

ME

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The logo consists of the letters 'M' and 'E' in a large, white, serif font, positioned on the left side of the top image.

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Martínez-Echevarría Lawyers, founded in 1983, is a law firm that is committed to quality and professional excellence. Both qualities constitute the pillars on which a firm recognized for its strong commitment to clients has been forged.

Under Martínez-Echevarría, more than 120 professionals carry out their work, which allows us to offer a complete service of multidisciplinary legal advice, with a high level of specialization. All professionals, at all locations, work under a single, integrated management, with the same quality standards

In Spain, it has its own offices in Madrid, Malaga, Seville, Córdoba, Granada, Almería, Marbella, Fuengirola, Estepona and Manilva; and, internationally, in Portugal (Lisbon, Porto, Estoril, Lagos, Vilamoura and Quinta do Lago) and Turkey (Istanbul and Bodrum).

Both companies and individuals find in Martínez-Echevarría Lawyers the necessary answer to all their business and personal needs. Each department is headed by specialists in the field, among which are State attorneys, Magistrates, Judges, Prosecutors, Professors and university professors.

This allows us to offer advice of the highest quality that minimizes the risks of legal and economic traffic



On the 11<sup>th</sup> of March, the General Director of the World Health Organization (OMS), Tedros Adhanom Ghebreyesus stated that "the WHO has evaluated this outbreak in recent days and we are deeply concerned ... that is why we have decided to decree the state of pandemic". Along with the undeniable health impact, this pandemic also has serious consequences that affect society as a whole in relations between people and companies regulated by law.

Martínez-Echevarría Lawyers has prepared a letter of legal products from Covid, which offers a complete legal response to the consequences of the pandemic, through a multidisciplinary team of lawyers who are experts in all those legal areas that take center stage in the new and extraordinary circumstance that affects a wide variety of sectors of activity.

Thanks to the specialization of the legal team we can identify and reduce the legal risks that affect legal and economic traffic, to offer an orderly orientation of solutions, specified in a product letter.

Vicente Morató

## Covid Product Chart

Civil law.



### **Real estate leases for housing.**

The recent regulation related to COVID-19 has partially addressed the situation of leases of housing properties submitted to the LAU.

The measures refer exclusively to assumptions of tenants who are in a situation of social or economic vulnerability caused by the effects of the expansion of COVID-19: a) eviction procedure for non-payment, with the suspension of the same for a specific maximum term; b) leases in force whose extension expires in the period between the declaration of the state of alarm and the 2 months following the end of the same, considering the possibility that the lessee requests an extraordinary extension of six months; c) leases in which the lessor is a company, a public entity or a large holder, with the possibility that the lessee requests a moratorium or a 50% rent reduction.

Ignacio Gallego

### **Leases of real estate for use other than housing.**

In the absence of regulation in the contract of the effects of "force majeure" and in the absence of an agreement between the parties that,

novating the contract at this time, marks clarity in the relations between lessor and lessee, there are some generic figures of civil law that can help in some way: a) art. 1105 of the CC, which establishes the lack of responsibility for breach of obligations caused by fortuitous event or force majeure; b) the "rebus sic stantibus clause", jurisprudential doctrine that under the premise of compliance with certain requirements -in principle successive contract, concurrence of an unforeseen event, not attributable to the parties, that produces a serious imbalance in the benefits of the contract-, can help, where appropriate, to achieve a modification that reestablishes the rebalancing of the benefits of both parties or the suspension of the contract and even, in very exceptional cases, its termination.

Ignacio Gallego

### **Request for mortgage moratorium.**

In accordance to the provisions of the exceptional regulations approved by the Government, legal advice will be essential to request and obtain a mortgage moratorium by individuals in vulnerable situations with respect to their habitual residence, as well as their guarantors and guarantors. The

procedure can also be managed in favor of businessmen and professionals who have a guaranteed loan with a mortgage for the acquisition of real estate related to their economic activity, as well as with respect to owners (mortgage debtors) of rented non-habitual dwellings who have stopped receiving income with occasion of COVID-19 or stop receiving it until one month after the end of it.

