



COVID-19 HEALTH CRISIS

Highlights
Recommendations
Employer costs

COVID – 19 Health crisis: Highlights, recommendations and employer costs

The health crisis linked to Covid-19 exposes companies to economic difficulties that could have significant social consequences. In this context, the government's aim is to preserve jobs while reducing the costs incurred by companies. In this emergency context, the government is currently working on the drafting of two texts that are fundamental to the survival of businesses: the draft decree on the introduction of partial activity (1) and the emergency bill allowing, in particular, more flexible management of paid holidays and reductions in working time (2).

1. PARTIAL ACTIVITY SCHEMES (SHORT-TIME WORKING) – ACTUAL DRAFT LAW AT 19 MARCH 2020

1.1 THE DEMAND FOR SHORT-TIME WORK

- The company compelled to **reduce** or **suspend** its activity due in particular to the **economic climate** or **any exceptional circumstances** (article R.5122-1 labour code), sends its request for short-time working directly via the website <https://activitepartielle.emploi.gouv.fr/aparts/> **without prior notice** from the company's economic and social committee ("CSE"). This notice may be sent within **two months** following the submission of the request.
- Companies have **30 days** to file their request for partial activity and in the context of requests for exceptional circumstances (Coronavirus), which must be processed within **48 hours** (instead of 15 days). Once these requests have been accepted, the partial activity will be taken over **retroactively from the date the employees are partially unemployed** (and not from the date of the online request).

BEWARE : But still, it is necessary to fall within the scope of the short-time work scheme as provided for in Article R.5122-1 of the Labour Code:

- If the company invokes the ground of "exceptional circumstances" related to the coronavirus (paragraph 5 of the above-mentioned section), it must be able to demonstrate that:
 - The positions concerned did not allow the introduction of telework;
 - It was impossible to organise working conditions that would ensure compliance with sanitary conditions of distance within the premises (organisation of teleconference, no grouping of employees in small spaces, cancellation or postponement of non-essential travel, team rotation, etc.).
- If the company invokes "economic climate" (paragraph (1) of the above-mentioned section), it must be able to demonstrate:
Recession,
 - The drop in orders
 - The increase in inventories

However, in fact, most of the companies submitted their request at a time when they were not yet in a state of decline in activity to the point of putting their staff out of work, but they took this decision because of the social pressure exerted (high expectations of the trade union organisations that are mobilising, threat or collective or individual exercise of the right to withdraw, etc.) or because of their conviction to participate in the "war effort" to fight the epidemic. Let us hope that in its final wording, the decree will take into account this particular context of requests for short-time working "as a precautionary measure".

Practical recommendation: particular care should be taken in the constitution of partial activity files: (i) demonstrate that there is indeed an established decline in activity (e.g. for consulting firms or banks : sudden cessation of deals) (ii) be able to demonstrate that the company is "civically responsible" by pursuing the activities that can be done, in particular through teleworking, and why not (iii) make commitments to maintain employment after the period of short-time working, commitments in terms of professional training, provisional job and skill management (GPEC), etc. It should be remembered that these commitments were required in the event of renewal of a request for short-time working over a period of 3 years (Article R. 5122-9 of the Labour Code).

COVID – 19 Health crisis: Highlights, recommendations and employer costs

1.2 THE SHORT-TIME WORK COMPENSATION: AMOUNT, DURATION AND EMPLOYEES CONCERNED

The employer shall pay the employee a compensation that cannot be less than **70% of his gross hourly wage** corresponding to 84% of his net hourly wage (with a minimum of 8.03€) and this, **within the limit of 4.5 times the hourly rate of the minimum wage** (new article D5122-13 of the Labour code) instead of 1 time the hourly rate of the minimum wage.

