

Reduction in workers' mobility and in the provision of non-essential services via recoverable paid leave approved under Royal Decree-law 10/2020 of 29 March

Rationale and purpose of Royal Decree-law 10/2020

Royal Decree-law 10/2020 of 29 March regulating recoverable paid leave for non-essential service employees in a bid to reduce personal mobility in the fight against COVID-19 ("**RDL 10/2020**") was published in the Official State Gazette of 29 March 2020.

Royal Decree 463/2020 of 14 March declaring a state of emergency had already adopted a series of **measures relating to restrictions on citizens' movement, as well as social and economic activities**. However, travel to and from the workplace to perform all activities considered critical, essential or pertinent for the continuity of activity across the country was permitted under Article 7.1.c.

RDL 10/2020 affirms its priority to "*limit movement to the fullest*", thus restricting work-related mobility.

For that, **it has created** the so-called "**recoverable paid leave**", which essentially means that employees must remain at home **between 30 March and 9 April but will still receive the salary owed to them by their employer**. Against this backdrop, **the employees in question will have to make up all paid hours not worked**, with 31 December 2020 set as a deadline.

The Annex of the RDL lists a number of key sectors to which the recoverable paid leave will not apply, meaning that all such activity shall continue and work-related travel be permitted in this regard.

Workers falling under the recoverable paid leave scheme

All employees of companies or public/private sector entities whose activities have not been suspended as a result of the statement of emergency declared under Royal Decree 463/2020 of 14 March, except:

- a) Those rendering services in **sectors classified as essential** under the RDL 10/2020 Annex, a copy of which can be found at the end of this report.
- b) Those rendering services in **divisions or production lines whose activity corresponds to the sectors classified as essential** under RDL 10/2020.

- c) Those hired by (i) **companies which have petitioned or are implementing a temporary collective redundancy** procedure and (ii) companies whose temporary collective redundancy is **authorised during the recoverable paid leave period** indicated in RDL 10/2020.
- d) Those **on sick leave due to temporary disability or whose contract has been suspended** on other legally-prescribed grounds.
- e) Those who **are able to continue performing their activity as normal via home working or any other means of providing services remotely**.

Paid leave and its applicable term

Under the recoverable paid leave arrangement, **employees will retain the right to the remuneration** which would have been owed to them in ordinary circumstances, including their basic salary and any extras.

This leave is **compulsory and will be observed from 30 March to 9 April 2020 (both inclusive)**. In other words, neither employees nor companies will be able to enjoy such leave or pay salaries where the employees fall under the RDL 10/2020's subjective scope of application. All paid hours in accordance with this arrangement must be recovered under the terms of Article 3 of the RDL.

Recovery of hours not worked during the paid leave period

Employees will have from the end of the state of emergency until 31 December 2020 to make up any hours not worked during the indicated term, pursuant to the following rules:

- a) Recovery shall be negotiated during a **maximum seven-day consultation period between the company and the employees' legal representatives**.

RDL 10/2020 implements measures for cases whereby there is no employees' representative body, i.e. the representative committee for negotiation during the consultation period will instead be formed of the most prominent trade unions of the sector in which the company operates, who also form part of the collective bargaining agreement negotiation committee. One person per union meeting the foregoing requirements will sit on the committee, with decisions made based on the corresponding representative majorities. Where this is not possible, the committee will comprise three company employees. In all of the above cases, the representative committee must be set up within a non-extendable five-day term.

- b) **Negotiations will be carried out in good faith with the aim of reaching an agreement. Said agreement will require a favourable vote of the majority of those recognised as the employees' legal representatives or, as the case may be, the majority of the representative committee members, provided that in**

both cases they stand for the lion's share of those affected by this extraordinary arrangement.

