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Covid-19: The main labor and employment measures provided for by the first “Covid-19 Ordinances”

Three Ordinances on labor and employment matters adopted in furtherance of the emergency health law to deal with the Covid-19 pandemic^[1] were published in the Official Gazette on Thursday March 26, 2020.

These Ordinances concern (i) derogations, subject to certain conditions, regarding paid vacation, working hours, rest days and work on Sundays, applicable until December 31, 2020, (ii) extension of the deadline for payments under mandatory and optional profit-sharing schemes to December 31, 2020, and (iii) extension of the scope of employees eligible for the supplemental allowance paid by the employer in the event of medical leave until August 31, 2020. Finally, one of the Ordinances provides for the extension of the compensation paid to jobseekers who no longer qualify for unemployment benefits.

Brief overview of these measures.

1. Emergency measures on paid vacation, rest days, working hours and work on Sundays, subject to conditions, applicable until December 31, 2020.

Measures concerning paid vacation: only in case of a company level agreement or, in the absence such agreement, an industry-wide agreement

- **Possibility for employers to impose or modify the taking of paid vacation** (i) within the limit of 6 working days, (ii) with a notice period of at least 1 clear day, and (iii) over a period of leave up to December 31, 2020 at the latest:
 - Impose the taking of accrued paid vacation days, even before the start of the paid leave period (i.e. May 1, 2020 by default);
 - Unilaterally change the dates of paid leave already set.
- **Possibility for employers to split the main leave** (i.e. 4 consecutive weeks maximum) without the employee's consent.
- **Possibility for employers not to grant simultaneous leaves to spouses or partners under a so-called PACS** (i.e. a contractual form of civil union between two adults) working in the same company

Measures concerning so-called "RTT days" (i.e. additional rest days resulting from the reduction in the working time) and other rest days: only if the interest of the business justifies these measures in view of the economic difficulties resulting from the spread of the Covid-19, by unilateral decision of the employer

- **Possibility for employers to fix unilaterally the accrued RTT days, rest days accrued under an agreement on the organization of working time and rest days accrued under a so-called *forfait jours* working time arrangement^[2]** (i) up to a maximum of 10 days, (ii) with a notice period of at least 1 clear day, (iii) over a period of leave up to December 31, 2020 at the latest:
 - Impose the taking of rest days on dates that they (i.e. employers) determine;
 - Unilaterally change the dates on which rest days are taken.
- **Possibility for employers to impose that the rights earned by employees under their Time Savings Account be used in the form of rest days, on dates they (i.e. employers) determine, under the same conditions and within the same limits as set out above.**

Measures concerning working time: only in companies operating in "*business sectors that are particularly needed for the security of the Nation and the continuity of economic and social life*", as determined by (a to-be-published) Decree

- **Derogations from maximum working hours**, provided that the Social and Economic Committee

("SEC") and the Regional Directorate for Companies, Competition, Consumption, Labor and Employment (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi* or "DIRECCTE") are informed without delay and by any means:

- Up to **12 hours of work per day (instead of 10 hours)**;
 - Up to **60 hours of work per week (instead of the absolute maximum weekly working time of 48 hours)**;
 - Up to **48 hours of work per week over a period of 12 consecutive weeks** (instead of the average maximum weekly working time of 44 hours);
 - For **night workers**: up to 12 hours of work per day (subject to the granting of compensatory rest) and up to 44 hours of work per week over a period of 12 consecutive weeks (instead of the average weekly working time of 40 hours).
- **Daily rest reduced to 9 consecutive hours (instead of 11 consecutive hours)**, subject, however, to the granting of compensatory rest equal to the duration of the rest the employee was unable to take. Employers must inform the SEC and the DIRECCTE thereof without delay and by any means.

Measures concerning work on Sundays: only in companies operating in "business sectors that are particularly needed for the security of the Nation and the continuity of economic and social life", as determined by (a to-be-published) Decree AND in companies that which provide those in essential business sectors with the services necessary for the performance of their main business activity.

- **Possibility to derogate from the principle of Sunday rest:**
 - The weekly rest will in this case be granted to employees on a rotating basis;
 - It should be noted that these provisions also apply in the Moselle, Bas-Rhin and Haut-Rhin geographical departments.

2. Measures regarding payment of sums due under mandatory and optional profit-sharing schemes, without any condition, applicable until December 31, 2020

- **Postponement of the deadline for payment or allocation of sums due under mandatory and optional profit-sharing schemes to December 31, 2020:** the deadline for the payment of sums to be granted under mandatory and optional profit-sharing schemes in 2020, or for the allocation of such sums to an employee savings plan (or a frozen current account), is postponed to December 31, 2020 (instead of the 1st day of the sixth month following the close of the company's financial year).

3. Measures regarding the continued payment of the wage by employers (supplementary allowance) in case of medical leave applicable until August 31, 2020

A brief reminder of applicable ordinary rules: the French Labor Code provides that an employee on medical leave due to illness or accident (whether work-related or not) is guaranteed to receive a supplementary allowance from his/her employer which complements the daily social security allowances. However, this continued payment is subject to a series of conditions, including a minimum of one year's seniority, a medical report on the employee's incapacity for work, the sending of the doctor's certificate to the employer within 48

hours, etc. This continued payment applies – except in exceptional cases – at the end of a waiting period of 7 days. Finally, some employees are excluded from this system (employees working from home, seasonal workers, intermittent workers and temporary employees).

- **Continued payment of the salary for employees on medical leave prescribed in the context of the Covid-19 pandemic** (including childcare, isolation, eviction, mandatory home-stay, etc.), including for employees working from home, seasonal workers, intermittent workers and temporary employees:
 - without any requirement as to seniority
 - without having to justify his/her absence from work within 48 hours;
 - without obligation to receive a care treatment on French territory or in one of the other Member States of the European Union or in one of the other States which are parties to the Agreement on the European Economic Area.
- **Continued payment of the salary for employees on medical leave, regardless of the reason of the leave**, including for employees working from home, seasonal workers, intermittent workers and temporary employees:
 - without any requirement as to seniority.

It is not specified whether these measures apply to medical leaves prescribed prior to the entry into force of the Order (i.e. March 26, 2020).

It should be noted that the Ordinance provides that a Decree may adjust the time limits and terms of payment of the supplementary allowance paid by employers: this decree could remove the 7-day waiting period for all medical leaves (currently removed by a decree of March 4, 2020 for medical leaves related to a measure of isolation, eviction or mandatory home-stay related to the Covid-19 pandemic).

[1] Cf. article entitled [Covid-19: “Emergency” Law: The main provisions regarding labor and employment](#) published on our Blog on March 26, 2020

[2] This is a contractual arrangement according to which working time is counted on the basis of a fixed number of working days per year.

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