

Royal Decree-law 2/2021 of 26 January on reinforcement and consolidation of social measures in the protection of employment

29 January 2021

On 26 January 2021, Royal Decree-law 2/2021 of 26 January on reinforcement and consolidation of social measures in the protection of employment (the “Royal Decree-law”) was approved, and whose main measures are as follows:

Files for the Temporary Regulation of Employment (“ERTE”) due to Force Majeure processed by article 22 of Royal Decree-law 8/2020: automatic extension until 31 May 2021.

These ERTes will benefit from the fee exemption if they meet the conditions set out in the additional provision 1^a.2 of the Royal Decree-law.

ERTE for restrictions (ERTes processed by additional provision 1^a.2 of Royal Decree-law 24/2020 and article 2.1 of Royal Decree-law 30/2020): they will be extended on the same terms of their corresponding resolutions, whether expressed or by silence.

The exemptions applicable to these ERTes, from 1 February 2021 until 31 May 2021, shall be the following:

- a) Companies with less than 50 employees on board at 29 February 2020: exemption from the company contribution shall be of 100%.
- b) Companies with 50 or more employees on 29 February 2020: exemption from the company contribution shall be of 90%.

ERTE for limitations of activity (ERTes based on article 2.2 of Royal Decree-law 30/2020): automatic extension until 31 May 2021.

The exemptions applicable to these ERTes, from 1 February 2021, shall be the following:

- a) Companies with less than 50 employees on board at 29 February 2020: exemption from the company contribution accrued in February, March, April and May 2021 shall be 100%, 90%, 85% and 80% respectively for employees whose activities are suspended and for the periods and percentages of working time affected by the suspension.

b) Companies with 50 or more employees on 29 February 2020: exemption from the company contribution accrued in the months of February, March, April and May 2021 shall be 90%, 80%, 75% and 70%, respectively, for employees of these companies whose activities are suspended, and for the periods and percentages of working hours affected by the suspension.

The possibility of requesting new ERTes due to restrictions or limitations to the activity is established from 1 February 2021 until 31 May 2021, to which the fee exemption mentioned for ERTes due to restrictions or limitations will be applicable.

Transformation of ERTE for restrictions to ERTE for limitations of activity or vice versa.

Companies that have obtained a decision approving an ERTE for restrictions may apply the measures corresponding to the situation of ERTes for limitations of activity as a result of the modulations in the health restrictions adopted by the competent authorities (and vice versa), and will not require the processing of a new ERTE.

Companies whose situation is altered must communicate the change of situation, the date of effect, as well as the centres and employees affected, to the labour authority that approved the file and to the employees' representatives.

The appropriate exemptions shall apply in each case.

ERTE for productive, technical, organizational or productive grounds ("ETOP") processed by art. 23 of RDL 8/2020: the possibility of applying for them is maintained from the moment the Royal Decree-law enters into force until 31 May 2021, in accordance with the provisions of Royal Decree-law 30/2020.

Distribution of dividends and tax transparency:

The limits and provisions related to the distribution of dividends and tax transparency are extended for all ERTes authorised before or under the Royal Decree-law.

Safeguarding of employment:

The safeguarding of employment will continue to apply in accordance with the provisions of article 5 of Royal Decree-law 30/2020, both in relation to previous periods and by virtue of the benefits contained in the Royal Decree-law. One must remember that the employer breaching this safeguarding of employment, being defined as keeping the level of employment for a 6 month period following the return to the activity, will be forced to return any Social Security bonuses that it may have enjoyed.

Protection of employment: extension of art. 2 and 5 of Royal Decree-law 9/2020 until 31 May 2021

It will remain in force until 31 May 2021: (i) the ban on any Covid-19 related termination; and (ii) the interruption of the calculation of temporary contracts affected by a suspension of the contract.

Overtime, new recruitment and outsourcing of activity during the term of an ERTE:

The limits and exemptions regarding overtime, new hiring and outsourcing shall remain in force until 31 May 2021 and shall also apply to all ERTes authorised under the Royal Decree-law.

Extraordinary measures on unemployment protection that will be extended:

The extraordinary measures for (i) unemployment protection, (ii) for employees who are included in an ERTE but do not receive an unemployment benefit, and (iii) the compatibility of unemployment benefits with part-time work in certain cases.

Likewise, companies that have already submitted a collective application for access to unemployment are not obliged to submit a new application for the employees included in the previous application.

Companies belonging to sectors with a high coverage rate of ERTes and a low activity recovery rate.

The following companies are considered to belong to sectors with a high coverage rate of ERTes and a low activity recovery rate:

- a) Those which have ERTes automatically extended until 31 May 2021 and,
- b) Those whose activity is classified in any of the codes of the National Classification of Economic Activities (“CNAE-09”) included in the Annex to the Royal Decree-law.

Between 1 February 2021 and 31 May 2021, the following shall be exempt from the payment of the employer's contribution to Social Security and for concepts of joint collection, in the corresponding percentages and under the corresponding conditions:

- a) Companies whose current ERTE due to force majeure based on article 22 of Royal Decree-law 8/2020 is automatically extended and which are considered to belong to sectors with a high rate of coverage by ERTE and a low rate of recovery of activity.
- b) Companies referred to in letter a) above, which transition, between 1 February and 31 May 2021, from an ERTE due to force majeure based on the causes set out in article 22 of Royal Decree-law 8/2020 to one ETOP ERTE.
- c) Companies referred to in letters b) and c) of section 3 of the first additional provision of Royal Decree-law 30/2020, which are holders of an ERTE ETOP based on article 23 of Royal Decree-law 8/2020, which have been entitled to the exemptions regulated in the aforementioned first additional provision, and whose activity is classified in any of the codes of the National Classification of Economic Activities -CNAE-09-.
- d) Companies whose current ERTE due to force majeure is automatically extended, based on article 22 of Royal Decree-law 8/2020 (ERTE due to Force Majeure) and whose business depends, indirectly and for the most part, on the companies referred to in the previous paragraphs, or which form part of their value chain.

It shall be understood that those companies that have been recognised as such, in accordance with section 2 of the first additional provision of Royal Decree-law 30/2020, are members of the value chain or indirectly dependent on the companies referred to in the previous paragraphs.

The companies indicated in the previous section will be exonerated, with respect to the employees affected by the ERTE who restart their activity from 1 February 2021, or who have restarted it since the entry into force of Royal Decree-law 18/2020, of 12 May, under the terms of its article 4.2.a), and of the periods and percentages of the working day worked from 1 February 2021, and in respect of the employees whose activities were suspended between 1 February 2021 and 31 May

2021, and of the periods and percentages of the working day affected by the suspension as follows:

- a) 85% of the employer's contribution accrued in February, March, April and May 2021, when the company had less than fifty employees or those assimilated to them registered with the Social Security authorities on 29 February 2020.
- b) 75% of the employer's contribution accrued in February, March, April and May 2021, when the company had fifty or more employees or those assimilated to them registered on 29 February 2020.

Mecuida Plan:

The Plan establishing work-life balance measures for COVID-19 will remain in force until 31 May 2021.

Social Security contribution bases:

The minimum contribution bases for the year 2021 shall be those in force on 31 December 2019, until the minimum occupational wage is fixed for 2021.

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