Javier Gutiérrez

#### **Protection of the right of those who have granted a purchase option on a property.**

When Royal Decree 463/2020 establishes the suspension of limitation periods and the expiration of any actions and rights, while the state of alarm lasts, such suspension cannot

affect the conventional civil terms set in current contracts, such as accredits it likewise, the General Council of Notaries in its Circular No. 2/2020, of March 18. Consequently, unless expressly agreed otherwise, the conventional period established for the exercise of the purchase option is not altered by the aforementioned suspension, so the right of the grantor of the option is protected and in the event of not exercising it the option in term will be able to acquire the amounts deposited in guarantee.

Javier Gutiérrez

#### **Contractual delivery terms for the purchase of real estate and dependency clauses for preventive notations.**

In contracts for the sale of real estate in which a conventional term has been agreed to make the delivery, this is not affected by the suspension of prescription periods and expiration ordered by Royal Decree 463/2020 and its non-compliance will generate the corresponding responsibility, exercisable at the time of resumption of procedural deadlines.

When the delivery has been agreed in the form of a notarial deed

it must be granted within the deadlines set even within the state of alarm. When the granting depends on the property being free of charge, the expiration terms of the preventive annotations that have been made on it are suspended, and will have to be taken into account the date of these when the state of alarm has ceased.

Felipe Martínez del Mármol

#### **The supervened impossibility in travel contracts.**



As a consequence of the decreed state of alarm, many contracts are celebrated prior to it, making it impossible to fulfill. More specifically, in relation to package travel contracts, in this case the consumer is allowed to withdraw from the contract and demand the return of the advance. It is interesting to note that if the trip provider is insolvent, and the payment was financed by means of a linked loan, the consumer may request the resolution of the loan, being released from its quotas.

Alberto Mora

#### **Civil liability because of lack of asepsis.**

Many health workers have worked with insufficient means of protection, with the consequent risk to their health and that of the patients they treated. In the event that specific damages have arisen due to complications derived from the absence of proper asepsis, the injured party (or their relatives in the event of death) can claim the damage from the hospital center, within a year, once it has been determined.

Alberto Mora

#### **Unfair enrichment in capital gains obtained by financial institutions in foreclosures.**

The current crisis is causing a considerable increase in debts, with the consequent increase in judicial executions. The Supreme Court in a recent Judgment of March 5, 2020 determines that there is an unjust enrichment and, therefore, a credit in favor of the debtors, in those cases in which - after the award of the mortgaged property in public auction and its subsequent sale to third parties by banks - a gain or gain is obtained

derived from the difference between the price at which the bank won the property and the subsequent sale price. For this, two requirements are established: a) that the capital gain is generated in a maximum period of about 10 years and b) that said capital gain is relevant.

Rafael Sancho

#### **Commercial Law.**

##### **Acquisition finance.**

The economic stage in which we are entering will bring with its opportunities to purchase assets, companies and productive units in bankruptcy proceedings, at more competitive prices. On numerous occasions, the buyer

needs to resort to external financing for the execution of the operation. In this scenario, in addition to advising on the acquisition operation itself, we advise on the strategy, origination, alternative structures and execution of financing in the purchase process of a company: analysis of the debt structure and the target operation (LBO's, MBO's, MBI's, acquisition finance); financial modeling and scenarios; preparation of documentation for the negotiation and signing of the finance (Staple financing, club deals).

Francisco Gallardo

#### **Optimization and search for financing.**

The current economic situation favors the entry into the debt market of players other than traditional banking and with fewer regulatory restrictions, which offer various financing alternatives, designed for special situations and which can replace or complement traditional bank financing. This type of combined financing of banks and funds is very well suited to companies with complex and flexible structures, with restricted access to the banking market, that have participated in aggressive refinancing processes (withdrawals, bankruptcies, etc.), or that are less stable in cash generation but which have attractive

value growth and those that need to carry out leveraged operations with a higher level of indebtedness.

In this context, we help companies obtain financing and optimally structure their debt, to improve their profitability and adapt it to their business strategy:

Diagnosis of the structure and conditions of debt; design of the optimal financial structure; advice on choosing debt providers; advice on the reordering process; advice on choosing the type of financing and debt providers and / or debt substitution.

