

## COVID-19: Q&A ON EMPLOYMENT IMPLICATIONS IN FRANCE

Date: 27 March 2020

### French Labor, Employment, and Workplace Safety Alert

By: Christine Artus, Sarah Chihi

#### Version française ici.

In response to the impact of the COVID-19 pandemic on French economic activity, specific measures for employees and companies have been taken to deal with the current situation. On 23 March 2020, an Emergency Act (law n°2020-290) was enacted to allow the Government to take exceptional temporary measures by means of ordinances. On 26 March 2020, 25 ordinances were published.

The below is a general overview on practical questions raised by the COVID-19 situation.

### Q1 - DO I HAVE TO CLOSE DOWN MY BUSINESS ACTIVITY?

Pursuant to a decree updated on 25 March 2020, the establishments mentioned in the decree can no longer receive the public until 15 April 2020 (e.g., restaurants except for delivery and take away service, shopping malls except for delivery and take away service, museums, libraries, schools, holiday resorts, etc.). A list of exceptions is provided by the decree.

Despite the above, the Government announced that companies must *keep their activity going* provided that employers ensure safe working conditions for their employees. Companies must take "barrier measures" to prevent the spread of the virus, i.e., in practice, provide gloves, masks, and water-based gel, observing safe distances, etc.

### Q2 - HOW CAN I DEAL WITH THE CRISIS?

1. *Assessment of the risks.* Under the French Labor Code, employers have the obligation to take necessary measures to ensure the safety and health protection of their employees. To this end, employers must carry out an assessment of the occupational risk.

The assessment of risks must be reflected in the single risk assessment document (*document unique d'évaluation*) that must be updated to take into account the current pandemic situation. Preventive measures to be taken as a result of the updated single risk assessment document must be brought to the attention of the employees so that these measures can be fully applied.

2. *Companies are requested to implement remote work* whenever possible. The use of remote work is the main rule during the COVID-19 pandemic. Only if remote work is not possible may employees continue to work from their usual place of work. Note that employees working from home will need to provide their employer with an insurance certificate covering remote work.

3. *If remote work is not possible*, companies are required to implement "barrier measures" to prevent the spread of the virus and comply with their safety obligation towards their employees. Employers must make sure that these hygiene and security rules are actually followed, that meetings are limited to what is strictly necessary, that employee gatherings are strictly limited and that unnecessary trips are cancelled or rescheduled.

\* Employees working on site must keep both i) a travel document provided by the company and ii) the mandatory document to leave their homes.

4. *Specific work stoppage for parents of children under the age of 16*. Employees with children under 16 years old who cannot work from home can ask for a specific work stoppage that is valid until the reopening of schools. Employers cannot refuse this specific leave and must declare it here.

\* The sick leave may only benefit one parent at a time. The employee should provide his/her employer with an affidavit stating that he/she is the only parent requesting the benefit of this specific work stoppage. Note that it is possible to split the work stoppage or to share it between the parents for the duration of the school closure.

5. *If there is a significant decrease* in the company's activity due to the COVID-19 and, in particular, those subject to a closure obligation (restaurants, coffee shops, shops, etc.), the company may be eligible to apply for partial activity ("*activité partielle*").

## **What is it?**

Partial activity is a collective measure (*i.e.*, concerning all the employees or a category of employees) allowing companies to *temporarily reduce working time or suspend the employment contracts of their employees*, after obtaining a prior *authorization from French administration*.

\* The decree on partial activity published on 26 March 2020 provides that in light of the circumstances, the employer has *30 days* from implementation of partial activity to request the administration's authorization. However, in practice, the sooner the company requests the implementation of partial activity, the better it is in order to avoid a critical situation if the administration were to refuse partial activity.

A specific procedure should be complied with in order to implement partial activity, including the information and consultation of the Social and Economic Committee. The decree on partial activity published on 26 March 2020 provides that, in light of the current situation, employers can exceptionally consult the Social and Economic Committee *after* the request of partial activity and provide the Social and Economic Committee's advice to the Labor administration within a *two-month period*.

\* Partial activity is *not* automatic and the company must justify its request. In particular, the company will need to justify and document the reasons for the partial activity request (economic difficulties, closure of the company in application of recent regulation, etc.).

Although the administration previously had 15 days upon receipt of a request to authorize or refuse partial activity, the decree on partial activity published on 26 March 2020, provides that this period is reduced to two days. Silence of the administration within the *two days* mentioned above constitutes *implicit agreement to the partial activity request*.

## How Much Does it Cost?

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)*.

\* Some Collective Bargaining Agreements may provide for higher compensation for partial activity (e.g., Syntec).

