

Social Law - Following the various announcements of the French government, and in order to protect people from the effects of the coronavirus pandemic, you will find hereafter the main measures put in place to date in order to best organize your business.

What measures should be implemented to deal with the decline in the Company's business?

- **If possible, the implementation of telework**

The French Labour Code expressly provides for the possibility for the employer to implement telework in exceptional circumstances, including the threat of an epidemic, without the agreement of the employees.

It does not require any particular formalism. It is nevertheless essential to inform employees and to ensure that they are informed, for example by e-mail.

- **The partial activity system**

While the Government initially indicated that the coronavirus was an exceptional circumstance allowing companies to benefit from the partial activity scheme, it appears to have given much stricter instructions to the DIRECCTE, which is responsible for examining applications for partial activity.


The government is said to have asked the various DIRECCTEs to accept applications for partial activity only for companies that have been subject to an administrative obligation to close down.

For other companies, the use of telework should be given maximum priority.

In the latter case, in the absence of the possibility to implement telework, the Minister of Labour has enjoined companies to maintain the activity, which would mean that the partial activity would not be automatically accepted.

However, if companies and associations in any sector are not directly affected by the administrative closure, they will suffer the full force of the decline in activity.

Article R5122-1 of the Labour Code currently in force provides that an employer may place its employees in a position of partial activity when the enterprise is forced to reduce or temporarily suspend its activity for one of the following reasons:

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- 1° The economic situation;
 - 2° Difficulties in the supply of raw materials or energy;
 - 3° A disaster or bad weather of an exceptional nature;
 - 4° The transformation, restructuring or modernization of the company;
 - 5° Any other circumstances of an exceptional nature.

After having consulted staff representatives if they exist, and having informed employees individually of the project of partial activation, you can make a prior request to the DIRECCTE, via a secure and confidential internet portal.

[\(https://activitepartielle.emploi.gouv.fr/apart/\)](https://activitepartielle.emploi.gouv.fr/apart/).


Pending clarification, particular care should be taken in compiling partial activity files and not simply invoke the health crisis linked to Covid-19. In our opinion, it will also be necessary to establish the reality of the decline in activity linked to the epidemic suffered by the company. By way of illustration, it is possible to indicate that orders/works/events are cancelled, to specify the difficulties in the supply of raw materials or energy, and to specify the impact on turnover. This motivation may be the subject of a separate note to be attached to the application. Applications may be filed retroactively within 30 days. You must therefore take the time to justify your request, and even if you are currently opening files, take advantage of the 30-day retroactive period to "beef up" your arguments.

Finally, and for those who will not have opted for telework or who will be refused short-time working, the question of the employer's criminal liability will arise in the event that one of his employees is invited by the employer to return to physical work, despite the adoption of safety rules and information on the extreme need to respect barrier gestures. Here too, the Government is alerted to the need to lay down clear rules in this area, which is not yet the case.

While the DIRECCTE usually has 15 calendar days to give its response, the Minister specified that the DIRECCTE would respond within 48 hours to employers via the dedicated website.

During the period of partial activity, the employee benefits from a single partial activity allowance paid by the employer, who in turn receives a partial activity allowance paid by the State.

Also, you will be required to pay employees an hourly allowance at the normal pay date. In return, the State will have to pay the companies a partial activity allowance.



The employer must pay its employees at the time of pay, an allowance equivalent to 70% of their gross hourly pay (based on paid holidays) which will correspond to 82% of the net (except for employees at the SMIC who will receive 100% of their salary).

On the other hand, according to a press release from the Ministry of Labour which has been transmitted on March 17, 2020, the compensation received by companies would no longer be capped at 8.04 €/hour but would be 100% of the payments within the limit of 4.5 Smic by virtue of a decree which will be issued shortly.

The companies will have a 30 days deadline to deposit their request, which will be retroactive, the ministry specified on March, 16 2020.

The unemployed hours taken into account correspond to the difference between the number of hours actually worked and the legal working time (or the collective working time or that provided for in the employment contract if it is lower). Overtime hours worked due to collective working hours in excess of 35 hours do not have to be paid at the originally agreed salary. For employees who work a fixed number of hours or days over the year, the legal duration corresponding to the days on which the establishment or department is closed is taken into account (up to a limit of 7 hours per day or 3.5 hours per half-day). The allowance is paid monthly to the employer by the Service and Payment Agency (SPA). As an exception, the ASP pays the allowances directly to the employees in the event of receivership or judicial liquidation or the employer's financial difficulties.


- **Deadlines for the payment of social security contributions**

It is possible to request, via the urssaf.fr website through the section "a declarative formality", then "declare an exceptional situation", a request for a delay in the payment of social security contributions and the exceptional remittance of surcharges and penalties for late payment for the periods concerned.

The URSSAFs have indicated that these requests will be processed as a matter of priority.

- **The alternative of training**

The Government has indicated that FNE (national employment fund) funds and OPCOs (skills operators) will be deeply involved in order to maintain the training effort for employees during their partial period of activity, but without further details to date.



Two options are available: the use of training within the framework of the partial activity ("common training law"), or the FNE FORMATION (with the benefit of State aid for the employer).

Our teams remain mobilized to answer your questions. Please contact:



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