

legal memo

Barcelona, October 14th, 2020

Spanish Government approves extension of ERTes until January 31st, 2021

After a long and difficult negotiation with social and economic parties, Spanish Government approved last Wednesday, September 30th, the Royal Decree-Law 30/2020 of social measures in defense of employment. The Royal Decree extends the validity of force majeure "ERTE's" until January 31st 2021. Furthermore, it introduces new kinds of ERTes as well as a new system of social security payment exemptions for companies in specific sectors.

Extension of ERTes until January 31st 2021. Exemptions for social security contributions for companies with ERTes belonging to certain sectors.

All companies with a force majeure ERTE in place on September 30th 2020 will be able to maintain it until January 31st 2021. The extension operates automatically.

Exemptions for social security contributions for companies with ERTes belonging to certain sectors.

Besides the automatic extension of force majeure ERTE's until January 31st 2021, companies included in the most vulnerable sectors of the economy experiencing a low activity recovery will be eligible for additional exemptions. The vulnerable sectors are listed in Annex II to the Royal Decree and the exemptions being the following: 75% exemption on social security contributions for companies with 50 or more employees and 85% for companies with less than 50 employees.

Those exemptions will also be available to companies with a force majeure ERTE automatically extended until January 31st 2021, even if their activity is not included within Annex II. The requirement for those other companies being that at least 50% of their 2019 turnover generated by operations carried out directly with companies included in that Annex. Besides them, some companies whose activity indirectly depends from that of Annex II companies may also be eligible for benefits. **New ERTes for impediment or limitation of activity for supervening restrictions of the authorities.**

New ERTE scenarios are introduced for companies in any sector that are prevented or restricted from carrying out their activities as a result of new health restrictions or containment measures which may be adopted as from October 1st 2020.

Those companies will be able to benefit from the following exemptions, during the implementation of their ERTes:



ERTE for impediment of activity	< 50 employees	100%			
	≥ 50 employees	90%			
		Oct 2020	Nov 2020	Dec 2020	Jan 2021
ERTE for limitation of activity	< 50 employees	100%	90%	85%	80%
	≥ 50 employees	90%	80%	75%	70%

Continuity of simplified ERTE ETOP with Social Security exemptions.

ERTEs "ETOP" for economic, technical, organisational and production reasons arising from COVID may continue to be processed under the same simplified procedure introduced by RDL 8/2020 until January 31st 2021.

Furthermore, companies belonging to sectors listed in Royal Decree's Annex II as well as those related are also eligible for the same social security exemptions (75% for companies < 50 employees and 85% for companies ≥ 50 employees, as long as they have an ERTE ETOP in place).

Limitations for companies benefiting from Social Security exemptions related to new ERTEs.

Companies benefiting from Social Security exemptions for their ERTEs are committed to safeguarding their employment level during a period of 6 months, which means they are prevented from terminating employment contracts (unless for justified or for a disciplinary reason). The infringement penalty is the devolution of the social security exemptions benefitted.

Companies in ERTE benefiting from Social Security exemptions are also prevented to distribute dividends accrued in the year in which the measures are being implemented.

Likewise, during the validity of the ERTE, the performance of overtime is prohibited, as well as the hiring of new staff, either directly or indirectly, and the outsourcing, with limited exceptions.

We are at your disposal for any further doubts or queries.

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