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The Pro-Employer Measures Taken By the French Government to Support the Activity

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Information, guidance, and the potential legal responses to COVID-19 are changing rapidly. The below reflects the Government position and related guidance as of 1 April, 2020.

This Alert constitutes the next instalment of our Client Alert series addressing the legal and business impacts of COVID-19. This communication focuses on the pro-employer measures that have been taken by the French Government. For issues involving other operations in the U.S., please contact Elena Baca. For issues involving other operations in the U.K., please contact Suzanne Horne.

Over the last days, the French Government and Parliament have adopted specific pro-employer regulations in order to support the French activities and help employers based in France.

The goals of the French Government actions are as follow:

I. Facilitating the recourse to partial activity

In order to limit the termination of employment contracts, the Government has taken the following actions (applying to all French companies whatever the headcount):

- Adapting the social treatment of indemnities paid under partial activity;
- Extending the eligibility to partial activity to other categories of beneficiaries (homeworkers, nursery assistants, etc.);
- Extending the length of partial activity to 12 months (instead of six months maximum currently);
- Enabling employers to send only one partial activity request when the company concerned has several sites;
- Offering a 30-day period to employers to apply for the benefit of the partial activity; and
- Taking into account individuals employed under a part-time basis.

II. Imposing the taking of vacation days

The Government allows French employers to force their employees into taking their accrued paid vacation days (amongst the days they must take up to 31 May, 2020) within a limit of six days per employee. Such possibility would have to be organized through a branch-wide or company-wide collective agreement. Please note that employers are already allowed to request from their employees to change the dates of any already planned vacations.



Employers also have the possibility (without the need to enter into a prior collective agreement) to impose the taking of working time reduction days off (*i.e.* "JRTT") which are granted each year to employees under an annual daily-based working time arrangement (*forfait jours*) within a limit of 10 days.

III. Facing the increase of activity

Companies whose activity is deemed necessary for "the safety of the nation or the continuity of the social and economic life" will be entitled to break with certain public policy rules relating to working time or minimum daily and weekly rest periods.

IV. Postponement of the payment of the profit-sharing allowance

The amounts that had to be paid by certain employers (on 1 June) as a result of a mandatory or voluntary profit-sharing agreement (*accord de participation des salariés aux résultats de l'entreprise ou accord d'intéressement*) have the possibility to postpone such payment up to 31 December.

V. Simplifying the labor relations with the employee's representatives

The modalities of information and consultation of the Social and Economic Committee ("SEC") have been simplified in order to obtain their opinion.

Usually, an employer can schedule SEC's meetings through video conference only if a company-level agreement allowing such possibility has been entered into. The Government will generalize the recourse to video conference even for companies that would not have already entered into such company-level agreement.

In addition, while SECs must usually give their opinion before benefiting from any partial activity measure, the Government exceptionally grants a two-month period to the employee's representatives to render their opinion.

VI. Extension of the residence permit for foreigners

The Government authorized to extend the duration of the residence permits that have already expired or that are going to expire between 16 March and 15 May, 2020 within a limit of 180 days in total.

VII. Offering the possibility to postpone the payment of social contributions

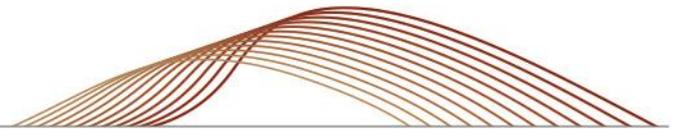
The Government allows French companies to postpone the payment of their social contributions within a limit of three months.

VIII. Theoretical possibility to terminate employee's contracts

Contrary to Italy, where both individual and collective economic dismissals are banned until 16 May, 2020, the French Prime Minister has reminded that the current situation does not prevent, in theory, employers from dismissing their employees if they have sufficient grounds to do so.

However, following this route may also be risky (at least for the moment).

Indeed, pursuant to French law, the employee must be, *inter alia*, (i) convened to a pre dismissal meeting (*entretien préalable à licenciement*) and (ii) given the possibility to be assisted by a legal counsellor during this meeting. If not, the dismissal is considered as null and void. With the current confinement circumstances and from a strict practical standpoint, such conditions will be very difficult to meet, which would put at risk the validity of the whole dismissal procedures that could be initiated these days.



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