

Insights

FRANCE – COVID 19 – PARTIAL ACTIVITY : NEW MODIFICATIONS INTRODUCED BY THE ORDER OF MARCH 27, 2020

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As expected, the order related to partial activity was adopted last March 27, 2020.

Further details on its provisions are expected in a forthcoming decree.

The Ministry of Labor's Q&A on partial activity was rewritten and updated.

You will find below a summary of the provisions of this new order as well as details contained in the Q&A that are worthwhile to highlight:

Order N°2020-346 dated March 27, 2020 related to emergency measures with regard to partial activity

1. Employees not subject to working time regulations and employees subject to a lump-sum agreement counting their working time in days

For employees not subject to Labor Code rules and collective labor provisions relating to working hours, the order specifies that methods for calculating compensation for partial activity will be determined by decree.

For employees subject to a lump sum agreement counting working time in days (on the basis of a "*forfait-jours*"), the number of hours taken into account for indemnification of the partial activity is determined by converting a number of days or half-days into hours. A decree will be issued to give further details as to how to proceed with this conversion.

2. Foreign companies with no establishment in France

Foreign companies' without any establishment in France may benefit from partial activity scheme for their employees in France for whom they pay social contributions and unemployment insurance in France.

3. CSG and CRDS calculation method

Partial activity allowances paid to employees (except for those employed at home and childminders) as well as additional allowances paid by the employer are subject to the CSG at the rate of 6.2% and to the CRDS at the rate of 0.5%.

4. Part-time employees

The hourly rate of the partial activity allowance paid to part-time employees may not be less than the hourly rate of the so-called “SMIC” (which is the legal minimum salary in France), unless the part-time employee's hourly rate salary is itself less than the SMIC (for example, if the employee is a minor with less than 6 months of seniority), in which case the hourly rate of the partial activity allowance paid to him/her shall be equal to his/her hourly rate of salary.

5. Apprentices and professionalization contracts

Apprentices and employees holding a professionalization contract shall receive a partial activity allowance equal to their previous remuneration. They will therefore be compensated at 100% of their usual remuneration, not 70%.

6. Employees in training

Employees in training during the partial activity period are indemnified under the usual legal conditions, i.e., 70% of their gross remuneration (instead of 100% of their net remuneration as previously before the order entered into force). This provision applies only to training agreed upon by the employer after the publication of the Order on 28 March 2020.

7. Protected employees

The partial activity is mandatory for protected employees who cannot oppose it subject to it applying to all employees of the company, the establishment, or the business department to which the protected employee belongs to.

8. Hours of equivalence

For employees whose working time is deducted according to the “equivalence system (specific jobs with periods of no activity), it is the paid equivalence hours which are taken into account for the calculation of the partial activity allowance. Therefore, the working time considered as equivalent is taken into account instead of the legal working time.

9. Home-workers and childminders

The order allows home-workers employed by individuals and childminders to benefit from the partial activity system.

In this regard, the order specifies that:

- Individual employers are exempted from the obligation to have an authorization from the labor administration.
- The hourly allowance paid by the employer is equal to 80% of the net remuneration corresponding to the remuneration provided for in the contract, without being less than the legal and conventional minimum wages (minimum of the CBA for home-workers, and minimum hourly wage of 2.85 € per child for childminders), nor above a gross hourly wage of 31.97 €. A decree will be issued to determine how this provision is to be applied.
- The URSSAF (social security) shall reimburse the full amount of the partial activity allowances payable by individual employers. In this respect, individual employers must keep at the disposal of the URSSAF, for inspection purposes, a sworn statement drawn up by their employee certifying that the hours giving rise to the allowance have not been worked.
- Allowances paid to employees are not subject to CSG.

10. Public companies

Employees subject to private law and employed by public companies who have their own unemployment benefits insurance (RATP, ADP...), may be placed in partial activity under the usual legal conditions. The sums accordingly paid by the unemployment administration agency ("*Unedic*") shall be reimbursed by the public company under conditions that will be set by decree at a later date.

11. Duration of the measures

The provisions of this order are applicable as from March 28, 2020 until a date that will be fixed by decree, and until December 31, 2020 at the latest.

Ministry of Labor's Q&A related to partial activity updated on 29 March 2020

Questions-Answers worthwhile to highlight:

1. Applications for multi-establishment companies: for multi-establishment companies, the Ministry specifies that the software allowing the submission of applications will be set up during April 2020 so that the application for a partial activity can be filed for the whole company at once and no longer on an establishment-by-establishment basis as is currently the case.

2. Calculation method of the partial activity indemnity: the Ministry specifies how the employee's partial activity allowance should be calculated and gives three examples (an employee paid at the minimum wage, an employee working less than the legal working time, and an employee paid above the 4.5 minimum wage limit).

3. Mentions on the payslip relating to the partial activity: the payslip of an employee placed in partial activity must mention the following information:

- The number of off-work hours compensated as partial activity;
- The hourly rate applied for the calculation of the allowance;
- The amount of the corresponding indemnity paid to the employee.

4. Penalties incurred in the event of fraudulent use of the partial activity scheme: the administration notes that a company which asks its employees in partial activity to work will be exposed to sanctions: the reimbursement of the financial compensation unduly received, a 5-year ban on receiving public aid and criminal sanctions (2 years' imprisonment and a €30,000 fine).

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