

Last 27th March the Royal Decree-Law 9/2020 was approved, establishing supplementary measures in order to alleviate the effects of COVID-19, mainly due to the significant stagnation that the labor market is recording, coupled with the significant volume of ERTE presented, since the declaration of the State of alarm.

The measures approved by the Government are summarized below:

1. Extraordinary measures for the protection of employment.

Employment agreements cannot be terminate based on force majeure or based on economic, technical, organizational and production causes (ETOP causes), this in relation to the current state of alarm due to COVID-19, but no restriction is established on dismissals that are justified by any other cause or on disciplinary dismissals.

2. Measures to speed up the processing and payment of unemployment benefits in case of suspension of contract or reduction of working hours.

The procedure for the recognition of the unemployment benefits, for all employees affected by ERTE, will be initiated by means of a collective application submitted by the company, acting on behalf of the employees. It must be presented in an official form.

The company will be obliged to communicate any variations in the data initially contained in the communication, as well as the termination of the application of the measure.

The communication must be sent by the company within **5 days from the request for the temporary employment regulation file** in cases of force majeure or from the date the company notifies the competent labor authority of its decision in the case of the ERTE based on ETOP causes because of the COVID-19. In the event that the request had occurred prior to the entry into force of this royal decree-law, the 5-day period will begin to run from this date.

The failure in notifying within the time limit will be considered a **serious infringement** under Article 22.13 of the Law on Infringements and Penalties in Social Order, whose **penalty may range from a minimum of 626 euros to a maximum of 6,250 euros**.



3. Limitation of the duration of ERTes based on force majeure (provided for in art. 22 of RD 8/2020).

The duration of the ERTes authorized because of force majeure causes may not extend beyond the period in which the extraordinary situation derived from COVID-19 is maintained, therefore, the maximum duration will be the same as that of the alarm state and its possible extensions.

4. Penalty regime and reimbursement of undue benefits.

Applications submitted by the company that contain false or incorrect information will be subject to the corresponding sanctions. The conduct of the company consisting of requesting measures, in relation to employment, that are not necessary or have insufficient connection with the cause that gives rise to them, will also be punishable, provided that they give rise to the generation or receipt of undue benefits.

The undue recognition of benefits to the employee for a cause not attributable to him/her, as a result of any of the breaches provided for in the previous section, shall give rise to a review, by own initiative of the Authorities, of the act of recognition of said benefits. In such cases, and without prejudice to the administrative or criminal liability that may correspond by law, the company must pay the amounts received by the employee to the management entity, deducting them from the wages that would have been due if they had not been paid, up to the limit of the sum of those wages.

5. Date of effect of the unemployment benefits.

The date of effect of the legal situation of unemployment in cases of force majeure shall be the date of the event causing it.

On the other hand, when the ERTE is due to any of the ETOP causes, the date of effects of the legal situation of unemployment must be coincident with or later than the date in which the company communicates the adopted decision to the Labor Authority.

6. Interruption of the calculation of the maximum duration of temporary contracts.

The suspension of temporary contracts due to their inclusion in ERTE procedure, whether due to force majeure or ETOP causes, will mean the interruption of the calculation of both the duration of these contracts and the reference periods for a period equivalent to the suspended period.



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