



CECA MAGÁN
ABOGADOS

CORONAVIRUS

TELEWORKING AND FAMILY CONCILIATION

**First LABOUR LAW issues after the
Royal Decree 8/2020, from the 17th March
(BOE 18-3-20)**

18th March 2020

MATTERS RELATING TO TELEWORKING AND FAMILY CONCILIATION

Does the Royal Decree establish any specific provisions regarding how to implement teleworking in the company from a labour law perspective?

No. The rule is limited to facilitating compliance with the obligation to carry out the corresponding risk assessment, although it establishes the business obligation to conduct organizational systems that allow the activity to be maintained by alternative distance working mechanisms, when this is technically and reasonably possible, and if the necessary adaptation effort is proportionate. Furthermore, the use of teleworking is considered to be a priority compared to the ERTes.

However, are there any other measures in the field of teleworking?

Yes, the Royal Decree provides for the possibility of providing services in the form of distance working or teleworking. To this end, if the requirements are met, the worker may request the adaptation of the working day in this way.

Is it possible to request the adaptation of the working day due to the coronavirus health crisis?

Yes, under the terms and conditions provided for in the Royal Decree Law 8/2020.

Can people apply for this adjustment on their own?

No. Adaptation is only contemplated in respect of employed persons.



MATTERS RELATING TO TELEWORKING AND FAMILY CONCILIATION (II)

And public servants?

Employees shall be governed in this respect by the rules set forth in the EBEP (Public Employees Basic Statute), and the Royal Decree makes no provision for them.

Is the adaptation of the working day provided for in the Royal Decree linked to the provisions of Article 34.8 Workers Statute?

No. For this purpose, no express reference is made to the legal regime for the adaptation of working hours provided for in Article 34.8 Workers Statute. Apart from the provisions of the Royal Decree, other rights to conciliation must be governed by its specific regulations.

Which family members are excluded from the right to adapt to the working day?

Relatives by affinity of the working person, as well as relatives by blood beyond the second degree of kinship. Otherwise, the norm does not refer to other different persons who, not being blood relatives or partners of the interested person, require her/his care (e.g., neighbors).

What kind of partners can generate the right to the adaptations and/or reductions foreseen in the RDL?

Since the rule does not distinguish between them, it seems that any kind of unmarried couple, whether or not they have entered in an administrative register created for that purpose, could have a place in this respect.



MATTERS RELATING TO TELEWORKING AND FAMILY CONCILIATION (III)

Does the fact of having relatives allow the adaptation of the day in any case?

No. For this purpose, it will be necessary for the working person to prove the care needs (safely, personally and directly) of the person concerned, as well as the existence of the required exceptional circumstances.

Can more than one person request the adaptation of the day according to the same reason?

Yes, as this is an individual right of working people (men and women).

The exceptional circumstances that the rule contemplates, are they *numerus clausus*?

Doesn't seem like this. Within the present framework of exceptionality, it seems that these circumstances will admit very diverse hypotheses. Neither are the multiple hypotheses of adaptation of the day to be requested.

How does the special reduction in working hours provided for in Royal Decree 8/2020 work?

Except for the specific provisions introduced by the Royal Decree, the reduction of the working day operates in similar terms to those provided for in Article 37.6 and 7 Workers Statute.



MATTERS RELATING TO TELEWORKING AND FAMILY CONCILIATION (IV)

Does the reduction in working hours have to be daily?

Although the rule does not expressly provide for it, the general reference made to Article 37.6 Workers Statute seems to understand that it does. A different matter is that such a reduction does not have to reach a certain percentage, neither a minimum nor a maximum.

If a reduction in working hours to 100% is carried out, is the employment contract suspended?

No. In this case we would find a reduction of the full working day but with the guarantees generally provided for in articles 37.6 and 7 Workers Statute and other complementary regulations. There is no specific social security benefit for this purpose.

Are the special adaptation and/or reduction of working hours provided for in the Royal Decree compatible with other conciliation measures?

Yes. Simultaneously or successively. It is even possible that the new cases imply the modification of the conciliation measures that were being enjoyed previously. In any case, other existing conciliation measures not provided for in the Royal Decree shall be governed by its specific regulations.

Once adopted, how long can these measures last?

These measures are limited to exceptional concurrent circumstances, so that those that have disappeared must lapse.



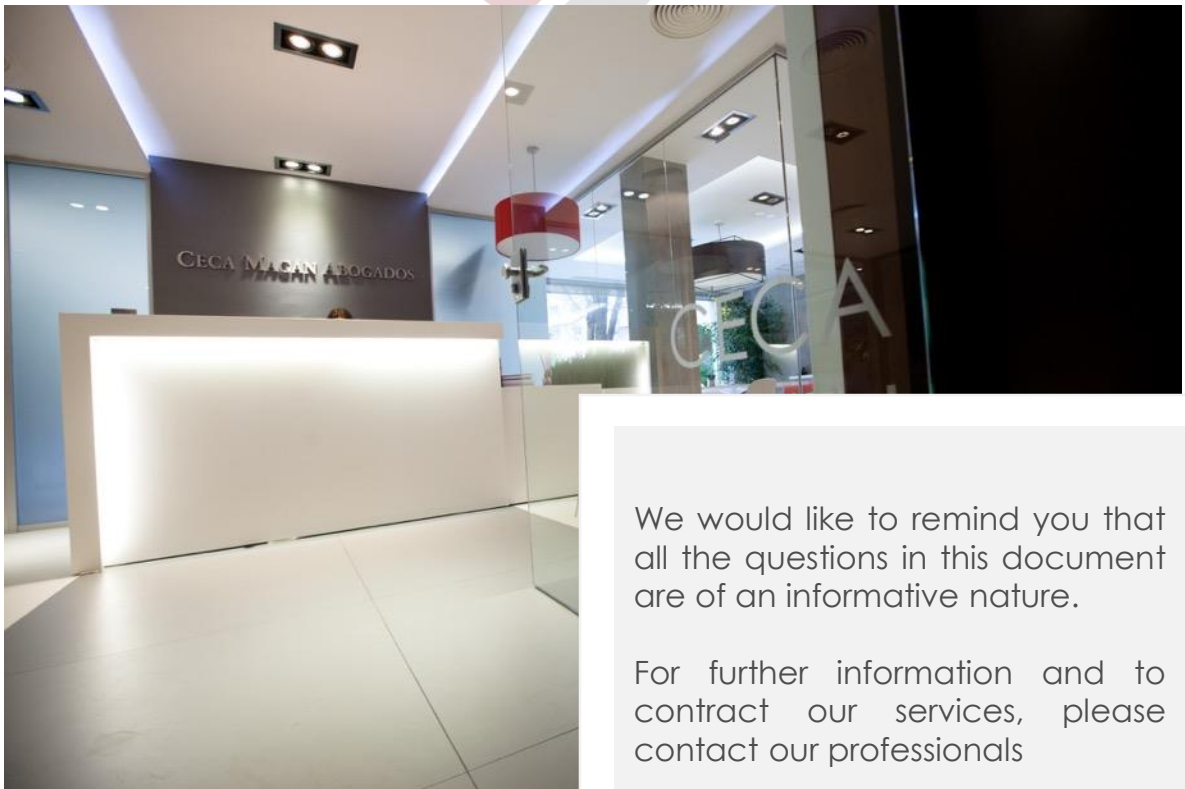
Can we help you?



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We would like to remind you that all the questions in this document are of an informative nature.

For further information and to contract our services, please contact our professionals

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