

COVID-19: FOLLOW-UP ON THE Q&A ON EMPLOYMENT IMPLICATIONS IN FRANCE (2)

Date: 20 April 2020

French Labor, Employment and Workplace Safety Alert

By: Christine Artus, Essya Zaraa

Further to the Emergency Act published on 23 March 2020 (law n°2020-290) and to the first wave of ordinances published on 26 March 2020 (see our Newsletter of 27 March 2020), the French Government adopted additional measures to face the COVID-19 pandemic.

The below is a follow-up of some practical questions raised by the COVID-19 situation.

PARTIAL ACTIVITY

Q1. - How do I deal with protected employees (i.e., trade union delegate, elected member of the social economic committee [“CSE”], etc.)? Do I have to obtain their prior agreement before placing them under partial activity?

In principle, the employer cannot unilaterally change the working conditions of a protected employee without his/her prior agreement. The protected employee's prior agreement is in principle necessary for partial activity.

However, in light of the current exceptional situation, an ordinance of 27 March 2020 and in order to facilitate the implementation of partial activity, employers are not required anymore to obtain the prior agreement of protected employees to place them under partial activity, as long as this measure is general (i.e., as long as it concerns all the employees of the company, the establishment, the department or the workshop to which the protected employee is assigned).

Q2. - As a foreign company employing employees in France, can I benefit from the partial activity scheme?

The ordinance of 27 March 2020 opens partial activity to foreign companies that do not have an establishment in France and that employ at least one employee in France.

However, the benefit of this temporary measure is reserved for companies covered by the French social security system and French unemployment insurance. Therefore, employees who remain covered under their employer's foreign social security and unemployment insurance schemes cannot benefit from the French partial activity.

Q3. - I would like employees to benefit from a partial activity indemnity equal to 100% of their remuneration. Will the amount be subject to social security contributions?

As previously mentioned in our Newsletter of 27 March 2020, employees subject to partial activity do not receive their regular salary but a specific allowance paid by the employer. This allowance must correspond to 70% of the employee's hourly gross remuneration (i.e., approx. 84% of the employee's hourly net remuneration).

However, companies can decide to keep 100% of the employees' remuneration. In such case, the amount paid by the company in excess of minimum 70% allowance, is "not subject to social security contributions," save for the CSG - CRDS that remain applicable.

Please note that non-worked hours exceeding legal working hours (i.e., 35 hours per week) remain subject to the usual social security contributions.

Q4. - How many hours can be compensated under partial activity?

In principle, the partial activity allowance paid to the company is limited to 1,000 hours per employee.

However, in light of the COVID-19 pandemic, the annual quota has been increased to 1,607 hours per employee until a date that will be fixed by decree, failing which the date will be 31 December 2020 at the latest.

THE EXCEPTIONAL PURCHASING POWER BONUS (KNOWN AS THE "MACRON BONUS")

Q5. - I want to pay the Macron bonus to my employees. What is the maximum amount I can pay in order to benefit from social and tax exemptions?

Pursuant to a law of 24 December 2018, companies are allowed to pay an exceptional bonus of "purchasing power" to their employees subject to specific conditions. This exceptional bonus is free from social contributions, charges, taxes and income tax up to a limit of EUR 1,000 per beneficiary. This exceptional bonus was renewed for the year 2020.

The ordinance of 1st April 2020 has amended the conditions of this exceptional bonus and all companies, whatever their workforce, can now pay the Macron bonus to their employees:

- Companies that do not have a voluntary profit-sharing agreement ("accord d'intéressement") are now able to pay this bonus to their employees and can benefit from the social and tax exemptions if the amount paid does not exceed EUR 1,000 per beneficiary;
- For companies implementing a voluntary profit-sharing agreement ("accord d'intéressement") on the date of payment of the Macron bonus, the maximum amount exempted from social contributions, charges, taxes and income tax is increased to a maximum of EUR 2,000 (instead of EUR 1,000) per beneficiary.

Note that the ordinance also extends the deadline for payment of this bonus from 30 June to 31 August 2020. After this date, companies will no longer be able to benefit from social and tax exemptions.

