

LEXCASE AVOCATS COVID 19**30th March 2020****EMPLOYMENT MEASURES DURING THE COVID 19 HEALTH CRISIS**

This note very briefly summarises the recent emergency measures taken by the French Government to deal with employment during the current health crisis caused by the Covid 19 epidemic.

It is likely that these regulations will evolve on short notice. This note should not be used as legal advice or as a basis to take action. Individual advice is essential given the variety of situations and legal contexts which will apply.

Following adoption by the French Parliament of emergency legislation enabling the Government to take urgent measures, particularly in the field of employment, the following provisions will apply during the current crisis:

1. Home working, special health precautions in the workplace, employer's certificate for employees working outside their home

Employers are required by the current emergency regulations to enable employees, where possible, to work from home; or if not, ensure that essential health precautions are taken in the workplace to minimize the risk of spread of infection by the Covid 19 virus.

Where employees have to travel from home to their place of work or travel on business, the employer is required to provide a certificate to that effect, which the employee must present to the authorities (police) on request.

2. Part-time working

Recourse by employers to part-time working is possible in certain exceptional situations. The Decree N°2020-325 of 25th March 2020 issued by the Government now specifically includes the Covid 19 epidemic.

This enables employers to receive State support for salaries paid of up to 70% of salary within certain limits (4.5 times the minimum wage) provided that part-time working is justified in the current circumstances (current health measures or inability to organize home/distance working).

• Procedure

The employer must apply for authorization to the labour administration on the following website <https://activitepartielle.emploi.gouv.fr/apart/>

By way of derogation, during the Covid-19 crisis, the request can be filled within 30 days from the date the employees are placed in part-time working.

The view of the works council, (where the company has one), does not have to be obtained in advance in this particular case, although the employer must consult within 2 months, and file notice with the Government employment inspectorate which has to give its approval or otherwise within 2 working days, failing which it will be deemed to have given tacit approval.

Employees under working time computed in days over a year (forfait annuel en jours) can benefit from the partial activity scheme.

The labor administration will be able to issue authorizations for a maximum period of 12 months (instead of 6).

- **Employee allowance**

During a period of part time working, the employer must continue to pay affected employees an allowance equal to 70% of their gross remuneration for every hour not worked (i.e. corresponding to 84% of the net remuneration and equal to at least €8.03 net per hour). Please note that some collective bargaining agreements (CBA) require the employer to pay more than the legal rate.

This allowance is exempt from social security contributions, but subject to CSG-CRDS at a reduced rate of 6.7%.

This allowance must be paid on usual payroll deadlines.

- **State refund**

Subject to the legal requirements for part time working are fulfilled, the Services and Payment Agency (ASP), will fully refund this amount to the employer subject to financial cap. The ASP allowance (70% of the gross monthly salary) is employee limited to 70% of 4.5 times of the minimum salary – “SMIC” (€4,849.17) per affected employee.

The objective stated in the preamble of the Decree is to eliminate the remainder to be paid by the employer, except for the highest salaries.

3. Paid holidays and rest days

Employers will be able require employees to take up to 6 days paid holiday during the current period of confinement. This is subject to the negotiation of a company-wide agreement or agreement for the business sector (negotiated with personnel representatives or trades unions).

For those employees benefitting from rest day entitlement, the employer is now given power to unilaterally impose or modify the dates when employees may take their rest day entitlement up to 10 rest days.

4. Working time

The current mandatory limits on daily and weekly working time have been modified to enable employers to require additional working hours where this is necessary for reasons of national security and continuity of the economy. A decree is expected on that matter.

5. Employee saving schemes and Macron premium payment

The regulations enable deferment of compulsory employee savings schemes. Companies will have until December 31, 2020 to pay their employees profit-sharing schemes.

With regard to the "Macron" premium, the government is empowered by emergency law to modify the deadline and the conditions of its payment. In 2020, this bonus must normally be paid no later than June 30. Further details will be published shortly.

6. Elections and consultation of the Economic and Social Committee (CSE)

The emergency law empowers the government to modify the information and consultation procedures for employee representative bodies to enable them to issue the required opinions within the time allowed.

Similar provisions apply to elections for the appointment of CSE representatives. The emergency law provides that the government may suspend the ongoing electoral processes.

7. Hiring and trial period

A question that many employers and employees ask themselves: does Coronavirus justify the termination of a promise of employment or a trial period?

- In the situation where the employment contract starts during the period of confinement, it is recommended to obtain the employee's agreement to postpone his starting date.

If the employee refuses to postpone his date of entry into the company, the employer cannot terminate the contract unilaterally.

The employer may only organize the employee's home working or part time activity.

- In the same way, the health crisis cannot justify termination of the trial period. Indeed, the purpose of the trial period is to test the employee's professional skills.

Therefore, the trial period may only be terminated on grounds related to the employee's skills.



An employer who decides to end the trial period for another reason is liable to damages.

The team of specialists in employment law at LEXCASE AVOCATS is at your disposal to provide specific advice on the above matters.

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