

Latest Measures to Tackle the Outbreak of COVID-19 and Limit Impacts for French Employers

March 23, 2020

Latest guidance after reinforced measures

Since March 14, 2020, the French Government has prohibited travel and activities generating public gatherings (schools, universities, shops, restaurants, shows, cinemas, sporting events, fairs, etc.) to prevent the propagation of the COVID-19. Among the places still open to the public, only "essential" services, i.e. grocery stores, drugstores, etc., remain authorized.

On March 16, 2020, the French Government took measures to reduce social contact and travel to an absolute minimum. Staying at home has been ordered throughout the national territory since 17 March for a minimum of fifteen days. Going out of home is prohibited except in limited cases (purchases of basic necessities, medical appointments, care of children and vulnerable persons, going to one's workplace when telework cannot be organized).

An emergency law has been adopted on March 22, 2020 which declares a state of health emergency for two months from March 23, 2020 and enables the Government to take temporary measures in labor law through decrees to, in particular :

- limit dismissals by facilitating and enhancing the use of the "partial activity" scheme;
- allow the employers, through a company or industry-wide collective bargaining agreement, to impose on the employees periods for taking part of paid leave;
- allow the employers to impose on the employees to take part of their working time reduction days (RTT) and rest days saved in their time-savings accounts;

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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- allow certain employers to take exceptions from the rules of the French Labor Code relating to working hours, weekly rest and Sunday rest;
- modify, on an exceptional basis, rules governing payments to be made under the mandatory and voluntary profit-sharing plans;
- amend the information and consultation process of the -works council to enable it to issue the required opinions within the applicable time limits;
- remove the sick leave waiting period;
- allow companies to defer the payment of their social security and tax charges, lease payments and various bills (water, electricity, etc.).

Key measures in place as of March 23, 2020

Most of these measures are custom made developments of existing rules designed to protect employees' health, but certain of them are also designed to help out businesses to overcome the foreseeable economic downturn resulting specifically from the current sanitary crisis.

A. Protection of Employees

1. Employer obligations under the general duty of safety and prevention

Under general labor law principles, employers are required to take and implement **all necessary measures to ensure the safety and protect the health of employees**, which, in the case of the COVID 19 crisis, implies to implement various measures at short notice, which measures will be regularly reassessed and updated in line with governmental directives.

The main measures include :

- ✓ Updating of the **single risk assessment document**, in collaboration with the works council (CSE) and the occupational health service. This update must include adequate protection and prevention measures to deal with COVID-19 and the running of the company in "degraded" mode.

- ✓ Eliminate non-essential travel and travel to or within risk areas
- ✓ Postponing or cancelling multi-person meetings
- ✓ Inform employees about good practices to be adopted
- ✓ **Promote the use of teleworking :**
 - **The French government requires employers to use teleworking to the extent that the job position permits it.** The French Labor Code allows the employer to impose on employees the use of teleworking in the event of an epidemic. ;
 - When the job position does not allow teleworking, the employer must ensure that employees avoid close contacts, unnecessary trips or meetings and implement all preventive measures required by the Government.
- ✓ **Business trips and commuting certificates:** for business trips and home-to-work commuting the employer must provide the employee with a certificate which indicates the nature of the professional activity, the workplace(s) and its duration (which is determined by the employer). All home-to-work commuting should only be made if teleworking is not possible and it is absolutely necessary to commute to the workplace.
- ✓ The works council must in principle be informed and consulted on general measures of organization of work which significantly change working conditions (including teleworking). **The works council has a right of alert** if it considers that there is a serious and imminent danger, which implies that the employer organizes an internal investigation in accordance with the procedure set out in the Labor Code and specific follow-up actions if the employer and the works council do not agree on the magnitude of the risk and the remedial actions.

2. Employer's obligations in case of workplace contamination

- ✓ Isolate the employee and contact the emergency services
- ✓ Ensure that all employees leave the workplace
- ✓ Inform employees and employee representatives of the contamination, without mentioning the name of the employee concerned
- ✓ Clean the premises
- ✓ Implement protective measures (teleworking, wearing masks, etc.)