Francisco Gallardo

#### **Adoption and execution of corporate measures by the administrative board after the state of alarm.**

With the latest legislative reforms due to the current Covid crisis<sup>19</sup>, measures have been adopted regarding the regime for holding meetings and councils, to admit that they can be held, with certain requirements, both by audio conference and by video conference, as well as the deadlines for the formulation of accounts and the requirements to modify the proposal for the application of the result contained in annual accounts formulated with respect to the

one submitted to the ordinary meeting to be held in the current year. In this sense, it is recommended that companies obtain adequate advice to be able to propose measures within the legal deadlines on corporate operations that allow to re-balance the patrimonial situation of the company and thus, limit possible responsibilities that administrators may incur in the face of social debts.

Ana Malvarez

### **Business restructuring**

Some of the uncertainties that companies face can be mitigated through structural modification operations such as mergers, segregations, divisions or transfers of activity. This type of operation requires a prior study of its fiscal and legal impact, which must be based on a previous project signed by the management board. Taking into account that these operations have not been expressly suspended in the latest reforms that occurred with the current crisis, we consider that they should be able to start and end without interruption, justifying them in ensuring the viability of the underlying business and activities.

Ana Malvarez

### **The "Pre-contest" before the current or imminent insolvency.**

Faced with an insolvency -current or imminent- that prevents the company from facing current payments, the Bankruptcy Law contemplates this "Bankruptcy" measure, which grants a period of three months - plus a quarter - in which it is possible to restructure / refinance the debt or reach a payment agreement with creditors. In addition, this prevents the bankruptcy at the request of creditors and the start of executions -judicial or extrajudicial- of goods or rights necessary for the continuity of its activity, also protecting the personal responsibility of the employer.

José Alés

### **Voluntary bankruptcy proceedings.**

If refinancing has not been obtained or negotiations with creditors have not prospered to reach out-of-court payment agreements (or without having made use of the previous communication of art. 5 bis Bankruptcy Law), the employer has the obligation to request (with in the deadlines) the declaration of voluntary insolvency when it remains in a current or imminent insolvency situation, and this with the



dual purpose of ordering the payment of its debts and continuing -in its case- with your activity. If not, the declaration of insolvency is permitted at the request of its creditors (with the damages and limitations that this will entail); In addition, you will be exposed to a potential guilty plea that could involve personal responsibility.

José Alés

#### **The legalization of business books.**

In accordance with article 40.3 of Royal Decree Law 8/2020, of March 17, on extraordinary urgent measures to face the economic and social impact of COVID-19 and the recent resolution of the General Directorate of Legal Security and Public Faith (DGSJFP) of April 10, 2020, those companies to which the suspension of the term for the formulation of their annual accounts is applicable, the term for the legalization of their Compulsory Books will also be suspended since among those books are the inventory book and annual accounts and therefore may be presented to be legalized within a period of four months from the date the alarm period ends.

Alfredo Solana López

#### **Administrative law.**

#### **Public procurement measures to mitigate the consequences of COVID-19.**

In relation to public procurement, the measures adopted as a consequence of COVID-19 or by the State, the autonomous communities or the local Administration to combat it present a varied typology that reaches from the suspension of contracts with the right to pay damages. for the concepts that are expressly determined, until the extension of terms or the extension in which they are found or the restoration of the economic balance of the contract, measures that will be applied depending on the type of contract concluded and that will require the prior request or request of the contractor, which will force him to clearly determine his claim and scope in order to obtain the quickest response consistent with the request.

Manuel Garrido

#### **Public subsidy measures.**

Due to the nature of the subsidy, the justification, in time and form, of fulfillment of the purpose for which it was granted appears as an essential element. To alleviate the situation created as a result of the declaration of the state of alarm, it has been foreseen

for those that had already been granted at the time of the entry into force of Royal Decree 463/2020 may be modified to extend the deadlines for the execution of the subsidized activity and, where appropriate, justification and verification of said execution, although it would not have been contemplated in the corresponding regulatory bases. This must be done at the request of the competent body which, depending on the circumstances, must weigh those that affect it to adequately articulate its request, given the importance it will have in order to avoid the concurrence of a cause or reason for non-compliance with the conditions of the subsidy and correlative obligation of reimbursement.

