

Process with ERTE for the Suspension of Contracts in Spain due to COVID-19

As a result of the current circumstances, the government has established that companies in situations of total or partial suspension of activity can benefit from a temporary employment regulation filing under reasons of force majeure. Causes derived from COVID-19 will be considered as those that have suffered losses of activity as a consequence of the virus, including the declaration of the state of alarm, which implies the suspension or cancellation of activities, temporary closure of premises, restrictions on public transport and on the mobility of people and/or goods. This also includes a lack of supplies that impede the continuation of the ordinary development of the activity and in urgent and extraordinary situations due to the contagion of the workforce or the adoption of preventive isolation measures decreed by the health authority, which are duly accredited.

Procedures for suspension of contract or reduction of working hours due to economic, technical, organizational or production causes or, derived from force majeure under the Article 47 (ERE-ERTE) are as follows:

If we follow the standard procedure, this will be initiated by notifying the appropriate labor authority and simultaneously opening a period of consultation with the employees' representatives of no more than 15 days.

The procedure may be initiated regardless of the number of employees in the company and the number of employees affected by the suspension.

The consultation shall take place in a single special negotiating body, but if there are several establishments it shall be restricted to the establishments related to the procedure. The special negotiating body shall be composed of a maximum of 13 members representing each of the parties.

After the maximum time limit for the establishment of the representative body, the management of the undertaking may formally notify the employees' representatives and the employment authority of the start of the consultation period. Failure to set up the representative body shall not prevent the start and progress of the consultation period. Additionally, the setting up of the representative body after the start of the consultation period shall not, under any circumstances, lead to an extension of its duration.

The labor authority will transfer the business communication to the unemployment benefits management body and will obtain a mandatory report from the Labor and Social Security Inspectorate on the details of this communication and on the development of the consultation



period. The report must be issued within a period of fifteen days from the notification to the labor authority of the end of the consultation period and will be incorporated into the procedure.

During the consultation period the parties must negotiate in good faith. Such agreement shall require the agreement of the majority of the legal representatives of the employees or, where appropriate, the majority of the members of the employees' representative body; in both cases they represent the majority of the employees of the establishment or the establishments concerned.

After the end of the consultation period, the employer shall notify the employees and the labor authority of the decision on the suspension of contracts. The suspension is effective from the date of its communication to the labor authority. The latter will communicate the employer's decision to the unemployment benefit management body.

Flexibility of the process, extraordinary measures in the ERE or ERTE process:

With the publication of the Real Decree - law 8/2020, of 17 March, by which urgent and extraordinary measures are applied to face the economic and social impact of the COVID-19, the aim has been to make the ordinary process established in ART. 47 of the Workers' Statute more flexible. In this sense, and in cases where the company decides to suspend contracts or temporarily reduce the working day with the main aim of avoiding dismissals, the following particularities will be applied with respect to the ordinary regulations:

1. The procedure will be initiated at the request of the company. This request will be accompanied by a report on the link between the loss of activity as a result of the COVID-19. The report will also include, where appropriate, the corresponding supporting documentation. The company must communicate its request to the employees and transfer the previous report and supporting documentation, if any, to the representation of the employees.
2. The existence of force majeure must be verified by the competent labor authority and whatever the number of people affected.
3. The resolution of the labor authority shall be issued within five days from the request. Taking effect from the date of the event causing force majeure, a report, if appropriate, from the Labor and Social Security Inspectorate, shall be limited to verifying the existence, where appropriate, of the force majeure alleged by the company. The report shall decide on the application of measures to suspend contracts or reduce the workday.
4. The report of the Labor and Social Security Inspectorate, whose request shall be optional for the labor authority, shall be issued within a non-renewable period of five days.



Special features of the process with respect to the ordinary procedure for cases of ERE or ERTE related to COVID-19:

In the event that workers are not represented, the negotiating committee during the consultation period will be made up of the most representative trade unions in the sector. This committee will be made up of one person from each of the unions. In the event that this representation does not exist, the committee will be made up of three workers from the company itself.

In any case, the committee must be constituted within a non-renewable period of 5 days.

The consultation period is increased from 7 days to 15 days.

The report of the Labor and Social Security Inspectorate is increased from 7 days to 15 days, and cannot be extended.

Extraordinary contribution measures:

In this section the most important point will be the exoneration of the companies from the payment of the quotas corresponding to the company's contribution. This is also relating to the quotas for concepts of joint collection for the duration of the suspension period. This exemption from contributions will be 100% in companies with less than 50 employees, effective 29 February 2020. In companies with 50 or more employees, it will be only 75%.

Furthermore, the contribution relating to the working person will be maintained so that the period of suspension will count as contribution purposes.

Exemption from contributions will be applied by the General Treasury of Social Security at the request of the employer, after communication of the identification of the employees and the period of the suspension or reduction of the working day. For the purposes of control of the contribution's exemption, it shall be sufficient to verify that the Public State Employment Service recognizes the corresponding unemployment benefit for the period in question.

Extraordinary measures in the field of unemployment benefit:

In this section, the main point is that persons who are affected by the suspension of the contract derived from Article 47 of the Workers' Statute may access the unemployment benefit even if they have not contributed for the mandated period minimum. It is required that the people who access the unemployment benefit were registered with the company before the Royal Decree came into force.

On the other hand, the time received by the unemployment benefit for these extraordinary reasons will not be considered for the purpose of consuming the maximum periods of benefit.



Discontinuous permanent workers in this situation are eligible to receive unemployment benefits for periods when there is no extraordinary cause for COVID-19, with a maximum limit of 90 days, and again once they are considered legally unemployed.

Finally, the time limit for applying for unemployment benefit is removed and will not lead to a reduction in the duration of entitlement.