
INFORMATIVE NOTE #1/2020

Actions and possible measures in labor matters under the interruption of economic activity due to COVID-19

- ***Temporary employment measures: suspension and working time reductions***

Suspensions and working time reductions: objective grounds and force majeure

In the event the company is obliged to suspend its business activity (fully or partially), or even to reduce the working time, as result of (i) a decision adopted by the health authorities, or (ii) indirectly as a consequence of the COVID-19 effects on such activity:

- Due to a lack of enough stock or resources to continue with the normal activity*
- Based on a decrease in demand, the inability to render services or an excess of products manufactured, all as result of a decrease in demand from client companies.*
- Absenteeism rates that imply a stop to the company's activity (isolation, illness, etc.); and,*
- A decision adopted by the health authorities declaring closure on precautionary grounds.*

In all cases, the procedure to be adopted is an "ERTE" -procedure for temporary suspension of labor contracts-, the procedure of which has been amended to speed it up and make it more flexible, but to appoint a representative of the employees will be needed. It will enter into force from the day the Closing of the activity will take place as a consequence of the administrative decision. As main consequences will have the following ones:

During the suspension of contracts, the employer would not be obliged to remunerate the employees. However nor paying the social security contributions. The employees will be allowed to get unemployment payment regardless they complied with the requirements established on the Law to obtain it.

- ***Other employment measures: employment terminations***

Companies may also decide to implement employment terminations based on the same grounds described in the previous paragraph (objective or force majeure reasons). In this case, the company will also have to follow other legal formalities. Likewise, with regard to costs, in the event an emergency is declared, the Council of Ministers could rule that the applicable severance or legal severance (20 days' salary per year of service, capped at 12 months) must be paid by the competent public institutions ("FOGASA").



However, these could be claimed back by employers at a later date. However, and as mentioned above, as of Monday, March 16, there is no measure adopted in this regard.

- **What is the protocol established if there is a suspicion of a potential infection of COVID-19 in the workplace?**

If an employee has symptoms compatible with the disease and meets any of the two previous conditions while he/she is in the workplace, the procedure to be followed would be:

i. The individual with symptoms should minimise his/her contact with other employees and go to a specifically-designated room where he/she remains alone, if possible. If this is not possible, a minimum distance of 2 meters with other individuals should be observed, ideally using physical barriers such as partitions. If masks are available, the individual shall put on a mask.

ii. In addition, it will be necessary to call 112 (Spanish emergency services) or the telephone number that the regional government has arranged for the management of COVID-19. In Catalonia this is the +061.

- **Withdrawal right, i.e. the right for the employee not to come to work to protect his/her health**

There is no legal withdrawal right established.

However, employees may be entitled to request the interruption of their labour activity in case the provision of services in the workplace involves a serious risk and imminent coronavirus infection. In this sense, where the company has adopted the necessary preventive measures and, if possible, other alternative measures such as homeworking or shift working, this kind of interruption would be unlikely.

- **Interruption of the business activity by the Labour Authorities/Inspection**

The Labour Inspection Service would be also entitled to interrupt the activity in case of serious and imminent risks to the employees' health & safety (reserved to very extreme cases).

- **Other rights of the employees in the context of the COVID-19**

In addition to the work permits that may be applicable in accordance with the applicable collective bargaining agreement in each company or other types of collective agreements, these are some of the rights that could be exercised by the employees in the context of COVID-19:

1. Working time

The employee could request, in accordance with article 34.8 of the SWS, an adaptation of the duration and distribution of the working day; a re-organisation of working time including the provision of remote working, in order to trigger his/her right to a work-life balance.

2. Reduction of working time

Alternatively, the employees could request a reduction of their working time for child care (under 12 years), although this would involve a proportional reduction of salary. In these cases, the request should be submitted with 15 days' notice. However, cases of force majeure would not require notice. In this sense, the closure of schools due to the COVID-19 could be understood as force majeure.

3. Paid leave

We understand that this case will not fit in the context of COVID-19 unless the Company accepts it. In any case the government may announce in the following days the implementation of new paid leaves as result of COVID-19.

Right to sick pay in quarantine

The latest criteria published by the government has considered, as an exceptional measure, that periods of isolation caused by the COVID-19 virus will be considered as a situation "assimilated" to an accident at work, exclusively for the economic benefit of temporary disability granted by the Social Security system.

If the employee has been infected by COVID-19, the situation will be considered as a situation "assimilated" to a work accident.

Finally, we can mention the possible limitations that both the employer and employees may receive in case of non-compliance with any of the forced measures affected by the competent authorities:

- **Sanctions against the employer**

In the worst-case scenario, the Labour Inspection Service may declare the closure of the business activity.

Likewise, in the event there is a breach of health and safety regulations, administrative fines could be imposed from EUR 40,986 to EUR 819,780 (in very extreme cases), in addition to criminal or civil action as a result of this breach.

- **Sanctions against the employee**

Notwithstanding the aforementioned interruption right of the employees, these are obliged to go to work under normal circumstances (unless a serious and imminent danger to their health is detected).

From an employment perspective, in case there are unjustified absences from work, or a breach of health and safety obligations related to the employees, the misconduct of employees may be considered a serious infringement depending on the circumstances (subject to disciplinary measures such as disciplinary dismissal).



- **Financial support measures to those companies affected by COVID-19**

The Government announces the issue of public guarantee lines of 100.000 million of euro. Some of these guarantee lines will be to export companies and small and medium companies. Further information about these measures is expected in the following days.

- **At last, a deferral payment regarding mortgage loans will be approved in the following days only to those persons in vulnerable situations.**

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