

## NEWSLETTER

### RECOVERABLE PAID LEAVE

### ROYAL DECREE - LAW 10/2020 OF 29 MARCH AND ORDER

### SND/307/2020 OF 30 MARCH

#### 1. INTRODUCTION

Last Sunday, 29 March, Royal Decree-Law 10/2020 was published in the Official State Gazette - which came into force on the same day - and a few hours later Order SND/307/2020, 30 March, was also published, establishing the interpretative criteria for the application of Royal Decree-Law 10/2020, 29 March, and the model of responsible declaration to facilitate the necessary travels from the place of residence and the place of work.

This Royal Decree-Law contains and specifies the measures that the Government had already announced regarding the **suspension of all non-essential economic activity**. Thus, workers whose jobs are not considered essential will not have to go to work between Monday 30 March and 9 April 2020.

In this way, after the declaration of the state of alarm on March 14, 2020 and the adoption by the Government of various regulatory instruments with direct impact on the labour field, especially Royal Decree-Laws 8/2020 and 9/2020 -which Giménez Torres Abogados has already published in its *newsletters*-, another step forward in limiting the mobility of people has been taken.

Thus, this Royal Decree-Law 10/2020 imposes, on a temporary and exceptional basis, one more measure to minimize on-site activity with the ultimate aim of reducing the possibilities of spreading Covid-19.

**It is important to point out** that the final version of Royal Decree Law 10/2020, as a novelty with respect to the drafts that circulated throughout Sunday 29, **establishes**

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**a 24-hour moratorium on its application**, by providing that in those cases in which it is completely impossible to immediately interrupt the activity, the **affected workers may provide services on Monday 30 March 2020**, "for the *sole purpose of carrying out the essential tasks for carrying out the compulsory recoverable paid leave without irremediably or disproportionately prejudicing the resumption of business activity*", which in practice means a 24-hour moratorium on the application of the Royal Decree.

Likewise, it is particularly noteworthy that those employees not subject to the recoverable paid leave established in Royal Decree Law 10/2020 and those others dedicated to the activity of union or business representation, will have the **right to have the company or employing entity issue a responsible statement recognizing this circumstance**, in accordance with the model included in the Annex to Order SND/307/2020, March 30.

## **2. EXECUTIVE SUMMARY OF ITS IMPACT**

The most significant new features of this Royal Decree-Law 10/2020 mean that

**A. Employees of companies, who are not able to telework and do not have their employment contract suspended, will be given a compulsory and recoverable paid leave, between Monday 30th March and Thursday 9th April.**

This means that these workers:

-  **Will not provide services** between Monday 30 March and Thursday 9 April.
-  **Will receive their regular full salary**, including allowances.
-  **Must recuperate the hours of work not carried out**, between the day after the end of the alarm state and 31 December 2020.
-  **The implementation of this hourly recovery must be done by agreement with the workers' representatives and**, if this is not possible, through a consultation period with the most representative trade unions or, otherwise,

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with a commission set up for this purpose by the company's workers.

**B. This compulsory recoverable paid leave does NOT apply to workers:**

- a) who can continue to carry out their usual activities through **home-working**.
- b) whose employment contracts have been or are being **suspended by a temporary suspension (ERTE)**.
- c) who are on **temporary sick leave or whose contract is suspended for other legally stipulated reasons**.
- d) those **workers who are essential to maintain the indispensable activity of the company**, despite not having as an activity one of the activities qualified as essential and that will have, as a reference, the activity maintained in an ordinary weekend or on holidays.
- e) engaged in trade union and employer representation activities, and this, in order to ensure assistance and advice to workers and employers.
- f) providing services in companies, divisions or production lines whose activity corresponds to the **sectors described as essential in the Annex including Royal Decree-Law 10/2020**.