#### **Temporary requirements, compulsory personal benefits and right to compensation.**

During the validity of the state of alarm, the delegated competent authority (defense ministers, Interior, Transport and Health) may issue orders, resolutions and provisions to guarantee the protection of people, goods and places, including temporary requisitions of goods, obligatory personal benefits and intervention of companies or services; there being the right of the affected natural and legal persons to be compensated in accordance with the

regulations on Forced Expropriation and subject to a statute of limitations of one year.

Iñaki Marrodán

#### **Sanctioning procedure for infractions to the limitation of the freedom of movement of people, and channels of contestation.**

Failure to comply with measures of this nature or resistance to orders from the competent authority may be subject to administrative sanction according to the Law on Public Safety, Public Health and Civil Protection, due to pecuniary fines (from € 100 to € 600,000), suspension of charges and others. Its challenge, whether administrative or contentious, will have to consider, among others, the correct classification of the conduct and attribution to the alleged offender, the proportional graduation of the sanction and the possible prescription, both of the sanction and of the infraction.

Iñaki Marrodán.

#### **Tax Law.**

##### **Request for deferment of the tax debt.**

It is possible to request the deferment of the payment of all those self-

assessments of the IS, Personal Income Tax or VAT whose filing and entry period ends between March 13 and May 30, 2020, for those people or entities with a volume of operations not exceeding 6,010 .121.04 in the 2019 financial year. Additionally, the contribution of guarantee will not be necessary in case of debts of less than 30,000 euros. The deferment will be granted for a period of 6 months, without interest accruing late payment during the first 3 months of the deferment.

Eladia de Carlos & Cristina Alba

#### **Application for refund of surcharge for presentation of extemporaneous declaration.**

It may be that the taxpayer, for various reasons derived from the state of alarm (lack of liquidity, impossibility of physical access to the necessary documentation, etc.), cannot present the VAT, IS or the correspondent Tax. In this situation, the tax regulations provide surcharges for extemporaneous self-assessment without prior requirement from the Tax Administration. However, in the context of the state of alarm, the inadmissibility of this surcharge is defensible.

Eladia de Carlos & Cristina Alba

#### **Request for compensation of debts by the taxpayer.**

Given the lack of liquidity that may arise in the state of alarm due to the lack of activity and confinement, the one-month moratorium term granted by the congress of Ministers of April 13, 2020 for pymes and the self-employed have stipulated plans to compensate the tax debt .The advice refers to the processing of the refund request, derived from the regulations of a tax, for example, the IS or VAT, provided that more than six months have elapsed since its presentation, with another tax debt derived from a self-settlement of similar nature and presented during the state of alarm.

Eladia de Carlos & Cristina Alba

#### **Tax residence of foreigners confined in Spain by the state of alarm.**

As a consequence of the decreed state of alarm, many foreigners have had to remain in Spanish territory. This fact, maintained over time, could imply their consideration as tax residents in Spain, when in reality it is a circumstance beyond their control. While waiting for Spain to rule on this matter, the advice offered on possible implications and ways to challenge tax residence in Spain





is of interest. Similarly, this question can be raised with the situation of Spaniards abroad.

Eladia de Carlos & Cristina Alba

### **Succession and patrimony planning.**

On the occasion of COVID-19, it is necessary to review the patrimonial structure of the natural person and family business in order to be able to benefit from the tax incentives provided by the different Autonomous Communities in the Tax on Inheritance and Donations. The self-settlement payment suspensions provided for in local taxation may be applicable (for example, in the Tax on the Increase in the Value of Urban Land in certain Municipalities).

Likewise, although it has not been officially announced, the reactivation of the Wealth Tax in some Communities cannot be ruled out, so it is recommended, also for this reason, to review such structures to be able to apply the exemption provided in the case of family businesses.

