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Spain Imposes Recoverable Paid Leave for Workers in Non-Essential Services

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The new regulation limits the mobility of workers providing services in sectors that currently qualify as non-essential.

On 29 March 2020, the Spanish Official Gazette (BOE) published Royal Decree-Law 10/2020 of 29 March 2020, regulating “recoverable paid leave” from 30 March to 9 April inclusive for workers in non-essential services (**RDL 10/2020**). On 30 March, Order SND/307/2020 was published, establishing the interpretative criteria for the application of RDL 10/2020. The purpose of this new regulation is to limit the mobility of workers providing services in sectors that, in the current context, qualify as non-essential.

Length and effects of the recoverable paid leave

- The leave will be extended from **30 March to 9 April 2020** inclusive
- Workers will be exempt from providing their services, although they will continue to earn a salary, including basic salary and salary supplements, for the entirety of the usual working day
- All obligations regarding social security contributions shall remain unaltered

Minimum indispensable activity

Companies that have to apply for recoverable paid leave may, if necessary, establish the minimum number of staff or shifts that are **strictly necessary to maintain the indispensable activity**. This activity and minimum number of staff or shifts will be based on the activity carried out during an ordinary weekend or during public holidays.

Essential services not affected by the recoverable paid leave

This permit **will not apply**, irrespective of the public or private nature of the employing companies, to:

- 1) Companies dedicated to activities that must continue to be carried out under the protection of articles 10.1, 10.4, 14.4, 16, 17, and 18 of Royal Decree 463/2020 of 14 March, which declared the state of

alarm (**RD 463/2020**) and the regulations approved by the Competent Authority and the Delegated Competent Authorities.

- 2) Companies involved in the market supply chain and the operation of services producing basic necessities, including food, drinks, hygienic, sanitary, and pharmaceutical products, allowing for distribution from the origin to retail stores.
- 3) Companies providing home delivery services in the catering and distribution sector.
- 4) Companies providing services in the chain of production and distribution of goods, services, health technology, medical material, protective equipment, sanitary equipment, and any other material necessary for the provision of health services.
- 5) Companies that are essential for the maintenance of the manufacturing industry, that offer the supplies, equipment, and materials necessary for the continued development of essential activities.
- 6) Companies that must ensure the maintenance of means of transport, both for people and goods, that continue to operate after the state of alarm.
- 7) Those that provide services in penitentiary institutions, civil protection, maritime rescue, rescue, prevention, and extinction of fires, mine safety, and traffic and road safety. Likewise, those that work in private security companies that provide security transport services, response to alarms, round-trip or discontinuous surveillance, and those that are necessary for the performance of security services in guarantee of essential services and supplying the population.
- 8) Those that are indispensable to the maintenance of the material and equipment of the armed forces.
- 9) Health centres and centres for the care of the elderly, dependants, and people with disabilities, research centres where projects related to COVID-19 are being carried out, and any facilities associated with them, as well as companies supplying products necessary for such research.
- 10) Animal health care centres, services, and facilities.
- 11) Press and media retail stores, including printing or distribution services.
- 12) Those working in financial services companies, including banking, insurance, and investment companies, for the provision of essential services, and the activities of payment infrastructures and financial markets.
- 13) Telecommunications and essential computer services companies, as well as those networks and facilities that support them and the sectors or subsectors necessary for their proper functioning, especially those that are essential for the proper provision of public services and the remote work of public employees.
- 14) Essential services related to the protection and care of victims of gender-based violence.
- 15) Those who work as lawyers, prosecutors (*procuradores*), social studies graduates, translators, interpreters, and psychologists, and those who attend essential justice proceedings not suspended by RD 463/2020.

- 16) Those who provide services in law firms and legal consultancies, administrative agencies, and social studies graduates, and third-party services and own occupational risk prevention, in urgent matters.
- 17) Those who provide services in notaries and public registers for the fulfilment of the essential services set by the General Directorate of Legal Security and Public Faith.
- 18) Those who provide cleaning, maintenance, urgent repairs, and surveillance services, as well as services for the collection, management, and treatment of hazardous waste, including hazardous and non-hazardous solid urban waste, waste water collection and treatment, decontamination activities, and other waste management services and the transport and removal of by-products or any of the entities belonging to the public sector.
- 19) Services provided in refugee reception centres and in centres for temporary stay of immigrants, and to the public entities of private management subsidised by the Secretariat of State for Migration and operating within the framework of International Protection and Humanitarian Assistance.
- 20) Water supply, purification, conduction, and sanitation activities.
- 21) Essential activities for the provision of meteorological services of prediction and observation and the associated processes of maintenance, monitoring, and control of operations.
- 22) Activities of the operator designated by the State to provide the universal postal service, in order to provide collection, acceptance, transport, sorting, delivery services, for the exclusive purpose of guaranteeing that universal postal service.
- 23) Services of importation and supply of sanitary equipment, such as logistics, transport, storage, customs transit and, in general, all those participating in the sanitary corridors.
- 24) Services of distribution and delivery of products acquired by internet, telephone, or other correspondence.

Other excluded scenarios or services

RDL 10/2020 and Order SND/307/2020 also provide that **this recoverable paid leave will not apply to:**

- Activities that can continue as normal through teleworking or remote working.
- Workers who are on temporary sick leave, as well as those whose contracts are suspended for other legally established reasons.
- Workers providing services in the divisions or production lines whose activity corresponds to the sectors qualified as essential.
- Companies that were applying the collective measures for the suspension of contracts or reduction of working hours (ERTEs) provided for in Royal Decree Law 8/2020 of 17 March on extraordinary urgent measures to deal with the economic and social impact of COVID-19, or those that were authorised to file proceedings during this compulsory suspension of activity.

- Union representatives and those persons dedicated to the activity of union or employer representation.

Recovery of working hours

The **recovery** of working hours can be made effective from the day after the end of the state of alarm **until 31 December 2020**.

Regardless of the number of employees in the company, the recovery system must be negotiated during a consultation period of a maximum of seven days. The consultation period regulated in RDL 10/2020 is identical to that regulated in article 23 of RDL 8/2020 in terms of time and election of the members of the negotiating committee. In other words, if there is no legal representation of the workers, the unions most representative of the corresponding sector will once again be given preference to form part of the negotiating committee. If no agreement is reached during this consultation period, the company must notify its decision on the recovery of working hours within seven days from the end of the consultation period.

In any case, the recovery system must respect the minimum working day requirements established in Article 34.2 of the Workers' Statute, may not exceed the maximum annual working day, and must respect the legally and conventionally recognised rights of labour conciliation.

Responsible statement: Companies must issue a responsible statement, following the template published by Order SND/307/2020, for those workers to whom the recoverable paid leave does not apply, in order to facilitate their identification by the State security forces.

Latham & Watkins will continue to monitor and update on the situation.

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