



Royal Decree-Law 30/2020, of September 29, of social measures defending employment

The Royal Decree-Law published on September 30, 2020, contains several social measures with the objective of maintaining the employment regulations approved in March 2020, aimed at tackling the crisis created by the COVID-19 pandemic.

Herein you will find the highlights of the new regulation

I. TEMPORARY SUSPENSION OF EMPLOYMENT (“ERTE”) PRIOR TO OCTOBER 1, 2020

- ERTEs based on force majeure, which are currently in force, will be automatically **extended until January 31, 2021**.
- Companies currently applying a force majeure ERTE **may file another ERTE based on economical, technical, organizational or productive reasons** (hereinafter “**ERTE ETOP**”) linked to COVID-19 and change into this scheme. If the ERTE ETOP is negotiated once the ERTE due to force majeure is finalized, the effects of the ERTE ETOP will be backdated to the end of the ERTE based on force majeure.
- For those ERTE ETOP that, on October 1, 2020, are close to their expiration date, it will be possible to **agree on an extension through a consultation period** that will have to comply with the requirements set out in Royal Decree 1483/2012 and Section 23 of Royal Decree law 8/2020.
- Companies can still benefit from the exemptions on Social Security contributions when the following requirements are fulfilled:
 - i) That on October 1, 2020, **the company is applying a force majeure ERTE**, that this is **automatically extended**, and that the **company belongs to a sector with a high ERTE percentage and a low recovery activity rate** – this status will be determined by the following:

- **Companies whose activity falls into any of the codes of the National Economic Activities Classification (“CNAE 09”) contained in the Royal Decree 30/2020 Annex.**
- **Those companies automatically extending a force majeure ERTE and whose business depends indirectly and almost entirely on companies whose activity falls into any of the codes of the National Economic Activities Classification (“CNAE 09”) or that are part of the ‘value chain’ of those companies** (meaning that at least 50% of its revenue during 2019 was the result of direct undertakings with companies belonging to such sectors).

Procedure: the abovementioned circumstances will be verified by the Labour Authority prior to the application made by the company, which will have to be filed before October 20, 2020. The public administration will issue its resolution within 5 days, after having requested the corresponding report to the Labour and Social Security Inspection. If such resolution is not issued within the abovementioned time period, the application will be considered to be tacitly accepted.

- ii) That on October 1, 2020, **the company has transitioned from an ERTE based on force majeure to an ERTE ETOP or it is applying an ERTE ETOP that is based on any of the social security exemptions contemplated within Section 4,2 of the Royal Decree-law 24/2020** (as contemplated on the 1st Additional Disposition of Royal Decree Law 30/2020).
- **Social security exemptions for the period between October 1, 2020 to January 31, 2021:**

Beneficiary companies	Percentage of exemption
Companies with less than 50 employees on February 29, 2020.	85%
Companies with more than 50 employees on February 29, 2020.	75%

II. NEW ERTES APPROVED AFTER OCTOBER 1, 2020.

A) Force majeure ERTE as a result of impossibility or restrictions on the business activity:

- Companies whose activity is affected by new public health restrictions or measures approved by the authorities from October 1, 2020 onwards will have the possibility to file an ERTE due to force majeure before the Labour Authority.
- Royal Decree Law 30/2020 distinguishes between those companies that are **impeded** from carrying out their activity and those whose activity has been **limited**. These two scenarios entitle companies to different Social Security exemption percentages:
 - Companies that are **impeded** in carrying out their business as a result of **new restrictions adopted either by Spanish or foreign authorities**, will be able to implement a force majeure ERTE and apply the following exemptions to the company's social security contributions:

Exemption percentage in the company social security contribution up to January 31, 2021

Companies with **less than 50 employees** on February 29, 2020. 100%

Companies with **50 or more employees** on February 29, 2020. 90%



- Companies whose activity has been **limited** as a result of **new public health restrictions adopted by the Spanish authorities** will be able to implement a force majeure ERTE and to apply the following exemptions to the company's social security contribution:

	Oct. 2020	Nov. 2020	Dic. 2020	Jan. 2021
Companies with less than 50 employees on February 29, 2020.	100%	90%	85%	80%
Companies with 50 or more employees on February 29, 2020. *	90%	80%	75%	70%

