

AUXADI

Dismissals, salary reductions and other measures during COVID-19

A vision covering
Spain, US and Latam

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2.	Spain-Latin American-US: Keys to the dismissal processes.....	3
3.	Spain	5
4.	Mexico	9
5.	Colombia.....	11
6.	Chile	13
7.	Peru	17
8.	Brazil	19
9.	Ecuador.....	22
10.	Argentina	24
11.	United States	26



1. Spain-Latin American-US: Keys to the dismissal processes

Coronavirus Crisis is challenging countries worldwide and their economies by being affected by situations such as shutdowns, containment measures or extreme financial measures.

This situation undoubtedly threatens the viability of a significant number of companies. In this context, the protection of millions of employees is one of the objectives on the tables of the governments of many regions.

In the specific case of Spain, since the beginning of the pandemic in March, the ERTes processes (an acronym of '*Expediente de Regulación Temporal de Empleo*' – Temporary Employment Dismissals) have become a recurrent word in conversations of all kinds. Many organizations in this country have been forced to carry out measures of this nature or at least study the possibilities of a process of suspension of temporary contracts within their companies.

Spanish legislation defines the ERTE as a procedure by which a company in an exceptional situation requests authorization to dismiss workers, suspend contracts or reduce working hours temporarily, when they are experiencing technical or organizational difficulties that jeopardize the continuity of the activity.

Through this White Paper, we offer the keys to understand this type of solutions and its equivalents with respect to the main economies of Latin America and the United States, due to the links and important relationships that exist between these three regions and which affect multiple companies.

Throughout this comprehensive document, we will describe the measures of temporary contract suspension and its counterpart measures in a selection of countries, analyzing the following key points in each of them:

1. Regulatory Measures
2. Sectors or activities
3. Causes of contract suspension processes
4. Application process
5. Compensation or unemployment benefits
6. Business savings
7. Protection measures against dismissal

We hope that this initiative will shed some light on a complex moment for all those companies, both Americans and Spanish, with a strong exposure in these regions.





2. Spain



The number of files submitted due to Covid-19 is now close to 500,000 since the start of the Spanish temporary redundancy plan ERTE outbreak in Spain. This is an exceptional situation that forces us to understand more fundamental aspects of these processes.

2.1. Regulatory Measures

Spanish labour force adjustment plans (ERE) are procedures established in the Spanish legal system according to *Artículo 47 de Estatuto de los Trabajadores* (Article 47 of the Workers' Statute), whereby agreements are either suspended or reduced due to economic, technical, organisational or production reasons or due to force majeure.

The ***Real Decreto-ley 8/2020*** ("Spanish Royal Decree Law 8/2020") of 17 March contains emergency and special measures to deal with the economic and social impact caused by the Covid-19. The Spanish Government made changes to the procedure provided by *Artículo 47 de Estatuto de los Trabajadores* (Article 47 of the Workers' Statute) and classified the ERTE procedures into two groups: force majeure cases arising from Covid-19 and economic, technical, organisational and production (ETOP, by its acronym in Spanish) cases arising from Covid-19. The aim of these measures was to speed up the process of terminating agreements and shortening deadlines.

Updates after May 13th

Royal Decree Law 18/2020 of May 12, it has taken a new step forward, with special mention of the labor aspect and the Temporary Employment Dismissal Processes (known as ERTes). As the main novelty of this text, those companies and entities that have a temporary employment regulation file based on article 22 of Royal Decree-Law 8/2020, of 17 March, and are affected by the causes referred to in that precept that prevent the resumption of their activity, will continue in a situation of total force majeure derived from COVID-19, for the duration of the same and in no case beyond 30 June 2020.

Therefore, the deadline of 30 June is established for the ERTes due to force majeure adopted by the companies concerned that cannot restart the activity, even though the state of alert has ended. These companies and entities must proceed to reincorporate the workers affected by temporary employment regulation measures, to the extent necessary for the development of their activity, giving priority to adjustments in terms of reduction of working hours.

2.2. Sectors or activities

The declaration of the state of emergency led to the closure and suspension of the activity of many companies except those declared as essential. In this sense, the following activities were identified to be able to carry out ERTE due to force majeure:



- Commercial activities
- Cultural facilities
- Establishments and leisure activities
- Hotels and restaurants

The rest of the companies which are not part of these areas and which have been indirectly affected in their production and activity may consider ERTE due to ETOP causes arising from COVID-19.

2.3. Causes of contract suspension processes

Force majeure reasons. Those reasons that have a direct cause The following are considered as reasons arising from COVID-19: those with a direct effect on the loss of activity as a result of COVID-19, including the declaration of the state of emergency, involving the cancellation of activities, the temporary closure of public premises, restrictions on public transport and, in general, on the mobility of people and goods, the lack of supplies that seriously affect the normal flow of activity. Furthermore, this applies to urgent and extraordinary situations due to staff contagion or the implementation of preventive isolation measures issued by the health authorities, which must be properly recorded.

Economic, Technical, Organisational and Production (ETOP) reasons. These will be all those that are not among the situations of force majeure described above, if they arise from Covid-19.

2.4. Application process

The application process will depend on the reason which justifies the termination. In this sense, in cases of force majeure, the companies will have to communicate it to the workers and to the competent Labour Authority, attaching the technical report which justifies the process.

The procedure for ETOP cases is closer to the standard procedure and requires collective bargaining for approval. It will be compulsory to set up a negotiation committee with workers' representation and a consultation period of maximum 7 days to agree on the conditions of the ERTE. Afterwards, the company must in any case justify with the technical report to the Labour Authority the causes that have led to this situation and the steps taken in the negotiation.

