

Short-time work: A new set of measures to cope with the second wave of Covid-19

In order to deal with the economic impact of the “second wave” health crisis, two Decrees amending the standard short-time work scheme on the one hand and the long-term short-time work scheme on the other hand were published on October 30, 2020.

What are the new measures laid down by these Decrees?

“Standard” short-time work scheme

Strengthened procedure for informing the *Comité Social et Economique* (Social and Economic Committee (“SEC”))

Article 1-1° of Decree 2020-1316 dated October 30, 2020

While in companies with at least 50 employees, the SEC must be consulted prior to the initial or renewal request for authorization to implement the short-time work scheme, it must now be informed, **at the expiry of each authorization**, of the conditions under which the short-time work scheme has been implemented.

Reduction of the maximum duration of the authorization to implement a short-time work scheme

Article 1-2° of Decree 2020-1316 dated October 30, 2020

As from January 1, 2021, the authorization to implement a short-time work scheme may be granted for a **maximum period of three months**. Prior to this date, the maximum duration of the authorization is set at 12 months, renewable.

The request for authorization to implement a short-time work scheme may be renewed up to a maximum limit of six consecutive or non-consecutive months over a reference period of 12 consecutive months.

Reduction of the compensation paid to employees and allowance paid to employers

Article 1-5° of Decree 2020-1316 dated October 30, 2020

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As from January 1, 2021, employees put on short-time work will receive a compensation corresponding to 60% (compared to 70% previously) of their gross reference remuneration, up to a maximum of 4.5 statutory minimum wage.

In addition, for employees who benefit from variable elements of remuneration or elements of remuneration paid on a non-monthly basis, the reference salary used to calculate the compensation to be paid by the employer to such employees and the allowance to be received by the employer takes into account the average of these remuneration elements earned by the employees during the 12 calendar months - or during all the months worked when the employee has worked less than 12 calendar months - preceding the first day of implementation of the short-time work scheme.

In addition, the Decree specifies that the net compensation paid by the employer to an employee may not exceed the employee's usual net hourly remuneration.

Moreover, **as from January 1, 2021**, the hourly rate of the allowance received by the employer will be equal, for each employee concerned, to 36% of the gross hourly remuneration (as opposed to 70% previously), up to a maximum of 4.5 times the hourly rate of the statutory minimum wage. This hourly rate will not be less than 7.23 euros (compared to 8.03 euros before January 1, 2021).

As an exception, **companies operating in the so-called "protected" business sectors** benefit from an increased rate set at 70%, effective from November 1, 2020 until, in principle, December 31, 2021, even if they have already implemented a long-term short-time work scheme. As such, there is no out-of-pocket costs for the employer, insofar as the amount of the allowance it receives is based on the amount of the compensation it pays to the employees.

The "protected" business sectors include in particular the tourism, hotel, restaurant, sport, culture, air transport and event industries.

"Long-term" short-time work scheme

Article 2 of Decree 2020-1316 of October 30, 2020

It should first be recalled that this scheme applies to companies faced with a lasting drop in business following the health crisis, but whose survival is not at stake.

As such, this concerns the business sectors most durably affected by the drop in business and which cannot resume a "normal" business activity directly.

The company must either negotiate a collective establishment-level, company-level or group-level agreement to implement this scheme or be subject to an extended branch agreement that provides for the possibility of doing so. The SYNTEC (i.e. engineering and consulting firms, and technology companies) and Metallurgy branches for example, have entered into concluded long-term short-time work scheme agreements that benefit all companies in these sectors.

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During periods of long-term short-time working, employees receive 70% of their gross salary, up to a limit of 4.5 SMIC. The employer is reimbursed up to 60% of the gross hourly wage paid to the employee, up to a maximum of 4.5 statutory minimum wage.

The current legal framework governing long-term short-time work scheme provides that the employer must reimburse sums to the French Service and Payment Agency if it dismisses, for economic reasons, an employee benefiting from a long-term short-time work scheme or whose employment position it had undertaken to maintain. However, this may be waived in whole or in part if the reimbursement is incompatible with the economic situation of the relevant establishment, group or company, or if the business prospects have deteriorated compared to those set out in the long-term short-time work scheme agreement/unilateral document.

As from November 1, 2020, the employer is required to inform the employee representatives

- wherever it files a request with the administrative authorities to benefit from these provisions;
- in the event of a positive response, when the administrative authorities exempt it from all or part of the reimbursement.

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