

Social Security Measures to Alleviate the DANA's Effects

The impact of the DANA (Spanish acronym for a cut-off low pressure system) on economic and employment activity has made it necessary to adopt urgent measures to provide employers and workers with liquidity. Among others, benefits, exemptions, extensions and increases of some Social Security pensions.

LOURDES LÓPEZ CUMBRE

Professor of Employment and Social Security Law, University of Cantabria
Academic counsel, Gómez-Acebo & Pombo

Referring to issues of a very disparate nature, Royal Decree-law 6/2024, of 5 November, adopting urgent response measures to the damage caused by the DANA in different municipalities (78 in total, according to the Schedule to said Royal Decree-law) between 28 October and 4 November 2024 (the Royal Decree), includes, in Chapter IV thereof, Social Security measures. As stated in the explanatory notes of the Royal Decree, these Social Security measures, in an effort to tackle the DANA's social and economic impact, aim to provide liquidity to affected workers and employers,

cushioning the losses caused to the business and employment fabric. Though not novel, having been tested before, these measures are nonetheless necessary to speed up the recovery of economic and employment activity in the affected areas.

1. Exemptions from Social Security contributions and joint collection items

Companies with a Social Security code whose place of business is in the areas listed in the schedule to the Royal-Decree, which have had or have their normal activity im-

peded or limited and which have been given leave to initiate a temporary collective redundancy procedure under Article 47(5) of the Workers' Statute Act (LET) as a result of the losses described in the Royal Decree, will be entitled to the extraordinary benefits provided for thereunder, as per Article 18 of the Royal Decree. Workers whose activities have been suspended or reduced, for the periods and percentages of the working hours affected by the suspension or reduction, may benefit, inter alia, from an exemption of 100% of the employer's contribution referred to in Article 153 bis of the Social Security Act (LGSS) for general and occupational contingencies and joint collection items, with respect to the contributions accrued in the period affected by the suspension or reduction, for the months of November 2024 to February 2025. The procedure and requirements for the application of this exemption from contributions will be those contained in Additional Provision 44 LGSS, which regulates the Social Security benefits in temporary collective redundancy procedures and in RED Mechanisms (allowing for reductions in working hours and suspensions of employment contracts).

2. Deferral and moratorium on the payment of Social Security contributions and joint collection items

The above-mentioned companies and self-employed workers whose place of residence or activity is in the localities covered by the Royal Decree, included in any Social Security scheme, provided that they are up to date with their Social Security obligations and have no other deferrals at the time, may request, directly or through their authorised representatives in the RED

System, a deferral in the payment of Social Security contributions and for joint collection items accruing between the months of October 2024 and January 2025, in the case of companies, and between the months of November 2024 and February 2025, in the case of self-employed workers, in accordance with Article 19 of the Royal Decree.

Companies will be able to benefit from a 100% exemption from Social Security contributions

The deferral will be in accordance with Social Security legislation, but with some qualifications: a) an interest rate of 0.5% will apply, instead of that provided for in Article 23.(5) LGSS -which, as is well known, refers to the default interest in force at any time during the deferral; in 2024, approximately 4%; b) the deferral will be granted by means of a single decision regardless of the months covered and will be repaid monthly with a repayment period of four months for each monthly payment deferred, without exceeding a total of 16 monthly payments; c) the first payment shall be made as from the month following the month in which the deferral was granted; and d) the request for deferral shall mean that the debtor shall be deemed up to date with Social Security obligations in respect of the contributions affected by the deferral, until a decision is issued in this respect.

Alternatively, the companies and self-employed workers to which the Royal Decree refers may request and obtain a moratorium of up to one year without interest on the payment of Social Security contributions and for joint collection items, the accrual of which takes place, in the case of companies,

between the months of November 2024 and February 2025, and, in the case of self-employed workers, between the months of December 2024 and March 2025. Deferrals and moratoriums will be incompatible, in such a way that requests for deferral for periods in respect of which the aforementioned moratorium has also been requested will be deemed not to have been submitted if the requester has been granted the latter. Likewise, a moratorium will be incompatible with the system set out in the Royal Decree on the extension of the regulatory period for the payment of Social Security contributions and for joint collection items, which is analysed in the following section. Requests for a moratorium will result in the non-application of the aforementioned provision in relation to the payment of Social Security contributions. A moratorium will be incompatible with the contribution exemptions described above. In any event, both requests for deferral and requests for moratorium must be made before the end of the first ten calendar days of each of the regulatory time limits for payment of the contributions referred to therein.