**C. Similarly, as expressly stated in Order SND/307/2020 of 30 March, the suspensions of the activities set out in the aforementioned Royal Decree-Law 10/2020 of 29 March, do not apply to self-employed persons and it is specified that only the limitations established by the declaration of the state of alert shall apply to them.**

### **3. DIFFERENT SCENARIOS IN PRACTICE**

Considering the present situation and in view of this latest Royal Decree-Law 10/2020, it seems necessary to recall that, now more than ever, common sense and good faith are the two pillars that should govern labour relations.

Likewise, needless to say that, if under normal legal circumstances an exclusive and individual analysis of the case must be carried out, at this time we must be extremely

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careful and remember that each case is different. Nevertheless, in this *newsletter* we have tried to outline *roughly* the issues that can be opened.

Based on this premise, we will now address, in an agile "question-answer" format, the different scenarios that, in practice, are immediately posed.

### 3.1. HOW DOES THIS NEW ROYAL DECREE LAW 10/2020 AFFECT WORKERS?

In which the Government is ordering the cessation of all non-essential activities. The activities that are essential must continue as before, with all preventive and safety measures for workers.

### 3.2. WHAT ARE THE ESSENTIAL AND NON-ESSENTIAL ACTIVITIES?

The non-essentials are: **(i)** all those that had already been suspended since March 14; and **(ii)** all those that have been included in Royal Decree-Law 10/2020 --and that are listed in the Annex of this Note.

Special care must be taken when establishing essential activities, since, in addition to those specifically listed in the Annex, there is a reference, by way RD 463/2020, to Law 8/2011 on measures for the protection of critical infrastructures, which would also be of an essential nature; plus the last section of the Annex, which is a real catch-all.

### 3.3. DOES THAT MEAN THAT ON MONDAY 30TH IT IS NOT POSSIBLE TO WORK?

It will depend on the specific situation, but in general terms:

#### **Non-essential activity:**

- o And teleworking possibility → If it is a company not included in the Annex and therefore not essential, and teleworking is possible, the company must facilitate remote working, if it is not already implemented.
- o And it is **not** possible to telework → from Monday 30 March, it **will be not allowed to go to work. Mandatory recoverable paid leave will apply.**

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**✚ Essential activity:**

- o And teleworking possibility → If it is a company included in the Annex and therefore essential, and teleworking is possible: the company must facilitate remote working, if it is not already implemented.
- o And not possible teleworking →. **The worker must go to his workplace.** These are the essential services that require direct, face-to-face work. The company must, however, guarantee the safety and health of the workers.

#### **4. CONCLUSIONS**

In conclusion, and reiterating that, as a general rule, it must be analysed on a case-by-case basis, from 31 March onwards, **only those workers who provide services considered by Royal Decree-Law 10/2020 to be essential and who do not have the possibility of carrying out the work by telematic means should go to work in person.**

Likewise, **compulsory recoverable paid leave would be designed, in general, for those workers who provide services considered by Royal Decree-Law 10/2020 to be non-essential and cannot perform them on a remote telematic way.**

Notwithstanding the above, and as mentioned before, in practice situations will arise that will require concrete and individualized analysis. Therefore, an adequate legal advice is now even more important.

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\*See *Annex* below

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## **ANNEX**

**Paid leave regulated by Royal Decree-Law 10/2020 shall not apply to the following employees:**

- 1.** Those that carry out activities that must continue to be developed under articles 10.1, 10.4, 14.4, 16, 17 and 18 of Royal Decree 463/2020 of 14 March, which declares the state of alarm, for the management of the health crisis situation caused by COVID-19 and the regulations approved by the competent Authorities.
- 2.** Those who work in the activities related to the market supply chain and the operation of the services of the production centres of goods and services of first necessity, including food, drinks, animal feeding, hygienic products, medicines, sanitary products or any other necessary for the protection of the health, allowing the distribution of the same ones from the origin to the final destiny.
- 3.** Those providing services in the hotel and restaurant business that provide home delivery services.
- 4.** Those providing services in the chain production and distribution of goods, services, health technology, medical material, protective equipment, health and hospital equipment and any other material necessary for the provision of health services.
- 5.** Those essential for the maintenance of the productive activities of the manufacturing industry that offer supplies, equipment and materials necessary for the correct development of the essential activities included in this annex.
- 6.** Those which carry out transport services, both for people and goods, that continue to be developed since the declaration of the alarm state, as well as those that must ensure the maintenance of the means used for this purpose, under the protection of the regulations approved by the competent authorities since the declaration of the alarm state.