Updates after May 13th

The State Public Employment Service must be notified of any changes that occur at the end of the application of the measure with respect to all or some of the persons affected, either in the number of these or in the percentage of part-time activity in their individual working day, when the relaxation of the restrictive measures allows for the effective return to work.

Companies that have been reincorporating workers, either totally or partially, must notify the State Public Employment Service of any changes in the data contained in the ERTE application within 15 days of the date on which the changes take effect.



With respect to temporary layoffs due to economic, technical, organizational or production causes negotiations may be initiated even if the ERTE remains in force due to force majeure and, if so, once the ERTE of force majeure ends, the effects of the ERTE due to these causes may be granted as of the date of termination of the previous one.

2.5. Compensation or unemployment benefits

During an ERTE, the worker will be entitled to receive a contributory unemployment benefit according to its regulatory base, both in the case of a 100% ERTE and in cases of reduced working hours due to periods of inactivity.

A new feature here is that the Spanish Government recognised that all workers included in an ERTE process, regardless of the minimum period of contribution, were eligible for this benefit. It is therefore a universal benefit without preconditions for all workers affected by an ERTE.

Updates after May 13th

The measures in the field of unemployment protection that were contemplated in Royal Decree Law 8/2020 of 17 March (and which referred to the extension of unemployment protection to all workers affected by an ERTE process derived from COVID-19 regardless of whether the requirements for access to the benefit were met) will be in force until 30 June 2020.

The exemptions in the contribution referred to in this article shall not have effect for workers, the period in which they are applied being considered as effectively contributing for all purposes, without the provisions of article 20 of the rewritten text of the General Social Security Act being applicable.

2.6. Business savings

In cases of force majeure, the Government allows a 100% exemption of employers' social security contributions in companies with less than 50 workers as of 29th February 2020 and a 75% exemption in companies with 50 workers or more.

Updates after May 13th

An important update is included on the subject of exemptions from Social Security contributions for those companies that are in a situation of ERTE due to force majeure and that are applying the exemption from contributions contemplated in Royal Decree Law 8/2020. For the contributions corresponding to the months of May and June the exoneration of quotas will work in the following way:

1. Companies affected by a temporary employment regulation file derived from force majeure that cannot restart their activity:

- a. Less than 50 workers: 100 % of the quotas.
- b. 50 workers or more: 75 % of the quotas.



2. Companies that can restart their activity, that were affected by a temporary employment regulation file derived from force majeure and that incorporate workers into the activity. The exemption will affect each person reincorporated:

- a. a. Less than 50 workers: for the May quotas the exemption will be 85 % and, for the June quotas, 70 %.
- b. 50 workers or more: for the May quotas the exoneration will be 60 % and, for the June quotas, 45 %.

3. Companies that can restart their activity and start it again, that were affected by a temporary employment regulation file derived from force majeure and that keep their staff in partial suspension. The exoneration will affect each person who maintains the suspension:

- c. Less than 50 workers: for the May quotas the exoneration will be 60 % and, for the June quotas, 45 %.
- d. 50 workers or more: for the May quotas the exoneration will be 45 % and, for the June quotas, 30 %.

In order for the exoneration to be applicable, this communication shall be made, for each contribution account code, by means of a responsible declaration that must be presented, before the calculation of the corresponding contribution settlement is requested, through the Electronic Data Remission System in the area of Social Insurance (RED System), regulated in Order ESS/484/2013, of 26 March.

The limit for the distribution of dividends in the company is established. In this regard, companies and entities with their tax domicile in countries or territories classified as tax havens under current regulations will not be eligible for temporary layoffs. In addition, they may not distribute dividends for the tax year in which these temporary layoffs are applied, unless they previously pay the amount corresponding to the exemption applied to social security contributions.

2.7. Protection against dismissal

The relaxation of the ERTE processes has been carried out in order to maintain employment after the crisis. Agreement terminations do not imply permanent termination and, at the same time, the regulation states that these measures will be subject to the maintenance of employment for 6 months after the activity is resumed. The regulation does not establish anything regarding the workers who are affected, but it is understood that, at least, it will be applied to the ones in ERTE.



3. Mexico



In mid-April, the number of layoffs offered by the Government of Mexico was around 350,000 since the first case of Coronavirus was detected on February 29. In addition to incentive measures such as the granting of loans to companies, this is the response of the North American country regarding the suspension of contracts before COVID-19.

3.1. [Regulatory Measures](#)

In the case of Mexico, **there is no specific regulation for the suspension of contracts**. In these cases, if the health contingency leads to a Mexican society to be temporarily suspended, the Federal Labour Law in articles 42 Bis, 427 and 429 establishes the points to take into account.

3.2. [Sectors or activities](#)

Contract suspension processes can affect all sectors and activities of the Country.

3.3. [Causes of contract suspension processes](#)

According to Article 427, the following are causes for the temporary suspension of labour relations in a company or establishment:

- I. Force majeure or fortuitous event not attributable to the employer, or his physical or mental incapacity or death, which produces, as a necessary, immediate and direct consequence, the suspension of work
- II. Lack of raw material, not attributable to the employer
- III. Excess production in relation to its economic conditions and market circumstances
- IV. The unattainable, of temporary, well-known and manifest nature of the exploitation
- V. Lack of funds and the impossibility of obtaining them for the normal continuation of the work, if it is fully verified by the employer
- VI. The lack of administration by the State of the amounts that it has been obliged to deliver to the companies with which it had contracted works or services, provided that they are indispensable
- VII. The suspension of labour or work, declared by the competent health authority, in cases of health contingency

3.4. [Application process](#)

Due to force majeure or the fortuitous case not attributable to the employer, the latter will not require approval or authorization from the Court. The company or its representative will



communicate the notice of the suspension to the Court so that it, prior to the procedure set forth in the Special Collective Procedure, approves or denies it as appropriate.

