

Insights

FRANCE – COVID 19 – THE MODIFICATIONS INTRODUCED IN LABOR LAW BY THE FIVE ORDERS OF APRIL 1ST, 2020

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Exceptional purchasing power bonus, works council, occupational services, vocational training

New orders relating to labor and employment law were published in the French Official Journal on April 2, 2020.

1. Order No. 2020-385 relating to the conditions for payment of the “exceptional purchasing power bonus”;
2. Order No. 2020-389 on meetings and elections of the works council (“CSE”);
3. Order No. 2020-386 relating to occupational health services and the modification of the regime for prior requests for partial activity;
4. Order No. 2020-387 on emergency measures in the area of vocational training;
5. Order No. 2020-388 relating to the postponement of elections to measure union representation within companies with fewer than eleven employees and to the extension of the mandates of labor court judges and of members of joint committees of inter-branch organisations.

It seemed important to us to inform you of the main provisions contained in these orders:

Order No. 2020-385 relating to the conditions for payment of the “exceptional purchasing power bonus”

The conditions for payment of the exceptional purchasing power bonus, which for the record is exempt from social contributions and income tax for employees whose monthly remuneration does not exceed 3 times the minimum wage (so-called “SMIC”), set forth in the social security financing law for 2020 are modified as of April 2, 2020:

1. No need for the company to have a profit-sharing agreement

Companies which do not have a profit-sharing agreement can now pay their employees an exceptional purchasing power bonus which will not be subject to social contributions and income

tax, up to a limit of € 1,000.

2. The maximum amount of this premium is increased up to € 2,000 for companies with a profit-sharing agreement

The maximum exempted amount of this premium is raised to € 2,000 for companies with a profit-sharing agreement on the date of payment of the bonus.

In the event that companies wish to enter into a profit-sharing agreement in order to benefit from such an exemption, the order provides that this profit-sharing agreement :

- must be concluded between January 1 and August 31, 2020 (versus June 30 previously) with a 1 to 3 year term (vs. a normal fixed term period of 3 years).

These profit-sharing agreements would continue to benefit from tax exemptions even if they were concluded after the 1st day of the second half of the period to which they relate, subject to being entered into before August 31.

Other changes: if the PEPA bonus is put in place, it benefits to employees and to temporary workers registered in the headcount at the time of payment (as was the case until now). It now also benefits to those registered in the headcount on the date of filing of the company or group collective agreement providing for the bonus or on the date of signing the employer unilateral commitment providing for such bonus.

3. The amount of the bonus can be adjusted by giving priority to employees directly exposed to Covid-19

The amount of the bonus, which initially could be modulated according to the remuneration, classification level, duration of actual presence of the employee during the year or his contractual working time can now also take into account "*the working conditions linked to the Covid-19 epidemic*".

The objective is therefore that companies be able to grant a higher bonus to employees working at their workplace during the health crisis.

4. The deadline for the payment of the bonus has been extended

The deadline for payment of the bonus (beyond which it is no longer possible to benefit from social and tax exemptions) is extended from June 30 to August 31, 2020.

Order No. 2020-389 of April 1, 2020 on emergency measures relating to Staff Representative Bodies

1. Authorization of CSE meetings by videoconference, conference call or instant messaging

During the health emergency period, that is until May 24 (Law 2020-290 of March 23, 2020 - art.4), the use of videoconferencing and conference calls is authorized for all meetings of employee representative bodies, subject to the prior information of their members.

If the use of videoconferencing or conference call is not possible, and in any case when a company agreement so provides, meetings of the employee representative bodies can be held by instant messaging (example: Lync, Whatsapp or Messenger) subject to the prior information of their members.

An upcoming decree will specify the conditions for holding meetings by conference call and instant messaging.

2. Adjustment of the information and consultation procedure of the CSE in the event of derogation to working time

The employer is required to inform the CSE without delay and by any means when it:

- Imposes on employees to take paid vacation or modifies their days of rest, including by the use of rest days transferred to the CET/rest time accounts, (within the maximum threshold of 10 days);
- Derogates from the maximum working hours as per the Order of March 25, 2020;
- Derogates from the rule of Sunday rest, as per the Order of March 25, 2020.

The opinion of the CSE must be given within one month of this information.

The employer can nonetheless implement these derogations without waiting for the opinion of the CSE.

The employer must therefore organize the consultation of his CSE within this one month period.

3. Provisions concerning professional elections

Suspension of ongoing elections

The order provides for various measures to suspend and postpone the electoral processes underway on April 3, 2020.

The date of suspension depends on the progress of the electoral process and last until 24 August 2020.

