

COVID-19: Latest Social Measures to Support French Businesses

March 30, 2020

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

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.

In the field of employment law, as of March 30, 2020, five ordinances and one decree have been enacted.

1. Untightening of the “Partial Activity” (*activité partielle*) scheme

- The procedure for applying for a partial activity scheme is made more flexible
- for employers with a works council (CSE), **the opinion of the CSE may be obtained after the application for partial activity** is filed and sent to the labor authorities within a maximum of 2 months from the date of such filing;
- the employer has 30 days to submit the request for partial activity from the date of implementation of the partial activity scheme when the application is justified by exceptional circumstances related to COVID-19);
- an authorization for partial activity may be granted for a **period of up to 12 months** (compared to 6 months maximum previously);
- the period of review of the application by the French labor authorities is reduced to **2 days** (instead of 15 days) until December 31, 2020, after which, in the absence of refusal, the application is deemed approved;

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 the following author:

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- the categories of employees who may be subject to partial activity are extended :
 - i. **employees under a work schedule based on a lump sum number of work days per year (*forfait annuel en jours*) or on a lump sum number of hours per year (*forfait annuel en heures*)** can be made subject to the partial activity scheme even if the branch in which they are employed is not closed down;
 - ii. **the conditions of indemnification of employees other than full-time permanent employees are improved: part-time employees** are now eligible to receive a partial activity allowance which is not less than the minimum statutory hourly salary and **trainees and employees in vocational training** are now eligible to receive a partial activity allowance which is not less than the fraction of the minimum statutory hourly salary applicable to them;
 - iii. **the partial activity scheme can be imposed on employees' representatives** without their consent, if the partial activity applies to all the employees of the company, branch, department or workshop to which such employees are assigned;
 - iv. **persons employed in France by foreign companies with no branch in France** can be made subject to the partial activity scheme, provided that the employer participates in the French social security and unemployment insurance schemes;
- the hourly rate of the specific allowance paid to the employer is significantly increased: it is equal to the hourly compensation paid to the employees (which is itself equal to **70% of the gross hourly pay**), **capped at 4.5 times the minimum statutory hourly wage (approximately €45 per hour)**;
- the labor authorities have clarified in which circumstances employers will be authorized to have recourse to the partial activity scheme: (i) businesses which have been closed down by governmental order (e.g., theaters, museums, restaurants), (ii) employers faced with a decrease or suspension of their business activity due to the epidemic (due to cancellation of orders, supply difficulties), (iii) employers that cannot implement the necessary preventive measures (e.g., cannot set up teleworking).

2. Required vacations

- the employer is permitted to **require employees to take vacation or to modify the dates of their vacation**, subject to entering into a collective bargaining agreement to this effect;
- the number of vacation days that employees can be required to take or to which a date change may relate is limited to 6 working days, i.e., one week of vacation;
- the decision of the employer may be effective upon a one-day prior notice (which may be extended in the collective bargaining agreement);
- this permission is valid until December 31, 2020.

3. Required exhaustion of rest days or other personal time off

- the employer is permitted to require employees to take rest days or modify the dates on which the taking of rest days was scheduled notwithstanding the applicable constraints in the French labor code or the collective bargaining agreement for a maximum of 10 days;
- This relates to rest days relating to the reduction of working time (*RTT*), rest days for employees working under a work

schedule based on a lump sum number of work days per year or on a lump sum number of hours per year and days saved on saving time accounts;

- the decision of the employer may be effective upon a one-day prior notice;
- this permission is valid until December 31, 2020.

4. Exceptional disapplication of working time limits

Until December 31, 2020, companies in sectors deemed essential to the continuity of business and national security (the list of which will be specified in a forthcoming decree) may take exceptions to certain rules relating to working time:

- maximum daily working hours is increased from 10 to 12 hours;
- maximum daily working time of a night worker is increased from 8 to 12 hours (subject to the granting of a compensatory rest period equal to the excess of the planned duration);
- the maximum weekly working time of a night worker calculated over a period of 12 consecutive weeks is increased from 40 to 44 hours;
- the minimum daily rest period may be reduced from 11 to 9 consecutive hours (subject to the granting of a compensatory rest period equal to the rest period from which the employee could not benefit);
- the maximum weekly duration is increased from 48 to 60 hours.

The implementation of these derogations requires to inform the CSE and the labor authorities without delay.

5. Postponement of profit-sharing payments

The time limits for making the payments relating to mandatory or voluntary profit-sharing plans which, for those payments relating to FY2019 would have expired on May 31, 2020 are extended until December 31, 2020.

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