The suspension of work, declared by the competent health authority in cases of health contingency, will not require the approval or authorization of the Court.

3.5. Compensation or unemployment benefits

In cases of force majeure, compensation shall be established to be paid to the workers, taking into consideration, among other circumstances the probable time of suspension of work and the possibility of finding a new occupation, without exceeding the amount corresponding to one month's salary.

In the cases of suspension declared by the health authority, compensation will be equivalent to one day of the current general minimum wage, for each day the suspension lasts, without exceeding the maximum period of one month.

In both cases and in the absence of a state unemployment service, these financial compensations will be taken care of by the company.

3.6. Business savings

In the case of sick leave, said suspension is not a leave from the "work" employee, but is under the Social Security Law and must be treated as such (that is, as a disability and not as any other illness). In this sense, the employee's rights do not cease and the employee cannot be considered in suspension. In case of recovery, the employee will decide whether or not to rejoin.

Similarly, from the above, it also follows that disability could also be assumed within a range of work-risk illness. In this case, if the employee continues to physically work for the company and he contracts the virus for the activity he carries out, the Institute could issue a declaration of illness for work risk, which would imply an increase in his percentage of risk premium I work for 2021.

3.7. Protection against dismissal

There are no exceptional protection measures against dismissal. Only in the event that a union exists, it and the workers may request the Court every six months to verify whether the causes that originated the suspension persist. If the Court decides that this is not the case, it will set a term of no more than thirty days for the resumption of work. If the employer decides not to resume the activity, the workers will be entitled to compensation.



4.

Colombia



Colombia is the fifth country by affectation with respect to those infected by COVID-19. These are the measures that the country has implemented in relation to job suspension processes.

4.1. [Regulatory Measures](#)

In the case of Colombia, **no additional regulations have been established** and the regulations on contract suspensions are established in the Substantive Labour Code in its articles 51 and 52 as well as in the Internal Labour Regulations.

Article 51 establishes the possibility, under certain conditions, of the suspension of the employment contract due to force majeure or fortuitous event, which suggests processing before the Ministry, duly supporting and justifying it in accordance with article 51 of the CST.

4.2. [Sectors or activities](#)

The sectors and activities comprised are all companies belonging to the private sector.

4.3. [Causes of contract suspension processes](#)

The following causes are understood within the Substantive Labor Code:

- Force majeure or fortuitous event: at this point the Ministry has stated that it cannot directly consider that COVID-19 is a force majeure
- Due to the death or disability of the employer
- Due to suspension of company activities
- For paid worker's leave
- For disciplinary sanction
- For preventive detention of the worker
- Strike

4.4. [Application process](#)

There is a different process for each cause. In all cases a written notification will be required with the particularity of the following cases:

- Force majeure: causes of force majeure must be proven.
- Suspension of company activities: requires express authorization from the Ministry of Labour.
- Preventive detention of the worker: the worker or his relatives must communicate and bear the fact.
- Strike: the strike must be declared within the limits of legality and according to the procedure.



4.5. Compensation or unemployment benefits

Except in cases of strike, disciplinary sanction and preventive detention of the worker, there is no benefit whatsoever, due to the COVID-19 crisis, the possibility has been authorized for the worker to access their temporarily saved severance pay.

4.6. Business savings

There is no published measure that exempts companies from making their contributions, which is why they must maintain normal contributions.

4.7. Protection against dismissal

In all processes of force majeure or cessation of activity, the Ministry of Labour is monitoring and certifying that there are the causes that led to the suspension of the contract.

However, only in cases of preventive detention of the worker and strike is there a limit to the start of dismissal processes.





5. Chile



With more than 80,000 layoffs in the first half of April alone, the consequences of the Coronavirus for the contraction of economic activity in Chile have not been long in coming, especially in sectors such as construction, administrative services and tourism. To solve this situation, these are some of the measures taken by the ministry headed by María José Zaldívar.

5.1. Regulatory Measures

In Chile, the health crisis has led to the publication of the Employment Protection Law, Law No. 21,227, in the Official Gazette on April 6, 2020, which allows access to unemployment insurance benefits under Law No. 19,728 in exceptional circumstances.

This law allows "protecting the income and the employment relationship of workers when acts of authority, such as quarantines or closures of companies, prevent the worker from providing his services".

5.2. Sectors or activities

The text refers to all companies except those that are not affected by the closure of their businesses, or workers who previously have through the agreement or annex to the contract to maintain continuity of service.

The beneficiaries of this law are all workers affiliated to the unemployment insurance.

Excluded from this benefit are the following:

- Activities or establishments exempted from the paralysis of activities.
- Workers who have signed a pact by common agreement with the employer to ensure the continuity of the provision of services. Including workers who agree to reduce their working hours and who continue to receive all or part of their monthly remuneration.
- Workers who receive an allowance for incapacity for work of any kind.

5.3. Causes of contract suspension processes

There are three types of contract suspensions provided by the Act:

- **Suspension of the obligations of the contract of employment as a result of an act of the Authority:** in the event that there is an act or declaration by the competent authority, in its own right and by the sole ministry of the law, the contract of employment will be temporarily suspended, that is to say, cessation of the obligation to provide services and the corresponding obligation to pay remuneration and other allowances derived from the contract of employment, with the employer's obligation to pay the worker's social security and pension contributions remaining unchanged.



- **Pact of temporary suspension of the work contract:** it will apply for the area or territory affected by the effects of the act or declaration of authority, with the exception of companies whose activities or establishments are exempt from the suspension of activities.
- **Agreement on reduction of working hours:** Employers and workers affiliated to the unemployment insurance scheme may agree by common accord on the temporary reduction of working hours when the employer is in one of the situations that qualify for the signing of such an agreement, either through an individual agreement with the worker or through the trade union organization to which they are affiliated, in which they agree to a reduction of working hours of no more than 50% of the working hours stipulated in the individual employment contract.

