



BEYOND LEGALMATTERS  
LEGAL INSIGHTS  
FOR PEOPLE MANAGEMENT

*Beyond LegalMatters is an initiative of PeopleMatters and CESZINKIN Strategic Legal Consulting, which aims to share, periodically and in an agile way, the news and legal news that, both nationally and internationally, have special relevance in the field of people management*

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## 1. NEW LABOR FRAMEWORK AND ERTES TREND: FROM FORCE MAJEURE TO ECONOMIC CAUSES

### NEW LABOR FRAMEWORK. ONE MORE STEP IN LABOR FLEXIBILITY

Royal Decree-Law 18/2020, of May 12, on social measures in defense of employment, has been approved. This RDL is one more step towards the necessary labor flexibility that, from our point of view, will allow, among other things, companies to deploy new strategies in the organization, distribution of work, and protection of their talent.

Find Below our vision of the primary measures.

1. ERTES [Spanish short-time work scheme] derived by the Alarm state during the phased lockdown-easing measures (those that took place due to force majeure by COVID19)
  - o Possibility of extending them until 06.30.20 if the causes that gave rise to it prevent the restart of the business.
  - o Possibility of reincorporating workers to their job if the business allows it (and the rest continue in the ERTE).
  - o IF ERTE is totally canceled, it must be communicated in 15 days to the labor authority.
  - o There is an obligation to notify SEPE [Spanish unemployment office] of any variations that may occur regarding the application of measures that affect all or part of the workforce.
  
2. ERTES for economic, technical, organizational and productive causes reported from the phased lockdown-easing measures
  - o Those produced between 05.13.20 until 06.30.20.
  - o Article 23 of RDL 8/2020 applies. That is, the specialties that were considered for the ERTES for causes e.t.o.p. by the state of alarm apply, where the periods and requirements to present them were reduced. Among others, the term of 5 days to constitute the representative commission, consultation period of 7 days, and Report of the Labor Inspection.
  - o Possibility of initiating an ERTE for these causes even if one previously existed due to force majeure: The date of effect of the new ERTE for causes e.t.o.p. [economic, technical, organizational, and productive causes] will be rolled back to the ERTE end date due to force majeure.



### 3. UNEMPLOYMENT RIGHTS (EXTRAORDINARY MEASURES ALREADY ADOPTED IN RDL 8/2020)

- The current benefit of not having a previous contribution period necessary to cause unemployment is maintained until 30.06.20, and unemployment for these purposes does not consume unemployment payment rights.
- With regard to the discontinuous permanent employees, the benefit is maintained until 31.12.20.

### 4. SOCIAL SECURITY QUOTES DURING THE ERTEs

- Exemptions from contributions will, from now on, be of two types.
- For companies that **cannot recover the activity**, not even partially, the SS tax exemption is maintained for those companies that as of 02/29/20 had less than 50 workers (100%) or those that on that date had more than 50 workers (75%).
- For those companies which **can recover the activity**, the exemption will be more complex, since there will be different exemptions if workers are reinstated in the labor activity. In any case, the company must notify the TGSS. The main exemption measures -which will not have effects for working people- are:
  - a) Regarding workers who **restart their activity** from the date of resignation and the periods and percentages of hours worked since that restart:
    - <50 workers as of 02.29.2020: 85% of the company social security contribution accrued in May 2020, and 70% of company social security contribution accrued in June 2020.
    - >50 workers as of 02.29.2020: 60% of the company social security contribution accrued in May 2020, and 45% company social security contribution accrued in June 2020.
  - b) Regarding the workers of these companies who **continue with their suspended activities** as of the date of the resignation and the periods and percentages of hours affected by the suspension:
    - <50 workers as of 02.29.2020: 60% of the company social security contribution in May 2020, and 45% of the company social security contribution accrued in June 2020.
    - > 50 workers as of 02.29.2020: 45% of the company social security contribution accrued in May 2020, and 30% of the company social security contribution accrued in June 2020.



