

COVID-19: RETURN TO WORK: WHAT IS NEW IN SEPTEMBER 2020?

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French Labor, Employment, and Workplace Safety Alert

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After a slow spring and an eventful summer, the return to the business world proved to be particularly perilous. Managing the aftermath of the lockdown continues to require ever-greater attention, in the context of dreaded resurgence of the pandemic. As a result, many companies, after experiencing partial activity in its many facets, need to continue to adapt to the resumption of business activity and the protection of their employees.

Between compulsory mask-wearing, the reform of partial activity, and management of the employees' physical return to the office, a deep dive into the ongoing changes to the assessment of this return to work in 2020 may be much needed.

Different Regimes for Partial Activity:

Long-Term Partial Activity

Long-term partial activity (activité partielle de longue durée, or "APLD") is an economic support mechanism that offers companies facing long-term economic difficulties the opportunity to reduce their employees' working hours and to receive a government allowance for hours not worked in return for specific commitments. This scheme is set up through collective agreements validated by the labor administration or a unilateral document from the company approved by the labor administration (Article 53 of law no.2020-734 of 17 June 2020; decree no.2020-926 of 28 July 2020).

Both collective agreements and the unilateral document must contain specific information, such as the economic situation diagnosis, activities and employees concerned, training commitments, maximum reduction of working hours below the legal working time, etc.

Once the APLD is implemented, employees will receive an indemnity from their employer, calculated on the basis of their remuneration, which will be partly covered by the State paying an allowance to the employer. The allowance received by employers will vary according to the date upon which the agreement is submitted to the labor authorities.

The APLD may be implemented for a maximum of 24 months, consecutive or not, over a period of 36 consecutive months. Under the APLD, the reduction in working hours may not exceed 40% over the total duration of the agreement.

Parents Benefitting from Partial Activity

The French Government announced on 9 September 2020 that parents who must stay home to care for children due to school closures and who are unable to work remotely will benefit from partial activity from the first day of their work stoppage until the end of the isolation period at the latest.

The National Health Protocol for Companies was Updated on 31 August 2020:

The National Protocol to ensure the health and safety of employees in companies to deal with the COVID-19 epidemic (the Protocol) has been updated in order to take into account the evolution of the pandemic. This Protocol highlights the following recommendations:

- The systematic wearing of masks, in shared and enclosed spaces, since 1 September 2020: this widely covered announcement should not replace all the barrier gestures and social distancing measures already in place under the previous version of the Protocol, which remain imperative. Going forward, masks must comply with specific standards and their supply by employers must be continuous. These masks must be worn systematically in closed and shared spaces within companies (e.g. meeting rooms, reception, open-space, corridors, chill rooms, changing rooms, shared offices, copy rooms, etc.). Masks should also be worn in individual offices when two or more people are present at the same time.
- Remote working, where possible, is still recommended in order to allow for the continuity of the company's activities and to ensure the protection of employees. This workstation arrangement, which many employees experienced for the first time in March 2020 during the lockdown, is the most effective measure to prevent the risk of infection.
- To complement the recommendations of the Protocol, and to support employers in organizing the return to work in 2020, the French Ministry of Labor has also updated its Questions and Answers on managing the consequences of the COVID-19 epidemic.

Prohibition of Photograph-Based Monitoring of Employees' Working Hours:

On 27 August 2020, the French Data Protection Authority (Commission National de l'Information et des Libertés; "CNIL") put several companies on notice for using photograph-based monitoring of employees' working hours on the basis of excessive data collection. Six private companies and administrations have thus been ordered to bring their time control systems in line with the General Data Protection Regulation (GDPR) following complaints received from their personnel. These access control technology combined badging system and the systematic capture of photographs upon each employee check-in, which has been invalidated by the CNIL.

The CNIL considered this practice to be excessive in the combined light of Article 5.1.(c) GDPR, which provides that all personal data, including data collected in the context of tracking working hours, must be adequate, relevant and limited to what is necessary for that purpose, and Article L. 1121-1 of the French Labor Code.

"No one may place restrictions on the rights of individuals and individual and collective freedoms which are not justified by the nature of the task to be performed or proportionate to the aim sought" - here in French.

Employers on notice now have three months to bring their time control systems into compliance. For the CNIL, time and attendance management tools, such as conventional time clocks with badges, are sufficient except in special circumstances, insofar as they make it possible to ensure satisfactory control of working hours.

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