



PUBLIC ADVISORY #10

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Frequently-Asked Questions On Worker's Rights in Spain During the State of Alarm

UPDATE: Please note that household employees are not exempt from going to work until 30 March 2020.

Under the latest Royal Decree 10/2020 of 29 March 2020, the Spanish government did NOT include household/domestic service workers among the “essential services” that can continue operating during the State of Alarm. HOWEVER, Article 9 of this decree considers as essential “services and persons that attend to the elderly, minors, or disabled.” As such, workers engaged in these activities will be able to move to and from the houses where they work and continue to carry out their activities normally.

However, those who are working from home, including live-in domestic workers, are not affected by the latest decree of 29 March 2020. They are allowed to continue working as their work does not require travel or going out.

Those who are working in supermarkets, food-related stores and restaurants offering delivery services are also allowed to continue their work as these are services considered essential under the Royal Decree of 29 March 2020.

- 1. It is important to identify and understand the Spanish laws and statutes or the Collective Labor Agreement of companies in order to terminate or temporarily suspend the employment relationship in times of crisis such as this pandemic. What are the rights of workers?**

The possibility of terminating or suspending employment contracts always depends on the employer.

If the worker initiates a voluntary resignation, he will not have the right to compensation or unemployment benefits.

- 2. What are the advantages that the workers may benefit from, and how do they avail themselves of these during this crisis?**

Workers whose employment contracts are temporarily suspended will always be entitled to an unemployment benefit equivalent to 70% of their regulatory base (salary) for the duration of the State of Alarm, without such benefit consuming those which they have already accumulated.



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3. What is the difference between ERTE and ERE and what should be done in the event that a worker is presented with the documents related to it? Should the worker sign? Set a date? Object or signify non-conformance?

During the coronavirus crisis, the ERTE (*Expediente de Regulación Temporal de Empleo / Temporary Employment Regulation File*) will be issued as it assumes a temporary suspension of employment justified by the State of Alarm.

The employer must notify the labor authority of the temporary suspension of the employment contract prior to the employee's signature of this communication.

Afterwards, the worker will receive the resolution communicating the suspension of the employment contract and the amounts to be received with retroactive effectivity from the date of the imposition of the State of Alarm (14 March 2020).

When signing any document, if in doubt or unsure, it is always advisable to sign as "non-conforming."

For more information on ERTE and ERE, please see:

Servicio Público de Empleo Estatal: ME HA AFECTADO UN ERE O ERTE.

[<https://www.sepe.es/HomeSepe/Personas/distributiva-prestaciones/quiero-cobrar-el-paro/afectadoERE.html>]

4. Is there mediation between workers and the company? Which agency is in charge?

Mediation is carried out before a labor administrative agency, and the timeframes for filing complaints regarding termination are suspended for the duration of the State of Alarm.

5. Are there unemployment benefits for household employees and other categories such as restaurant/service industry? How do these apply?

Workers affected by sectors classified as prohibited during the State of Alarm – for example, restaurants – have the right to an unemployment benefit equivalent to 70% of their base salary.

The work regime of household employees is unique and in the coming days the government will approve a package of measures. Household employees are under a special regime of domestic service, whereby they are entitled to medical leave and retirement pensions, but not to unemployment benefits. Therefore, a subsidy that will be similar to an unemployment benefit will be provided.

While waiting to know the measures that the government will adopt for this sector, household employees who become unemployed due to the coronavirus crisis will receive an extraordinary subsidy that will put them on an equal footing with workers whose work will be suspended with an ERTE, as long as they can prove that their employer has fired or suspended them from employment. In this case, they will receive 70% of the regulatory base (70% of the salary) for the duration of the extraordinary situation of State of Alarm.



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Household employees are not exempt from going to work under the coronavirus confinement order [UPDATE: Under the latest Royal Decree 10/2020 of 29 March 2020, the Spanish government did NOT include household/domestic service workers among the “essential services” that can continue operating in the State of Alarm, effective 31 March 2020]

Cases of household employees who claim to be unable to go to work [prior to 31 March 2020] because they are medically prescribed with isolation or are ill from the coronavirus are considered as similar to those who have had a work-related accident, therefore, they would be entitled from the first day to 75% of the regulatory base.

6. Can a worker refuse to go to work for his employer if he is afraid of contracting the virus?

The worker cannot refuse, unless the company fails to provide adequate protection measures and seriously compromises the safety and health of the worker.

However, in general, the non-observance of these measures by the employer does not end the worker's obligation to go to his job. In addition, the refusal to work may be considered voluntary resignation, allowing the employer to terminate the employment contract without the right to compensation.

7. What would be the recourse if a worker was fired? Is it legal to fire a worker for not going to work in this crisis?

If a worker does not go to work, it is legal for the employer to terminate the contract due to voluntary resignation, without right, in this case, to any compensation.

On the other hand, if a dismissal occurs, the worker has 20 days to file a claim for previous settlement against the employer for improper dismissal. If the worker does not act within that term after the date of dismissal, such action is considered expired.

8. Is there any other form of aid that the Spanish government guarantees or will guarantee to workers (including foreigners) affected by the COVID crisis?

It should be added that the late application for unemployment benefits or its extension does not entail any reduction or loss of the recognized benefit.

9. Once a household employee has decided not to go to work, what is the law that applies when calculating the salary if the employee has an existing contract?

If the worker voluntarily decides to resign from work, the employer has to pay the severance pay for the days accrued until cessation, in addition to the proportional part of extra payments and unused vacation days.



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The salary that the worker will receive is that which is set forth in the collective labor agreement applicable to the contract.

10. If your employer decides to unsubscribe you from social security, is it correct to do so during the State of Alarm?

The State of Alarm does not allow employers to unsubscribe any employee from social security. Any termination or modification of the contract must always be previously justified by the employer. If the employee is not in agreement with such decision, it is necessary to take action by contesting the employer's decision.

11. Can undocumented people with employment still go to work during the State of Alarm? Or will the police question where they are going?

The legal status of individuals with irregular migration status is not affected by the State of Alarm.

However, if they have already submitted documents for the regularization of their status, no sanctions proceedings for expulsion can be initiated until the administration resolves the initial petition. Therefore, it is recommended that they at least carry with them the documents that prove their status.

Household employees are covered by a special domestic service regime, whereby they are entitled to medical leave and retirement pensions, but not to unemployment benefits. Labor sources indicate that they are not exempt from going to work under the coronavirus confinement order [prior to the suspension of all non-essential work effective 31 March 2020]. "In these cases, there are confined families who are paying them even if they don't go to work. Cases of household employees who claim to be unable to go to work because they are medically prescribed with isolation or are ill from the coronavirus are considered as similar to those who have had a work-related accident, therefore, they would be entitled from the first day to 75% of the regulatory base." – Patricia León, labor lawyer at Montero Aramburu law firm.



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References and further links:

Servicio Público de Empleo Estatal: ME HA AFECTADO UN ERE O ERTE.

[<https://www.sepe.es/HomeSepe/Personas/distributiva-prestaciones/quiero-cobrar-el-paro/afectadoERE.html>]

Real Decreto-ley 10/2020, de 29 de marzo, por el que se regula un permiso retribuido recuperable para las personas trabajadoras por cuenta ajena que no presten servicios esenciales, con el fin de reducir la movilidad de la población en el contexto de la lucha contra el COVID-19.

[<https://www.boe.es/buscar/doc.php?id=BOE-A-2020-4166>]

Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19. [<https://www.boe.es/buscar/doc.php?id=BOE-A-2020-3824>]

