

COVID-19: French Measures to Facilitate the Continuation of the Dealings with the Employees Representatives

April 7, 2020

On March 23, 2020, the French Parliament adopted an emergency law declaring a “state of health emergency” for an initial period from March 24, 2020 to May 24, 2020 (Emergency Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic).

In the context of the sanitary crisis, the Act empowers the Government to take measures designed to limit the consequences of the reduction of activity on employment and to facilitate the operation of businesses.

On April 2, 2020, [further to the series of five ordinances recently enacted](#), a new ordinance was published, focusing on the dealings with the employees representatives.

1. Facilitating the meetings with the works council (CSE) and the taking of urgent decisions

In these times of social distancing, teleworking and confinement, organizing the meetings of the CSE, whose prior information and consultation is required in case of important changes in the working conditions and organization has become a headache for most French HR Directors while in person meetings have always been the rule under French employment law. Indeed, in absence of agreement between the employer and the members of the CSE, meeting via videoconference is limited to three times per year. This rule is temporarily set aside **during the period of state of health emergency**:

- upon information of the members of the CSE, **all the meetings can be organized via videoconferences or conference calls**;
- where videoconferences or conference calls cannot be set up or if a collective bargaining agreement provides so, CSE meetings may be organized via instant messaging;
- forthcoming decrees will determine the conditions under which conference call or instant messaging systems can be used.

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:

PARIS

Jean-Marie Ambrosi
+33 1 40 74 68 00
jambrosi@cgsh.com

Jérôme Hartemann
+33 1 40 74 68 00
jhartemann@cgsh.com

Marilyn Moreau
+33 1 40 74 68 00
mmoreau@cgsh.com



The **requirement for prior information and consultation is also temporarily set aside for specific measures**. The employer may implement its decision after the sole information of the CSE, which may be done by any means, and the consultation of the CSE may happen after such implementation. The CSE has a one-month period from such information to issue its opinion. The relevant measures are those referred in our [previous alert memorandum](#):

- permissions for the employers to require employees to exhaust rest days or other personal time off;
- permissions to take exceptions (in those sectors deemed essential to the continuity of business activities and national security) from the maximum working time durations and minimum rest durations, as well as from the obligation to give the weekly rest on Sunday.

2. Postponing of the staff elections

As a general rule, **all procedures of staff elections are suspended as of March 12, 2020** or, if steps were taken in relation to staff elections after such date, as of the latest step after such date and before the entry into force of the ordinance. If a round of elections took place after March 12, 2020, the ordinance has no effect on its validity. If such suspension happens between the first round and the second round of the elections, the results of the first round are frozen and will be used for the second round.

The suspension:

- will terminate three months after the end of the period of state of health emergency in relation to on-going election processes engaged prior to the entry into force of the ordinance;
- will terminate after the end of the period of state of health emergency in relation to election processes which have not been engaged prior to the entry into force of the ordinance and, but for such suspension, which should have been engaged prior to the end of the period of state of health emergency: employers will be required to initiate such elections processes within three

months from the end of the state of health emergency;

- applies to the time limits allowed to the employer to organize the elections and also to any other time limits related thereto such as the time limit to file a request with the labor authorities in relation to the determination of the scope of the elections (e.g., one election of the whole company or elections at the level of each branch of the company); time limits to challenge the eligibility of an employee or the results of the elections.

As a result of this suspension, the terms of office of the current employees representatives are extended beyond the state of health emergency until the results of the elections are declared.

In addition, the duration of the specific protection against dismissal afforded to the candidates to the elections (for a period of 6 months from the filing of the candidacy), which requires to request a permission to dismiss from the labor authorities, is extended until the results of the elections if it would have otherwise expired before the first (or the second, if applicable) round of the elections.

Other recent points to note in relation to Covid-19 governmental measures include:

- the Government announced that the additional compensation that the employer may pay on top of the partial activity indemnity (such indemnity being equal to 70% of the gross monthly compensation, the employer can choose to increase such indemnity to match the usual compensation of the employee) will benefit from the same favorable social regime as the partial activity indemnity;
- the number of hours which can be indemnified by the State is increased from 1,000 to 1,607 per employee (until December 31, 2020);
- the so-called “Macron bonus” (an annual bonus reserved to employees earning less than three times the minimum statutory salary which is exempted from social security contributions and income tax up to an amount of €1,000) will be increased to €2,000 and the payment of such

bonus may be subject to, or its amount may vary depending on, its beneficiaries having continued to work during the Covid-19 pandemic.

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