5. Companies that have their tax domicile in territories classified as tax havens may not make ERTES or benefit from exemptions in social security.
6. The companies that benefit from these measures may not distribute dividends.
7. By agreement of the Council of Ministers, there is the possibility of extending the ERTES by force majeure beyond 06.30.20.
8. A Tripartite Labor Monitoring Commission is created for lockdown-easing phase with monthly meetings, to follow up on the labor measures adopted in this phase of attenuated exceptionality. It is made up of members of the Ministry of Labor, the Ministry of Social Security, CEOE [conferederation of employer and industries of Spain], CEPYNE [Spanish conferederation of small and medium enterprises], CCOO, and UGT [Main Spanish unions].
9. Companies that continue with these exceptional measures **UNDERTAKE TO MAINTAIN THE JOB FOR 6 MONTHS.**
  - o If it is not fulfilled: If dismissals or termination of contracts of any of the workers affected by the ERTE occur, they must reimburse the entire amount of the exonerated contributions, plus surcharge, plus late payment interest, after the Labor Inspection has acted.
  - o The commitment will **NOT** be considered unfulfilled in the following cases:
    - a) Disciplinary dismissal declared fair by a labor court.
    - b) Voluntary retirement or resignation of the worker.
    - c) Retirement or permanent, total, absolute disability or great disability of the worker.
    - d) End of a discontinuous fixed contract.
    - e) In temporary contracts: When the term established in the contract ends, completion of the work or service that is the subject of the contract, or the impossibility of carrying out the activity that is the subject of the contract.
    - f) In companies at risk of bankruptcy.

## ERTES TREND: FROM FORCE MAJEURE TO ECONOMIC CAUSES

According to the latest weekly survey on labor practices and compensation trends during the crisis by PeopleMatters and CESZINKIN, most of the companies (65%) that have applied an ERTE have availed themselves of exceptional labor measures (force majeure) of RD 8/2020.

In the ERTE's due to force majeure, those of suspension predominate (63%). This trend has hardly changed in the 3rd survey. However, a displacement towards e.t.o.p. ERTES is observed and, we believe that, in this area, considering the newly approved labor



legal framework, the reduction ERTES are called to play an important role, since they admit a wide range of modalities and enable distribution of work among employees.

## EXTRACT THIRD WEEKLY SURVEY

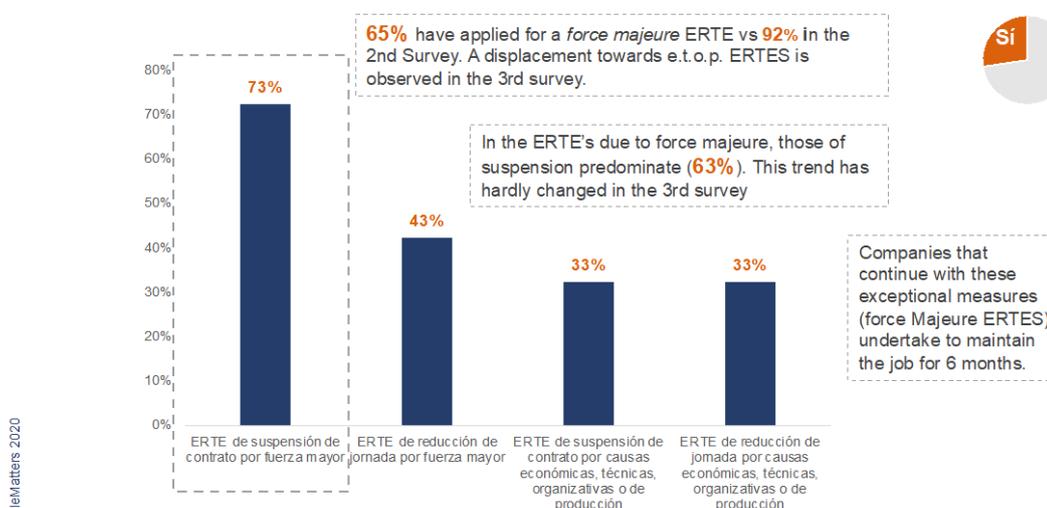
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### Measures to maintain employment

What kind of ERTE has your company submitted?



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\* The percentages are calculated on the total number of participants. Questions may have more than one answer and, therefore, the percentages do not necessarily add up to 100%

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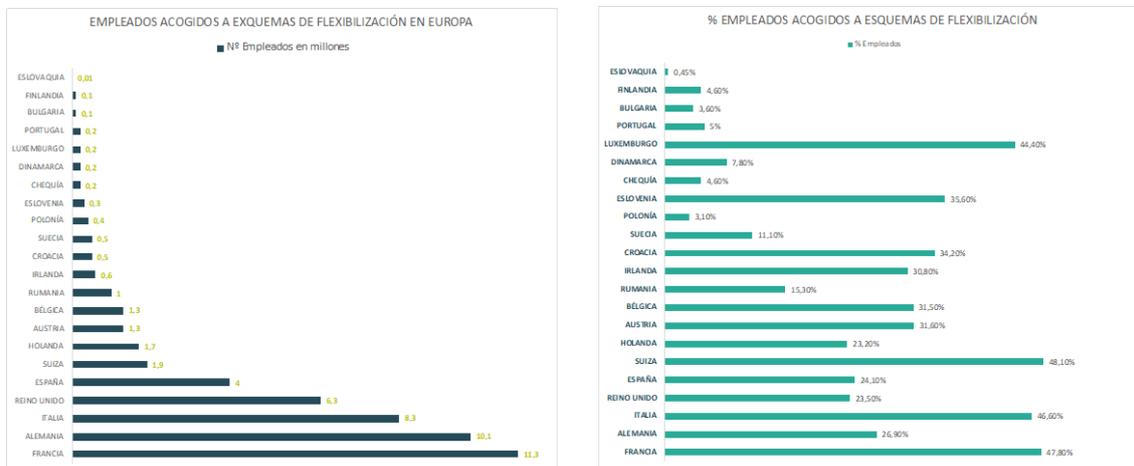
## 2. EU, GERMANY, UNITED KINGDOM, ECUADOR and PERU: LABOR FLEXIBILIZATION MEASURES

