

Legal Status in Spain

APR 1, 20



“A letter from home”

Dear clients and friends,

Our world has changed radically. Suddenly we find ourselves immersed in a war economy at a global level caused by a pandemic which, according to the medical experts, we will overcome in the near future but which will lead to an economic crisis with effects that are hard to estimate.

As lawyers, we are already providing assistance in the context of economic needs which were unforeseen only a month ago. In the employment area, we are working on the management of ERTes; in the corporate/commercial area, seeking agreements related to breach of contracts due to force majeure and in financial management and company survival, through negotiations with banks and suppliers. We are also working on the analysis of insolvency procedures as a survival mechanism for many companies to make it through this difficult period.

Bartolome & Briones is providing a series of information articles which will be updated according to the legal news that emerges in the following days, weeks, and months.

Ánimo y seguimos...

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Index

1. Commercial measures	4
2. Employment measures	7
3. Tax measures	16
4. Litigation measures	19

1. Commercial measures

Commercial

The main flexibility measures related to the obligations of civil, commercial and cooperative societies, associations, foundations and their management bodies, enacted by Royal Decree Law 8/2020, of March 17, on extraordinary urgent measures to deal with the economic and social impact of COVID-19, are detailed below:

- 1. Management bodies' meetings:** provision is made for holding management and administrative bodies' meetings for commercial companies, associations, civil societies, cooperative societies governing council meetings, and foundations' boards of trustees meetings through telematic systems or in writing, without the need for express provision to this effect in Corporate Statutes.
- 2. Annual Accounts:** The period of three months counted from the end of the financial year for the formulation of the Annual Accounts is suspended until the state of alarm is lifted, at which time the aforementioned period will be resumed for an additional period of three months.
- 3. Board General Meeting:** To be held within the three months following the date of formulation of the Annual Accounts (which shall be calculated from the end of the new period available to the administrative body for their formulation, indicated in point "2" above).
- 4. Right of separation of shareholders:** Suspension of the legal period established for this purpose, which shall be resumed once the when the state of alarm is lifted.
- 5. Dissolution:** In the event of a legal or statutory cause for the dissolution of a company, the period of time available for the directors to call the meeting to adopt the appropriate resolutions for this purpose is suspended until the state of alarm is lifted.
- 6. Responsibility of board members:** In the event that the cause for dissolution occurs during the period in which the state of alert is in force, the directors shall not be liable for the corporate debts incurred during that period.

7. Insolvency procedure:

- (a) Debtors in a state of insolvency shall not be obliged to apply for a declaration of insolvency until two months have elapsed since the end of the alarm state.
- (b) Nor shall there be a duty to apply for a declaration of insolvency while the state of alarm is in force in the case of debtors who have notified the court competent for the declaration of bankruptcy of the commencement of negotiations with creditors to reach a refinancing agreement, or an out-of-court settlement agreement, or to obtain adherence to an advance proposal for a settlement, even if the period referred to in the fifth paragraph of Article 5 bis of the Bankruptcy Law has expired.

2. Employment measures

Employment

Current situation

Because of the current health crisis at the national and international level due to the devastating spread of the Coronavirus (also known as Covid-19), the Government of Spain has so far approved the following regulations as a matter of urgency:

- Royal Decree-Law 6/2020, of 10 March, adopting urgent measures in the economic area and for the protection of public health.
- Royal Decree-Law 7/2020, of 12 March, adopting urgent measures to respond to the economic impact of COVID-19.
- Royal Decree 463/2020, of 14 March, declaring a State of Alarm for the management of the health crisis situation caused by COVID-19.
- Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19.
- Royal Decree-Law 9/2020, of 27 March, which adopts complementary measures in the field of employment to alleviate the effects of Covid-19.
- Royal Decree-Law 10/2020 of 29 March regulating recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against Covid-19.

Measures adopted in the field of labour and social security law

The measures approved in the area of labor relations by the Spanish Government due to the impact on the economy of the Covid-19 health crisis are aimed at strengthening the protection of workers and companies that have been affected by this health emergency and also at making labor relations more flexible in order to adapt to this extremely serious situation.

Likewise, in terms of redundancy proceedings (hereinafter ERTes) [Temporary Employment Regulation Procedures], the regulations have been clarified allowing the adoption of an ERTE due to force majeure in those cases in which the employee has been prevented from carrying out their functions as a result of the declaration of the State of Alarm or isolation due to Covid-19.

In addition to this, measures have been adopted to promote teleworking or distance working, so that companies avoid, as far as possible, suspending their activities with the negative consequences that this entails and thus minimize the risk of contagion.

