

ERES & ERTES

What is an ERE?

Redundancy Procedure (ERE by its acronym in Spanish)

- Collective dismissals based on economic, organisational, technical or production causes.
- Temporary suspension due to force majeure.

Requirements

- Companies with less than 100 workers, the dismissal or suspension must involve at least 10 of them.
- Companies with 100 to 300 workers, will involve at least 10% of them.
- Companies with more than 300 workers, at least 30 of them.

Causes

- Economic nature.
- Technical nature.
- Organisational nature.
- Production nature.

Types

- Termination ERE.
- Suspension ERE.
- Reduced working hours ERE.

Where are ERE regulated?

Article 51 of the Statute of Workers.

What is an ERT?

Temporary Redundancy Procedure (ERTE by its acronym in Spanish)

- Type of ERE.
- Temporary nature.

Obligations of the employer

- Mandatory reinstatement of the worker to his job under the same conditions as prior to the implementation of the procedure.
- Obligation to keep registered workers and to continue to pay their Social Security contributions.

Rights of the worker

- The right to challenge the procedure in court if they consider that the legal circumstances justifying it have not occurred.
- The right to receive unemployment benefit (if the requirements are met)
- The right to readmission under the same working conditions as prior to the implementation of the procedure.

Where are ERT regulated?

Article 47 of the Statute of Workers.

Due to COVID

- ERT due to force majeure: RDL 8/2020
- ERT due to new outbreaks: RDL 24/2020
- ERT with exonerations: RDL 30/2020



In collaboration with



Types of ERE

The rights of the workers involved depend on the specific type of ERE:

Termination ERE

- This involves collective dismissal and consists of the definitive termination of the employment relationship between the company and the workers.
- Rights of the workers involved: Unemployment benefit and severance pay.

Suspension ERE

- This involves the implementation of a new work schedule, which may affect the entire workforce or only part of it. This new schedule will specify the suspension days on which the employee is required to stay at home.
- Rights of the workers involved: The worker has the right to receive unemployment benefit in proportion to the part of the suspended working hours. They will also be entitled to 100% of their daily Social Security contributions.

Reduced working hours ERE

- Similar to the suspension ERE. The main difference is that instead of the employee's working hours being suspended, their working hours are reduced on some days of the week.
- Rights of the workers involved: Workers are entitled to 100% of their daily Social Security contributions and to receive unemployment benefit in proportion to the hours not worked.



Types of ERTE

In accordance with the type of reduced working hours

• Reduced working hours ERTE:

- Reduction in working hours or days (between 10% and 70%).
- Unemployment benefit for the part of the reduced working hours.

• Suspended employment agreement ERTE

- Full suspension of the agreement for a limited time.
- No salary will be paid by the employer.
- Once the ERTE has ended, the worker will be reinstated.

In accordance with the causes

• ERTE due to objective causes (ETOP)

- Economic, technical, organisational or production causes.
- ERTE due to objective causes due to COVID.

• ERTE due to Force Majeure

- External events unrelated to the company's activity and regarded as unforeseeable or unavoidable ERTE due to Force Majeure due to COVID.
 - ERTE due to impediments to the execution of activity
 - ERTE due to limitations to the normal execution of activity
 - ERTE affecting companies with specific CNAE (economic activity)

In accordance with the procedure

• ERTE due to objective causes (ETOP)

- Negotiated with an ad hoc commission.
- Advance notice: notification of workers or representatives.
- Start of the consultation period: the documentation provided must be transferred (7 days).
- The end of the consultation period: with or without agreement.
- The company notifies the labour authority of the decision (within 5 days).
- Workers are notified individually.

• ERTE ETOP due to COVID

- Negotiated with the worker's legal representatives.
- If the workers is not represented, it will be negotiated with the most representative unions in the sector.

• ERTE due to force majeure

- Application to the Labour.
- Authorities.
 - A report justifying the situation.
- A list of the workers involved and under what conditions.
- Reply within 5 business days (positive silence).

When does erte status end?

The term of the ERTE is subject to the overcoming of the extraordinary circumstances that led to it being implemented, or in other words, it will end when the reason for which it has arisen no longer exists.



Who pays the unemployment benefit?

Unemployment benefit, known as "paro" in Spain, is paid by the Public Department of State Employment (SEPE). The amount of the unemployment benefit varies depending on the time and the amount the worker has contributed.