These agreements may not be signed with workers who are entitled to a labor law, nor may the employer hire new workers to perform the same or similar functions performed by those who signed the agreements during their term.

5.4. [Application process](#)

The management procedure is the same in cases of total and partial suspension. An act or declaration of competent authority is required for the control of COVID-19, which involves the cessation of activities in all or part of the territory and which prevents or totally prohibits the provision of the contracted services.

It will apply for the area or territory affected by the effects of the act or declaration of authority, with the exception of companies whose activities or establishments are exempt from the cessation of activities. Workers who apply for this benefit must comply with one of the following requirements:

- Have three continuous contributions in the last three months immediately prior to the act of authority (Quarantine)
- Have a minimum of 6 continuous or discontinuous contributions during the last 12 months, as long as they register the last two with the same employer in the two months prior to the act of authority (Quarantine).

The average of the taxable remunerations accrued in the last three months in which contributions were registered prior to the act of authority will be considered to calculate the amount of the benefits to the worker.

The request for temporary suspension of the contract must be made by the employer through the electronic channels enabled by the AFC Chile (*Administradora de Seguro de Cesantía*), where the employer may register all the workers and may also request the payment of the benefits with retroactive effect, that is, they may access the benefits established by law, with respect to the period between the declaration of the State of Catastrophe (March 18, 2020) and the entry into force of the law for those workers who have entered into agreements or initiated processes of termination as from that date.



In cases of suspension due to reduction of the working day, the duration of this type of agreement will be as follows

- 3 months for fixed-term contracts or for work or service.
- 5 continuous months for an indefinite contract.
- The minimum duration of each agreement is one month.

Its effects must be executed, at least, from the first day of the month following the date of conclusion of the agreement. Employers must present one of the following situations to agree to the signing of this agreement

VAT contributing employers, who as of October 2019 have experienced a decrease in the average of their sales declared to the SII in any period of 3 consecutive months, exceeding 20% calculated with respect to the average of their sales declared in the same 3-month period of the previous fiscal year.

- Company that is in a reorganization proceeding, according to the resolution published in the Bankruptcy Bulletin.
- Company that is in an insolvency proceeding under the Reorganization or Closing of Micro and Small Businesses in Crisis Law.
- Employers whose companies, establishments or tasks have been exempted from the act or declaration of authority and who need to reduce or redistribute the ordinary working hours of their workers in order to maintain their operational continuity or to effectively protect the life and health of their workers.

The agreement must be signed by common agreement of the parties, preferably electronically through the platform implemented by the Labor Department, understood as an annex to the labor contract, which will be enabled as of March 24 and must contain at least the following stipulations

- Individualization of the parties, and information necessary for the payment of the benefit by AFC Administradora de Seguro de Cesantía.
- Duration and effective date of the agreement.
- Average of impossible remunerations of the last 3 complete months prior to the conclusion of the agreement.
- Reduced working hours, percentage of reduction and corresponding remuneration.
- Sworn statement by the employer regarding compliance with the requirements established for the conclusion of the agreement.

5.5. Compensation or unemployment benefits

If the working hours are reduced to a maximum of 50 %, the employer must notify the management of the job in order to enter into a temporary working hours reduction agreement for a maximum of 5 months. The management will review the application and approve or reject it in accordance with a series of tax requirements. At the time of approval, the worker will receive a supplement to his benefits from the AFC (Administradora de Seguro de Cesantía) with



a maximum limit of CLP 225,000 (approximately 250 euros). In any case, this will also be the amount to be paid for cases of total suspension.

This compensation has been an exceptional measure since in normal situations access to unemployment insurance is only possible in cases of permanent dismissal.

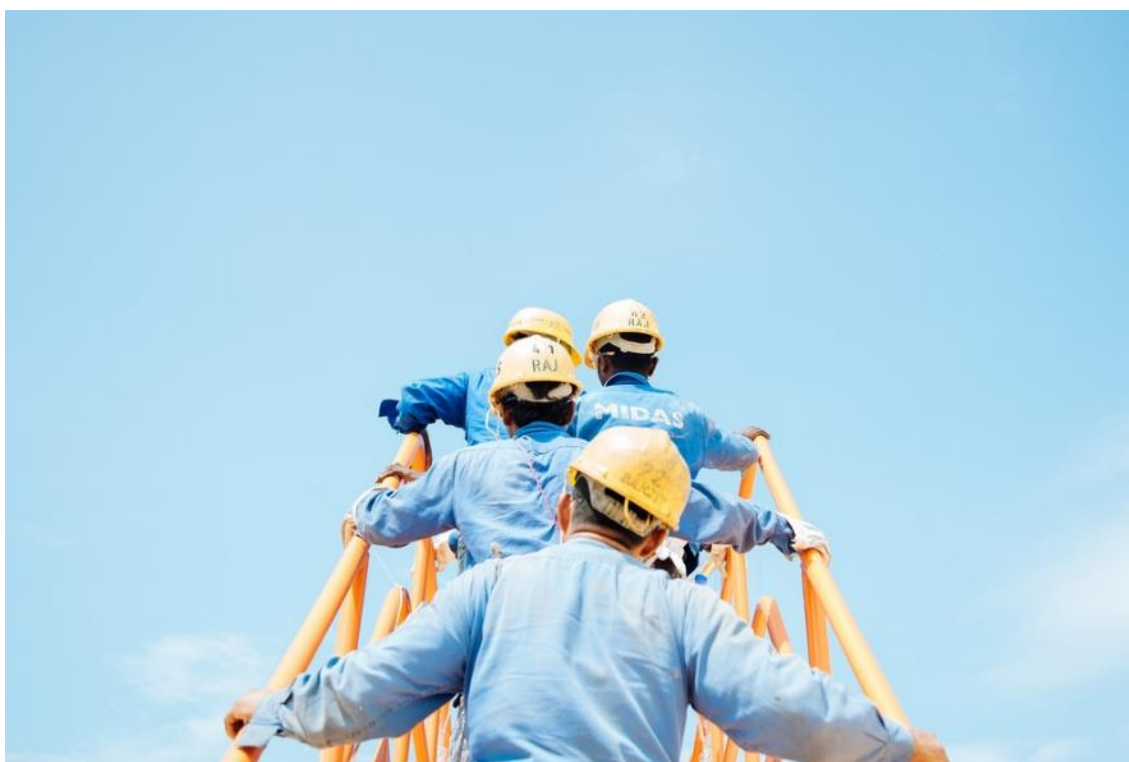
In Chile there are two types of funds, an individual fund and a solidarity fund. It is from the latter that the exceptional benefits for unemployment suspensions for the next 5 months are being made so that the employee's individual fund is maintained for when he or she can be dismissed.

