

Spain, week between April 13 and 19, 2020

COVID-19: Companies face a return to non-essential activities, new rules on administrative and procedural time periods and the renegotiation of agreements

The situation created by the spread of COVID-19 requires an analysis of the new legislation from all angles of business law. For another week running, Garrigues summarizes the key new legislation that companies need to be aware of over the coming days. This week, the labor landscape features the return to non-essential activities, together with a few new measures such as deferred payment of social security contributions or the ability to combine agricultural activity with unemployment subsidies and benefits. In the tax field, besides paying close attention to new tax legislation in Spain and elsewhere, there are other elements needing to be considered such as the issue of renegotiating commercial lease agreements which may trigger tax costs. In relation to administrative law, businesses need to keep sight of the new legislation on administrative and procedural time periods. And on the subject of litigation and arbitration, this week we look at how COVID-19 will impact international contracts, and the opportunity provided by mediation as an alternative route for dispute resolution in the current context.

Labor and employment

The validity period of restrictions relating to non-essential activities and of recoverable paid leave has ended, whereas new legislation with labor measures is being approved. Moreover, some forecasting activity is needed regarding the measures that may be necessary after the state of emergency period ends.

1. Workplace good practice guidelines. The government has published **workplace good practice guidelines** to prevent COVID-19 contagion, coinciding with the end of the recoverable paid leave and the return to their workplaces for workers carrying on non-essential activities who cannot work from home.

2. Directorate General for Work makes determinations on some of the most controversial issues arising from the new labor legislation. In reply to a request submitted by CEOE (Confederation of Employers and Industries of Spain), the Directorate-General for Work has made determinations on matters including the tolling of terms of temporary contracts, the scope of the obligation to maintain employment (which it considers only applicable to the beneficiaries of the exemption or reduction for contributions affected by temporary layoffs due to force majeure) and on the restriction on making dismissals (limited to terminations or layoffs due to force majeure and on economic, production-related, technical and organizational grounds related to COVID-19).

3. Companies will be able to request deferred payment of social security contributions without needing to provide guarantees for debts up to €150,000. The **social security general treasury decision of April 6, 2020** determines that it will not be necessary to provide guarantees to secure the deferred payment of social security debts where the deferrable debt amounts in aggregate to €150,000 or below, or if, where the deferrable debt is below €250,000 euros, it is agreed to pay at least a third of that debt within ten days from notification of the decision granting this arrangement, and the remaining amount over the following two years.

4. Implementation of classification as events assimilated to occupational accident in various circumstances caused by COVID-19. **Royal Decree-Law 13/2020** implements classification as a scenario able to be treated as assimilated to occupational accident for periods of isolation, contagion or restrictions for leaving municipalities as a result of COVID-19. Where, by contrast, it is proven that the disease was contracted exclusively as a result of performing work as envisaged in the law, it will be classed as an occupational accident.

5. It is allowed temporarily to combine agricultural activity with unemployment subsidies and benefits. Royal Decree-Law 13/2020 also allows the temporary hiring of workers in the agricultural sector under extraordinary flexible-employment measures, where necessary to ensure the continuity of agricultural activity while the state of emergency is in place. This is temporarily applicable until June 30, 2020.

6. Measures in the labor jurisdiction to head off a collapse of the justice system after the end of the state of emergency.

The shake-up plan proposed by the General Council of the Spanish Judiciary includes labor measures, such as: (i) extending the time-bar periods for pretrial mediation and conciliation processes, (ii) amendments to enable challenges of temporary layoff procedures under the collective dispute procedural mechanism, (iii) giving urgent status to dismissal proceedings, (iv) raising to €6,000 the minimum amount for appeals to superior courts in the labor jurisdiction, or (v) making judgments deciding on challenges of temporary layoff procedures not able to be appealed to superior courts in the labor jurisdiction, or in cassation appeals.

7. What will happen at the end of the validity period of temporary layoffs due to force majeure? As the end of the validity periods of temporary layoffs due to force majeure caused by halted activity in the state of emergency draws near, companies will have to examine whether they are able to resume their activities at full capacity and in the same conditions as before the state of emergency or whether, to the contrary, they will need to apply a labor law mechanism, such as a temporary layoff procedure on economic, technical, organizational or production-related grounds, or one of the material modifications to working conditions.

