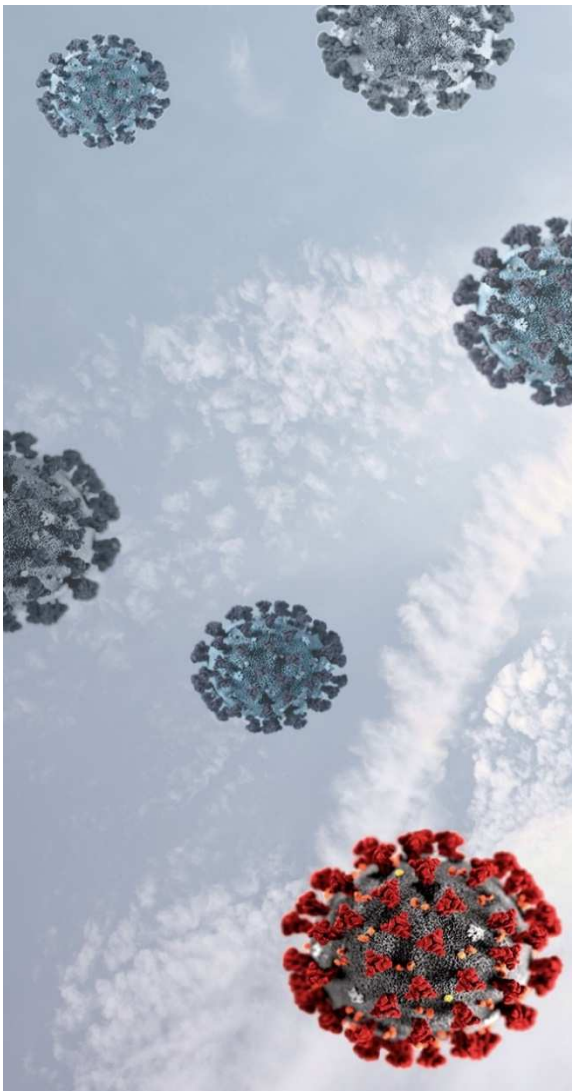

Recoverable paid leave for workers in non-essential activities (Covid-19) in 10 questions

Legal flash

30 March 2020

Royal Decree-Law 10/2020, which regulates recoverable paid leave for workers in non-essential services ("[RDL 10/2020](#)") aims to further strengthen the limitations on the mobility of persons imposed by Royal Decree 463/2020, which declares the state of alarm. It came into force on 29 March, the same day as its publication in the BOE.



In this document we analyze the main characteristics of the recoverable paid leave approved by the Government to face the Coronavirus health crisis and its consequences for companies:

- > Scope of non-recoverable paid leave: schedule of activities and workers not affected.
- > Alternatives to recoverable paid leave.
- > Legal status of paid leave: duration, obligations, method and period of recuperation of leave.
- > Guarantees for the resumption of business activity and the possibility of working on 30 March 2020



1. When did the measure come into force and what is its objective?

- RDL 10/2020 came into force on 29 March 2020, coinciding with its publication in the BOE.
- Its aim is to restrict the movement of workers as much as possible in order to limit the spread of the Coronavirus and thus avoid the collapse of the health system.
- Therefore, its duration extends over 12 calendar days (from 30 March to 9 April), so that its end will coincide with the start of the Easter holiday period.

2. Which companies are obliged to grant recoverable paid leave to their employees?

- RDL 10/2020 applies to all employees who provide services in companies or entities in the public or private sector and whose activity has not been paralysed as a result of the declaration of a state of alarm (see our [legal flash on RD 463/2020](#)).
- However, working persons are **excluded from** the scope of application:
 - That they provide services in the sectors qualified as essential (and which we summarize in the [Annex to this Legal Flash](#)), as well as in their divisions or production lines.
 - Who are affected by a suspended employment regulation file (in force or authorized during the validity of this paid leave).
 - Who are on temporary disability leave or whose contract is suspended for other reasons (e.g. birth leave).
 - That they can continue to carry out their activity normally by means of teleworking or distance working.

3. What happens if a company had agreed to an irregular distribution of working hours, a suspension of employment contracts or teleworking with its workers?

- In such cases, recoverable paid leave shall not apply.
- According to RDL 10/2020, such permission will not apply to contracts that have been suspended or to workers who are or may be providing services at a distance or by "teleworking".