5.6. Business savings

Social Security contributions are made on a regular basis in accordance with the worker's salary in cases of reduced working hours.

5.7. Protection against dismissal

At present there is no exceptional measure, except, as already mentioned, the fact that the amount of the benefits is being taken over by the solidarity fund.





6. Peru

Peru is battling against a labour related crisis, by implementing measures through the Ministry of Labour and Promotion of employment, which is led Minister Sylvia Cáceres.

6.1. [Regulatory Measures](#)

On the 14th of April 2020, an emergency decree was implemented to include additional regulations aimed toward reducing the economic impact of COVID-19, which includes measures to suspend contracts.

Updates after May 2nd

Law N° 31017 published on May 1, 2020 authorizes the withdrawal of up to 25% of AFP funds with a maximum limit of up to S/12,900 soles and a minimum of S/4,300 soles from all workers who submit their application within a maximum period of 60 calendar days.

On May 2, 2020, Generancia General's Resolution N° 563-GG-ESSALUD-2020 was published regarding the procedure for delivering exceptional disability benefits to workers diagnosed with COVID-19. This subsidy will be given from the first day of temporary disability in favor of the employee. The employer will pay the benefit directly and can subsequently process the return at the Essalud virtual window.

6.2. [Sectors or activities](#)

These newly implemented regulations are applicable to all companies and activities in the private sector.

6.3. [Causes of contract suspension processes](#)

A complete and full suspension of work, up to 90 days, is approved for employers who cannot implement remote work or grant paid leave. This suspension may be implemented for up to thirty calendar days from the end of the State of Emergency.

6.4. [Application process](#)

The application of said suspension will be carried out the same as any standard procedure agreement between the company and worker.

6.5. [Compensation or unemployment benefits](#)

Health benefits will continue to be provided to all workers and their dependents who are furloughed during this time.

Furloughed workers may receive their CTS (Compensation for Time of Service) up to the sum of a monthly gross remuneration corresponding to each month of suspension during this time. In



the case that there is no remaining balance in their CTS account, they may request the advance deposit of CTS for the month of May and the bonus of July.

A special fund is available to give an amount of S/760 soles per month, not exceeding three months, applicable to all furloughed workers who work in a microenterprise. The maximum amount is S/2,400 soles. The employer is authorized to postpone the deposit of the CTS for the month of May until November 2020 only if the worker earns no less than S/2,400 soles or is furloughed from work. The withdrawal of up to S/2,000 soles from the pension funds is authorized for all workers who earn a gross income of less than or equal to S/2,400 soles and who are furloughed from work, provided that the worker meets certain conditions that demonstrate income and contributions to the pension funds.

6.6. Protection against dismissal

A control mechanism is established to disallow the termination of the worker during the period of suspension.





7. Brazil



Due to its larger population volume and administrative complexity, Brazil faces a unique set of challenges during the Coronavirus pandemic. Below are some of the measures that have been enacted regarding the termination process during this time.

7.1. Regulatory Measures

On the 1st of April 2020, the Brazilian government announced the **Provisional Measure 936/2020**, implemented with the intention to protect jobs and distribute income.

7.2. Sectors or activities

This measure is applicable to all privately-owned companies.

7.3. Causes of contract suspension processes

All employees are eligible to enter into collective agreements with their company with the aim of implementing measures to reduce working hours or suspend contracts.

The contract suspension process is intended for workers who earn at least R\$ 3,135.00 per month (three times minimum wages) or more than R\$ 12,202.12 (twice the INSS ceiling) with a higher degree.

Employees who do not meet the above requirements can only access salary reduction or contractual suspension through the Collective Agreement with the union.

There are two types of suspensions:

- **Partial:** they consist of the reduction of hours of work and a proportional part of the salary. You can reduce wages up to 90 days, preserving the hourly wage, where the agreement must be sent to the employee at least 2 days in advance. That is, the employee must accept the reduction.
- **Totals:** Maximum period of 60 days, which can be divided into 2 periods of 30 days.

7.4. Application process

The application for the agreements of reduced work hours or suspension can be either individual or collective. In the case of workers who receive at least R\$ 3,135.00 per month or more than R\$ 12,202.12 with higher education, individual agreements are available. These eligible workers may also sign individual agreements for a 25% salary reduction even if they do not meet the salary requirements.

Collective agreements are reserved for employees who do not meet the above salary requirements. These agreements will be made through the union.



All individual agreements must be communicated to the trade unions within 10 days after the signing of the agreement.

