

# COVID-19: Moratorium to Suspend Certain Deadlines Relating to Investigations, Statutes of Limitation and Audits in Relation to Social Matters

April 6, 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 23 March 2020 to deal with the Covid-19 epidemic).

In the context of the sanitary crisis, this 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 but also to adjust procedural deadlines and applicable statutes of limitation during the state of health emergency, with retroactive effect to 12 March 2020<sup>1</sup>.

These provisions have led to a series of 25 ordinances, adopted by the French Government on March 25, 2020 and officially published on March 26, 2020.

Ordinance No 2020-306 *on the extension of time limits expiring during the state of health emergency and on the adaptation of procedures during that same period* provides, *inter alia*, in relation to the period between March 12, 2020 and the expiration of a period ending one month after the end of the state of health emergency, i.e. until June 24, 2020 (the “**Covered Period**”)<sup>2</sup>:

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](mailto:Global-Cleary_Covid-19_Taskforce@cgsh.com) or one of the following authors:

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<sup>1</sup> Article 11 specifies that these measures may not exceed a period of three months after the end of the state of public health emergency.

<sup>2</sup> Article 10 of the ordinance.



1. **the extension of the term of the applicable statute of limitation to any action which should have been completed during the Applicable Period**<sup>3</sup>, and permits, within a period which may not exceed, as from the end of the Covered Period, the lesser of the statutory applicable time limit or two months, to take the necessary step, such as a, legal action, declaration or notification:

- (i) by way of an example, this specific extension applies to the one-year statute of limitations applicable to claims against employment termination (art. L. 1471-1 of the French labor code): if such one year-period would have normally expired during the Covered Period, it will be extended until the expiration of a two month-period from the end of the Covered Period. Similarly, if the period of two months (art. R. 142-1 of the French social security code) for challenging a notice of reassessment notified in the context of an audit engaged by the social security authorities ("Urssaf") expires during the Covered Period, the employer's right to challenge it before the Amicable Recourse Commission ("CRA") will be preserved for a period of two months after the end of the Covered Period. The period during which the employer is entitled to reply to an observations notice issued by the Urssaf in the context of an audit and which would have otherwise expired during the Covered Period arguably benefits from the same extension.
- (ii) the extension also applies to any act, declaration or notification required by law or regulation the lack or untimeliness of which would result in any right being forfeited or voided. The labor authorities have, informally, confirmed that this

extension is applicable, for example, to the right of any party to a mutual termination agreement to repeal its consent to such termination (article L. 1237-13 of the labor code) . Thus, both the employee and the employer could, within 15 days following the end of the Covered Period, repeal their consent to a mutual termination of an employment agreement.

2. the suspension or postponement of certain time periods for investigations, proceedings and decisions in social matters upon which a decision, consent or opinion of the labor or social security authorities may or must be issued or is deemed granted<sup>4</sup> :

- (iii) **the suspension**, during the Covered Period, of time periods which have started to run before March 12, 2020 but have not expired prior to such date , and
- (iv) **the postponement**, at the end of the Covered Period, of the commencement date of the time periods of the same nature that should have started to run during the Covered Period.

**It is worth noting that these suspension and postponement measures apply to all applications submitted to the labor authorities and in particular applications for approval of mutual termination agreements (individual or collective, so-called "RC"), as well as applications for validation or approval of social plans (so-called "PSE"), or applications for authorization to dismiss employees representatives. Thus, for instance, implied approvals or validations of RC or PSE cannot be granted during the Covered Period. The time period for processing applications to get an authorization to terminate employees representatives filed during the Covered Period will be significantly extended.**

<sup>3</sup> Article 2 of the ordinance.

<sup>4</sup> Article 7 of the ordinance.

**This postponement does not apply to the time periods after which the requests for permission to implement partial activity schemes are deemed accepted (such time period being two days for requests related to a reduction or a cessation of activity related to Covid-19)<sup>5</sup>.**

Contrary to tax matters, there is no specific provision applicable to Urssaf audits and reassessment procedures. In the event of a claim being filed with the CRA during the Covered Period, the starting point of the time period after which the claim will be deemed to be rejected will be postponed until the end of the Covered Period.

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<sup>5</sup> Ordinance of April 1<sup>st</sup>, 2020, article 6.