- The exemptions applied on the basis of a force majeure ERTE filed due to the impossibility or limitations in the company's business will not be compatible with any exemptions applied in previous ERTES.
- Those companies applying an **ERTE due to new COVID-19 outbreaks** (Additional Disposition 1.2 of Royal Decree Law 24/2020) will be able to continue to apply **the social security exemptions from October 1, up to January 31, 2021 in the same percentages applicable for ERTES filed when it is impossible for the company to carry out its business.**
- During the period in which such exemptions are applied, it will be considered that **the employees have fully contributed to the social security.**

B) New ERTE ETOP

- Companies wishing to implement a new ERTE ETOP will have to follow the **procedure set out in Section 23 of the Royal Decree 8/2020**, and they will not be able to apply any exemptions to their company social security contributions.

III. MAINTENANCE OF EMPLOYMENT

- Companies receiving social security exemptions as per Royal Decree Law 30/2020 will have to **maintain employment for an additional 6 month-period**.
- The 6 month-period for maintenance of employment in companies that were previously subject to this obligation will start once the previous 6-month commitment has expired.

IV. LIMITATIONS CONCERNING PROFIT SHARING AND TAX TRANSPARENCY

- **The prohibition on applying any social security exemptions to force majeure ERTes or ETOP ERTes for companies domiciled in tax heavens will continue.**
- **The prohibition will continue for companies applying an ERTE to share profits**, unless these companies, prior to the sharing of profits, pay back the amount exempted to the Social Security and waive their entitlement to receive any further exemption.

V. PROHIBITION TO CONDUCT DISMISSALS, INTERRUPTION OF THE MAXIMUM LENGTH OF TEMPORARY CONTRACTS AND PROHIBITION TO CONDUCT OVERTIME AND EXTERNALIZATIONS:

- The following measures will be extended **Until January 31, 2021**:
 - i) the **prohibition on conducting terminations** based on force majeure or economical, technical, organizational or productive reasons related to COVID-19;
 - ii) **the maximum length of temporary contracts will be interrupted**; and
 - iii) the **prohibition on working overtime, conducting new hirings or carrying out any subcontracting** during the application of an ERTE related to COVID-19.

Any hiring or subcontracting conducted as a result of the existing workforce not being able carry out such activities will be considered as an exception to the abovementioned prohibition. .

VI. MEASURES RELATED TO UNEMPLOYMENT BENEFIT

- The right to receive unemployment benefits will be maintained for those employees affected by an ERTE, **even if their contribution period to the social security does not reach the minimum length** required for the accrual of the benefit.
- From October 1 2020, employees receiving unemployment benefits as a result of an ERTE **will start using up the duration of their unemployment benefits** in the following terms:
 - i) for any new unemployment benefits from October 1, 2026 onwards and;
 - ii) for those employees that will be entitled to new unemployment benefits before January 1, 2022 as a result of the expiration of a temporary contract or a redundancy, either of individual or collective nature, due to economical, technical, organizational or productive reasons or due to any termination that is later declared as unfair.
- Companies starting a new ERTE ETOP will have to file a **collective application for unemployment benefits** on behalf of the employees, within 15 days following the start of the situation triggering the entitlement to the benefits. The end date for the payment of benefits will be extended **up to January 31, 2021**.
- In any case, companies affected by extensions to force majeure ERTEs as well as those applying an ERTE ETOP will have to **file a new collective application for unemployment benefits before October 20, 2020**.
- **The amount of unemployment benefits up to January 31, 2020 will be the same**, i.e. up to 70% of the social security contribution base of the employees affected by an ERTE.
- This extraordinary benefit will be granted to all employees with an indefinite term contract, and to those carrying out permanent and periodical services repeatedly on the same dates and that have been affected by an ERTE, once they stop being included within such ERTE.
- **Part-time employees will also be entitled to receive unemployment benefits** as a result of a force majeure ERTE or an ETOP ERTE.
- Part time employees receiving unemployment benefits as a result of an ERTE, whose benefits have been reduced proportionally to the worked time under their part-time contract will be entitled to receive **financial compensation** of an amount equivalent to such difference.

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