

Analysis of the Royal Decree-Law 11/2020 of 31 March, which adopts additional urgent measures in the social and economic field to address the COVID-19 crisis

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With the objectives of protecting and supporting the productive and social sectors, minimizing the impact and facilitating the recovery of economic activity as soon as the public health emergency caused by the COVID-19 epidemic comes to an end, the Government of Spain has approved the Royal Decree-Law 11/2020 of 31 March, which adopts additional urgent measures in the social and economic field to address the COVID-19 crisis (the Royal Decree-Law).

The following is a summary of those measures that have a direct impact on the field of labour.

Interpretation of the guarantee of employment clause

Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of the COVID-19 (the Royal Decree-Law 8/2020) regulates a commitment to maintain employment, by virtue of which the extraordinary measures in the field of employment provided for in that law (specifically, exemption from social security contributions for companies affected by procedures for the suspension of contracts or reduction of working hours due to force majeure arising from the health crisis of COVID-19) are subject to a commitment by the company to maintain employment for a period of six months from the date of resumption of activity.

The Fourteenth Additional Provision of the Royal Decree-Law, under the title "Application of the sixth additional provision of Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of the COVID-19, to companies in the performing arts, music, film and audiovisual sectors" offers highly relevant interpretative rules which, a priori, seem to be more general than those suggested by the title of the additional provision.

Specifically, the rule indicates that this commitment will be assessed in view of the specific characteristics of the different sectors and the applicable labour regulations, taking into account, in particular, the specificities of those companies that present a high variability or seasonality of employment or a direct relationship with specific events or shows, as is the case, among others, in the field of the performing, musical, film and audiovisual arts.

In particular, in the case of temporary contracts, the commitment to maintain employment shall not be deemed to have been breached where the contract is terminated by the expiry of the agreed period or the performance of the work or service which constitutes its subject-matter or where the activity which is the subject of the contract cannot be carried out immediately.

The Explanatory Memorandum adds the following: "*the commitment shall not be deemed to have been breached where the employment contract is terminated as a result of disciplinary dismissal declared to be fair, resignation, retirement or total or permanent disability or severe disablement of the worker*". Notwithstanding this, these exceptions have not been included in the specific regulation of the decree.

Companies in bankruptcy and procedures for the suspension of contracts or reduction of working hours arising from COVID-19

The measures provided for in Royal Decree-Law 8/2020 relating to the procedures for suspending contracts and reducing working hours on grounds of force majeure and for economic, technical, organisational and production reasons arising from COVID-19, will apply to firms in bankruptcy, provided that the factual assumptions underlying the measure are met.

The regulations governing the above procedures shall be understood to be those provided for in the Workers' Statute with the specialities set out in Royal Decree-Law 8/2020, without the procedure set out in Article 64 of Law 22/2003 of 9 July on Bankruptcy being applicable.

The applications or communications of the files must be formulated by the bankrupt company with the authorization of the bankruptcy administration, or by the bankruptcy administration directly, according to the regime of intervention or suspension of patrimonial powers.

The bankruptcy administration will be part of the negotiation period provided for in Article 23 of Royal Decree-Law 8/2020, in relation to the procedures for the suspension of contracts or reduction of working hours for economic, technical, organizational or productive reasons derived from COVID-19. In such cases, the decision to apply the measures on the suspension of contracts or reduction of the working hours must have the authorisation of the bankruptcy administration or be adopted by it, according to the system of intervention or suspension of economic powers, in the event that no agreement is reached in this respect during the negotiation period.

In any case, the application, resolution and measures applied must be immediately reported to the bankruptcy judge, by telematic means.

The bankruptcy judge will resolve the objections derived from the procedure of suspension or reduction of the working hours, which will be dealt with by the procedure of the bankruptcy incident in labour matters. The judgment handed down may be appealed against before the Social Chambers of the High Courts of Justice.

Moratorium on social security contributions

The General Treasury of the Social Security is authorized to grant six-month moratoriums, without interest, to companies and self-employed workers included in any social security regime, who request it and meet the requirements and conditions that will be established by Order of the Minister of Inclusion, Social Security and Migration. The moratorium may affect the payment of contributions whose accrual period, in the case of companies, is between April and June 2020 and, in the case of self-employed workers, between May and July 2020, provided that the activities they carry out have not been suspended as a result of the state of alarm.

This moratorium will not apply to contribution account codes for which companies have obtained exemptions from social security contributions as a result of the procedures for the suspension of contracts and reduction of working hours due to force majeure arising from the COVID-19 crisis.

Deferral of payment of social security debts

Companies and self-employed workers included in any social security regime may request the deferral of payment of their social security debts for which the statutory period of payment is between April and June 2020, with interest of 0.5% being applicable, provided that no other deferral is in force.

Other measures

The Royal Decree-Law approves other measures, among which the following stand out:

- **Extraordinary allowance for the termination of temporary contracts:** for a period of one month (except for possible extensions), an unemployment allowance is established in favour of employees who have had a fixed-term contract of at least two months' duration terminated after the entry into force of the state of alarm and who do not have the necessary contributions to qualify for another benefit or allowance, provided that they meet certain income requirements. This measure is understood to be applicable to those temporary contracts not affected by suspension procedures derived from COVID-19, since these contracts are interrupted for the duration of the measure, and shall come back into force once the suspension has ended.
- **Rescue of pension plans:** during the period of six months from the entry into force of the state of alarm, and within certain limits and conditions, pension plan participants may make their consolidated rights effective if they have been affected by the COVID-19 crisis because they are (i) employees affected by a procedure of suspension of contracts or reduction of working hours; (ii) employers who own establishments that have been suspended from opening to the public; (iii) or self-employed workers who have had to cease their activity.
- **Compatibility of childcare allowance and unemployment benefit or cessation of activity during the state of alarm:** during the state of alarm, the allowance for the care of children affected by cancer or other serious illnesses, which the employees were receiving on 14 March 2020, will not be affected by the suspension of the contract and reduction of the working hours due to the crisis of COVID-19. In these cases, the procedure will only affect the employee receiving this benefit in the part of the working day not affected by the care of the child. It will therefore be compatible the receipt of the allowance for the care of children affected by cancer or other serious illnesses with the receipt of the unemployment benefit that as a result of the reduction in working hours he or she may be entitled to receive. During the time that the state of alarm remains effective, there will be no obligation to make contributions, the period being considered as contributed for all purposes.

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