

Insights

FRANCE – COVID 19 – THE THREE NEW EMPLOYMENT ORDERS OF MARCH 25, 2020

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Paid leaves and *rest* days, working time, sick leave, profit-sharing schemes, unemployment benefits

You will find below a summary of three employment orders published in the Official Journal of March 26th and concerning:

1. The modalities according to which the employer may temporarily impose or modify the paid leaves and rest days of the employees as well as the temporary modification of certain rules relating to working hours;
2. The temporary adaptation of the payment of the compensation due by the employer to the employee on sick leave, in addition to the social security indemnity, and concerning the temporary modification of deadlines and terms of payment of optional and mandatory profit-sharing;
3. The exceptional extension of the period of payment of unemployment benefits.

Order N°2020-323 dated March 25, 2020 related to emergency measures with regard to paid leaves, hours of work and rest days

Provisions concerning all companies:

1. PAID LEAVES

A company-wide collective labor agreement or, if applicable, a branch collective agreement, may provide, subject to a minimum notice period of one clear day:

- the determination by the employer of paid leaves to be taken by the employee, within a maximum of 6 working days;
- the modification by the employer of dates of paid leave without the employee's prior agreement.

The period of paid leaves imposed or modified may not extend beyond December 31, 2020.

2. REST

When it is justified by the interests of the company taking into account to the economic difficulties linked to the spread of COVID-19, the employer may, subject to a minimum notice period of one clear day:

- impose rest days to be taken on predetermined dates;
- unilaterally modify the dates for taking rest days;
- require that the rights assigned to the employee's "Time Savings Account" be used by taking rest days whose are to be determined by the employer.

The total number of rest days which the employer may require the employee to take or of which it may modify the date shall not exceed ten.

The period to take the rest days imposed or modified pursuant to the above provisions may not extend beyond December 31, 2020.

Provisions concerning companies in "sectors of activity particularly necessary for the security of the Nation and the continuity of economic and social life":

The list of the concerned sectors will soon be determined by decree. According to the labor administration, these may include energy, telecommunications, logistics, transport, agriculture and agri-food.

- The maximum daily working time, legally set at 10 hours, may be extended to 12 hours;
- The maximum daily working time of a night worker, legally set at 8 hours, may be extended to 12 hours, subject to the granting of compensatory rest time equal to the time by which the legal limit is exceeded;
- The daily rest period, legally of 11 consecutive hours, may be reduced to 9 consecutive hours, subject to the granting of compensatory rest time equal to the length of the rest period from which the employee was unable to benefit;
- The maximum weekly rest period, legally of 48 hours, may be extended to 60 hours;
- The average weekly working time calculated over a period of 12 consecutive weeks, legally of 44 hours, may be extended to 48 hours (however limited to 44 hours for night workers);
- It is possible to derogate from the Sunday rest rule by allocating weekly rest time in shifts.

The employer which uses at least one of the above-mentioned derogations shall inform the works council (so-called CSE) and the labor administration without delay. In this case, this is merely an

“information” and not a “consultation”.

The derogations implemented on the basis of these provisions shall cease to be enforceable on December 31, 2020.

Order N°2020-322 dated March 25, 2020 temporarily adapting the terms and conditions for the allocation of the additional compensation provided for under Article L. 1226-1 of the French Labor Code and modifying, on an exceptional basis, the deadlines, terms and conditions for the payment of optional and mandatory profit-sharing schemes

Provisions concerning the payment by the employer of additional compensation to social security allowances paid during sick leaves:

Until August 31, 2020, the additional compensation owed by the employer to the employee on sick leave in addition to the social security daily compensation shall be paid by the employer :

1. To employees who benefit from a work stoppage leave resulting from COVID-19 (home support, vulnerability, childcare imposed by the situation of quarantine, etc.), without the following conditions, provided for in article L. 1226-1 of the Labor Code, being required:
 - one-year seniority;
 - justification of the medical certificate within 48 hours;
 - receiving care on French territory or in one of the other Member States.
2. To employees in “usual” situations of sick leave (justified by the incapacity resulting from illness or accident), without the one-year seniority condition provided for by Article L. 1226-1 of the Labor Code being required.

By way of derogation, the above-mentioned provisions shall also apply to employees working from home, seasonal employees, short-term employees and temporary employees.

Provisions concerning the deadlines and terms of payment of optional and mandatory profit-sharing schemes:

The deadline for payment to beneficiaries or allocation to an employee savings plan or a blocked current account of sums allocated in 2020 under a profit-sharing scheme is extended to December 31, 2020.

Order N°2020-324 dated March 25, 2020, related to emergency measures with regard to the replacement income (i.e., unemployment benefits) mentioned by Article L. 5421-2 of the Labor Code

Jobseekers who have exhausted their rights to one of the unemployment benefits (back-to-work allowance, specific solidarity allowance, etc.) as from March 12, 2020 until a date to be set later by the labor administration and no later than July 31, 2020, will be able to benefit from an extension of the period during which unemployment benefits are paid.

The minister in charge of employment will also have to intervene at a later date to set this duration, and a Supreme court decree will specify the modalities of this derogation.

RELATED CAPABILITIES

- Employment & Labor

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