\* The decree on partial activity published on 26 March 2020, provides that the allowance paid by the State will cover 70% of the employee's hourly gross remuneration, up to the limit of 4.5 times the minimum wage (i.e., € 6,927 gross per month). In practice, this means that the partial activity allowance paid by the employer to the employee will be *fully covered by the State (i.e., no cost for the employer)* except i) if the company wants or is requested by a collective agreement to pay more than the minimum 70% of the employee's hourly gross remuneration or ii) if the allowance exceeds 4.5 times the minimum wage.

This does not mean that the State will be compensating the employee's entire remuneration.

## Will Employees Benefiting From Partial Activity Receive 100% of Their Remuneration?

No, in principle the partial activity allowance amounts to *70% of the employee's hourly gross remuneration with a minimum of € 8.03 per hour. The employee would receive approximately 84% of his/her hourly net remuneration (as this allowance is not subject to social security contributions)*. However, some Collective Bargaining Agreements may provide for higher compensation for partial activity. The employer can also decide to pay a higher amount or even keep the employees' gross remuneration by paying the remaining part.

## For How Long Can we Benefit From Partial Activity?

Where partial activity could normally be granted for a maximum period of six months (renewable), the decree on partial activity published on 26 March 2020, provides for a 12-month period.

## Q3 - CAN I STOP PAYING MY EMPLOYEES OR ASK THEM TO GO ON UNPAID LEAVE OR ON SICK LEAVE WITHOUT PAYING THEM?

No, employers can neither decide to suspend the remuneration of their employees nor lower the remuneration. Employers cannot ask employees to go on unpaid leave or sick leave in order to stop paying them.

## Q4 - CAN I UNILATERALLY AMEND THE DATES OF MY EMPLOYEES' PAID LEAVE?



As per the provisions of the Emergency Act dated March 23, 2020, and the ordinance n°2020-323 published on 26 March 2020, employers can:

- unilaterally impose or change the vacation dates of their employees to a maximum of *six working days* subject to prior notice of at least one day and *subject to* a Collective Agreement concluded at the level of the company or the branch;
- unilaterally impose or change additional days-off for the reduced working time (*JRTT*) and rest days provided for in lump-sum working time agreements and rest days allocated to the time-saving account ("*compte épargne temps*" subject to prior notice of at least one day). The number of days an employer may change or impose is limited to a maximum of *10 days*.

## Q5 - CAN I STOP PAYING SOCIAL SECURITY CONTRIBUTIONS?

No, but according to the French Government's announcements, companies can defer the payment of their social security contributions entirely or in part for the months of March or April with no penalty.

The payment date of social security contributions may be postponed for up to three months. Further information should be provided by the regulation to come.

## Q6 - WHAT CAN I DO TO ANTICIPATE ECONOMIC DIFFICULTIES?

In addition to the deferred payment of social security contributions, companies can ask to defer the deadline for payment of their upcoming taxes to the State's tax office.

As per the announcement of the French Government, some companies can ask for a suspension of the payments of rent, water, and electricity bills. Further regulation should provide for conditions to benefit from this suspension.

## Q7 - CAN I TERMINATE EMPLOYEES DUE TO THE CURRENT COVID-19 CRISIS?

*The Emergency Act dated 23 March 2020*, provides that the government will be entitled to take any measure to *limit* termination of employment contracts.

Despite the COVID-19 pandemic, companies must be able to demonstrate the financial difficulties, the necessity to safeguard the company's competitiveness on the market, or the cessation of its activity sustaining the redundancies. It will be very difficult for companies to be able to validly justify the dismissal of one or several employees in the very first days/weeks of the COVID-19 crisis, especially if the French government implements specific measures to limit the number of dismissals.

## Q8 - CAN EMPLOYEES DECIDE NOT TO COME TO WORK?

Employees benefit from a right of withdrawal (*droit de retrait*) in case of *serious and imminent danger* to the employee's life or health. In such situation, employees may leave or refuse to work without the employer's consent.

*In principle*, the COVID-19 pandemic should not, per se, justify the use by employees of their right of withdrawal.

*However*, if an employer does not provide its employees with sufficient protection to carry out their duties in a safe manner (i.e., gloves, hydro-alcoholic gels, minimum safety distance of one meter between each person, etc.) employees could be entitled to use their right of withdrawal, in particular if an employee has tested positive for COVID-19.

If an employee *legitimately* uses his/her right of withdrawal, the employer can neither withhold a part of the employee's remuneration nor sanction the employee for using his/her right of withdrawal. Note that the employer cannot ask an employee using his/her right of withdrawal to work if the serious and imminent danger remains.

## KEY CONTACTS



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



**SARAH CHIHI**  
ASSOCIATE  
PARIS  
+33.(0)1.58.44.15.10  
SARAH.CHIHI@KLGATES.COM

---

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.