3. Extension of the regulatory time limit for payment of Social Security contributions and joint collection items

The regulatory time limit for payment of Social Security contributions and for joint collection items, as well as for submission of the relevant assessments, by companies included in any Social Security scheme, holders of Social Security codes with their place of business in the localities referred to in the Royal Decree, which accrue in the months of October 2024 to January 2025, is extended by one month, in accordance with the provisions of Article 20 of the Royal Decree. The same extension shall apply to supplementary assessments whose

regulatory deadline for payment falls within any of the aforementioned months. For its part, the regulatory deadline for such payments in the case of self-employed workers or where accrual takes place in the months of November 2024 to February 2025, is also extended by one month (in the case of the seafarers' scheme, the deadline affects accruals in the months of October 2024 to January 2025).

4. Stay of proceedings for the collection of Social Security contributions and for joint collection items

The commencement and continuation of proceedings for the collection of Social Security contributions and for joint collection items in relation to the companies or self-employed workers included in the Royal Decree shall be stayed from the date of entry into force of the Royal Decree (7 November 2024) and until 28 February 2025, the date from which said proceedings may be commenced or continued, pursuant to Article 21 of the Royal Decree.

5. Extension of deadline for payment of contributions accrued prior to the natural disaster

The submission of assessments for Social Security contributions and joint collection items accrued in the month of September 2024 and their payment, when such payment has not been made by the date of entry into force of the Royal Decree (7 November 2024), by the companies included in the Royal Decree, may be made in the month of November 2024, without any surcharge or interest being applied. The same deadline extension will apply to the supplementary settlements whose regulatory deadline for payment was October 2024. Similarly, the payment of these same items in the case

of the self-employed workers included in the Royal Decree, provided that they have not been paid by the date of entry into force of the same, may be made in November 2024, without the application of any surcharge or interest. The same deadline extension will apply to supplementary settlements whose regulatory deadline for payment was October 2024. All of the above in accordance with the provisions of Article 22 of the Royal Decree.

6. Extension of the deadline to apply for deregistration and changes in workers' particulars in the Social Security system

Applications for the deregistration of employees included in the Social Security codes of the affected companies, as a result of the cessation of activity derived from the emergency situation, with effects between 28 October 2024 and 28 February 2025, may be made within the period of thirty calendar days following the cessation of

which they are to take effect in terms of Social Security contributions.

For their part, applications for deregistration by self-employed workers included in any Social Security scheme whose place of business or residence is in the localities listed in the schedule to the Royal Decree, as a result of the cessation of activity derived from the emergency situation, with effects between 28 October 2024 and 28 February 2025, may be made within 30 calendar days following the date of cessation of work.

7. Specific measures for self-employed workers

Self-employed workers included in the Royal Decree who cease work completely, either definitively or temporarily, may apply for the cessation-of-activity benefit provided for in Article 331(1)(b) LGSS without it being necessary to provide documents proving

the existence of force majeure, as stated in Article 24 of the Royal Decree. In the recognition of the benefit, which will be carried out by the Mutual Societies collaborating with the Social Security

or by the Social Marine Institute on a provisional basis with effect from 29 October 2024, proof of the impossibility of carrying out the activity will not be required, without prejudice to the managerial body subsequently requiring the beneficiary to provide such proof. The time during which benefits are received for cessation of activity, caused by these events, will not be calculated for the purposes of using up the maximum periods of receipt established in Article 338 LGSS.

There are deferrals and moratoriums on the payment of Social Security debts until the first months of 2025

work, in accordance with the provisions of Article 23 of the Royal Decree. Similarly, applications for changes in particulars resulting from the start or end of suspensions or reductions in working hours, as well as modifications of the latter, in the employment relationship as a result of a temporary collective redundancy procedure in respect of Social Security codes with a place of business in the affected localities, may be made up to the time at which the last request for the assessment calculation is submitted in

The minimum contribution period requirement of 12 continuous months immediately prior to the legal situation of cessation of activity, provided for in Article 338 LGSS for self-employed workers affected by the losses described in the Royal Decree, shall be considered to be fulfilled for the purposes of access to the cessation-of-activity benefit. Likewise, those self-employed workers included in any Social Security scheme who were benefiting from any rebate or reduction in Social Security contributions provided for in the Self-Employed Workers' Statute Act and who, as a direct and immediate consequence of these events, are receiving the cessation-of-activity benefit deregistered from the relevant scheme, will not lose the right to access the rebates or reductions in contributions for the time that would have remained pending, provided that they apply for registration immediately after the end of the benefit.