Conditions required to be eligible for unemployment benefit

- Loss of job involuntarily (due to dismissal, termination of contract or redundancy procedure, among others).
- You need to be registered as looking for a job and sign an activity commitment (this means accepting job offers consistent with your profile and participating in training, orientation, informative, refresher and vocational inclusion programmes).
- You must have contributed at least 360 days in the last six years, not be of retirement age, or be collecting any Social Security pension.
 - If you intend to claim benefit while working on a self-employed basis, you may not provide professional services to the same company you worked for or for other companies in the same group.
 - In the event you still have one or more part-time contracts at the time you become legally unemployed, only the contribution periods related to the job you have lost, either temporarily or permanently, will be taken into account, or where the normal working hours have been reduced.
- Not having reached the normal age required in each case to be eligible for a contributory retirement pension, unless the worker has not completed the necessary contribution period, or in cases of suspended work relations or reduced working hours authorised by administrative resolution.

How long does unemployment benefit last for?

This depends on two variables:

- The time you have contributed for before becoming legally unemployed.
- In the event of a suspended contract or reduced working hours, the term of unemployment benefit will also depend on the term of the measure in question.

What is the amount of unemployment benefit?

The daily amount of the total contributory unemployment benefit depends on the regulatory base.

- The calculation of the regulatory base in accordance with the base for professional contingencies for the last 180 days of contribution.
 - The daily amount of the benefit in the first 180 days: 70% of the regulatory base.
 - The daily amount of the benefit from day 181 until the end of the benefit will be 50% of the regulatory base.

- If the resulting amount is higher or lower than the maximum or minimum amounts defined, these maximum or minimum amounts are paid as appropriate.
- If unemployment is partial, you will be paid the part in proportion to the hours for which you are unemployed, and the benefit will be consumed by the hour and not by the day.

In cases of suspension or reduced working hours, the company is required to pay 100% of the corporate Social Security contribution.

Can I be fired while I am subject to ERTE?

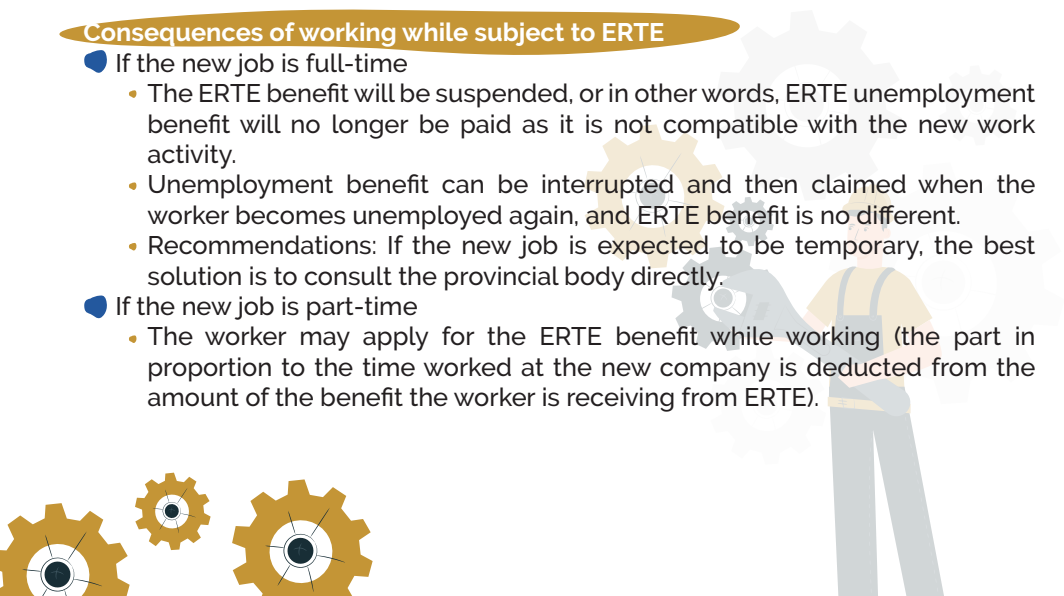
- **No.** The approval of ERTE is subject to the company's commitment to maintaining the job for a period of six months of the date on which the activity is resumed.
- Dismissal applies if the company proves it cannot maintain the job due to bankruptcy or other objective causes.
- There are differing opinions with regard to this limitation. We need to wait for the Supreme Court.

Can I work while I am subject to ERTE?

- **Yes,** you may work while subject to ERTE, both self-employed and as an employee.
- Exception: If the worker has signed a specific commitment of non-competition or exclusivity with the company, they will not be able to work for another company.

Consequences of working while subject to ERTE

- If the new job is full-time
 - The ERTE benefit will be suspended, or in other words, ERTE unemployment benefit will no longer be paid as it is not compatible with the new work activity.
 - Unemployment benefit can be interrupted and then claimed when the worker becomes unemployed again, and ERTE benefit is no different.
 - Recommendations: If the new job is expected to be temporary, the best solution is to consult the provincial body directly.
- If the new job is part-time
 - The worker may apply for the ERTE benefit while working (the part in proportion to the time worked at the new company is deducted from the amount of the benefit the worker is receiving from ERTE).