The most important measures are summarized below:

1. Royal Decree-Law 6/2020 of 10 March adopting certain urgent measures in the economic field and for the protection of public health.

1.1 Isolation arising from or contagion by Covid-19 shall be considered to be a “work accident”.

In other words, for those cases in which employees are in quarantine or infected by Covid-19, this will be considered, exceptionally, to be the equivalent of a work accident or an occupational disease.

Accordingly, employees in such situations will be entitled to receive a temporary disability benefit equal to 75% of the regulatory base from the day after they leave.

This benefit is available to all employees and self-employed persons, provided that they are registered with the social security system.

2. Royal Decree-Law 7/2020, of 12 March, adopting urgent measures to respond to the economic impact of COVID-19.

2.1 Bonuses for tourism, commerce and the hotel and catering industry.

All those companies involved in tourism, commerce and the hotel and catering sector (provided they are linked to the tourism sector), whose productive activity is generated in the months of February, March, April, May and June, and which hire or maintain employees with fixed and discontinuous contracts during these months, shall be granted a bonus of 50% of the company quota for common contingencies, as well as for joint collection of unemployment, FOGASA and professional training. The duration of the bonus shall be from 01.01.20 to 31.12.20, except in the Balearic and Canary Islands, where it will be applied during the months of February and March.

3. Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19.

3.1 Measures related to teleworking

a. Promotion of teleworking (Article 5)

Measures are established to promote the use of those organizational systems that allow activity to be carried out through alternative mechanisms, particularly by means of telework, with the company having to adopt the appropriate measures if this is technically and reasonably possible and if the necessary adaptation effort is proportionate.

These alternative measures, particularly distance working, should take priority over temporary cessation or reduction of activity.

b. Enabling self-evaluation in the area of prevention in the workplace (Article 5)

It is established that, in order to facilitate teleworking in those sectors, companies or jobs in which it was not foreseen until now, the obligation to carry out risk evaluation, in the terms provided in Article 16 of Law 31/1995, of November 8, on the Prevention of Occupational Risks, will be understood to be fulfilled, exceptionally, through self-evaluation carried out voluntarily by the employees themselves.

3.2 Measures relating to work-life balance

a. Employees may adapt or reduce their working hours by up to 100% (Article 6)

Employees who can prove that they have a duty of care towards their spouse or partner, as well as towards relatives by blood up to the second degree of the working person, shall be entitled to have their working day adapted and/or reduced, when exceptional circumstances arise in connection with the actions required to prevent the community transmission of the Covid-19.

These exceptional circumstances will be understood to occur when the presence of the working person is necessary to care for any of the persons indicated in the previous section who, for reasons of age, illness or disability, need direct personal care as a direct consequence of the Covid-19. Likewise, exceptional circumstances will be considered to exist when there are decisions adopted by the government authorities related to Covid-19 that result in the closure of educational centers or of any other nature that provide care or attention to persons in need of them. Exceptional circumstances requiring the presence of the working person will also be considered to exist when the person who has hitherto been responsible for the direct care or assistance of the working person's spouse or relative up to the second degree cannot continue to do so for justified reasons related to Covid-19.

The right provided for in this article is an individual right of each of the parents or carers concerned and must be based on a co-responsible distribution of the care obligations and the avoidance of the perpetuation of roles, and must be justified, reasonable and proportionate in relation to the situation of the company, particularly in the event that there are several working people who make use of it in the same company.

3.3 Measures related to ERTes

a. Flexibility in the processing of ERTes due to force majeure (Article 22)

In this regard, all those suspensions of employment contracts or reductions in working hours directly caused by loss of activity resulting from government measures adopted as a consequence of Covid-19 (including the declaration of the State of Alarm) and which involve the suspension or cancellation of activities, temporary closure of premises, restrictions on public transport and on the mobility of people and goods, lack of supplies, or urgent situations due to staff contagion and preventive isolation measures shall be considered force majeure.

Due to the extraordinary urgency required to adopt measures such as the ERTes, the deadlines for their processing have been made more flexible. Exceptionally, the resolution of the Labour Authority, following an optional report by the Labour Inspectorate, which establishes the

presence of force majeure, must be issued within a maximum of 5 days from the date of its request. This contrasts with the previous time limit, which could be up to 15 days.

Furthermore, because of the extraordinary need to speed up the procedure, there shall be no period set down for the establishment of a special negotiating body or a period of prior consultation, as the consultation period was normally 15 days and the time limit for the establishment of the special negotiating body was 7 days, sometimes up to 15 days.