### EUROPEAN LABOR FRAMEWORK

The labor framework of the European countries allows flexibility measures to be established with the aim of maintaining employment, at least in the short term. This contrasts with other countries, such as the United States, where the crisis has already led to unemployment for more than 33 million people.



## European Economic, Employment and Social Policy (ETUI). End of April/beginning of May 2020 Data



Source:

<https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Ensuring-fair-Short-Time-Work-a-European-overview>

### GERMANY

The German Ministry of Finance, among other things, has announced an exemption on employers' social security contribution of up to 80 percent of the difference between the target and the real wage for temporary and short-term work (Kurzarbeit). This exemption is limited to aid granted for salary payment periods from February 29, 2020, to January 1, 2021.

The Kurzarbeit is a measure of labor flexibility that enables a modality of reduced working hours or eventual suspension in which the State temporarily pays just over two-thirds of the salary. For this, as a minimum, it is necessary for the company to take advantage of a 10% reduction in working hours for at least 30% of the workforce, although this reduction maybe 100%.

This flexibility modality allows workers to distribute the workload. Still, during that time, employees maintain their remuneration and employment relationship with the company, which, in turn, is remunerated by the State so that there are no layoffs. In this model, the affected workers are not located within the State, as happens in the ERTES in Spain.

Link to the measures:

[https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\\_Gesetzesvorhaben/Abteilungen/Abteilung\\_IV/19\\_Legislaturperiode/Gesetze\\_Verordnungen/2020-04-30-Corona-Steuerhilfegesetz/0-Gesetz.html;jsessionid=43814E2853B64C0701C886F13A8CA75A.delivery1-replication](https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/19_Legislaturperiode/Gesetze_Verordnungen/2020-04-30-Corona-Steuerhilfegesetz/0-Gesetz.html;jsessionid=43814E2853B64C0701C886F13A8CA75A.delivery1-replication)



## UNITED KINGDOM

The UK Job Retention Scheme for employees suspended from employment, without paid leave, has been extended until 31 October.

The program allows employers to obtain 80% of monthly wages for employees without permission, up to a maximum of 2,500 pounds per month (US \$ 3,085.20).

Around 935,000 employers have applied this suspension scheme to 7.5 million employees and applied for £ 10.1 billion (\$ 12.5 billion) under this program.

Starting in August, among the measures to reactivate the employment that they intend to approve, the suspended workers will be able to work part-time, and the employer will partially pay the part of the wages paid by the government under the program. More details on part-time work will be given in late May.

Link to the measure:

<https://aboutbtax.com/QM2>

## ECUADOR

Ecuadorian law provides for fixed-term labor contracts; Temporary contracts are only allowed under very limited circumstances. In general, termination of employment contracts must be compensated (1.25 times the salary per year of employment).

Due to the rigidity of the legal and constitutional framework that considers inalienable labor rights, the Ministry of Labor has promulgated several decrees that allow the reduction, modification, and suspension of working hours, to reduce employers' labor expenses. However, these measures are merely a deferral of costs, since the regulations stipulate that lost wages must be recovered by workers in the future.

Some employers have used force majeure to terminate employment contracts. Although this modality is technically legal within the Ecuadorian framework, its practical application during the pandemic is problematic. It is generating some litigation, which may be the focus of more social conflicts in the country.

## PERU

Supreme Decree No. 011/2020 has been approved, which implements a series of gradual measures to maintain employment. The decree regulates from the measures to adopt telework to the procedure to request the total suspension of work. The duration of the suspension is linked to the duration of the State of Sanitary Emergency, which cannot exceed thirty 30 days, except for an extension thereof.