How about another job, but at the same company?

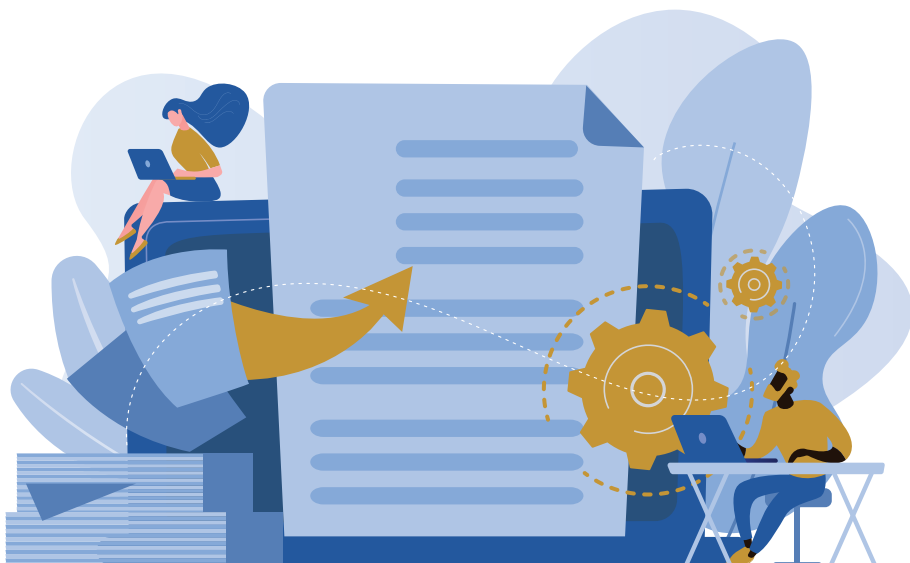
It would not be legal to work for the same company, except in the event the ERTE benefit is due to reduced working hours.

What is the procedure if I find a new job while I am subject to ERTE?

- You will need to
 - Inform the SEPE that you are going to pay contributions for another company so as not to generate undue payments.
 - This can be done through the SEPE website, by calling the entity's helpline (91 273 83 83), or in person, for which you will need to make an appointment.
- Recommendations
 - Inform the company at which the worker is currently subject to ERTE of the new employment situation.
 - Inform the new company of the worker's current employment situation and that he/she is subject to ERTE, as the old company could invite the worker to return to his/her old job when the time comes.

New measures related to the Coronavirus?

- When the recognised unemployment benefits are claimed while working a part-time job that has not been affected by suspension measures, the part proportional to the time worked will not be deducted from the amount of the benefit.
- Workers involved in an ERTE prior to this measure, where the amount of unemployment benefit has been reduced in proportion to the time worked in part-time employment, may apply for financial compensation to the amount equal to what they failed to receive due to the deduction in question. This will need to be conducted through the SEPE electronic headquarters by 30 June 30 2021.



Do I have the right to receive unemployment benefit if I am subject to ERE or ERTE?

Yes but you will need to meet a series of requirements in order to apply for unemployment benefit:

- You must be legally unemployed.
- You must register as a job seeker, keep registered while receiving the benefit and comply with the activity commitment included in the application.
- You must have worked and paid unemployment contributions for at least 360 days in the six years prior to becoming legally unemployed, and not have used the contributions from that period for any previous benefit.
- If you have contributed for a period of less than 360 days, you will be able to receive unemployment benefit if, in addition to meeting the other requirements, you do not have an income of more than 75% of the current minimum inter-professional salary, without taking the proportional part of two extraordinary salaries into account.
- You must not have reached normal retirement age, unless your contract has been suspended or your daily working hours have been reduced.
- You must not be carrying out any activity on your own account or any full-time work for others, unless such compatibility has been defined in an employment promotion programme.
- You must not be collecting a Social Security pension that is incompatible with the job.
- In the event of suspension of contract, this must be agreed upon in the corresponding procedure, be temporary and be due to economic, technical, organisational or production reasons or as a result of force majeure.

Declaration of income: do I have to declare income received from SEPE?

General rule: Obligation to declare income

Exception: income from personal work, equal to or less than 22,000 euros per year from A SINGLE PAYER. If there are several payers, the 22,000 euro annual limit remains in force, but, in addition, the amounts received by the second payer (the SEPE would be included here) must be equal to or less than the total amount of 1,500 euros.

As such, the potential scenarios are:

- Income exclusive from SEPE less than 22,000 euros per year. No obligation to declare
- Several payers, including sepe: if the sum of the amounts received by the second payers is less than 1,500 euros. No obligation to declare
- In excess of the established limits. Obligation to declare

For further information