Eladia de Carlos & Cristina Alba

### **Impact of the state of alarm on the Corporate Tax for the financial year 2020.**

The state of alarm supposes a series of economic effects on companies that can impact their accounting result and, therefore, affect the tax base of Corporation Tax. We refer to the accounting of aid and subsidies, provisions, impairments, as well as aspects related to late payment, among other issues, which should be carefully analyzed to collect and, if possible, minimize its fiscal impact.

Eladia de Carlos & Cristina Alba

### **Possible increase in inspection activities. Prevention plan.**

Due to the current health crisis, various organizations (for example, the OECD) are recommending to countries a review of policies to combat tax fraud, which, together with the foreseeable reduction in tax collection, will probably translate into an increase in tax inspections in search of public revenue. It is convenient to carry out, in advance, a review of the fiscal criteria that have been followed in the last four years, in case it is convenient to regularize the tax situation or, at least, to evaluate possible fiscal contingencies, in matters such as: business reorganization operations



carried out (mergers, divisions, exchange of securities, etc.), related-party transactions, deduction of expenses, compensation of professional partners, declaration of assets abroad (Form 720) or real estate operations, among others.

Joaquín López

#### **Attention to the VAT quotas of the rents reduced, forgiven or deferred in the leases of premises.**

Given the extraordinary situation created by the state of alarm, many lessors of business premises have found unpaid rents. Others have reached agreements with their tenants, temporarily lowering their rent, postponing their payment or even forgiving them to allow them to better weather this difficult situation. Given this, the VAT Law is inflexible and, even when the income has not been received, the obligation to enter the corresponding VAT in the Treasury remains.

Landlords who are faced with any of these situations must bear in mind that, to avoid VAT conflicts due to lowered, deferred or unpaid rents in this period, it is essential to adopt measures in relation to the enforceability of rents derived from lease, modifying the contract. If it is

not done properly, they may be forced to pay fees that they have not received with a surcharge.

Eduardo Cardona Alonso

#### **Criminal law.**

#### **Of documentary falsity and other possible crimes in cases of crimes processed by the covid19.**

There may be the circumstance that a worker, under suspension of the employment contract, is found providing services for the company that processed the ERTE at the time.

In relation to a crime of Social Security fraud, it is reasonable to understand that such fraud would not exist in the event that the work performance of the employee affected by ERTE is due to causes arising from the processing thereof.

Regarding a crime of documentary falsehood, the conduct of drafting documents (memory, sworn statements, etc.) that are irrelevant, even when they are relevant, or even essential, for the processing of the file would not be punishable. Such assumption of criminal irrelevance would not be applicable in the case of documents manipulated or

created      simulating      authentic  
documents.

Jorge Muñoz

### **Of the fungible nature of money in the crime against public finances.**

The collateral effects that the COVID 19 pandemic is causing in the economic sphere are well known to all, especially as regards the lack of liquidity. The question arises whether the amounts received as VAT passed on for purposes other than their entry into the Tax Agency may cause, after exceeding the limit of € 120,000 of unpaid fee, the commission of a tax offense.

We can advise in the controversy of whether the amounts received in the form of passed VAT have the sole purpose of paying taxes or if it is possible to face other payments of a business nature with said sums or, what is the same, if there is any type of prevalence of tax obligations with respect to other economic obligations of a diverse nature that are necessary for the maintenance of professional or business activity, and what would be the criteria that would support this last possibility.

Manuel Alarcón

### **Family Law**

#### **Consequences of the suppression or limitation of visitation rights and / or Guard and custody regime during the state of alarm.**

Due to the state of alarm, the time that children spend with their parents has been seriously affected, not respecting the custody or visitation regime. In this regard, there is no unanimous criterion on the part of the Family Courts, so, depending on the competent judicial party, the affected parents may -in case of lack of agreement- initiate procedures for the execution of the Judgment to comply with the established measures. , or request compensation for the time not enjoyed with the minors once the state of alarm has ended.

Angela Lomeña

#### **Payment of alimony during the state of alarm.**

Compliance with economic measures established in a Judicially approved Regulatory Agreement or Regulatory Agreement, such as the payment of alimony, are not suspended despite the current state of alarm. The obligor is not exempt from such obligation despite the fact that the situation has been reduced

from the labor point of view, or despite the fact that he is suffering from lack of income due to the cessation of his activity. The exceptional situation that exists does not exempt the maintenance obligation.

