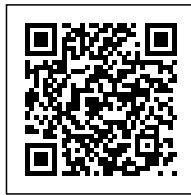


# THE PERFECT STORM

*Posted on 12/05/2020*



Category: [Archive](#)



**It is estimated that in the month of March alone, some 86,000 businesses closed and that, since the beginning of the pandemic, close to 3.9 million workers have been affected by the temporary layoffs (ERTE) derived from the impact of COVID-19 in Spain. To discuss one of the most affected**

**practice areas in this crisis, we have talked with two heavyweights in this speciality, Antonio Pedrajas, managing partner of Abdón Pedrajas, and Enrique Ceca, partner and head of the Labour area of Ceca Magán Abogados**



We asked the experts, first of all, what they consider to be the most significant extraordinary measures taken by the Government in the regulatory field as a result of the state of alarm in the Labour field and how, from their respective experiences, companies have dealt with them

"The declaration of the state of alarm on the occasion of the health crisis caused by the COVID -19, has generated an incessant set of Labour measures. From the convulsive succession of royal decrees and orders, which are immediately followed by countless circulars, guides and explanatory reports, the first conclusion that can be drawn is the lack of the necessary legal security, having generated numerous doubts among companies, workers, lawyers, government employees and administrations," says **Antonio Pedrajas**.

**Enrique Ceca** provides us with a valuable outline of the royal decrees and their main implications (see box). In the same vein, Pedrajas classifies the Labour measures adopted; "a first block has the protection of employment as its objective. Thus, for example, the preferential nature of teleworking has been established with the aim of trying not to paralyse the activity of companies, the rights to adapt and reduce working hours have been linked to the COVID- 19 or, among others, extraordinary benefits have been created for self-employed workers on termination of their activity. A further step has even been taken. Firstly, by limiting dismissals and extinctions due to the termination of temporary contracts, covered by force majeure or economic, technical, organisational or productive causes linked to the COVID-19. Secondly, by creating a recoverable paid leave, the cost of which will be borne entirely by the companies, regardless of their size or financial health, even that it will be difficult for them to recover those working hours if they do not recover their activity and productive capacity first. In the second block of measures, in contrast to the previous one which transfers more of the cost and burden on employers, we find those which make the temporary employment adjustment mechanisms more flexible, simplifying and speeding up the procedures for processing temporary layoffs (ERTE), both for reasons of force majeure and for economic, technical, organisational or production reasons (ETOP). Furthermore, in both cases, the personal scope of coverage for ERTes has been extended by eliminating the qualifying period for access to unemployment, introducing a total or partial exemption from social security contributions in the case of ERTes due to force majeure."

As for how companies have dealt with this situation since the crisis began, Enrique Ceca explains that "as it is normal, in the face of such an exceptional and unprecedented situation like the one we are in, companies have found themselves in very delicate situations given the potential danger to the viability of their activities in the short or medium-term due to the COVID-19. Initially, all possible internal flexibility measures were considered to deal with this crisis, unless the activity had been

paralysed by law, in which case ERTE was called upon due to force majeure. Subsequently, the most popular consultations have been aimed at carrying out temporary employment regulation proceedings for productive reasons, trying to preserve jobs as far as possible, and maintaining business activity, including individual or collective negotiations for temporary salary reductions in this period. 70% of the consultations were aimed at carrying out ERTE's, 15% at salary reductions, 10% at dismissals, and the rest at other issues."

"In the case of Abdón Pedrajas, since March 14, we have been instructed by hundreds of companies to process force majeure ERTes, as well as ERTes for ETPO causes. Secondly, we are advising companies on definitive employment adjustments via layoffs and other extinctive formulas. Finally, many heterogeneous issues and doubts connected with the interpretative Labour aspects of the indicated set of measures. Issues such as the implementation of teleworking, time recording in remote work, Personal Protection Equipment (PPE) in the workplace, the role of health and safety committees, whether or not to maintain supplements and financial aid linked to face-to-face work, recoverable paid leave, irregular distribution of the working day, etc., are being answered in our day-to-day work," answers Antonio.

## **TELEWORK**

The establishment of teleworking measures and the adaptation of working hours for reasons of work-life balance have been part of the regulatory explosion. We asked the experts for their opinion on this subject. "The preference for teleworking has been clear from the beginning. To the extent that, formally, it is a priority option for the ERTE," clarifies Antonio Pedrajas. "In my opinion -he continues- the problem has not been so much the lack of regulation, but the lack of differentiation and sensitivity to the heterogeneity of our business fabric. Once again, legislation is being passed without differentiating between small and medium-sized companies and large organisations, where there are surely already means to implement teleworking in an agile manner and with reasonable success. However, in small and medium enterprises, the lack of experience and tradition with teleworking is added to the lack of means. This also leads to data protection problems. The legal framework was clear with the Organic Law on Protection of Personal Data (LOPD) and the General Data Protection Regulation (RGPD). However, this company profiles cannot be required to have the means to implement protocols to manage security in telematic tasks and communications, to create private communication networks (VPNs), to avoid application installations, to evaluate risks, etc. overnight," concludes Pedrajas.

For Enrique Ceca, the relative "normality" with which workers and employers have accepted teleworking is remarkable. "Having been an important source of conflict due to the existence of deficiencies in the regulatory framework in this regard, the truth is that workers and employers have accepted the implementation of teleworking without excessive hesitation. It is true that many employers have implemented the policies with great urgency and without having scrupulously respected the regulations on data protection. At present, the firm is providing specialised advice on this matter in order to adapt internal policies to the criteria of the Spanish Data Protection Agency and the applicable regulations."