3. Employees' right to stop working

The French Labor Code allows any employee to stop working without facing the risk of any disciplinary sanction or reduction in salary in the event of a work situation that presents a serious and imminent danger ("right of withdrawal"). This is not a collective right in the event of an epidemic, but an individual and subjective right assessed on a case-by-case basis. According to the French Government, in the current context, once the employer has implemented the national recommendations and the preventive and protective measures, the right of withdrawal may in principle not be exercised.

In the event of legitimate exercise of the right of withdrawal, the employer may not sanction the employee or reduce her or his remuneration. On the other hand, an abusive right of withdrawal may give rise to a deduction from pay.

4. Sick leave and special indemnity scheme

An employee may be placed on sick leave :

- at the employer or the employee's request, when he or she is placed in quarantine if he returns from a risk area and shows symptoms of contamination;
- at the employee's request, when he or she is the parent of a child under the age of 16 whose school is closed by decision of the public authority and his or her position does not allow for teleworking.

In addition, employees who have a poor health condition and who may be more at risk to suffer from a severe or fatal health condition as a result of being infected with COVID-19 (e.g. pregnant women, people older than 70 years, diabetics, people with a cardiovascular record, etc.) can apply on-line to obtain a specific sick leave.

B. Protection of Businesses

1. Disapplication of working time limits in the event of increased activity

For certain companies whose activity is increasing as a result of the epidemic, the employer may, under certain conditions, take exception from the rules on working time limits (e.g., exceed the maximum weekly and daily working hours; and derogate from the maximum 11 consecutive hours duration of rest periods).

2. "Partial activity" (*activité partielle*) scheme based on COVID-19

Employers who do not operate an essential activity or who cannot organize teleworking are encouraged to temporarily suspend the activity of their employees, according to a specific legal scheme which allows to reduce the working time of the employees and, as a result, their compensation and to obtain an indemnification from the State. Such suspension can be partial or total and for a maximum number of 1,000 hours per year and per employee. Only the hours below the statutory threshold which triggers the payment of overtime (i.e., 35 hours per week or such lesser duration which might be in force in the company) are indemnified by the employer and the public authorities. Such suspension must be collective, i.e., not apply to individuals but to a specific branch or department of the company. The maximum duration of a furlough is six months. It can be renewed but in such a case, the employer must take some undertakings such as guarantee of employment, training of the employees or other measures to restore the economic situation of the company.

The employees who are furloughed receive **an indemnity equal to 70% of their normal gross compensation for each unworked hour**. This indemnity is not considered as a salary and is therefore not subject to social security contributions,

but remains subject to certain social levies paid by the employee and to income tax. For each such hour, the employer can get a specific indemnification from the State equal to €7.74 for companies with 250 employees or less and €7.23 for other companies. In the COVID-19 context, the French Government announced that the public authorities will compensate 100% of the indemnification paid by the employers up to a cap of c. €45 per hour.

The main steps to benefit from this specific scheme are:

- prior consultation of the works council;
- apply for an authorization of the French labor authorities (which must be made online on [this site](#)); the authorities have a 15-day review period after which, in absence of negative response, the authorization is deemed granted. In the COVID-19 context, French authorities are trying to review the applications expeditiously (48 hours);
- the suspension of activity can only be applied after the authorization of the labor authorities has been granted. However, French Government announced that it intends to allow the employers to apply for such specific scheme up until 30 days after the beginning of a temporary suspension of work, thus allowing the employers to retroactively apply for an authorization;
- in the request for authorization, the employer must provide the reasons for such request, the number of employees concerned and the estimated duration of the furlough. In absence of such an estimate, employers are recommended to indicate the longest duration, i.e., six months;
- the employer must apply for the specific compensation from the public authorities on the same Internet site, on a monthly basis.

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