Although agreements between parents could temporarily resolve this situation, we must not forget that alimony is a matter of public order that requires the intervention of the Prosecutor's Office and its judicial approval for its modification.

Andrés Tallafigo

### **Modification of measures**

The crisis caused by COVID-19 has resulted in many people having lost their jobs, closed their businesses or, ultimately, lost much of their purchasing power. The compensatory pension recognized to your ex-spouse, whose payment they are obliged by Judgment, will most likely no longer be proportional to their current economic situation, which allows them to resort to a judicial procedure to modify measures, the success of which is more than likely, having a substantial change in circumstances has occurred, as required by current regulations and the most current jurisprudence.

Sonia Gea

### **Labor law.**

#### **Adaptation and revision of contents in the company agreement.**

It would be advisable to recover the existing flexibility mechanisms in our labor system to make decisions in order to overcome the effects of this situation. To this end, adequate advice on the negotiation of aspects regulated by the applicable collective agreement - among which are indicated, salary review, adaptation of the system of professional categories or rearrangement of schedules, among others - will provide information and application of a wide range of possible actions in the management of human resources.

Francisco J. Prados

#### **Suspension of temporary contracts during the application of ERTE's.**

Royal Decree-Law 8/2020 of March 17 of extraordinary measures to face the economic and social impact of COVID-19 facilitated the implementation of ERTES in the company. However, the subsequent Royal Decree-Law 9/2020 of March 27, by which complementary

measures are adopted in the workplace to alleviate the effects derived from COVID-19, introduced a new provision that affects ERTES that are carried out at protection of that legal provision, even if they had already been presented, and it is the provision contained in art. 5 relating to the interruption of the calculation of the maximum duration of temporary contracts.

Specialized advice will be necessary in the first place due to the fact that this obligation has been imposed after presentations by many ERTE's, and also due to the interpretive problems that such extension will generate

Antonio Torrecillas

### **Temporary Records of Employment Regulation and the safeguarding of employment.**

The measures to make the employment regulation procedures processed as a consequence of COVID-19 more flexible are linked to the commitment to maintain employment for a period of six months from the date of resumption of the activity.

This commitment to maintaining employment will be valued based on the specific characteristics of the different sectors, taking into account, in

particular, the specification of those companies that present a high variability or seasonality of employment or a direct relationship with specific events or shows, as it happens, among others, in the field of performing, musical, cinematographic and audiovisual arts. In particular, in the case of temporary contracts, the commitment to maintain employment shall not be deemed breached when the contract expires due to the expiration of the agreed time or the performance of the work or service that constitutes its object.

María José González

### **The Labor Inspection and the Covid-19.**

Royal Decree-Law 9/2020, of March 18, includes in its Fourth Additional Provision that in cases where there are indications of fraud to obtain unemployment benefits, it will be communicated to the Labor Inspector and social security, of the existence of the causes alleged in the applications and communications of temporary employment regulation files based on the causes of articles 22 and 23 of Royal Decree-Law 8/2020 of March 17. For all these reasons, a strong work inspection is foreseen, and the company must be well advised to be able to contest and



defend the application of the different measures adopted within its company.

María José González

### **Implementation of internal rules of conduct and protocols in the area of prevention in compliance with labor regulations. Labor compliance.**

A fundamental element to manage a workforce is the implementation of internal regulations and labor compliance protocols. In this sense, the implementation of internal regulations and labor protocols allows to execute, with guarantee and speed, labor restructuring measures (disciplinary sanctions) and even establish internal processes that guarantee effective compliance with labor regulations (control of working hours, prevention of risk related to Covid19). The Organizational and disciplinary power corresponds, according to EETT, to the businessman in accordance with current conventional regulations.

Rafael Córcoles

### **Contestation of sanctions imposed by the labor authority.**

Regarding the different measures adopted by the Government in labor

matters to compensate for the devastating effects caused by COVID-19 on business activity, it should be remembered that the Administration reserves the right to review all the labor measures adopted and based both on a responsible declaration (for example, cessation of activity), as in administrative silence (for example, ERTES), leaving them without effect -in their case- with the corresponding reimbursement of aid and benefits, and imposition of sanctions. Our specialized advice can defend your interests, making the appropriate allegations and challenging those resolutions that correspond.