- c) The parties may agree at any time to replace the consultation period with the mediation or arbitration procedures prescribed under employment law.
- d) **Any agreement reached may set out the conditions for the recovery of all or a portion of the working hours** during the regulated leave period, the minimum notice for advising employees of the date and time the resulting work is to be performed and the period during which the non-worked hours are to be recovered.
- e) **Where an agreement is not reached during the consultation period, the company will notify its employees and the representative committee of the decision made regarding the recovery of the hours not worked during the paid leave term within seven days from the end of such consultation.**

In any event, RDL 10/2020 stipulates that in **making up these hours, the minimum daily and weekly rest periods prescribed by law and in the collective bargaining agreement must still be observed**, that a **shorter notice period** than the one indicated in Article 34.2 of the Spanish Workers' Statute may not be established and that **the maximum annual hours foreseen under the applicable bargaining agreement may not be exceeded**.

Moreover, **all legally and contractually-recognised rights to a work/life balance must be upheld**.

Exception relating to vital minimum activity

Article 4 of RDL 10/2020 provides an important **exception** to its applicability for **sectors not classified as essential** and which are therefore bound to observing the recoverable paid leave arrangement. Where necessary, these companies **may establish a skeleton workforce or shift working to continue to maintain essential activities, using their usual weekend or bank holiday arrangements as a reference**.

In other words, companies obliged to trigger the recoverable paid leave arrangement but which perform an activity which must remain in place during the period regulated under RDL 10/2020 are permitted to set up a skeleton workforce or shift working which would usually ensure the same level of activity on non-working days. Logically, this applies to sectors not recognised as essential which remain operational at weekends, need to retain maintenance services at their facilities (such as IT-related services for remote working) or perform their activities 365 days of the year, thus avoiding any damage that the complete suspension of such activities may cause.

Moratorium to prepare activities prior to closure

As a transitional provision, RDL 10/2020 is expected to enter into force on 31 March 2020 (one day after the beginning of the paid leave period) "**for cases in which activity cannot be immediately shut down**". The only activities permitted on 30 March must be "**crucial tasks required to implement the recoverable paid leave arrangement without causing irreparable or disproportionate damage to the reinstatement of business activity**".

Along similar lines, the RDL's second transitional provision authorises transport carriers rendering services upon its entry into force and obliged to enforce recoverable paid leave to wait to implement the scheme until such services are completed (including return journeys).

Authorisation granted to the Health Ministry to modify affected activities

As a delegated relevant authority, Spain's Ministry of Health is authorised to amend or specify the activities subject to the recoverable paid leave arrangement by issuing the corresponding orders.

Further measures relating to the Justice Administration and public procurement

Regarding the **key Justice Administration services**: judges, prosecutors, Justice Administration attorneys and staff will continue to perform all procedural actions not suspended under Royal Decree 463/2020. Against this backdrop, **such persons will uphold the services deemed essential by way of agreement between the Ministry of Justice, General Council of the Judiciary, General State Prosecution Service and the regional governments with authority over such matters.**

What's more, **Justice Administration staff will also continue to provide necessary Civil Register services** in accordance with the Ministry of Justice's instructions.

Lastly, there are two provisions concerning **public sector contracts**:

- a) **Activities which are not included in the annex and have been undertaken via the procedure established in Article 120** (emergency processing) **of the Spanish Public Sector Contracts Act 9/2017 of 8 November.**
- b) In addition, recoverable paid leave **will not apply to the employees of companies awarded** public sector works, services or supply contracts considered **vital for the maintenance and security of buildings and the correct provision of public services**, including the rendering of such services remotely. The foregoing is notwithstanding Article 34 of Royal Decree-law 8/2020 of 17 March on urgent and extraordinary measures to address the economic and social impact of COVID-19 (contracts which cannot be performed as a result of the virus or the

measures adopted by the State, regional governments or local authorities to combat COVID-19 and which have been automatically suspended from the time at which the event hindering their performance was recognised and until performance can be resumed).

