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# **GUIDE FOR ACTION AGAINST CORONAVIRUS**

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We are summarizing here all the information published so far in relation to the coronavirus, including the exceptional measures approved by the Government in Royal Decree Law 7/2020.

The Government has approved an **Action Plan** with a series of economic, labor and health measures to respond to the exceptional situation we are experiencing. Today RD-Law 7/2020 was published, which takes urgent measures to respond to the economic impact of COVID-19. In total, more than €18 billion will be allocated to combat this crisis.

## 1. FINANCIAL SUPPORT MEASURES

These measures seek to mitigate the possible impact that the scenario of forced containment may have on the most vulnerable sectors of the economy, that is, SMEs and the self-employed.

### 1.1 DEFERRAL OF TAX DEBTS AND PAYING IN INSTALLMENTS FOR SMES.

The Plan includes [a deferment for the payment of taxes for SMEs and the self-employed](#). As such, the Executive has made tax payment deferrals more flexible for a period of six months, upon request, with a discount on interest rates.

A necessary requirement for the granting of the deferral will be that the debtor is a person or entity with a volume of operations not exceeding 6,010,121.04 euros in 2019.

The following conditions will apply to the deferral:

- The term will be six months.
- No default interest will be accrued during the first three months of the deferment.

IMPORTANT: It should be noted that these deferrals are also exceptionally applicable to natural and legal persons with the following debts, provided that their global amount is below 30 thousand euros:

- Those corresponding to tax obligations that must be met by the withholding agent or the person required to make payments on account (DEDUCTIONS).
- Those derived from taxes that must be legally passed on unless it is duly justified that the amounts to be passed on have not been effectively paid (mainly VAT (IVA)).
- Those corresponding to tax obligations that the obligor must make in instalments as Corporation Tax (PAYMENTS MADE IN INSTALLMENTS).

Also, as shown on the [website of the Tax Agency](#):

*“The deadlines for tax procedures are to be extended by an impending regulatory change. Don't worry if you have a pending process. While the regulatory change is approved, the Agency is aware of the situation and will not consider the deadline to have been missed. We can postpone your appointment; we will call you to inform you of the new date”.*

## 1.2 ENABLING AN OFFICIAL CREDIT INSTITUTE (ICO) LINE OF CREDIT.

A specific financing line is operated through the Official Credit Institute to certain companies and self-employed persons who are considered especially affected by the coronavirus. There will be 400 million euros of aid in order to meet liquidity needs, especially for companies and self-employed workers in the tourism sector, as well as related activities that are being affected by the current situation.

Among the most important measures announced, is the authorization of lines of credit to help SMEs through the Official Credit Institute (ICO), as well as the deferral and payment in instalments of tax debts for SMEs for 6 months. It has also announced fiscal stimulus measures to return to the situation we had before the coronavirus.

## 1.3 SOCIAL SECURITY ALLOWANCES

Support measures have been established to prolong the period of activity of workers with discontinuous fixed contracts in the tourism, commerce and hospitality sectors linked to tourist activity.

To protect employment, the Social Security allowances have been extended for discontinuous fixed contracts to cover contracts from February to June 2020 in the tourism, commerce and hospitality sectors linked to tourism activity.

Specifically, companies may apply an allowance during said months of 50% of business contributions to Social Security for common contingencies, as well as for the concepts of joint collection of Unemployment, FOGASA (Wage Guarantee Fund) and Professional Training of said workers.

*Likewise, to **help parents** who have to stay at home to care for their children in those Autonomous Communities where teaching activity in educational centers has been suspended, flexibility in the working day to care for children has been established. In terms of jobs, working from home and videoconferencing is recommended.*

*Furthermore, in the health field, €1 billion will be allocated to Health and €2.8 billion to the Autonomous Communities for health care.*

## 2. LABOR MEASURES

In view of the coronavirus emergency situation, Royal Decree-Law 6/2020 has been published, which includes the exceptional measures approved in Spain in recent days.

### 2.1 ISOLATION PERIODS: SICK LEAVE DUE TO AN ACCIDENT AT WORK

Until the publication of RDL 6/2020, of March 10, the isolation periods derived from infection by coronavirus were considered as sick leave due to temporary disability derived from common disease. However, based on this rule these periods of isolation are considered exceptional, **similar to the situation of an accident at work**, for the purpose of the economic benefit of temporary disability.