In circumstances where hours will be reduced, the agreement must be sent to the employee at least 2 days in advance. The company will have a period of 2 calendar days, counting from the end date of the calamity, to inform the employee of said reduction. The employer must also establish in the agreement the end of the reduction or the date of communication by which the employer must inform the employee of the end of the reduction.

In cases of total contract suspension, the agreement must also be sent to the employee at least 2 days in advance. Similarly, the company will have a period of 2 calendar days, counted from the date of the end of the calamity. The employer must also establish in the agreement the end of the reduction or the date of communication by which the employer must inform the employee of the end of the reduction.

7.5. Compensation or unemployment benefits

In the case of a reduction in working hours through individual agreements, the percentages will be fixed: 25 %, 50 % or 70 %, with equal compensation in unemployment insurance from the government.

With collective agreements the percentage reduction of working hours is flexible, but the compensation is fixed depending on the range:

- Up to 25 %: no compensation from the federal government.
- From 25% to 49.99%: compensation of 25% of unemployment insurance to which the worker is ordinarily entitled.
- From 50% to 69.99%: compensation of 50% of unemployment insurance to which the worker is ordinarily entitled.
- 70 % or more: compensation of 70% of unemployment insurance to which the worker is ordinarily entitled.

For total suspensions during this time all benefits to the employee, including health plan, meal voucher and more, must be maintained.

- **Simple National Companies** (with annual gross income of up to R\$4.8 million): the compensation paid per company is optional. The government, on the other hand, covers 100% of the unemployment insurance to which the worker would be entitled.
- **Companies with gross annual revenues of more than R\$4.8 million**: the compensation paid by the company is mandatory, in the amount of 30% of the salary. The government, on the other hand, covers 70% of the unemployment insurance to which the worker would be entitled.



7.6. Business savings

The compensation received by the company as an incentive to adhere to the agreements will not be of a salary nature but will be exempt from personal income tax and social security contributions. It will also be deducted from the tax base paid by the companies and the FGTS.

7.7. Protection against dismissal

Employees who sign agreements to reduce working hours, wages, or the suspension of contracts will have temporary termination immunity. This means that they cannot be dismissed for the length of the duration of the extraordinary measures.





8. Ecuador



In the case of Ecuador, measures do not provide for the suspension of contracts. Under country regulations, labor measures to address the health crisis focus on substantial modifications to working conditions.

8.1. Regulatory Measures

Reduced working day - Employers and workers may reach an agreement to reduce working hours following authorization from the Ministry of Labor. The reduction is for the duration of the emergency pursuant to the parameters issued by the authorities. Social security contributions paid by employers shall continue to be calculated on original remunerations.

Emergency modification to the working day - During the health emergency, in order to safeguard business activities and/or production, employers may modify, as an emergency, their workers' working day (in terms of shifts and hours), including working on Saturdays and Sundays, but without exceeding the maximum working day of 8 hours a day and 40 hours a week, with two consecutive rest days.

Emergency suspension of the working day - For all labor activities that, given their nature, cannot benefit from the options described above, employers must arrange and inform of the emergency suspension of the working day. The corresponding time must be recovered once the declared health emergency ends. Employers shall determine the form and time for the recovery, which may be up to twelve hours from Monday to Friday or up to eight hours on Saturdays.

No surcharges are imposed for extra hours and overtime worked while recovering the working day. Workers failing to recover working hours shall not receive the corresponding remuneration or, if paid, must repay the corresponding amount. The working day cannot be suspended and, simultaneously, hours decreased and/or teleworking applied.

During the emergency suspension of working hours, employers and workers may agree a timetable for payment of remunerations. All agreements must be in writing. For example, payment of 50% of the remuneration may be made on April 10 and the difference paid at the end of the month or in additional installments.

Vacations during the health emergency period - Given the emergency, employers may establish beginning and end dates for the use of accumulated vacations to which workers are entitled. If no accumulated vacations are available, employers may even anticipate its workers' vacations.

In those sectors most affected by the crisis, such as the commercial food and industrial sector, some companies are opting to dismiss employees due to force majeure, as provided for in the Labor Code. Consequently, the Ministry of Labor has implemented control mechanisms to



ensure that this type of dismissal is only undertaken in situations in which activities have, of necessity, ceased, not for the suspension of activities.

8.2. [Industries or activities](#)

All companies from private sector

8.3. [Causes of temporary employment dismissal](#)

- Fortuitous case or force majeure: on this point the Ministry of Labor has stated that it cannot directly consider the COVID-19 to be a force majeure.
- Under approval
- Non-labour illness (one of the most common causes)
- Occupational hazards
- For attending military service or participating in public office
- For suspension of the company's activities (due to strike or lockout)

8.4. [Application process](#)

There is a different process depending on each cause. In all cases, written notification will be required with the corresponding particulars. Due to the COVID-19 emergency, some employers have been using the cause of a fortuitous case or force majeure, a situation that has been observed by the Ministry of Labor, which has implemented a mechanism so that companies that use this cause can justify it with the corresponding elements of judgment, a situation that will be analyzed by the Ministry.

8.5. [Compensation or unemployment benefits](#)

No financial compensation or unemployment benefits have been contemplated. The only compensation is the unemployment insurance that, for many years, has been contemplated by the social security system, the same one to which the unemployed can have access. The novelty that has been implemented is that people can have access to this insurance, in a time period of less than 60 days contemplated in the original legislation.

8.6. [Business savings](#)

No se ha publicado ninguna medida que exima a las empresas de aportar sus contribuciones por lo que éstas deben mantener cotizando de manera normal.

8.7. [Protection against dismissals](#)

In dismissal processes where a fortuitous case or force majeure has been argued, the Ministry of Labor has implemented a control mechanism, according to which the employer will report the elements of judgment that motivated the dismissal. These elements of judgment will be analyzed case by case by the Ministry.