8. Exceptional consideration as a situation akin to an accident at work of temporary incapacity proceedings, and permanent incapacity, death and survival pensions

Temporary incapacity proceedings occurring in the area corresponding to the localities included in the Royal Decree from 29 October to 30 November of this year, and initiated as a result of the accidents described above, will be considered, exceptionally, as a situation akin to an accident at work, exclusively for the purposes of the Social Security system's temporary incapacity financial benefit, in accordance with the provisions of Article 25 of the Royal Decree. For this exceptional consideration, these temporary incapacity proceedings will be coded by the medical practitioner of the Public Health Service with the code determined by the Ministry of Health in coordination with the National Social Security

Institute. Temporary incapacity proceedings arising from an accident at work will be recognised as such without the provisions of Article 156(4)(a) LGSS (i.e. exclusions from the concept of accident at work, among others, situations arising from force majeure) being applicable. Any self-employed or salaried worker who, on the date of the causal event, is registered in any of the schemes, may be entitled to this exceptional protection.

Along the same lines, the pensions for permanent disability, death and survival, as well as the financial benefit for partial permanent disability, whose causal event is the result of the losses described and which occurred in the locations covered by the Royal Decree, shall be considered, exceptionally, as a situation akin to an accident at work for the sole purpose of calculating their financial amount. The financial benefits for permanent incapacity, death and survival derived from an accident at work shall be recognised as such without the provisions of Article 156(4)(a) LGSS being applicable, in the terms already described. This exceptional protection may be granted to self-employed or salaried workers who, on the date of the causal event, are in a state of registration or similar to that of registration in any of the Social Security schemes.

9. Measures for the conduct of certain procedures by the Social Security managerial bodies

In those cases in which, as the domicile of the person concerned is in one of the localities listed in the Royal Decree, he/she cannot present a mandatory document for the recognition, maintenance or review of entitlement to Social Security benefits, a statement of compliance may be accepted

for the data or documents he/she intends to assert, in accordance with the provisions of Article 26 of the Royal Decree. If the interested party does not have an identity document and does not have an electronic certificate or permanent password, the identity declared by the interested party will be accepted, without prejudice to the checks that the managerial body may carry out, using the means already established to verify such identity.

10. Extraordinary increase in the ‘minimum subsistence income’ benefit

An extraordinary increase in the minimum subsistence income benefit in force at the time the Royal Decree comes into force is recognised for each individual or cohabitation unit beneficiary of the minimum subsistence income whose domicile is located in one of the localities included in the Royal Decree. In accordance with the provisions of Article 27 of the Royal Decree, the Spanish Department of Social Security will recognise an increase for the monthly payments from November 2024 to January 2025, both

shall apply to applications submitted at the date of entry into force of the Royal Decree, which have not been resolved, as well as to those made before 31 December 2024, provided that the individual applicant or, where applicable, the cohabitation unit is domiciled in any of the affected localities.

11. Extraordinary increase in non-contributory Social Security pensions

The amounts of non-contributory retirement and disability pensions paid to beneficiaries whose domicile is in any of the localities covered by the Royal Decree shall be increased by an extraordinary 15% in the monthly payments from November 2024 to January 2025, both included, as per Article 28 of the Royal Decree.

12. Exception from the obligation to be up to date with tax or Social Security obligations

In accordance with Additional Provision 9 of the Royal Decree, in order to facilitate the management and obtaining of this aid, and due to duly evidenced circumstances arising from the nature of the aid, applicants are exempt from the requirement to be up to date with the tax or Social Security obligations established in Articles 13(2) and 34(5) of the Subsidies Act. It should be noted, however, that although some of the sections of this paper refer to the obligation to be up to date with Social Security obligations, the exception here applies to aid or subsidies to which the provisions of Articles 13(2) and 34(5) of the Subsidies Act apply,

Self-employed workers with total or partial cessation of activity may apply for benefits without having to prove force majeure

included, which will consist of applying 15% to the monthly amount established for each individual or cohabitation unit beneficiary in the aforementioned months, including the recognised monthly supplements and excluding the amounts for previous periods, as well as to other non-monthly items that may have accumulated. This increase

which do not include Social Security benefits or any benefit in Social Security contributions.

13. Suspension of procedural time limits

Pursuant to the provisions of Additional Provision 10 of the Royal Decree, the time limits laid down in procedural laws for all branches of the judiciary in the courts located in the province of Valencia are suspended and interrupted from 30 October to 10 November 2024. Said period may be extended by decision of the Cabinet, after

consulting the Spanish Council for the Judiciary, if the circumstances justifying the suspension continue to exist. However, the Royal Decree specifies that this interruption will not apply, inter alia, to collective dispute proceedings and proceedings for the protection of fundamental rights and public freedoms regulated in the Employment Jurisdiction Act. However, in any proceedings and as a general rule, the judge or court may order the taking of any judicial steps that are necessary to avoid irreparable harm to the legitimate rights and interests of the parties to the proceedings.