ANNEX

The recoverable paid leave scheme regulated under RDL 10/2020 will not apply to the following types of employees:

1. Those performing **activities which must continue under the scope of Articles 10.1, 10.4, 14.4, 16, 17 and 18 of Royal Decree 463/2020** and the regulations passed by the relevant authority and delegated relevant authorities.
2. Those who **perform activities relating to the market supply chain and the functioning of services at sites for the production of basic necessities, including food, drinks, animal feed, hygiene products, medicines, sanitary products or any other product required for the protection of health, enabling distribution from origin to their final destination.**
3. Those who render services **recognised as catering activities providing home deliveries.**
4. Those rendering services as part of the **production and distribution of goods, services, health-related technology, medical devices, protective equipment, hospital apparatus and any other material required for the provision of healthcare services.**
5. **Key staff for the maintenance of the manufacturing activities offering the necessary supplies, equipment and material for the correct performance of the essential activities** described in this annex.
6. Those performing **transport services for both people and cargo which have continued to be rendered from the state of emergency declaration, as well as those responsible for ensuring the maintenance of the means used for such services** under the regulations approved by the relevant authority or delegated relevant authorities since a state of emergency was declared.
7. Those **rendering services at prisons, civil protection facilities, sea rescue, fire rescue, prevention and protection, mine security and traffic safety.** Moreover, those who work for private security firms **providing safe transport services, alarm response, intermittent patrol or surveillance and those required to perform security services to guarantee essential services and supply to the population.**
8. Those **required to support the maintenance of material and equipment belonging to the armed forces.**
9. Those at **health centres, services and establishments, as well as persons who (i) care for the elderly, minors, dependants or disabled citizens, as well as those working for companies, R+D facilities and biotechnology centres**

linked to COVID-19, (ii) work at animal testing facilities, (iii) maintain a skeleton service at related facilities and companies supplying products required to assist with research, and (iv) work at funeral homes and related activities.

10. Those at **animal health centres, services and establishments.**
11. Those rendering services at **points of sale for the press and for public or private media or news agencies, as well as printers and distributors of such material.**
12. Those working for **financial services institutions, including banks, insurance and investment firms, providing essential services, as well as activities relating to payment infrastructure and financial markets.**
13. Those working for **telecommunications and audiovisual firms and essential IT service providers, as well as their networks and facilities and in sectors or sub-sectors to ensure their correct operation, most notably those deemed essential for the provision of public services and the functioning of remote working for civil servants.**
14. Those rendering **services relating to the protection and care of domestic violence victims.**
15. Those who work as **lawyers, court representatives, welfare officers, translators, interpreters and psychologists who are required to attend the proceedings not suspended under Royal Decree 463/2020.** Against this backdrop, **such persons will uphold the services deemed essential** by way of agreement between the Ministry of Justice, General Council of the Judiciary, General State Prosecution Service and the regional governments with authority over such matters and captured in the Resolution of the Secretary of State for Justice dated 14 March 2020 and any amendments which may later be agreed.
16. Those who provide services at **law and legal consultancy firms, management agencies and social authorities, as well as occupational risk prevention services, where urgent.**
17. Those who render **services at notary offices and registers to ensure the provision of services deemed essential by the Directorate General of Legal Certainty and Public Faith.**
18. Those who provide **cleaning, maintenance, urgent repair and surveillance services, as well as services relating to the collection, management and treatment of hazardous waste, plus municipal solid and non-hazardous waste, the collection and treatment of waste water, decontamination activities and other waste management, transport and the removal of by-products, or in any public sector entities pursuant to Article 3 of Act 9/2017.**

19. Those working at **reception centres for refugees and temporary accommodation for immigrants, as well as for public entities subsidised by the Secretary of State for Immigration and which operate under the banner of international humanitarian protection and attention.**
20. Those performing **activities relating to the supply, purification, piping, filtering and drainage of water.**
21. Those considered **indispensable for the provision of weather forecasting and observation services, as well as the associated maintenance, surveillance and operational control procedures.**
22. Those at the **operator appointed by the State to provide postal services, namely collection, receipt, transport, classification, distribution and delivery, for the exclusive purpose of guaranteeing such service to all.**
23. Those providing services in the **sectors or sub-sectors involved in importing and supplying healthcare material, such as logistics, transport, storage, customs transit and, broadly speaking, all those linked to healthcare product couriers.**
24. Those working on the **distribution and delivery of products bought online, by telephone or mail order.**
25. Any others **rendering services which are not considered essential.**

Our entire team of experts at CMS Albiñana & Suárez de Lezo remains at your disposal to answer any questions or queries you may have.