4. Can a company choose to grant paid leave or process an ERTE?

- According to the literal wording of RDL 10/2020, a company affected by recoverable paid leave may choose - if the reasons for doing so concur - to process the temporary suspension of employment contracts due to force majeure. As long as it does not request it, it must grant the compulsory paid leave to the workers.
- If the ERTE is already in progress, non-recoverable paid leave would only be mandatory until the suspension of the employment contracts takes effect.
- In principle, RDL 10/2020 does not paralyze the deadlines for the constitution of the negotiating commission or for the negotiation of an ERTE for economic, organizational or production reasons, as provided in RDL 8/2020 of 17 March, which approved extraordinary urgent measures to address the economic and social impact of the coronavirus Covid-19 (see our [Legal Flash](#)).

5. Can a company affected by RDL 10/2020 maintain a minimum production or service activity?

- Yes, but on a restricted basis, since the rule requires that a "*minimum number of staff*" or "*strictly essential shifts*" be established in order to maintain "*indispensable activity*", taking as a reference "*that maintained on an ordinary weekend or on public holidays*".
- In addition, where it is impossible to interrupt the activity immediately, workers may provide services on **Monday 30 March 2020 for the sole purpose** of carrying out the tasks necessary to enable the paid leave to be recovered without irretrievably or disproportionately prejudicing the resumption of business activity.

6. What is the duration of the recoverable paid leave?

- Paid leave, which is compulsory for workers within its scope, is granted from **Monday 30 March to Thursday 9 April** inclusive.
- In this way, the paid period will be linked to the Easter holidays.

7. What are the implications of the permit for the company and the worker?



- During this period, workers will not be able to provide services or go to the workplace.
- The company must pay the full salary to the workers (including basic salary and supplements) and pay social security contributions, as if the workers had been providing services on a regular basis.

8. How and when can hours of recoverable paid leave be made up?

- Recovery of working hours may be made effective from the day following the end of paid leave (10 April) until 31 December 2020. The leave therefore functions as a real "bag of hours".
- The formulas for their recovery are left open, with the possibility of resorting to irregular distribution of the day, paid vacation accounts, etc.

9. How and when should the company determine the mode of recovery?

- Through collective bargaining with the workers' legal representatives, which must be carried out through a period of consultation of a maximum of 7 days.
- In companies without legal workers' representatives, the company must sit down to negotiate with the most representative trade unions or the most representative trade unions of the sector to which the company belongs and which are entitled to be part of the negotiating committee for the applicable collective agreement; or, failing that, with an *ad hoc* committee of 3 workers from the company (chosen in accordance with the rules of Article 41.4 of the Workers' Statute).
- The negotiating committee must be set up within a non-renewable period of 5 days.
- In addition to regulating the majority regime, RDL 10/2020 states that the agreement may regulate: (i) the recovery of all or part of the working hours during the paid leave; (ii) the minimum notice with which the worker must know the day and hour of the work performance, and (iii) the reference period for the recovery of the undeveloped working time.
- If an agreement is not reached, the company must communicate the decision on the recovery of the working hours not provided during the application of the leave within 7 days from the end of the leave.

10. What limits must the recovery of paid leave respect?



- Respect the minimum rest periods established by law and the collective agreement. It is recalled that the minimum rest provided for in Article 34 of the Workers' Statute is as follows:
 - Daily rest: 12 hours between the end and the beginning of the day or the greater or lesser period provided for in [Royal Decree 1561/1995 on special days](#).
 - Weekly: 1.5 days on average every 14 days or as provided for in [Royal Decree 1561/1995 on special days](#).
- Respect the minimum notice period of 5 days provided for in Article 34.2 ET.
- Respect the maximum annual working day established in the collective agreement.
- Respect the rights of workers to reconcile family and working life (e.g. reduction and adaptation of working hours).

Annex

Summary of activities not covered by the recoverable paid leave (Annex and transitional and additional provisions of RDL 10/2020)

Below is a list of the main business activities that are not affected by the recoverable paid leave in accordance with the Annex to RDL 10/2020:

- **Activities to be continued under the protection of RD 463/2020** declaring the state of alarm and the regulations approved by the Competent Authority and the Delegated Competent Authorities; among them:
 - **Retail establishments of food, beverages, products and basic necessities**, pharmaceutical and health establishments, veterinary centres or clinics, opticians and orthopaedic products, hygienic products, press and stationery, fuel for automobiles, water tanks, technological and telecommunications equipment, pet food, Internet, telephone or correspondence trade, dry-cleaning shops, laundries and the professional practice of home hairdressing.
 - **Home delivery services for hotels and restaurants.**
 - **Transport of goods** for the supply and delivery of products acquired in the trade by internet, telephone or correspondence.
 - **Supply of electricity, petroleum products and natural gas.**
 - **Critical operators of essential services** and non-critical companies and suppliers that are essential to ensure the supply of the population and the essential services themselves.
- **Production and distribution of essential goods and services**, including food, beverages, animal feed, hygiene products, medicines, health products or any product necessary for the protection of health
- **Production and distribution of healthcare goods and services, including healthcare**



technology, medical material, protective equipment, healthcare and hospital equipment, and any other materials necessary for the provision of healthcare services.