According to the RDL, “the date of the causative event will be the date on which the isolation or illness of the worker is agreed, without prejudice to the fact that the leave is issued after that date”. Therefore, the duration of the benefit will be set by the part of the leave due to isolation and the corresponding medical discharge, although the date of the commencement event will be the one in which the isolation or illness of the worker is agreed, without prejudice to the leave being issued later.

All those cases of preventive isolation are excluded from this consideration without having been agreed upon by the health services.

**IMPORTANT:** How to process medical leave and discharge using IT for cases of coronavirus infection.

- **Who:** medical leave/discharge can only be issued by the doctors in the Public Health Services, both in situations of isolation and illness, and to all workers who need it, so they cannot be issued by doctors of Mutual Collaborators with Social Security (MCSS), the Marine Social Institute or Collaborating Companies.
- **How:** the contingency to be completed by said physicians of the Public Health System will always be due to Common Illness (although for real purposes they are considered to be an accident at work).
- **Duration:** the period of these IT processes is set between 5 and 30 calendar days as stated in RD 625/2014, the issuance of the first confirmation of leave will not exceed more than seven calendar days from the date of initial medical leave. Successive confirmations, if necessary, may not be issued more than fourteen calendar days apart.
- **Payment of benefit:** as long as medical leave has not been issued, actions aimed at suspension of the employment relationship and recognition of the right to the aforementioned financial benefit by IT will not start. Therefore, the following must be taken into account:
  - Prior to its issuance, medical leave for isolation will require confirmation of the origin of that isolation by the competent health authority of each Autonomous Community or whomsoever they authorize to do so.
  - The physical presence of the worker is not necessary for confirmation of sick leave, as long as there is an indication from the authority in cases of isolation and confirmation of the disease by available means in the Health Service (clinical histories).
  - When the period of isolation/contagion or illness is known after its start, the leave will be issued retroactively.

**Note.** The National Institute of Social Security (INSS) has just reported through the Association of Mutuals for Accidents at Work (AMAT) on the management of Direct Settlement for CORONAVIRUS processes, in the sense that:

- It will inform the General Treasury of Social Security (TGSS) of the periods of withdrawal due to isolation or coronaviruses as derivatives of Accidents at Work, instead of Temporary Disability due to Common Contingencies (ITCC).
- Therefore, the Direct Settlement System will allow compensating of the ITCC subsidy from the day after medical leave and at 75%, since it will have changed to contingency.
- It must be remembered that, in view of this exceptional situation, measures are being taken by the INSS or TGSS that may change, in which case, the INSS communicate that they will report on the changes that may take place.

## 2.2 DECREASE IN PRODUCTION DUE TO CORONAVIRUS

According to **current labor legislation**, the following options are available to companies, starting with the least burdensome:

- Possible arrangements for workers to take **vacations** to avoid the aforementioned measures.
- Application of irregular workdays.
- Possibility of substantial modifications to individual working conditions.
- Temporary closure of the company and the corresponding suspension of contracts due to force majeure (without employment and without salary), in the event that the coronavirus affects the specific area where the company is located.
- Possibility of undertaking collective dismissal or temporary redundancy (ERTE).

## 2.3 TEMPORARY REDUNDANCY (ERTE) AND SUSPENSION OF CONTRACTS BY FORCE MAJEURE

Given the current situation, many companies are considering the possibility of carrying out collective temporary employment regulation.

As such, it is important to differentiate between conventional ERTE and the suspension of derivative contracts due to force majeure. Throughout this article, we indicate the main causes.

That said, it is expected that the Government will take measures in the coming days, since in the areas especially affected by the coronavirus, the processing of conventional ERTes seems especially complicated and contrary to the recommendations given by the health authorities, to the extent that an obligation to negotiate with the Legal Representative of the Workers (RLT) is indicated, as well as the fact that the timeframes that are involved are long. Therefore, it is likely that the possibility of suspending contracts through force majeure will be decreed, or extraordinary measures will be established, although it will be necessary to be attentive in this regard.