- **The French government covers the full cost of this compensation paid to the employee** (70% of the gross amount corresponding to 84% of the net amount), up to the same limit of 4.5 times the minimum wage. It is planned to move from indirect State funding (the employer compensates his employees and then receives an allowance from the State) to **direct State funding** (which would itself compensate the employees concerned, so that the employer would no longer have to disburse any money). This, however, requires an overhaul of the systems, which seems unlikely given the saturation of the network
 - This compensation is **totally exempt from employer and employee social security contributions**. However, any remuneration paid in excess of 70% of the gross hourly wage will be considered as salary and therefore subject to contributions.
 - The partial activity system may be set up for a maximum period of **12 months** (instead of 6 months).
 - The partial activity system is now eligible for employees with an **annual number of working hours or working days**. It still applies to part-time employees and apprentices. However, trainees are excluded. Their status is envisaged by the emergency draft law (see 2 “emergency draft law to deal with the COVID-19 epidemic and job security”)

Examples of calculations (subject to regulatory provisions and/or future circulars)

1. Employees who works 35 hours or 39 hours par week:

Overtime, even if contracted, shall not be taken into account in the calculation of the compensation. For instance, an employee who is paid 2,000 euros gross for 35 hours a week and an employee who is paid 2,285.73 euros gross for 39 hours a week will receive the same short-time work compensation.

In both cases, if the basic monthly gross salary is 2,000 euros for 35 hours per week:

- the hourly rate of his pay is $2000/151.67 = €13.19$ gross
- the amount of the hourly allowance for short-time working = $70\% \times 13.19 = €9.23$ gross (cannot be less than € 8.04)
- for 35 hours of partial unemployment per week, the employee receives $€151.67 \times 9.23 = €1,400$ gross (i.e. € 1,248.95 net of general social security contribution and social security debt contribution) and the employer receives an allowance of € 1,400.

2. Employee under annual flat rate in hours:

If the employee earns 4,000€ gross for an annual flat rate of, for example, 1,737 hours and includes 130 hours of overtime paid at 125%, his or her hourly rate is calculated as follows:

- $€4,000 \times 12 \text{ months} = €48,000$ per year;
- $1,607 \text{ hours} + (130 \text{ hours} \times 125\%) = 1,769.50$ hours per year;
- $€48,000 / 1,769.50 \text{ hours} = €27.13$.

For 35 hours per week

The hourly rate of his remuneration is 27.13 €.

The amount of the hourly short-time working compensation = $70\% \times 27.13 = €18.99$ gross (cannot be less than € 8.04)

For 35 hours of partial unemployment per week, **the employee receives $151.67 \times 18.99 = €2879.97$ gross (i.e. €2569.25 net of general social security contribution and social security debt contribution) and the employer receives an allowance of €2879.97 gross.**

3. Employee under annual flat rate in days:

In our opinion, it would be more appropriate to proceed in several stages for employees with a fixed daily rate:

- first determine the number of compensable days by applying the following formula: (no. of closing days/no. of calendar days in the month) × (monthly average no. of days fixed in the flat-rate agreement);
- turn that number of days into hours. To do this, the following method (inspired by administrative circular no. 2012-08, 4 May 2012) can be applied: starting from the "legal" annual working time, i.e. $151.67 \times 12 \text{ months} = 1,820.04 \text{ hours}$ (for 218 days) and a daily working time of 8.35 hours (1,820.04 h/218 d).

Case study 1

An executive employee gets a monthly gross pay of € 6,000 for an annual flat rate of 218 days; the average monthly number of days worked is : $218 \text{ d}/12 = 18.17 \text{ days}$. Suppose his company closes for the whole month of April 2020. The executive will be entitled to :

- $18.17 \text{ days} \times 22/30 = 13.32 \text{ days}$ of compensation ;
- $13.32 \text{ days} \times 8.35 \text{ hours} = 111.26 \text{ hours}$.

Since its (hypothetical) hourly rate is necessary for the calculation of the standard allowance payable by the employer, the monthly working time expressed in days (18.17 days), i.e.:

- $18.17 \times 8.35 \text{ hours} = 151.7 \text{ hours}$ per month ;
- Hourly rate: $\text{€ } 6,000 / 151,7 \text{ hours} = \text{€ } 39.55$.