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7. Those that provide services in penitentiary institutions, civil protection, maritime rescue, rescue and fire prevention and extinction, mine safety, and traffic and road safety. Likewise, those that work in private security companies that provide security transport, alarm response, patrol or discontinuous surveillance services, and those that need to be used for the performance of security services to guarantee essential services and supply the population.

8. The indispensable ones that support the maintenance of the material and equipment of the armed forces.

9. Those of health centres, services and establishments, as well as people who *(i)* care for the elderly, minors, dependent persons or persons with disabilities, and persons working in companies, R&D&I and biotechnology centres linked to COVID-19, *(ii)* animal facilities associated with them, *(iii)* maintenance of the minimum services of the facilities associated with them and companies supplying products necessary for such research, and *(iv)* *persons* working in funeral services and other related activities.

10. Those of animal health care centres, services and establishments.

11. Those that provide services at press sales points and in public and private media or news agencies, as well as in their printing or distribution.

12. Those of financial services undertakings, including banking, insurance and investment undertakings, for the provision of services which are essential, and activities relating to payment infrastructures and financial markets.

13. Those of telecommunications and audiovisual companies and essential computer services, 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, as well as the operation of the non-presential work of public employees.

14. Those that provide services related to the protection and care of victims of gender-based violence.

15. Those who work as lawyers, solicitors, social graduates, translators, interpreters and psychologists and who attend the procedural actions not suspended by Royal Decree 463/2020, of 14 March, which declared the state of alarm for the

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management of the health crisis situation caused by the COVID-19 and, in this way, comply with the essential services established by consensus by the Ministry of Justice, the General Council of the Judiciary, the Office of the Public Prosecutor and the Autonomous Communities with jurisdiction in this area, as set out in the Resolution of the Secretary of State for Justice dated 14 March 2020, and any adaptations that may be agreed in the chaos.

**16.** Those that provide services in legal offices and consultancy, administrative and social graduate agencies, and external and own services of prevention of occupational risks, in urgent matters.

**17.** Those that provide services in the notary's offices and registries for the fulfilment of the essential services established by the General Direction of Legal Security and Public Faith.

**18.** Those that provide cleaning, maintenance, urgent breakdown repair and surveillance services, as well as those that provide services for the collection, management and treatment of hazardous waste, as well as solid urban waste, both hazardous and non-hazardous, the collection and treatment of wastewater, 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, in accordance with the provisions of Article 3 of Law 9/2017, of 8 November, on Public Sector Contracts.

**19.** Those working in the Refugee Reception Centres and Temporary Stay Centres for immigrants and the privately run public entities subsidized by the Secretariat of State for Migration and operating within the framework of International Protection and Humanitarian Assistance.

**20.** Those working in water supply, purification, conduction, potabilization and sanitation activities.

**21.** Those that are indispensable for the provision of meteorological services of prediction and observation and the associated processes of maintenance, monitoring and control of operational processes.

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**22.** Those of the operator designated by the State to provide the universal postal service, to provide the services of collection, acceptance, transport, sorting, delivery and delivery for the exclusive purpose of guaranteeing that universal postal service.

**23.** Those that provide services in those sectors or subsectors that participate in the import and supply of health material, such as logistics, transport, storage, customs transit (freight forwarders) companies and, in general, all those that participate in health corridors.

**24.** Those who work in the distribution and delivery of products purchased in the internet, telephone or mail order business.

**25.** Any others providing services that have been deemed essential.

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