According to the ordinance, employees entitled to this bonus are the employees employed the date of registration of the collectif agreement or date of the employer's unilateral decision setting up this exceptional purchasing power bonus.

A voluntary profit-sharing agreement ("accord d'intéressement") entered into between 1 January 2020 and 31 August 2020 may cover a period of between one and three years (previously, a voluntary profit-sharing agreement needed to be for a three-year period).

Q6. - I want to reward employees who are working in the workplace or the office. Can the amount of the Macron bonus be higher for these employees?

Initially, the amount of the Macron bonus could be adjusted from an employee to another depending on the employees' remuneration, classification level, length of effective presence in the company during the year or the employees' working time.

As per the ordinance of 1st April 2020, the amount of the Macron bonus can now be adjusted depending on "working conditions related to the Covid-19 epidemic". Therefore, companies can decide to reward their employees who, for example, go to the company's workplace and decide to give them a higher Macron bonus.

OCCUPATIONAL HEALTH

Q7. - Can an employee hired on 13 March 2020 carry out his medical information and prevention examination?

The ordinance of 1st April 2020 provides that the medical examinations, which normally take place between 12 March and 31 August 2020, may be postponed, except when they are considered by the labor doctor as indispensable.

The labor doctor may postpone, until 31 December 2020 at the latest, the date of the following medical visits and examinations :

- The initial information and prevention visit;
- The renewal of the information and prevention visit;
- The renewal of the aptitude test and the intermediate visit for employees benefiting from enhanced individual monitoring;
- The renewal of the aptitude test and the intermediate visit for employees benefiting from enhanced individual monitoring when the return to work is to take place before 31 August 2020.

The postponement of the initial information and prevention visit does not prevent, as the case may be, the hiring or return to work of an employee.

When the medical examination is rescheduled, the labor doctor shall inform the employer and the employee of the new date of the examination.

EMPLOYEE REPRESENTATIVE BODIES

The ordinance of 1st April 2020 provides for specific measures relating to the work organization of employee representatives and to electoral processes during the COVID-19 period.

Q8. - How can I organize meetings with employee representative bodies in the context of COVID-19?

In light of the current situation, the employer may organise the employee representatives meetings by using:

- Videoconferencing;
- Conference calls (audioconference);

- Or instant messaging, if it is not possible to use videoconferencing or conference calls or when a company-wide agreement provides with such possibility.

In "normal times", the use of videoconferencing to organise the meetings of the CSE must be provided for in a company-wide agreement or, in the absence of agreement, is limited to three meetings per calendar year.

The ordinance of 1st April 2020 now authorizes the use of these communication tools for all the meetings of the CSE, as long as the employer has informed the CSE members in advance.

The employer may use the instant messaging tool only if it is not possible to organize the meeting by videoconference or conference call.

This measure is applicable to meetings convened during the state of public health emergency period.

Q9. - Can I organize professional elections during the health emergency period?

No, the ordinance of 1st April 2020 suspends pending professional election processes depending on the situation.

More specifically, the ordinance provides that when the employer has informed the staff of the organization of the elections before 3 April 2020, the electoral process is deemed to have been suspended as of 12 March 2020 and will be continued following the end of the health emergency period as mentioned below.

Where the electoral process has led to the completion of certain formalities after 12 March 2020, the suspension is effective from the latest date on which one of these formalities has been completed (e.g. the invitation to the unions to negotiate the pre-election memorandum of understanding, the request of an employee or a trade union to organize elections).

In general, the suspension of the electoral process ends three months after the date of cessation of the health emergency period.

When the suspension of the professional election process occurs between the first and the second round, the suspension shall not affect the regularity of the first round regardless of the duration of the suspension.

The conditions of electorate and eligibility shall be deemed on the date on which each round of voting is held.

The current mandates of the elected employee representatives shall be extended until the results of the first round or, where applicable, the second round of professional elections are announced.

KEY CONTACTS



CHRISTINE ARTUS
PARTNER
PARIS
+33.(0)1.58.44.15.38
CHRISTINE.ARTUS@KLGATES.COM



ESSYA ZARAA
ASSOCIATE
PARIS
+33.(0)1.58.44.15.36
ESSYA.ZARAA@KLGATES.COM

K&L GATES HUB

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.