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Covid-19: Update on the latest measures relating to partial activity (short-time work)

Partial activity (also referred to as short-time work) allows the employer to reduce the working time of his employees or to temporarily close his establishment or part of it in order to maintain employment, and to compensate in part for the loss of remuneration suffered by employees as a result of the unworked hours. Because of the economic consequences associated with the spread of the Covid-19 pandemic, a draft Decree encourages and facilitates the use of the partial activity scheme.

Soulier Avocats provides an update on the latest measures in the form of a Q/A.

NB: The following information is based on the draft Decree modifying the short-time work scheme and is, therefore, subject to changes.

Question 1: Which companies can implement the short-time work scheme?

The employer may put its employees on short-time work when the company is forced to reduce or temporarily suspend its business activity for one of the following reasons: the economic situation; difficulties in the supply of raw materials or energy; a disaster or bad weather conditions of an exceptional nature; the transformation, restructuring or modernization of the company; any other circumstances of an exceptional nature.

In the context of the current health crisis, the Government indicated that a request for the implementation of a partial activity scheme can be made in the following situations:

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Examples	Comments
Administrative closure of an establishment	
Prohibition of public demonstrations following an administrative decision	
(Massive) absence of employees who are essential to the activity of the company	If the employees who are essential to the continuation of the company are infected by the Covid-19 or quarantined, thereby making it impossible to continue the business, the other employees can be put on short-time work
Temporary interruption of non-essential activities	If the Government decides to limit travels to avoid aggravating the epidemic, employees may be put on short-time work
Suspension of public transportation pursuant to an administrative decision	All employees who are unable to travel to the workplace due to the lack of public transportation may be put on short-time work
Decline in business due to the epidemic	Supply difficulties, deterioration of sensitive services, cancellation of orders, etc. are all reasons for implementing the short-time work scheme

Question 2: How do to apply for the implementation of the short-time short scheme?

- *To whom should employers apply?*

The employer must send a request for authorization for the implementation of a short-time work scheme to the *préfet* of the department where the relevant establishment is located or, when the request concerns several establishments of the same company, to the préfet of the department where the company's head office is located.

- *What information is required?*

The request must specify the reasons justifying the implementation of the short-time work scheme, the foreseeable period of under-activity, the number of employees concerned, the commitments that the employer proposes to make wherever he makes a new request whereas it has already implemented the short-time work scheme in the previous 36 months.

The opinion of the Social and Economic Committee (SEC) must be annexed to the request. If such opinion has not yet been delivered, the request must specify the planned date of consultation of the SEC; in this last case,

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the opinion must be sent within a maximum of two months from the date of the request.

- – How is this done?

The request for authorization is made online on the website:

https://activitepartielle.emploi.gouv.fr, or by any means showing a so-called "*date certaine*" (i.e. a specific and indisputable date).

- *When is the deadline?*

The employer has a period of 30 days from the date the employees are placed in partial employment to submit his request.

- – *What is the response time?*

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*, also known under the acronym "DIRECCTE") has two calendar days to make its decision. In the absence of a response within this period, the request for authorization shall be deemed tacitly granted. The employer must inform the SEC as well as the employees of the favorable or unfavorable decision to implement a short-time work scheme within the establishment.

Question 3: Are all employees eligible for the short-time work scheme?

All employees of the company (permanent, fixed-term, temporary) are in principle eligible for compensation under a short-time work scheme. The draft Decree provides for the extension of this scheme for employees working on under so-called *forfait jours* and *forfait heures* working time arrangements[1], including when there is not a total closure of the relevant establishment, i.e. even in the case of a reduction in working hours.

Question 4: What compensation under a short-time work scheme?

In return for the administrative authorization to implement the short-time work scheme, the employer must:

- pay to the employee the hours normally worked in case of reduction in working hours;
- pay to the employee an hourly allowance corresponding to 70% of the gross remuneration that serves as the basis for the holiday pay, i.e. 84% of the net remuneration, for the number of unworked hours giving entitlement to the payment of this allowance (i.e. up to 35 hours) or 100% of the previous net remuneration if training activities are implemented during the unworked hours;
- where applicable, pay to an employee on short-time work whose remuneration is lower in a given month, an additional remuneration at least equal to the net minimum wage (8.03 euros) based on 35 hours (for compliance with the minimum monthly remuneration);
- pay the allowance due under the short-time work scheme on the normal pay date.

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This indemnity is subject neither to employees' and employers' social security contributions, nor to the flat rate contribution (*forfait social*). However, it is subject to the so-called general social contribution (*Contribution Sociale Généralisée,* commonly referred to as *"CSG"*) at the rate of 6.20% and social debt repayment contribution (*Remboursement de la Dette Sociale*, commonly referred to as "*CSG*") at the rate of 0.50%.

These two contributions are calculated on the basis of 98.25% of the allowance paid (application of a 1.75% abatement for professional expenses). In these conditions, the employee will receive a compensation representing approximately 84% of his net salary.

Question 5: How does the employer get the short-time work compensation?

The employer receives a short-time work compensation jointly financed by the State and the body managing the unemployment insurance scheme (Unédic). The hourly rate of the short-time work compensation is equal to 70% of the hourly pay up to a maximum of 4.5 times the hourly rate of the minimum wage. This hourly rate may not be less than 8.03 euros (Article D. 5122-13 of the French Labor as it would be amended by the draft Decree).

Within one year following the end of the period covered by the authorization to implement the short-time work scheme, the employer must send a request for indemnification together with supporting documents (employees' pay slips showing the number of unworked hours) to the website https://activitepartielle.emploi.gouv.fr.

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[1] These are arrangements according to which working time is counted on the basis of a fixed number of working days (*forfait jours*) or working hours (*forfait heures*) per year.

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