

Insights

FRANCE – COVID 19 - LABOR MINISTRY'S RECOMMENDATIONS CONCERNING THE RULES FOR COLLECTIVE BARGAINING NEGOTIATION, SIGNATURE AND DEMATERIALIZED CONSULTATION

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The French Labor *Minister's Q&A for Companies and Employees* has been updated and now includes recommendations concerning the rules for collective bargaining negotiation, signature and dematerialized consultation (<https://travail-emploi.gouv.fr/actualites/l-actualite-du-ministere/article/coronavirus-questions-reponses-pour-les-entreprises-et-les-salaries>).

You will find below the points of the Q&A that we consider are worth highlighting:

Information and consultation of the works council (Social and Economic Committee or so-called "CSE")

The Minister reminds that the works council must be involved in the risk assessment process and related registry and consulted on the updating of this registry.

It specifies that the use of videoconferencing "*is encouraged where necessary to avoid physical contact*" and that "*if justified by emergency circumstances, the employer may take temporary decisions relating to work organization before consulting the SEC*".

Collective Bargaining Meetings

1. Face-to-face collective bargaining meetings

The Minister specifies that collective bargaining meetings can be held face-to-face if :

- Urgent circumstances requiring that negotiations be held (compliance with a legislative or contractual bargaining timetable, needs related to the health crisis);
- And provided the negotiators' meeting can be held in compliance with health safety instructions.

In that case, the negotiators can benefit from the derogatory travel authorization, in the same way as employees whose activity is not compatible with remote work and who have to travel to their workplace.

However, given the context of the epidemic, the Minister recommends that all companies and professional branches organize dematerialized collective bargaining meetings under the conditions detailed below.

2. Collective bargaining meetings by videoconference or audio-conference

The Ministry specifies that collective bargaining meetings may be held by videoconference or, failing that, by audio-conference as long as the conditions under which they are held respect "*the fairness principle related to collective bargaining*". It implies that negotiations are conducted collectively and that all parties to the negotiations are invited to meetings, otherwise the agreement may be null and void (cf. in that respect Cass. Soc. 12 Oct. 2006, no. 05-15.069).

The Minister also points out, from a practical standpoint, that many online solutions now exist for organising videoconferences bringing together a relatively large number of people.

Remote signing of collective agreements

The Ministry specifies the terms and conditions of the electronic signature and the "*handwritten*" signature and reminds us of the possibility of mandating another union to sign.

1. Electronic signature

Companies and professional branches can set up an electronic signature device that meets national and European regulatory requirements, such as :

- *" to be linked to the signatory only,*
- *To allow identification of the signatory,*
- *The device has been created using electronic signature data that the signatory can, with a high level of confidence, use under his or her sole control,*
- *The electronic signature is linked to the data associated with that signature in such a way that any subsequent change in the data is detectable"*

The Ministry points out that this solution is "*perfectly safe from a legal standpoint*", since an electronic signature issued by an electronic certification service provider has the same value as a handwritten signature and that many online providers now offer a paid electronic signature service (between 20 and 50 euros per user for one month).

2. « Handwritten » signature

The Ministry specifies that it is also possible to sign the collective agreement manually by sending the submitted draft to all the negotiating parties for each of them to sign it manually in one of the following ways:

- If the signatories have printing facilities: they print the draft, initial and sign it manually, then scan it (or take a photo of each page with their telephone, making sure that the document is readable) and return the signed document thus scanned electronically.
- If they do not have printing facilities: a copy of the draft agreement submitted for signature to each party to the negotiation can be sent by mail or hand-delivered. Once the copy has been received, each signatory can sign and initial and then scan (or take a picture) the document and return it electronically.

The Ministry highlights that it is preferable that the signatures of all parties appear on the same copy and, if this is not possible, the signed agreement will consist of all the copies signed by each party. Company-wide agreements signed in this way may be filed via the electronic procedure ("teleprocedure"), provided that all the signed copies are combined in a single pdf file.

3. Possibility of mandating another union for signature

The Ministry points out that one union can appoint another union to sign a collective agreement on its behalf. As mentioned by the Ministry: "*Thus, for example, a trade union organization of employees may give a mandate to a professional organization of employers or an employer to sign a collective agreement*".

In this case, the Ministry specifies that the trade union organization may precisely define in its proxy the version of the draft agreement it has agreed to. The Ministry recommends that "*the proxy be written to facilitate proof, but it may be a simple e-mail as long as the author can be identified*".

Remote consultation of employees

Because of the health crisis, the Ministry recommends "*not to bring all employees together to receive their approval during a consultation*" on a draft collective agreement.

However, an electronic system for collecting employees' approval remotely can be set up in companies with fewer than 11 employees without a trade union delegate and in companies with 11 to 20 employees without an SEC.

The Ministry points out that two fundamental electoral principles must be complied with:

- the confidentiality of the vote
- and the signatures of those consulted, in order to avoid multiple voting.

In order to guarantee the integrity of the vote, "*companies are encouraged to attach a summary of the electronic voting operation issued by the service provider when the agreement is filed*".

Adaptation of the procedure for the filing of branch/industry-wide agreements

The Ministry is adapting the procedure for the filing of branch/industry-wide agreements and specifies that :

- Sectoral branches must, as a matter of priority, file their agreement electronically at depot.accord@travail.gouv.fr, adding, in addition to the documents usually required, a PDF version of the signed agreement. The paper filing of the signed original may be done at a later stage, after the electronic version has been filed.
- When filing electronically an agreement entered into as per the Orders dated March 25, 2020, it is recommended that the branch specifies in the subject line of its e-mail "agreement Covid-19 Orders" so that the agreement is registered as a priority and also indicates whether an extension of the agreement is requested.

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