It will be necessary to be well-advised to be prepared, and plan in advance as far as it may be possible, for any measures that will be needed, and any required consultation periods, so that when the end of the state of emergency arrives, the companies will be able to carry out this transition as efficiently as possible.

Tax

1. Tax implications of renegotiating rentals. In the current situation a great many commercial lease agreements are being renegotiated, which, at times, means a temporary or permanent rent reduction or grace period for payment. It is important in these scenarios to consider the tax implications of these renegotiation processes, and study what measures can be taken in this respect to secure the best outcome. See our commentary on this subject [here](#).

2. Interactive maps. Tax measures are being used to soften the economic effects of the health crisis, and over the past weeks we have been summarizing the main ones in our alerts and commentaries. A few weeks ago we published an interactive map of Spain, with links to updated central government and autonomous community tax legislation, and to our alerts and commentaries on that legislation ([see here](#)). Now, our new interactive map ([see here](#)) also provides links to the main tax legislation in other countries where Garrigues operates, together with alerts and commentaries on that legislation.

Administrative

1. New legislation on administrative and procedural time periods. Companies need to keep sight of the important new legislation in the specific provisions introduced by Royal Decree-Law 11/2020, of March 31, 2020, in relation to filing administrative appeals and other actions substituting them in procedures that may result in unfavorable or costly effects for the interested party. Other key elements are the measures for speeding up procedures proposed for the judicial review system in the document containing the 'First working document on organizational and procedural measures for the shake-up plan in the justice system following the state of emergency' ('Primer documento de trabajo sobre medidas organizativas y procesales para el Plan de Choque en la Administración de Justicia tras el estado de alarma'), prepared by the General Council of the Spanish Judiciary. See [here](#) for further information.

Litigation and Arbitration

1.- International contracts and COVID-19. The worldwide health crisis caused by COVID-19, and the state of emergency decreed in Spain on March 14, 2020, could potentially have an impact on the performance of obligations under international contracts signed by Spanish companies. In these cases, it needs to be asked what the applicable law is. An issue we examine in this [article](#).

2.- Mediation: opportunity in the time of COVID-19. COVID-19 will change a great many things. We are awash with a multitude of uncertainties over its length, consequences and, focusing on matters of concern to us here, over the real impact it is having and will have on commercial relationships, the disputes that may arise from it, and institutions' capacity to manage the avalanche of disputes that is expected. This situation may be an invitation for business operators to reassess how they confront these situations. Has the time come to change also their perception of mediation as a dispute resolution mechanism?

In this context, mediation presents itself as an alternative able to contribute to the parties, assisted by the mediator, finding early on in the process creative and efficient solutions satisfying their real interest in continuing with the relationship, and adapting it to the exceptional circumstances we are experiencing, without losing control of the situation. All of which takes place in an environment that is fully covered by the law (Law 5/2012 on mediation in civil and commercial matters), confidential, extremely flexible (the procedures may be carried out electronically), quick, economic (regarding the use of resources and also in employee costs, etc.), and any agreement that is reached is fully enforceable.

In this way the parties can ensure that their relationship makes it through the crisis. And if they fail to achieve this, they can also use the available dispute resolution mechanism.

3.- Does Royal Decree-Law 11/2020, of March 31, 2020, set out potential criminal liability cases? On April 1, 2020, **Royal Decree-Law 11/2020, of March 31, 2020 adopting additional urgent social and economic measures to confront COVID-19** was published, containing a new package of measures, applicable in social and economic spheres, decided at the council of ministers meeting held the previous day. Its articles contain implicit or explicit references to potential criminal liability cases. Prudence is needed, however, before classing certain types of practices that are not compliant with legislative or regulatory mandates inserted in the legislation on the state of emergency or resulting from it, as a criminal offense without further analysis. This is discussed in [our article](#).

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Garrigues, a multidisciplinary team of specialists facing COVID-19

The worldwide health alert triggered by coronavirus is generating a great deal of uncertainty among companies, affecting all aspects of their activity. Since the crisis took hold, Garrigues has been at the disposal of its clients, with multidisciplinary teams specializing in all practice areas in the countries in which it is present. These are also the teams responsible for supervising the contents of this Special section, in which we provide information on all legal developments in relation to the coronavirus crisis, on proposals made by social agents, agreements, decisions, orders, etc.; in short, all the relevant information which companies need to be aware of.

[Check our special section](#)

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