### **Adaptation of protection clauses for teleworking.**

Once the crisis is over, there will be many companies that, after the experience, decide to continue with the teleworking modality, either completely or partially, allowing the worker to alternately carry out their activity in person or teleworking. Likewise, there will be many workers who, taking advantage of the hourly specification regime established in art. 34.8 ET, will request to develop all or part of their working day in a teleworking regime. This implies an attention of the company as responsible for data protection that will require the implementation of certain protocols, as

well as the signing of them; and it will allow the company, in case of non-compliance by the worker, not only to adopt the appropriate disciplinary measures, but also to claim the damages that the company has suffered due to said non-compliance. From Martínez-Echevarría we offer advice for the implementation of the activity in telework mode.

Javier Gomez

#### **Exceptions to the new commitment to maintain employment for six months.**

Royal Decree-Law 11/2020 of March 31 has clarified, in its Fourteenth Additional Provision, the commitment to maintain employment for six months after the resumption of activity imposed by Royal Decree-Law 8/2020. In this sense, it is stated that said commitment will be valued taking into account the specifications of those companies that present a high variability or seasonality, as well as those that are related to the world of events of all kinds. Likewise, said commitment will not be considered breached in the event of dismissals, temporary contracts, end of work or impossibility of carrying out the activity object of the contract.

José Luis Gutiérrez

#### **Records of Temporary Employment Regulation for objective causes derived from Covid-19.**

The publication of Royal Decree-Law 8/2020 established as the main measure to alleviate the negative consequences of the Covid-19 crisis in the workplace, the possibility for employers to process Temporary Employment Regulation Files, either due to force majeure or either for objective reasons, by means of separate procedures that are more agile than the usual ones. The correct choice of one or the other procedure will lead to approval or denial of such a measure, with the inherent legal consequences.

Carlos Valdes

#### **Collective bargaining and restructuring of staff.**

After the urgent measures implemented by Royal Decree-Law 8/2020, of March 17, the adaptation of labor relations to the needs of companies and workers is favored, with collective bargaining taking on special importance in order to implement adaptive flexibility measures. to the economic and productive crisis, mainly oriented to the irregular distribution of working time, adapted

working hours, vacations and the adaptation of the salary structure.

Patricia Bueno

### **Return to activity: need for a Contingency Plan.**

The return to work must be guided by strict monitoring of preventive criteria in each workplace. For this, it is essential that each company develops a contingency plan or general protocol for security and health. Said Plan must detail the specific measures that each company will adopt to prevent as much as possible the risks of contagion from COVID-19.

Due to legal requirements, the process of preparing the adaptation of the risk assessment and the resulting safety protocols must be the result of a consensus between the company and the workers' representatives. The final document must be practical, with a clear and real exposition of the measures and commitments that the company assumes to avoid the risk of contagion of the working people.

Juan Tomás Martínez-Echevarría

### **Isolation or contagion as an accident at work.**

The entry into force of Royal Decree Law 6/2020, of March 10, which adopts certain urgent measures in the economic field and for the protection of public health, has led to exceptional consideration as a situation assimilated to a work accident involving periods of isolation or contagion of workers as a consequence of the COVID-19 virus. The worker may be entitled to this benefit own or third party that is on the date of the causal act (date on which the isolation or illness of the worker is agreed) in a situation of registration in any of the Social Security regimes.

Carlos Bejarano

### **Constitutional Law.**

#### **Protection of the fundamental right to free movement of people.**

In relation to the confinement of citizens in their homes, it should be remembered that it is a principle maintained by the Constitutional Court regarding the application of fundamental rights that these should be interpreted in the widest possible sense, and could only be limited when collide with other fundamental rights; Along with that, on the contrary, the restrictions or limitations to fundamental rights must

be interpreted restrictively. Precisely, based on these interpretative principles of any fundamental right, all the sanctions that are being imposed, including the arrests that are being carried out, must be examined under those interpretative criteria. They could be contested though the fundamental right jurisdiction in all our procedural laws.