Postponement of the elections after the end of the state of health emergency

The electoral process must be initiated within 3 months following the term of the state of health emergency, i.e. no later than August 24, 2020 if before April 3, 2020, which is the date of

entry into force of this order, or if between April 3, 2020 and May 24, 2020, which is the term of the state of health emergency:

- The workforce was or reaches at least 11 employees over a period of 12 consecutive months;
- An employee requests it;
- An electoral college is no longer represented or if the number of permanent members of the staff delegation is reduced by half (by-election).

Extension of the current terms as well as of the protected status of employee representatives and candidates

If, due to the suspension or postponement of the electoral process, current terms of office not expired on March 12, 2020 have not been renewed, then such current terms are extended until the results of the first round or, if applicable, the second round of the professional elections are announced.

Throughout the period of extension, the protective status of staff representatives is maintained.

Exemption from partial elections

When the term of office of the members of the CSE expires less than 6 months after the date on which the suspension of the electoral process ends, the employer is exempted from holding partial elections, regardless of whether or not elections were launched before the suspension.

Order No. 2020-386 of April 1, 2020 adapting the conditions for the exercise of the missions of the occupational health services to the state of health emergency and modifying the system of prior requests for partial activity authorization

1. Adaptation of the missions of the occupational health services to the health emergency

Until a date to be fixed by decree and at the latest until August 31, 2019, the following provisions shall apply:

Prescription and renewal of sick leaves by the occupational health doctor in the event of infection or suspected infection with covid-19

The occupational health doctor (and not only the treating doctor) can prescribe and, if necessary, renew a sick leave in the event of infection or suspected infection with covid-19.

The occupational health doctor may also carry out screening tests for covid-19 according to a protocol to be defined by decree.

Adaptation of “non-essential” medical visits

The medical examinations which must be carried out from March 12, 2020 as part of the individual monitoring of the workers' state of health can be postponed under conditions which will be defined by decree, unless they are “essential taking into account in particular the 'state of health of the worker or characteristics of his workstation' (night worker, at-risk positions, disabled worker etc.).

It is specified that the postponement of the medical examination "does not prevent hires or the return to work".

Medical examinations which have been postponed after 2 April 2020 will take place at the latest before 31 December 2020.

A decree to be published must provide further details on the above provisions.

Postponement or adjustment of occupational health service interventions unrelated to the epidemic

The occupational health services may postpone or arrange their interventions in or with companies "unless the occupational health doctor considers that the urgency or the seriousness of the risks for workers' health justifies an intervention without delay".

2. Deadline for accepting requests for partial activity

Decisions, agreements or opinions expected from the administration which did not expire before March 12, 2020 were suspended until June 24, 2020 by art. 7 of Order 2020-306 of March 25, 2020.

Order No. 2020-386 of April 1, 2020 specifies that this suspension does not apply to requests for partial activity authorization (including those presented before April 2, 2020) which remain subject to a period of acceptance by the administration - even implicit - of 2 days.

Order No. 2020-387 of April 1, 2020 on emergency measures in the area of vocational training

This Order provides for specific provisions regarding professional training for employers and other organizations involved in vocational training (skills operators (Opco) and associations, etc.), in order to enable them to meet their legal obligations in the present context.

Regarding employers, the important points are:

1. An additional period is allowed to carry out the interview relating to the employee's career development

Law n ° 2014-288 of March 5, 2014 relating to vocational training, employment and social democracy imposed on the employer the obligation to carry out, every 6 years, an interview with each employee on his/her career development. The first interviews were therefore to be held as from March 2020. Given the circumstances, the employer can postpone the date of the interviews to be held during 2020 until December 31, 2020.

In companies with at least 50 employees, the penalty of € 3,000 to supplement the CPF (personal training account) to be paid by employers failing to comply with this requirement is suspended from March 12 until 31 December 2020. Here again, the objective is not to penalize companies forced to postpone interviews.

2. Work-study contracts can be extended

The Order authorizes the extension of apprenticeships and professionalization contracts to take into account the suspension of the presence of apprentices and trainees within their training centres.

All of the apprentices whose contracts must end between March 12 and July 31, 2020 can benefit from this extension, provided that they have not been able to complete their training cycles (postponement or cancellation of training sessions and / or exams).

The contract can then be extended by amendment until the end of the cycle.

It is also possible to extend the period during which the apprentice can be received by an apprenticeship training centre before finding an employer and therefore entering into an apprenticeship contract.

Order No. 2020-388 of April 1, 2020 relating to the postponement of the ballot to measure the union audience within companies with fewer than eleven employees and to the extension of the mandates of labor court judges and of members of joint committees of inter-branch organizations.

1. Union audience measurement

The next ballot to measure the union audience among employees of companies with fewer than eleven employees is postponed. It will be organized in the first half of 2021, at a time to be defined by decree.

2. Mandates of labor court judges

The renewal of labor court judges is postponed at a later date to be determined by decree and no later than December 31, 2022.

Mandates of labor court judges in force on the 3rd of April 2020 are extended until that date.

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- Employment & Labor

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