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## Tribune de Lyon 2021 Legal Guide: “The collective performance agreement: A tool for companies to adapt to the health crisis?”



The 2021 Legal Guide published by [Tribune de Lyon](#) offers precise and pragmatic answers to concrete issues faced by business owners/managers.

[Fabien Pomart](#) contributed to this Guide through an article entitled “*The collective performance agreement: A tool for companies to adapt to the health crisis?*”.

This article is reproduced below and a courtesy English translation follows.

## L'accord de performance collective : un outil d'adaptation des entreprises face à la crise sanitaire ?



Maître Fabien Pomart

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**A** lors qu'il est impossible de savoir combien de temps dureront les effets de la crise sanitaire, les entreprises doivent se doter d'outils leur permettant de tenir face à cette situation. L'accord de performance collective peut être envisagé comme une solution car il permet notamment d'aménager la durée du travail et la rémunération des salariés tout en préservant l'emploi en vue d'une reprise d'activité. Comment le mettre en place ? En présence de délégués syndicaux, l'accord est cosigné par ces derniers et l'employeur, puis ratifié par la majorité des salariés. En l'absence de délégués syndicaux, les modalités de mise en œuvre dépendent de l'effectif de l'entreprise :

**Une accord qui dépend du nombre de salariés**

- > Moins de 11 salariés : ratification de l'accord par les salariés à la majorité des 2/3 ;
- > Entre 11 et 49 salariés : en l'absence de Comité social et économique (CSE), ratification par les salariés à la majorité des 2/3 ; en présence d'un CSE : négociation entre l'employeur et un

ou plusieurs (i) salariés mandatés, ou (ii) membres du CSE, puis ratification par la majorité des salariés ;

- > À partir de 50 salariés : négociation entre l'employeur et les membres du CSE mandatés par un ou plusieurs syndicats, puis ratification par la majorité des salariés.

Comment l'appliquer ? Le salarié est libre d'accepter ou de refuser l'application de l'accord. Son refus peut constituer un motif de licenciement. En cas d'acceptation du salarié, l'accord s'impose aux clauses contraires ou incompatibles du contrat de travail. La durée de l'accord peut être déterminée ou indéterminée. À défaut de précisions dans l'accord, la durée est fixée à cinq ans.

***“The collective performance agreement: A tool for companies to adapt to the health crisis?” [1]***

Fabien Pomart, Partner

While it is impossible to know how long the effects of the health crisis will last, companies must adopt tools that allow them to cope with this situation.

The collective performance agreement can be considered as a solution because it allows to adjust the working hours and the remuneration of the employees while preserving the employment in view of a resumption of business activity.

*How to set up a collective performance agreement?*

If the company has trade union delegates, the agreement must be signed by them and by the employer, and then approved by the majority of the employees.

If the company does not have any trade union delegates, the agreement can still be considered but the conditions in which it can be set up depend on the size of the company’s workforce:

- In companies with less than 11 employees: The agreement must be approved by a two-thirds majority vote of the employees;
- In companies with between 11 and 49 employees: If the company does not have a Social and Economic Committee (“SEC”), the agreement must be approved by a two-thirds majority vote of the employees. If the company has a SEC, the agreement must be negotiated between the employer and either one or more (i) employees mandated by one or more trade union organizations, or (ii) one or more members of the SEC, and approved by a majority of the employees;
- In companies with 50 employees or more: The agreement must be negotiated between the employer and the members of the SEC mandated by one or more trade union organizations and approved by the majority of the employees.

*How to implement a collective performance agreement?*

The employee is free to accept or refuse the application of the agreement to his/her employment contract. His/her refusal may constitute a ground for dismissal. If the employee accepts the collective performance agreement, the agreement applies to the employee’s employment contract and prevails over any contrary or incompatible clauses set forth in said contract. The collective performance agreement may be concluded for a fixed or indefinite period of time. If the duration is not specified in the agreement, it is concluded for a fixed term and its duration is 5 years.

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[1] An extended version of this article is available on our Blog: [Covid-19: Optimizing the long-term](#)



management of the crisis thanks to the collective performance agreement

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