### Temporary redundancy (ERTE)

- **Objective:** (i) Suspend labor and employment relations, or; (ii) reduce the working day temporarily by between 10% and 70%, without the possibility of overtime work except through force majeure.
- It will apply regardless of the number of workers in the company and the number affected by the suspension.
- **Application time:** It must be adapted to the current situation to be overcome.



- It does not generate any right to compensation in favor of the worker, although the worker will be entitled to unemployment benefit.
- There must be economic, technical, organizational and production causes.
  - Economic causes: Negative economic situation, in cases such as the existence of current or anticipated losses, or persistent decrease in the level of ordinary income or sales. It will be understood that there is a persistent decrease if during two consecutive quarters the level of ordinary income or sales of each quarter is lower than that registered in the same quarter the previous year.
  - Production causes: Changes in demand for products or services.
  - Organizational causes: Changes in the systems and methods of work of personnel or in the way of organizing production.
  - Technical causes: There are changes in the scope of the means or instruments of production.
- It will begin with the communication to the workers or to the legal representative of the workers (RLT) of their intention to start the procedure.
- Subsequently, it is communicated to the competent labor authority and there is the simultaneous opening of a consultation period with the RLT. This communication and opening must be done within the following deadlines:
  - If there is an RLT: Maximum period of 7 days from the initial communication for the constitution of the negotiating committee, serving the existing work centers.
  - If there is no RLT: Maximum period of 15 days from the initial communication, since the workers must choose the interlocutors who will negotiate with the company.
- This initial communication must be accompanied by various documents, specifying the causes; number and classification of affected workers and employees in the last year; steps to be taken; criteria taken into account for the appointment of workers; explanatory history; economic and accounting documentation where appropriate; technical reports.
- Negotiation not exceeding fifteen days in good faith. Unless otherwise agreed, at least two meetings shall be held, separated by an interval not exceeding seven days nor less than three.
- After the end of the consultation period, the employer will notify its final decision to the workers and the labor authority within a period not exceeding 15 days.

## Suspension of contract due to force majeure

### *What is force majeure?*

It is considered to be when an inevitable event occurs that makes the continuation of an employment relationship impossible for all purposes, as well as when decisions by authority prevent the employment relationship from continuing. Except in those cases in which work centers have been closed by decision of the authorities, we believe at this time that this type of suspension is complicated, although each specific case must be analyzed separately.

- It must be verified by the labor authority.
- It will apply regardless of the number of workers in the company and the number affected by the suspension.
- It begins at the request of the company to the labor authority, together with the means of evidence it deems necessary and communication to the RLT.
- The resolution of the labor authority must be issued within 5 days from the request and must be limited to verifying the existence of force majeure.
- Once the cause has been notified and verified, the company must communicate the final decision to both the RLT and the labor authority.

### **3. RECOMMENDATIONS IN THE WORKPLACE**

Regardless of the package of measures that has been announced, in recent days rules have been issued to clarify the situation in the workplace. Summarized below are some of the recommendations given by the Ministry of Health.

#### **3.1 PROTECTION OF HEALTH AND SAFETY AT WORK**

The company has the obligation to adopt all necessary measures to protect employees in matters of health and safety at work.

With this objective, companies have various means of informing about and executing prevention plans:

- the recommendations adopted by its prevention services;
- the information provided by the Ministry of Health;
- the action procedure determined for the Occupational Risk Prevention Services issued by the Ministry of Labor and Social Economy against exposure to coronavirus;
- any other recommendation published by state, international and/or regional organizations.

#### **3.2 PREVENTION MEASURES THAT THE COMPANY CAN ADOPT**

In addition to what was mentioned in the previous point, as well as other cleanliness and personal hygiene measures (constant hand washing, for example), the company can also adopt other measures to avoid infections and ensure the health of workers.

However, the company has a limitation imposed on these measures: it should never interfere in the private life of the worker, which would happen if, for example, the company forced the worker to take their temperature in the workplace or prohibited them from going to certain places to which they travel in their leisure time. In all cases, these measures can only be allowed if there is the prior consent of the worker and provided there is a favorable report from the legal representative of the workers.

