

Adjustments to Emergency Measures to Tackle the COVID-19 Outbreak and First Recommended Steps to Prepare the Restart of French Businesses

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Over the last few weeks and days, the French Government has been continuously adjusting the initial emergency measures taken in order to combat the Covid-19 outbreak and support French businesses, to bridge the gaps that have been pointed out by employers or to allow more flexibility. As the French Government aims to progressively lift the lockdown measures starting as from May 11, 2020, the first steps that employers should implement to achieve this goal have been identified.

A. Adjustments to emergency measures

1. New measures on partial activity scheme (“*activité partielle*”)

- ✓ The partial activity has been extended to new categories of employees:
 - senior executives (“*cadres dirigeants*”), in the event of temporary closure of their establishment or part of the establishment;
 - employees of temporary employment agencies.

We have a COVID-19 Task Force within Cleary Gottlieb that is acting as a repository for practical solutions, best practice and issue-spotting to help our clients by sharing market experience, insight and advice from across our global presence.

If you have any questions concerning this memorandum or COVID-19 more broadly, please reach out to us on Global-Cleary_Covid-19_Taskforce@cgsh.com or one the following authors:

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- ✓ For employees working regular overtime pursuant to either a company-wide collective bargaining agreement or an agreed-upon work schedule based on a lump sum number of work hours per week, month or year (*forfait en heures*) entered into before April 23, 2020: **the employer has to take into account such overtime to determine the unworked hours eligible for compensation** under the partial activity scheme.
- ✓ In principle, the additional partial activity indemnity paid by the employer on top of the statutory indemnity equal to 70% of the normal gross compensation of the unworked hours is not subject to social security contributions. However, as of May 1, 2020, if the combination of the statutory partial activity indemnity and the additional indemnity results in the payment of a sum greater than 3.15 times the hourly value of the minimum statutory salary (70% x 4.5 SMIC), the excess will be subject to social security contributions.
- ✓ **Employers may apply the partial activity scheme taking into account individual situations:** the employer is now entitled to apply the partial activity scheme to only part of the employees of the same branch, department or workshop). The employer may also apply to its employees a different allocation of worked and unworked hours, provided that, in both cases, it is permitted by a company- or industry-wide collective bargaining agreement or, in absence of such agreement, on the basis of a favorable opinion from the works council.
- ✓ **Employers may apply the partial activity scheme without requesting the benefit of the partial activity allowance paid by the State.** In such a case, the employer will nonetheless continue to benefit from the exemption from social security contributions on the partial activity indemnity paid to the employees..
- ✓ Although there is so far no obligation to do so, the French Government has encouraged companies using the partial activity scheme **not to pay dividends in relation to their 2019 results.**

2. An upcoming decree is expected to reduce the maximum time periods for issuing works council's opinions and expert reports

in relation to **decisions aimed at dealing with the economic, financial and social consequences of the Covid-19 epidemic.**

3. Teleworking allowance

The French Government considers that the employer must pay employees working remotely an **allowance for the occupation of their home**, in line with the employer's general obligation to cover professional expenses incurred by its employees (computer equipment, consumables, internet and telephone connection costs, etc.). Companies are encouraged to use a **flat-rate allowance by referring to the social security authority scale, which allowance is automatically exempted from social security contributions within an overall limit** which increases in proportion to the number of days teleworked in a week (10 € for the month if one day is teleworked each week, 20 € for the month if two days are teleworked each week, etc.). If these limits are exceeded, supporting documents must be provided in order to claim exemption from social security contributions.

4. Procedural deadlines adjustments

The scope of the suspension and postponement rules applicable to certain time periods relevant in the context of employment relationships (see our previous memorandum *Covid-19: Moratorium to Suspend Certain Deadlines Relating to Investigations, Statutes of Limitation and Audits in Relation to Social Matters*, available [here](#)) has been clarified to exclude certain periods during which the employee (and the employer) can repeal their consent to certain specific acts. Thus, by way of example, the 15 calendar-day period available to each party to repeal its consent to a mutual termination agreement is not affected by such suspension and postponement rules.

In addition, a decree n° 2020-471 of April, 24 2020 sets out a list of procedures which are not within the scope of such rules. These

exceptions are based on grounds of safety, health protection, safeguarding employment and activity, and securing labor relations and collective bargaining. They entered into force on April 26, 2020.

The main procedures listed in this decree include:

- ✓ **Restructuring plans:** deadlines for clearance by the administrative authorities of the restructuring plans, including for companies in bankruptcy or liquidation;
- ✓ **Mutual termination agreement:** deadlines for clearing individual and collective mutual termination agreements;
- ✓ **Duration of work:** in particular the time limits for the administrative authorities to review the request for taking exception to the maximum average and absolute weekly working time duration, for the labor inspector to notify its decision to authorize the use of individualized working hours or to exceed the maximum daily working time duration or to vary the minimum daily rest period, etc.;
- ✓ **Profit-sharing plans and savings plans:** deadline for the labor authorities to notify observations on a profit-sharing plan or a savings plan as from the filing of such plan;
- ✓ **Health and safety:** in particular the deadlines for the labor authorities to give a formal notice to the employer that an employee is in a dangerous situation, for requesting verification of work equipment and protective devices, etc.

As a result, the above-mentioned deadlines or periods starting from April 26, 2020 onwards will run normally according to the rules of ordinary law. Periods that began to run before March 12, 2020, but which were suspended as of that date, in application of the exceptional suspension and postponement rules, have begun to run again as of April 26, 2020.

B. Preparing for restarting business activities

The French Government has announced the **gradual phasing out of containment from May 11, 2020**, by successive 3-week periods where, depending on the level of the epidemic, new measures will be progressively implemented. As of this date, the restarting of certain activities previously shut down could be envisaged.

Employers must anticipate now and rethink their organizations in order to comply with all the Government's recommendations regarding the prevention of risks of contamination by COVID-19 and thus protect their employees. In order not to run the risk of being held liable for failure to comply with its obligation to ensure a safe work environment, **the employer must take all measures to protect the health and safety of employees, make a proper assessment of those measures that are required and formalize them by setting up relevant procedures.**

Two tools are essential for this purpose:

- ✓ **Updating the single risks assessment document**, according to a procedure involving the works council and the occupational health service. This update requires a new risks assessment to be carried out in collaboration with the employees' representatives. Once these situations have been identified, the employer must :
 - take the necessary protective measures to prevent the risk of virus transmission. These measures must cover both **space management and time management** in order to keep direct and indirect social interactions to a minimum;
 - implement **information and staff training measures** adapted to the risks of contamination linked to the nature of the company's activity (reminder of barrier and distancing practices, training on the use of protective equipment, etc.) ;

- implement specific and reinforced measures for **cleaning and disinfecting premises and workplaces**, as well as work equipment (particularly if used by several employees) according to adapted procedures.

- ✓ **Updating the internal regulations**, based on the prevention measures identified in the single risk assessment document, the health and safety obligations that must be respected by employees throughout the company's premises, whether in terms of barrier gestures or, more generally, the rules of social distancing, hygiene measures, such as hand washing, limiting or even prohibiting face-to-face meetings or limiting the number of participants, or finally, introducing systematic temperature taking of employees upon entering the company's premises.

The amendment of the rules of procedure generally implies (i) a prior consultation of the works council and (ii) transmission of the resulting document to the labor inspector. However, a specific exemption applies for health and safety regulations which can be immediately applicable after transmission to the works council secretary and the labor inspector. The measures set out in the notice must be brought to the attention of the employees and must be communicated widely within the company in order to be enforceable against them.

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