- > **Industrial manufacturing sector:** Those essential for providing the supplies, equipment and materials necessary for the proper development of the essential activities set out in the annex to RDL 10/2020.
- > **Transport:** Transport services, both for people and goods, that continue to be developed from the declaration of the state of alarm, as well as those that must ensure the maintenance of the means used for this purpose. In accordance with the transitory provision, it is clarified that transport services in progress for services not included in RDL 10/2020 at the time of its entry into force, will begin the recoverable paid leave once the service in progress has been completed, including as part of the service, if applicable, the corresponding return operation.
- > **Civil protection and private security: penitentiary, civil protection, maritime rescue, rescue and fire prevention, mine and traffic security and road safety institutions; as well as** private security companies that provide security transport, alarm response, patrol or discontinuous surveillance services, and the performance of security services to guarantee essential services and supply to the population.
- > Maintenance of the **material and equipment of the armed forces.**
- > **Health centres:** Centres, services, health establishments, and people who attend to the elderly, minors, dependent persons or persons with disabilities, as well as companies, R&D&I and biotechnology centres related to the COVID19 ; as well as the animal facilities associated with them and the maintenance of the minimum services of the facilities associated with them and the companies supplying products necessary for this research.
- > **Funeral services** and other related activities
- > **Animal health care** centres, services and establishments
- > **Press and media:** Press outlets, media or news agencies, printing and distribution.
- > **Financial services (banking, insurance and investment)** for the provision of essential services and activities related to **payment infrastructure and financial markets.**
- > **Telecommunications, audiovisual 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.
- > Protection and care of **victims of gender violence.**
- > **Lawyers, solicitors, social graduates, translators, interpreters and psychologists** who attend procedural actions not suspended by Royal Decree 463/2020, to comply with the essential services set out by consensus by the Ministry of Justice, the General Council of the Judiciary, the Attorney General's Office and the Autonomous Communities with jurisdiction in this area and set out in the Resolution of the Secretary of State for Justice dated 14 March 2020.
- > **Legal offices and consultancies, administrative and social graduate agencies, and**



external and own risk prevention services, in urgent matters.

- > **Notaries and registries for the** fulfillment of the essential services established by the General Direction of Legal Security and Public Faith.
- > **Cleaning services, maintenance, repair of urgent breakdowns and surveillance, services for the collection, management and treatment of hazardous waste, as well as** solid urban waste, both hazardous and non-hazardous, collection and treatment of wastewater, decontamination activities and other waste management services and transport and removal of by-products or in any of the entities belonging to the Public Sector.
- > **Water:** Supply, purification, conduction, potabilization and sanitation.
- > **Provision of meteorological services for** forecasting and observation and the associated processes of maintenance, monitoring and control of operational processes.
- > **Universal postal service.**
- > **Sanitary material:** Import and supply services of sanitary material (logistics, transport, storage, customs transit companies and, in general, all those participating in the sanitary corridors).
- > **E-commerce:** Distribution and delivery of products purchased in the internet, telephone or mail order business.
- > **Any others providing services that have been deemed essential.**

We also include a list of other activities which, in accordance with the additional provisions of RDL 10/2020, would also not be affected by the recoverable paid leave:

- > **Emergency Public Procurement:** Activities not included in the annex that have been subject to contracting through the procedure established in Article 120 of Law 9/2017 of 8 November on Public Sector Contracts may continue.
- > **Companies awarded public sector contracts:** The recoverable paid leave will not be applicable to employees of companies awarded public sector works, services and supply contracts that are essential for the maintenance and safety of buildings and the proper provision of public services, including the provision of such services on a non-attendance basis, all without prejudice to the provisions of Article 34 of Royal Decree Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19.

For further information on the content of this document, please contact your usual Cuatrecasas contact

2020 CUATRECASAS

All rights reserved.



CUATRECASAS

This document is a compilation of legal information prepared by Cuatrecasas. The information or comments included in it do not constitute legal advice.

The intellectual property rights to this document are owned by Cuatrecasas. This document may not be reproduced in any medium, distributed, transferred or used in any other way, either in its entirety or in an excerpt, without Cuatrecasas' prior authorization.