The employee will receive **a compensation of:** $111.26 \text{ h} \times (\text{€}39.55 \times 70\%) = \text{€}3080.23 \text{ gross}$ (i.e. €2747.90 net of general social security contribution and social security debt contribution) and **the employer receives an allowance of €3080.23.**

COVID – 19 Health crisis: Highlights, recommendations and employer costs

Case study 2

An executive employee gets a monthly gross pay of €10,000 for an annual flat rate of 218 days; the average monthly number of days worked is : $218 \text{ d}/12 = 18.17$ days. Suppose his company closes for the whole month of April 2020. The executive will be entitled to :

- $18.17 \text{ days} \times 22/30 = 13.32$ days of compensation ;
- $13.32 \text{ days} \times 8.35 \text{ hours} = 111.26$ hours.
- $18.17 \times 8.35 \text{ hours} = 151.7$ hours per month ;
- Hourly rate : $\text{€ } 10,000 / 151.67 \text{ hours} = \text{€ } 65.93$.

Please note: the amount of the allowance to be reimbursed to the employer is limited to €45.13 (4.5x10.03).

The employee would receive **a compensation of:** $111.26 \text{ hours} \times (\text{€}65.93 \times 70\%) = \text{€}5,134.76$ **gross** (i.e. €4,580.77 net of general social security contribution and social security debt contribution) **while the employer would receive an allowance of** $111.26 \text{ hours} \times (\text{€}45.13 \times 70\%) = \text{€}3,514.81$ **gross. The remainder to be paid by the employer is therefore €1,619.95.**

The current crisis is so rapid that the short-time working system, although considerably extended and consolidated, will not be sufficient on its own to enable companies in the most affected sectors to cope with the crisis. That is why the government has launched a major draft law aimed at securing jobs.

2. EMERGENCY DRAFT LAW TO DEAL WITH THE COVID-19 EPIDEMIC AND JOB SECURITY (ARTICLE 7 OF THE DRAFT LAW)

In order to deal with the economic, financial and social consequences of the spread of the covid-19 virus and to limit its impact on employment, in accordance with Article 38 of the Constitution, in the field of labour law and social security law, the Government would be authorized to take by ordinance any measure (normally falling within the scope of the law), in particular for the purpose of :

- **Limiting terminations of employment contracts** (in particular, it would be envisaged to prohibit dismissals during the crisis period).
- Amending the conditions for the acquisition of paid leave and **allow any employer to impose or unilaterally change the dates on which part of the paid leave, days of reduced working time and rest days** allocated to the **employee's time savings account** are taken, by way of derogation from the legal and contractual provisions.

COVID – 19 Health crisis: Highlights, recommendations and employer costs

This unprecedented measure was unthinkable only two days ago (see Q&A n°21 on the Covid-19 Coronavirus - updated on 17 March 2020). Will it be taken into consideration to assess the civic responsibility of the company that applies for short-time working? In any case, it is a way for the company to join the "war effort".

So far, the clearance of paid leave and reduction of working time is not a compulsory prerequisite for recourse to short-time working, but could well help the administration to obtain a favourable opinion by asking companies to adopt a "civic responsibility" in the context of recourse to short-time working (see frame 1 above).

- **Derogating** from the legal and conventional rules relating to **working hours, weekly rest and Sunday rest** in companies in sectors that are particularly necessary for the security of the nation or the continuity of economic and social life;
- **Reinforce** the recourse to partial activity (new categories of beneficiaries, reduction of the remainder to be paid by the employer, etc.) in order to **mitigate the effects of the drop in business activity**;
- Exceptionally modifying the deadlines and terms of payment of **profit-sharing** and **incentive schemes**;
- Amending **the arrangements for informing and consulting** the Social and Economic Committee to enable it to deliver the required opinions within the time limits laid down (allowing videoconferencing, limiting the number of meetings, etc.);
- Adapting the conditions of pay for **trainees** (who are not eligible for short-time working) and adjusting the payment of social security contributions.



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