9.

Argentina



In Argentina, last March, **Decreto de Necesidad y Urgencia (DNU) N 329** was approved, according to which dismissals without just cause and based on the lack or reduction of workload and force majeure are banned for a period of 60 days from the date of publication of this decree in the Official Gazette.

Following this legislative novelty, last April 27th the first appeal for protection was known, which declared a dismissal null and void for not respecting the prohibition of layoffs without cause for 60 days, by which the Justice ordered a company to return a worker to his job, thus rejecting the dismissal.

The standstill or the very low level of activity in many companies and the disruption of the payment chain in the economy has led to a search for alternatives beyond the measures announced by the Government in order to help with the payment of wages, which are having an economic impact on the workers.

9.1. Regulatory Measures

The latter includes suspensions with payments of non-contributory amounts lower than the usual wage. This is a procedure enabled by **Decreto 329** (Argentine decree 329) at the end of March, which forbids dismissing and suspending employees for two months but, at the same time, establishes that suspensions are possible if they are agreed upon in accordance with Artículo 223 bis (article 223 bis) of the labour contract law.

9.2. Causes of temporary employment dismissals

According to the part of the regulations concerning labour relations, in cases where employees do not carry out their tasks due to lack or decrease of work without the fault of the employer, a non-remunerative benefit can be granted "as compensation for suspensions", provided that there is an individual or collective agreement.

9.3. Application processes

The trade unions in Argentina have begun negotiating with the rest of the social agents in each field how each process of suspension will be carried out and under what conditions. Apart from agreements for a whole company (or part of its staff) or those involving a sector, there are also individual agreements which in either case should require official approval. Basically, suspension agreements are signed at company level.

9.4. Compensation or unemployment benefits

One of the issues that is analysed when negotiating these agreements is the amount of State aid that will be given for the payment of salaries in the companies concerned. Decreto 376 (Argentinian decree 376), which increased the benefits granted, stipulates that the so-called "supplementary salary" may be considered in the remuneration "or the monetary allowance laid down in article 223 bis of the law on employment contracts". In other words, it is expressly



established that signing this type of agreement is compatible with accessing the Government's plan. However, certain requirements must be met, so the benefit will not reach all companies.

The supplemental wage, according to the regulations, equals 50% of the net wage earned in February this year, although the value will move in a figure between one and two times the minimum wage; that is, between \$ 16,875 and \$ 33,750.

9.5. Business Savings

The Comité de Evaluación y Monitoreo del Programa de Asistencia de Emergencia al Trabajo y la Producción (Argentinian committee for the evaluation and monitoring of the emergency assistance program for work and production) decided that to receive this subsidy, companies must belong to activities considered affected and, in addition, must not have had any nominal increase in their turnover between 12th March and 12th April this year, compared to the same period in 2019. Since no consideration is given to the inflation that occurred in the months between the two periods of time, not a few warn that this condition would leave many cases outside. Moreover, it is a condition that the company has, a priori, less than 800 employees; if it has more, several conditions must be met.





10. United States



As of April 28, 2020, the United States has close to 1 million confirmed cases of COVID-19 and over 26 million Americans filing for unemployment and economic assistance. The below are the measures that US Government is taking to provide assistance to US Citizens.

10.1. Regulatory Measures

On March 18th, the Families First Coronavirus Response Act (FFCRA) passed the US Senate. The US Federal government has passed the Bill to help address the financial challenges Americans are experiencing as a result of COVID-19. The Bill, which applies to employers with fewer than 500 employees, addresses the need for **temporary paid employee sick and family leave**, as well as other support programs to help individuals and families cope with COVID-19 disruptions.

The bill gives some relief to workers and their families by creating emergency paid sick leave and paid family leave in the case of school closures. The bill requires employers with up to 500 employees to provide paid sick leave and paid family leave to their employees.

To be eligible the employee must have worked at least thirty calendar days for the employer before they were impacted by COVID-19.

Both provisions expire on December 31, 2020.

10.2. Compensation or unemployment benefits

Under this bill, employers must offer:

- **Two weeks (10 days) of paid sick leave** for COVID-19-related reasons for eligible full-time employees. 100% of employer costs are offset for providing this mandated paid sick leave. Under the paid sick leave provision, employees who are unable to work (or telework) may take leave if they:
 - are subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (100% of pay capped at \$511 per day);
 - have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (100% of pay capped at \$511 per day);
 - are experiencing symptoms of COVID-19 and seeking a medical diagnosis (100% of pay capped at \$511 per day);
 - are caring for an individual who is subject to a quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (2/3 pay capped at \$200 per day);
 - are caring for a son or daughter if the school or place of care for the child has been closed, or childcare provider is unavailable due to COVID-19 precautions (2/3 pay capped at \$200 per day); or



- are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services (2/3 pay capped at \$200 per day).

Under the sick leave provision, individuals who are working part time or hourly are also eligible for paid sick leave which is to equal the number of hours the employee works on average over a two-week period.

- **Ten weeks of paid family leave (12 weeks total)** for an employee with a minor child who is unable to work (or telework) in the event of the closure of the child's school or place of care due to COVID-19 precautions. 100% of employer costs are offset for providing this mandated paid family leave. Under the expanded paid family leave provision, the benefits are as follows:
 - The first 10 days are unpaid, but the employee can use the 10 days of paid sick leave during this time.
 - The benefit must replace at least two-thirds of the employee's wages up to a maximum of \$200 per day (and \$10,000 in aggregate) and reflect the number of hours an employee would otherwise be normally scheduled to work.
 - This 12-week period does not extend any time under the FMLA act, it simply adds another reason for leave and specifies payment.
 - The Act allows an employer of an employee who is a health care provider or an emergency responder to elect out of providing paid family leave to these employees.
 - The Labor Department will have the authority to exempt from the paid family leave requirement small businesses with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business.