In this regard, we ask whether the high demand for consultations is compatible with teleworking. Antonio Pedrajas is emphatic when he states that "maintaining the activity of a sector in an extraordinary and exceptional situation unaltered, is impossible," and gives, as an example, the case of Abdón Pedrajas. "During the first month of the state of alarm, more than 80% of the volume of activity of the office has revolved around Covid-19. This is an important change that requires means, resources and qualified personnel to be able to manage it. On the other hand, except in procedures declared as essential, judicial activity has been paralysed. For an office that manages more than 2,000 legal proceedings a year, this is certainly a change. And this standstill generates a lot of uncertainty regarding the maintenance of the estimated level of business. Finally, lawyers have

adapted very well and quickly to teleworking. With some minor limitations, they can attend to and carry out most of their non-trial activity normally."

"In our case -explains Enrique Ceca- thanks to the support department and the investment made in these measures before the present crisis, we have been able to continue developing our work with the same rigour as if we were in the office. It is important to emphasise that, apart from having the necessary means, it is essential to coordinate the work teams to guarantee an optimum provision of services in times of such uncertainty. And, in my humble opinion, I would add that an optimum balance between personal and professional life must be sought even more, as we are teleworking from home and have to make it compatible with family obligations. Setting work and rest times, the trust of clients and respect for your family are key pillars."

## **SPECIAL COMMITTEES**

We asked them if the Labour legislation, with almost daily changes in the Official State Gazette (BOE), has forced them to recycle themselves in order to give immediate answers. "Not in our case," answers Antonio Pedrajas. "Fortunately, we have a team of lawyers and consultants of extraordinary solvency and experience, which has allowed us to serve our clients with the utmost diligence and rigour. Furthermore, as we have more than 40 lawyers, we have created a coordinating committee for COVID-19 matters, sharing all the information and establishing common interpretative bases for the whole firm, thus guaranteeing homogeneous and uniform lines of action among our different teams."

In Ceca Magán Abogados, as in many other firms, a specialised team has also been created to analyse the legal news. "This team has been analysing and detailing the most important aspects of the regulations that were being issued and producing guides and guidance criteria supervised by a Labour Law professor, which we have also extended to clients and other colleagues through social networks. We have also led the preparation of standard documents and communications by a partner heading each project, which have served as a model for each procedure or file, increasing the productivity of the team," replies Enrique Ceca.

## **AND THEN WHAT?**

The paralysis of the courts for "non-urgent" cases suggests a foreseeable bottleneck for Labour cases when we return to normal. "Without any doubt," says Antonio Pedrajas. "Although at the proposal of the General Council of Spanish Lawyers, the Permanent Commission of the General Council of the Judiciary, in its April 13 session, has agreed to gradually reactivate the courts/procedural activity. Essential judicial actions include the telematic presentation of writings and documents, their registration, distribution and dispatch in an ordinary manner, without being affected by the suspension and interruption of procedural terms and deadlines. But, above all, regarding non-essential actions and services, all those procedural actions that are not linked to a procedural term or deadline can now be carried out. For practical purposes, this means that notifications of ongoing cases on Lexnet will be resumed, regardless of whether the procedural deadlines continue to be suspended. This is a good measure that will allow courts and lawyers to move forward and reduce congestion. Despite this, bottleneck situations will occur. We are considering expanding the backup courts and even declaring August as an active month for certain procedures."

"In view of this situation," Enrique Ceca said, "it will be up to the Government to establish measures to try to guarantee, as far as possible, the proper functioning of the Administration of Justice. The congestion will be very high and measures will be needed to minimise it. In any case, I am totally unhappy with the possibility of restricting access to appeals as provided for in the Law regulating Social Jurisdiction. Perhaps increasing resources in the courts, and limiting the use of prior conciliation, are good tools."

Finally, we ask their opinion on the measures taken in the field of employment and what other measures would have been necessary according to them. "In my opinion", says Enrique Ceca, "the measures taken have been an extreme attempt to avoid the massive destruction of employment that may occur due to the COVID-19, resorting to criteria of internal flexibility, on external flexibility. It is my understanding that prohibiting the possibility of dismissal as a result of the pandemic has not been positive, assuming that the problem is not structural but circumstantial since there will surely be situations in which a certain post will no longer be necessary. In addition, there is already a judicial review of decisions to assess whether or not the measure was in accordance with the law. I have also missed the possibility of ERTes having retroactive effects for productive reasons, or of expressly excluding the possibility of obtaining a bonus for social security contributions. Finally, I believe that not knowing what the commitment to maintain employment means for the application of the extraordinary measures in the ERTE due to force majeure, creates a great deal of legal uncertainty. Once the state of alarm is over, many companies will see their viability compromised thanks to this indetermination, without us also knowing when it will be possible to return to an optimum production level."

Antonio Pedrajas agrees with him, also pointing out that "more flexibility is needed in the ERTes to save jobs. If the measures to make ERTes more flexible are only maintained during the state of alarm, we are undoubtedly going to face a great deal of job destruction. When the state of alarm is over, the force majeure ERTes will be terminated. But the drop in consumption, productivity and turnover will continue for months. Therefore, the business causes of ERTes must adapt to this new economic reality."

**To read the article in full please download issue N.94 [here](#)**