In the same way, tax incentives such as:

- 1) extend payment terms for employer social security contributions and payroll taxes.
- 2) provide subsidies to employers to contribute to employees' social security contributions.
- 3) offset additional expenses incurred by employers due to telecommuting.
- 4) allow exceptional withdrawals from pension funds.
- 5) provide incentives for small business employees, and
- 6) provide various support measures for dismissed workers.

Link to the Decree:

<https://busquedas.elperuano.pe/download/url/decreto-supremo-que-establece-normas-complementarias-para-la-decreto-supremo-n-011-2020-tr-1865658-3>

### 3. GENDER DISCRIMINATION AND WAGE GAP

Three Oracle Corp. employees have achieved an unprecedented milestone in the United States Justice, by being recognized the right to collectively represent other women in a lawsuit for gender discrimination and wage gap.

A California state judge has admitted as a class action lawsuit the one filed by three female workers on behalf of more than 4,000 women, claiming to demonstrate that the tech giant pays men more for doing the same job.

"For a jury, whether the jobs performed by women in the same professional category as men are substantially the same or similar is a matter of fact," said California Superior Court Judge V. Raymond Swope in the ruling. 25-page version, in which it flatly rejects Oracle's argument that they were individual cases because they do not perform substantially similar work. This ruling gives working women a huge boost to demand compliance with the Equality Act.

So far, similar lawsuits against Walmart, Twitter, or Microsoft have been unsuccessful, and other companies such as Uber Technologies have reached compensation settlements to resolve the wage discrimination lawsuits.

At the European level, a few weeks ago we knew about the Resolution of January 30, 2020, on the gender pay gap, in which the European Parliament deeply regrets that there is still a gender pay gap in the Union, which has a negative impact on the social and economic situation of women and in society as a whole; calls on the Member States to take concrete and urgent measures to overcome wage inequalities and guarantee



equal pay for the same job, while promoting a general increase in wages; calls, furthermore, on the Member States to take specific measures to close the gender gap in pensions, in particular through an extraordinary and significant general rise in pensions.

In Spain, in March of last year, Royal Decree-Law 6/2019 amended the Workers Statute to establish non-sexist models of professional classification, include the definition of work of equal value and salary records, and express law from the legal representation of workers to receive information, at least annually, on the application in the company of the right to equality and data on the proportion of women and men at different professional levels.

However, these salary audits, which must also be included in the Equality Plans, are still pending regulatory development one year later. Despite this, it should be kept in mind that salary records are already mandatory in all companies, even when they do not have an immediate legal obligation to implement Equality Plans, which implies that the mandatory exercise of analyzing, structuring and adopting the necessary measures to end a possible gender gap in companies has already completed one year of life, regardless of whether or not there should be an Equality Plan based on the number of employees.

Link to the documents:

[https://www.europarl.europa.eu/doceo/document/B-9-2020-0084\\_ES.html](https://www.europarl.europa.eu/doceo/document/B-9-2020-0084_ES.html)

#### **4. LIMITATION OF WAGES AND VARIABLE SUSPENSION IN RESCUED COMPANIES**

The EU Member States will be able to intervene in the capital of companies hit by the crisis. In this context, Brussels is moving towards a new aid package for the recapitalization of companies that will be prohibited from paying bonuses to their managers.

The emergency measures that the Member States have had to take to manage the pandemic have affected the ability of many European companies to produce goods or provide services, leading to losses that have depleted their funds and their ability to ask for financial help in the markets. Therefore, this second amendment extends the Temporary Framework to allow well-targeted public interventions in the form of aid for the recapitalization of non-financial companies in need, in order to help reduce risk to the EU economy as a whole.



Recapitalization aid should only be granted if no other suitable solution is available. Furthermore, the intervention should be in the common interest, for example, to avoid social difficulties and market deficiencies due to a significant loss of jobs, the bankruptcy of an innovative or systemically important company, or the risk of disruption of an important service.

Until the State has completely left the company, the beneficiaries will be subject to prohibitions on the distribution of dividends and the repurchase of shares. Furthermore, until at least 75% of the recapitalization has been redeemed, a strict limitation on the remuneration of managers will apply, including the prohibition of the payment of bonuses. These conditions are also intended to incentivize beneficiaries and their owners to repurchase state-owned shares as soon as the economic situation allows. Furthermore, until at least 75% of the recapitalization is redeemed, beneficiaries other than small and medium-sized enterprises (SMEs) are prohibited from acquiring more than a 10% stake in competitors or other operators in the same business line, both in the previous and in the subsequent phase of the company's operations.

Link to the law draft:

[https://ec.europa.eu/commission/presscorner/detail/es/ip\\_20\\_838](https://ec.europa.eu/commission/presscorner/detail/es/ip_20_838)

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