In place of this, the company must communicate its request to the workers and transfer the previously mentioned report and supporting documentation, if any, to their representatives.

b. Exemption of companies from the obligation to pay social security contributions for employees affected by a force majeure ERTE due to Covid-19 (Article 24)

In the ERTes processed and authorized on the basis of temporary force majeure linked to Covid-19, the Tesorería General de la Seguridad Social [General Treasury of Social Security] will exempt companies from the payment of their company contribution, as well as that relating to contributions for joint collection during the period of suspension of contracts or reduction of working hours authorized on that basis in cases when a company, on 29 February 2020, had less than 50 employees registered with Social Security.

If the company had 50 or more employees registered with the Social Security authorities on that date the exemption from the obligation to pay contributions will be 75 % of the company's contribution.

This exemption also applies to companies which have carried out an ERTE before the entry into force of Royal Decree Law 8/2020, provided that the ERTE is a consequence of Covid-19.

c. Enable access to unemployment benefits for employees without the required contribution period (Article 25)

In the cases of ERTes, due to the special circumstances derived from Covid-19, the right to contributory unemployment benefit is recognized for the employees affected, even if they have not fulfilled the minimum period of contributory payments normally necessary to do so.

This right applies to those affected by ERTes prior to Royal Decree-Law 8/2020 of 17 March, if they are for a cause related to Covid-19.

d. Periods of unemployment because of ERTes arising from Covid-19 shall not be taken into account. (Article 25)

In the cases of ERTE due to the special circumstances derived from Covid-19, the period in which the unemployment benefit is received at the contribution level as a result of the aforementioned extraordinary circumstances shall not be counted for the purpose of consuming the maximum established periods for receiving it.

This right also applies to those affected by ERTes prior to Royal Decree-Law 8/2020 of 17 March, if they are for a cause related to Covid-19.

4. Royal Decree-Law 9/2020, of 27 March adopting complementary measures in the field of employment to alleviate the effects of Covid-19.

4.1 Measures related to ERTes

a. Speeding up the processing and payment of unemployment benefits to workers affected by an ERTE as a result of the Covid-19 crisis (Article 3)

Companies that carry out an ERTE as a result of Covid-19 are obliged to submit, collectively, the application for unemployment benefit to the State Employment Service (SEPE) of the workers affected by the measure of suspension or reduction of working hours.

The time limits are five days from the date of the ERTE application if it is for reasons of force majeure, or from the date of notification to the labor authority of the ERTE decision (if it is for economic, productive, technical or organizational reasons related to Covid-19). If the force majeure occurred before 28.03.20, five days will be counted from that date.

b. Protection of temporary workers affected by an ERTE (Article 5)

In the case of temporary contracts (including training, substitution and interim contracts) that have been suspended by an ERTE due to economic, productive, technical or organizational reasons or force majeure as a result of the COVID-19 health crisis, their period of duration will be considered to be interrupted.

c. Limitation of the duration of the ERTE due to force majeure to the State of Alarm and its extensions (First additional provision)

The ERTes that have been issued based on force majeure, permitted by the Royal Decree 463/2020, in the context of the Covid-19 health crisis will have a duration restricted only to the period of validity of the State of Alarm.

Furthermore, if the authority competent to establish the facts causing the suspension of the employment contract does not resolve the matter within the legally established period, its silence must be interpreted positively, and the duration of the suspension must also coincide with the duration of the State of Alarm.

d. Prosecution of fraudulent or incorrect unemployment benefit or ERTE claims resulting in wrongful receipt of benefits (Second Additional Provision)

If companies submit incorrect or false applications for ERTes and/or apply for measures to suspend or reduce working hours that are not sufficiently connected with the cause given for them and this leads to the improper benefits being received, the sanctioning regime established in the Law on Infractions and Sanctions in Social Order (LISOS) is applicable and this categorizes such conduct as a serious infraction.

Furthermore, the LISOS sanctions the falsification of documents in order to facilitate employees' access to unemployment benefits in a fraudulent manner as a very serious infringement.

In this case, the company must return to the management entity the benefits unlawfully received by the employee, deducting them from the unpaid salaries, the maximum limit being the sum of those salaries.

e. Setting the date of effect of the unemployment benefit (Third additional provision)

In the case of unemployment benefits resulting from the adoption of an ERTE due to force majeure, the date of the unemployment situation shall coincide with the time when the cause occurred. Otherwise, if it is due to economic, organizational, technical or productive causes, it shall be at the time when the company informs the competent labor authority of the decision taken.