Antonio Torrecillas

### **Special procedure for the protection of fundamental rights when the administration violates them.**

Since the declaration of the state of alarm, it could be that some administrative provisions and acts affect fundamental rights. The procedure for the protection of the fundamental rights of the person provided for in articles 114 and following of Law 29/1998, of July 13, is an exception in the interruption of the periods in force in the state of alarm.

It is a special process characterized by four distinctive facts: the needlessness of exhausting the administrative pre-judicial route; the reduction of the preclusive periods provided by law to exercise the corresponding action; the easiest way to obtain the adoption of precautionary measures; and the

existence of a more complete system of resources than that provided for in the ordinary process. In addition, it has a preferential procedure.

Rafael Cabrera

### **Procedural law.**

#### **The out-of-court payment agreement with creditors to avoid bankruptcy.**

Given the economic consequences of the current health crisis, it is necessary to take into account the regulations established in the Bankruptcy Law regarding the out-of-court settlement of payments, through bankruptcy mediation, which are going to have to resort, presumably, a good number of natural persons (entrepreneurs or not) and legal entities (whether or not they are capital companies) in order to avoid bankruptcy, provided they comply with the budgets and requirements established in articles 231 and following of Law 22/2003, of July 9, Insolvency.

Rafael Cabrera

### **International Law.**

#### **Recovery of credits against debtors domiciled abroad.**



The world health crisis suggests a highly probable increase in late payment by debtors domiciled abroad in relation to their payment obligations in Spain derived from commercial contracts or even quotas owed to the community of owners. There is a higher risk with the United Kingdom because the eventuality of the end of the transitional period of Brexit at the end of the year is added, except for a new extension. Therefore, as a creditor, it is necessary to initiate legal actions aimed at recovering the credit as soon as possible for the operation of the courts in Spain and, in any case, before the end of this year, in order to consolidate the procedural advantages currently existing for the collection of credits in the European Union.

Miguel Checa

### **Contract breach in international business.**

In international contracts it has always been customary to incorporate force majeure clauses, contract frustration or impossibility of compliance. Now, with the health crisis, these clauses are of greater importance and a minimum diligence requires reviewing them and, where appropriate, renegotiating them,

always in accordance with the law applicable to the contract.

In the event that the breach has occurred due to the health crisis, in order to reduce the risk of litigation in Spain or abroad, in the first place we must look for options of negotiating and find a way out of the situation of non-compliance, when appropriate, formalizing or documenting the resolution of the contract correctly in accordance with the above considerations.

Miguel Checa

### **Maritime Law.**

#### **Claims for damages in transport law on the occasion of COVID19.**

The shipper who has entrusted a logistics operator with the shipment of a merchandise may claim damages and delays suffered while in its custody (real or fictitious), from when it was taken over until its final delivery. The operator will have the right to subsequently claim whoever, in his case, has been guilty of the damage and all this with the application of the corresponding limits of liability depending on the type of transport in question.



Deliveries of perishable goods, stoppages or closure of ports ,overload of customs and phytosanitary inspections, damages and delays, deviations of ship routes, closure of borders and extra costs, expropriation, confiscation or arrest of cargo on board, impositions of quarantines on ships, marine insurance claims, ..., are all scenarios that with high probability they can be found on the occasion of the COVID19 pandemic, giving rise to total or partial breaches of contracts, trying to justify them due to force majeure.

Pedro Abad

### Urban Law.

**Urban streamlining by replacing the first occupation license with the responsible declaration.**

The Decree Law 2/2020, of March 9, (Junta de Andalucía) to improve and simplify the regulation for the promotion of Andalusian productive activity facilitates the flexibility of the procedure for obtaining the first occupation license, by authorizing the first occupation license application with a responsible declaration, provided that its destination is in accordance with the applicable regulations and with the building license granted. Likewise, the approval

procedure for planning instruments is streamlined, also making the process more flexible when it comes to the implementation of a hydraulic, energy and utilization infrastructure.

Juan Antonio Rodríguez