10.3. Business savings

To cover the costs of the leave, the government will **give employers a refundable payroll tax credit** as well as a refundable income tax credit for self-employed individuals. The leave requirements take effect April 1, 2020 and expire on December 31, 2020, according to the Department of Labor.

10.4. Protection against dismissal

There is **no regulation that prevents companies from firing or laying off** their employees during the COVID Crises should they not be able to support payroll. Many employers have been laying off employees or putting them on furlough (unpaid time off). There are currently around 26 million people (particularly in the hotel/restaurant industry) who have filed for unemployment as of April 2020. If employees are laid off it is up to them personally to apply for unemployment with their respective state to obtain unemployment benefits and compensation. Many are unable to apply due to the system being overwhelmed with claims.

However, the U.S. Department of Labor announced on April 5 2020, the publication of Unemployment Insurance Program Letter (UIPL) providing guidance to states for implementation of the **Pandemic Unemployment Assistance (PUA)** program. Under PUA,



individuals who do not qualify for regular unemployment compensation and are unable to continue working as a result of COVID-19, such as self-employed workers, independent contractors, and gig workers, are thus eligible for PUA benefits. This provision is included in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act enacted on March 27, 2020.

PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work due to COVID-19 related reasons, as defined in the CARES Act. Benefit payments under PUA are retroactive, for weeks of unemployment, partial employment, or inability to work due to COVID-19 reasons starting on or after January 27, 2020. The CARES Act specifies that PUA benefits cannot be paid for weeks of unemployment ending after December 31, 2020.

10.5. [Exemption for Small Employers](#)

The Department of Labor has the authority to issue exemptions to qualified employers with **fewer than 50 employees** from the requirements to provide paid leave to an employee under FFCRA, if it would jeopardize the viability of the business.

In a temporary rule issued on April 1, 2020, the Department of Labor clarified that to claim the exemption, an authorized officer of the business must deem that:

- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee requesting leave, and this labor or services are needed for the small business to operate at a minimal capacity;
- The leave requested would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity; or
- The absence of the employee requesting such leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities.

To elect this exemption, the employer must document that a determination has been per above criteria. The employer should retain these records for at least four years. The employer is required to post the required FFCRA notice.

10.6. [Additional measures to protect Small Businesses](#)

The US Government has created a stimulus program called the **Paycheck Protection Program** which allows qualifying businesses to apply for a Loan from the US Small Business Administration designed to provide a direct incentive for small businesses to keep their workers on the payroll. It is very limited and is already being injected with additional stimulus funding.

The Paycheck Protection Program (PPP) is a new loan program for small businesses. The program will be administered by the Small Business Administration (SBA), which will fully guarantee loans



provided by approved lenders to eligible entities. Forgiveness of these loans is also available under certain circumstances and the SBA has announced that it will be providing guidance on loan forgiveness. Here is some additional information about the PPP:

Who is Eligible?

Businesses and nonprofit organizations with no more than 500 employees are eligible for the PPP through June 30, 2020. Businesses must have been in operation, with employees, on February 15, 2020.

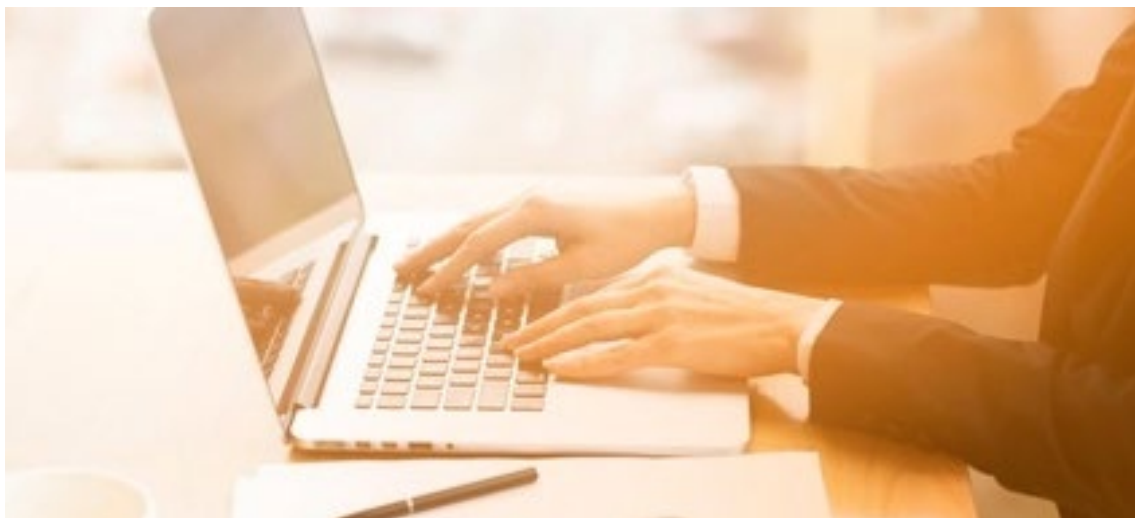
What is the Loan amount?

PPP loans will be provided in amounts approximately equivalent to ten weeks of payroll costs. Loan amounts are determined based on 250% of average monthly payroll costs, taking into consideration average wages paid during the applicable period (which will either be the one-year period prior to the loan or calendar year 2019, at your option), up to a limit of \$10 million.

Loans may be used for the following:

- Payroll costs
- Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

The United States Government is continuing to search for ways to provide much needed relief and support to its Citizens and Residents and regulatory guidelines and measures will continue to be released.



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