4.2 Measures relating to the termination of employment contracts

a. Prohibition of dismissal for objective reasons (economic, organizational, technical, productive or force majeure) when they have a cause related to the COVID-19 (Article 2)

It is prohibited to carry out objective dismissals justified by a cause related to Covid-19, whether economic, organizational, technical, productive or force majeure. In this regard, a dismissal for these causes is characterized as unjustified or null, according to what is established in the Workers Statute.

5. Royal Decree-Law 10/2020 of 29 March regulating recoverable paid leave for employees who do not provide essential services in order to reduce population mobility in the context of the fight against Covid-19.

5.1 Measures concerning compulsory recoverable paid leave

a. Compulsory recoverable paid leave (Articles 1, 2 and Second Transitional Provision)

Employees who have not been affected by the suspension of activities and opening of premises enacted by Royal Decree 463/2020 declaring the State of Alarm, must have access on a mandatory basis to recoverable paid leave, between 30.03.20 and 09.04.20, both inclusive.

Unlike the people affected by the application of an ERTE, in the case of paid leave, they are entitled to receive the full salary, including the basic salary and the salary supplements.

However, the following are excluded from the recoverable paid leave provision : workers who provide services qualified as essential in the annex to Royal Decree Law 10/2020, workers who have been affected by the suspension of their employment contract due to the application of an ERTE, workers who are on leave, those whose contract has been suspended for other legally

established reasons or those who can continue to carry out their activity normally by means of teleworking or any of the other non-presential modalities of providing services.

In the case of workers in the field of transport who are carrying out a service that is not included in the annex to Royal Decree Law 10/2020 at the moment when it comes into force, they will begin the recoverable paid leave once they have completed the service in progress, including the corresponding return operation as part of the service if applicable.

b. Recovery of hours not worked during paid leave (Article 3)

The recovery of working hours can start from the end of the State of Alarm until 31.12.20.

The way the paid leave hours are to be made up must be negotiated between the workers' representatives and the company during a consultation period of a maximum of 7 days

In the event that there is no legal representation in the company, the representative committee must be made up of the most representative unions of the sector to which the company belongs and with the legitimacy to be part of the negotiating committee of the applicable Collective Agreement. If this is not possible, the negotiating committee must be made up of three employees of the company itself, elected in accordance with the provisions of Article 41.4 of the Workers Statute.

The quorum to reach the agreement will be the majority, provided that the majority of those affected by the extraordinary leave are represented. This commission must be constituted within a non-renewable period of five days.

During the consultation period, it may be agreed to replace this procedure with the mediation or arbitration procedures provided for in inter-professional agreements at state or regional level (Article 83 of the Workers Statute)

c. Minimum level of activity required in the case of the application of compulsory recoverable paid leave (Article 4)

Companies that are obliged to apply compulsory recoverable paid leave may, if necessary, set the minimum number of staff or the shifts that are strictly necessary in order to maintain the indispensable level of activity.

d. Guarantees for the resumption of business (First transitional provision)

A margin is granted to the companies, in case it is impossible to immediately interrupt their productive activity, so that they can carry out the tasks that are indispensable during Monday 30th of March so that they can make effective the recoverable paid leave without causing irremediable or disproportionate harm to the future resumption of the business activities.

5.2 Measures related to essential services

a. Essential services in the judicial system (Third additional disposition)

Judges, prosecutors and lawyers employed by the judicial system and other related personnel will continue to deal with procedural actions not suspended by Royal Decree 463/2020. In addition to this, they will continue to provide services for the provision of essential civil registry services in accordance with the instructions of the Ministry of Justice.

b. Public employees and workers with their own specific legislation (First additional disposition)

In relation to public employees, the Ministry of Territorial Policy and the Civil Service and the competent authorities in the Autonomous Communities and local entities are empowered to issue the necessary instructions and resolutions in order to regulate the maintenance of essential public services.

c. Measures relating to public sector procurement (Fifth additional disposition)

The measures relating to recoverable paid leave shall not apply to employees of businesses undertakings awarded public works, service and supply contracts that are essential for the maintenance and safety of public buildings and the proper provision of such services on a non-presential basis.

Furthermore, activities relating to contracts with the public sector can continue to be carried out if they are listed in the Annex to Royal Decree Law 10/2020.

3. Tax measures

Tax

The economic impact that the COVID-19 outbreak is having on the Spanish economy has led the government to take a series of tax measures to try to alleviate the effects it is having on Spanish companies and these measures have a significant effects on their day-to-day operations.