If these requirements are not met, these measures could constitute a violation of the worker's right to privacy.

People who meet any of these criteria are considered to be at risk of being infected:

- Anyone with a history of travel to affected areas.
- Anyone who has been in close contact with a confirmed case within 14 days of the onset of symptoms.

#### **3.3 INFECTED WORKER OR WORKER WHO HAS BEEN IN CONTACT WITH AN INFECTED PERSON**

According to the information we have, the regional public health authorities will establish protocols to ascertain the seriousness of each case. In all cases, the worker must be quarantined at home for a period of 14 calendar days. Here it is necessary to differentiate two suppositions in case the worker has been diagnosed or is undiagnosed.

- If they have been diagnosed and quarantined by the Public Health Services, refer to point 7.



- If the case is undiagnosed and quarantine is adopted as a preventive measure, the worker will not be considered to be on temporary medical leave and the company, as far as possible, should facilitate the adoption of measures for them to work remotely (working from home).

As this is very sensitive data, companies must make sure to keep anonymity and secrecy about the worker in both situations.

### 3.4 WORKER WHO DOES NOT WANT TO GO TO THE WORKPLACE FOR FEAR OF BEING INFECTED

In this case, the worker cannot refuse to go to the workplace. If the worker refuses for fear of being infected, it could lead to a disciplinary offense as established in the applicable Collective Agreement.

### 3.5 INFECTED WORKER. PROTOCOL FOR ACTION IN THE COMPANY

If there is a confirmed case of infection in the workplace, the company must send a **statement to all staff** informing them of the existence of the risk of contagion and of the measures to be adopted.

Likewise, **clear instructions** must be given in the case that activity needs to be interrupted due to serious, imminent and unavoidable danger and, if necessary, the workplace needs to be evacuated.

In addition to these measures, the company must promptly inform the Public Health Services of the Autonomous Community and follow their instructions. The first of these will be to immediately isolate people who may have had close contact with the infected worker. In this situation, it is probable that the company will have to stop its activity or adopt measures to temporarily suspend the activity, without prejudice to the possibility of adopting alternatives that allow the activity to continue (for example, working from home).

### 3.6 WORKING FROM HOME

The possibility of working from home seems to be one of the key measures recommended by government bodies that allows reconciling prevention measures with the continuation of business in similar terms, as indicated by the Minister of Health. As of today, it has been set as a recommendation and not as an obligation, although we should be aware of the suitability of the measure in these exceptional circumstances.

For these purposes, the company must provide, as far as possible, the material and tools necessary for workers to continue performing their functions from their homes in terms similar to how they had been doing in the work centers. For their part, the worker must declare and be aware of the need to have a suitable place in their home in order to carry out work, respecting the rules of prevention of occupational risk, without having to bear any additional costs.

Our recommendation is that, for all those employees who are going to be working from home, the company send an email (we do not see the need to sign contractual annexes) indicating among other points the following:

- that the measure is for an exceptional reason;
- the measure is temporary and for the duration of the exceptional situation;
- that in no case shall it be considered as a benefit or acquired right for the future;

- that all other rights and obligations remain in place for the duration of the measure;
- maximum collaboration is requested from all involved;
- if any employee lacks a suitable place for working from home, please indicate it as soon as possible in order to find an alternative.

We must be aware that all other business and worker obligations remain in place, meaning that there is still the obligation to register the working day, pay wages, apply disciplinary regimes, etc. That said, in an exceptional situation such as the one we find ourselves in, we understand that exceptional solutions are feasible.

As an example, for those companies that have a physical record of the working day in the workplace and cannot provide it electronically, we recommend the possibility that the workers at least send the actual working day via email or that automatic registrations are carried out for the whole day unless the worker indicates otherwise.

In the event that a worker refuses to work from home, and as long as the workplace remains open, they will not be obliged to do so.

### **3.7 WHAT HAPPENS WITH INTERNS OR TRAINEES?**

Currently each university is determining what to do with its students. There are two possibilities:

- cancel/suspend internships;
- apply the same flexibility measures to the interns as other workers.

In any case, and in the absence of official news in this regard, it is advisable to contact the different universities with which you have collaboration agreements.



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