measure does not prevent the activity from being carried out, but only restricts it (e.g., reducing the opening times or capacity), only measures adopted by Spanish authorities will be admitted as being on the grounds of *force majeure*, and the contribution exemptions available will be as follows:

% OF EXEMPTED EMPLOYER CONTRIBUTIONS					
Employees registered on February 29, 2020	Employees	Oct. 2020	Nov. 2020	Dec. 2020	Jan. 2021
Fewer than 50	Suspended	100%	90%	85%	80%
	Not suspended	0	0	0	0
More than 50	Suspended	90%	80%	75%	70%
	Not suspended	0	0	0	0

- Contribution exemptions provided for new ERTE on the grounds of *force majeure* owing to impediments or restrictions to activity are **incompatible** with exemptions applicable to previous ERTE.

B) NEW ERTE FOR BUSINESS REASONS

- Until January 31, 2021, new ERTE for business reasons that have not changed from being an ERTE on the grounds of *force majeure* to another kind of ERTE must also be negotiated following the **simplified procedure provided under article 23 of RDL 8/2020**.
- In these cases, the regulation does not grant companies **any exemptions on contributions**.



III. SAFEGUARD OF JOBS AND RESTRICTIONS ON DIVIDEND DISTRIBUTION

› **Once the company starts benefiting from new exemptions**, it be subject to a **new six-month commitment to maintain jobs**, in the terms established in the Sixth Additional Provision of RDL 8/2020.

› The new regulation specifies that **the start date of the new six-month commitment to maintain jobs will be the date on which the previous six-month commitment ceases to be in force**.

› Also, it is still **not possible to distribute dividends while benefiting from exemptions from employer contributions**, and this also extends to exemptions for ERTE on the grounds of *force majeure* resulting from the authorities adopting new health risk mitigation measures that prevent or restrict activity.

IV. PROHIBITION TO DISMISS EMPLOYEES, SUSPENSION OF THE LENGTH OF TEMPORARY CONTRACTS, AND PROHIBITION ON OVERTIME AND OUTSOURCING

› The **restriction on fair dismissal** based on temporary reasons resulting from COVID-19 as well as the **suspension of the length of temporary contracts** of workers affected by an ERTE resulting from COVID-19, will remain in force **until January 31, 2021**.

› The **prohibition on overtime and outsourcing** while an ERTE resulting from COVID-19 is applied will remain in force for as long as the company applies that ERTE.

V. UNEMPLOYMENT PROTECTION

› Companies that still have an **ERTE in force** (on the grounds of *force majeure* that is

automatically updated, or for business reasons) on September 30, 2020, must, before **October 20, 2020**, submit a **new collective request to the Public State Employment Service for the unemployment benefits** of any affected workers.

› Although there is still no requirement as to a minimum contribution period to be eligible for these benefits, there is no longer the advantage of not calculating the time during which unemployment benefits are received, and they will now be deducted from the maximum time established. Therefore, **from January 1, 2020**, the period during which **workers that are unemployed as a result of an ERTE are entitled to unemployment benefits will begin to run**.

› However, employment benefits received after October 1, 2020, **will not be considered used up** in the following cases:

1. New unemployment benefits granted after October 10, 2020.

2. Workers that are granted new unemployment benefits before January 1, 2022, due to (i) the termination of a temporary contract, (ii) an individual or collective dismissal based on ETOP grounds, or (iii) any other unfair dismissal.

› The exceptional measures on unemployment protection applicable to **permanent seasonal workers while an ERTE is in force**, will remain in force until **December 31, 2020**.

› Companies that still have an **ERTE in force** (on the grounds of *force majeure* that is automatically updated, or for business reasons) on September 30, 2020, have must, before **October 20, 2020**, submit a **new collective request to the Public State Employment Service for the unemployment benefits** of any affected workers.

› In the case of companies that **begin an ERTE on objective grounds** based on article 23 of



RDL 8/2020, affected workers will be entitled to the exceptional unemployment benefits. The company will have 15 days from the date on which the legal unemployment situation began to submit a **collective request for the unemployment benefits** on behalf of all of its employees, through the form provided for this purpose on the website or online system of the Public State Employment Service. The length of the acknowledged benefits will be extended until **no later than January 31, 2021**.

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