1. Measures related to deferral of payments:

Individuals or entities with a volume of operations not exceeding 6.010.121,04 euros in 2019 may defer the payment of the tax debt corresponding to all those returns-settlements and self-assessments whose deadline for presentation and payment ends from 13 March 2020 and up to 30 May 2020, both inclusive, provided that the applications presented up to that date meet the requirements referred to in article 82.2.a) of the General Tax Law (limited amount, currently 30,000.00 euros).

The conditions for deferment are as follows:

- i. The period of deferral will be six months.
- ii. No interest on arrears will be accrued during the first three months of the deferment.

2. Flexibilization of tax deadlines:

The following settlement periods are extended:

- Payments of tax debts arising from settlements both during the voluntary and the enforcement periods, once the enforcement order has been notified.
- Expiry of time limits of instalments and fractions of debts deferred or paid in instalments.
- Deadlines for auctions and in seizure or attachment proceedings.
- Deadlines for responding to requests, seizure proceedings or requests for information.
- Deadlines for submitting arguments on the opening or hearing of proceedings:
 - Tax enforcement.
 - Sanctions.
 - Declaration of invalidity return of sums unduly paid, rectification of material errors and revocation.
- Deadlines for responding to requests, formulating arguments on the opening or time limits for hearing in those acts before the *Dirección General del Catastro* [General Directorate of Cadastre].

The deferral granted will be until:

- a) 30 April 2020 for those acts notified before 18 March.
- b) 20 May 2020 for those acts communicated after 18 March.

The aforementioned deferrals shall not be applicable to the presentation of tax returns and self-assessments.

3. Procedures relating to the economic-administrative jurisdiction (appeals before the Economic-Administrative Courts):

- **Lodging of appeals:** for litigation whose time limit had not expired prior to the entry into force of Royal Decree 463/2020 of 14 March, the term for lodging economic-administrative appeals or claims will be one month from 1 May or the day following the end of the State of Alarm, if this is later. However, in the absence of a decision by economic-administrative bodies on the matter, the precautionary principle would recommend that the ordinary period for responding be respected.
- **Formulation of arguments:** if the relevant period had begun to run before 18 March, it is not affected by the new regulation, and therefore must be processed within the corresponding period in accordance with the ordinary rule. However, if the opening of the period for arguments is notified between March 18 and April 30, the period is extended until May 20, 2020, unless in accordance with the general regulations the applicable period is longer. However, as there is no specific mention of this procedure in the new regulations, it is recommended to process it within the period applicable to ordinary regulations.

4. Litigation measures

Litigation

Royal Decree 463/2020 of 14 March, which established the State of Alarm as a result of the coronavirus, requires the suspension of all legal proceedings, in all jurisdictions, and of all procedural deadlines, except for certain special cases such as criminal proceedings with detainees, preventative measures in the area of violence against women or minors, and matters involving the protection of fundamental rights.

1. Suspension of time limits

The suspension of time limits means that all time limits that were in progress are now halted and will be resumed when the State of Alert ends. They will not resume from the beginning but will continue to be counted from where they were on 14 March.

There were some initial doubts about this matter, but the State Attorney's Office has issued a binding ruling which established the correct interpretation.

However, the aforementioned rule allows that a judge may agree to the carrying out of any judicial action that they consider necessary to avoid irreparable damage to the interests of parties.

2. Suspension of a period of prescription or limitation

Furthermore, the Royal Decree suspends periods prescription or limitation for legal action. Consequently, the usual periods for any legal action, such as the five-year limitation period for claims for breach of contract, are interrupted and will resume when the State of Alert is lifted.

3. Written submissions

In connection with this suspension, the *Consejo General del Poder Judicial* (General Council of the Judiciary) agreed on March 18 to prohibit the filing of lawsuits and written submissions through the LexNet system, the online system through which attorneys usually file their written submissions. Although this system technically allows the filing of a written submission on any day at any time, this decision was taken on the basis that it was appropriate given the suspension imposed and to avoid saturating the courts. Consequently, any written submissions filed on LexNet after March 19 will be deemed as not having been submitted.

In theory, written submissions prior to March 19 are considered filed and will be processed when the State of Alert is lifted. However, there is doubt in this regard because it could be interpreted that the CGPJ decisions apply to all filings from March 14 onwards. Consequently, it is advisable to enquire in each case where a written submission has been filed in that period, and if required, resubmit it when the State of Alert is lifted.

