

LABOUR LAW

NEWS - CORONAVIRUS N°2

EXECUTIVE ORDERS OF MARCH 2020

26 MARCH 2020

The Executive Orders authorized by the Emergency Law to adapt labour law to the health crisis have just been published in the French official journal « *Journal Officiel* ». Here is a summary of the main provisions:

1. Executive Order No. 2020-323 "on emergency measures relating to paid leave, working hours and rest days"

▪ Concerning measures relating to paid leave

The employer will now be able to impose, or on the contrary to defer, the dates of paid leave for employees within the **limit of 6 days**, provided that **a company or branch agreement so specifies**. The notice period set in the agreement must be **at least 1 full day**.

A company or branch collective agreement is therefore necessary; a **unilateral decision by the employer cannot replace it**.

The company or branch collective agreement may also authorise the employer to :

- ✓ **Split paid leave** without the employee's agreement;
- ✓ **Fix paid leave without having to grant simultaneous paid leave** to spouses or civil partners.

These measures may not extend beyond **December 31, 2020**.

In practice, the condition of having to negotiate a company or branch agreement in the context of a health crisis may constitute a major obstacle to the implementation of this measure at short notice.

▪ Concerning measures relating to rest days (working time counted by days, « RTT », « CET »)

As soon as the interest of the company justifies it in light of the epidemic, the employer may **unilaterally**, by way of derogation from the legal and conventional provisions, subject to observing a **notice period of one full day** and within a **limit of 10 days**:

- ✓ **Impose the taking of rest days** acquired by the employee and modify the dates already fixed for the taking of these rest days;

- ✓ **Impose the taking of rest days** not provided for by a package agreement and change the taking of these rest days;
- ✓ **Impose the taking of days** booked in the employee's work time savings account (CET).

This possibility may not be extended beyond **31 December 2020**.

▪ Concerning measures regarding companies in sectors of activity that are particularly necessary for the security of the Nation and the continuity of economic and social life

A decree will soon determine the list of sectors concerned by this measure.

These companies may until **31 December 2020**:

- ✓ **Extend the maximum daily working time to 12 hours**;
- ✓ **Increase the maximum daily working time of a night worker from 8 hours to 12 hours**, subject to the granting of a compensatory rest equal to the difference between 8 hours and the set derogation period;
- ✓ **Reduce the daily rest period to 9 consecutive hours** (instead of 11 hours) subject to the granting of compensatory rest equal to the rest period from which the employee was unable to benefit (i.e. 2 hours);
- ✓ **Increase the maximum weekly working time to 60 hours**;
- ✓ **Increase the weekly working time calculated over any period of 12 consecutive weeks to 48 hours**;
- ✓ **Apply a weekly working time for night workers of 44 hours on average over 12 consecutive weeks**;
- ✓ **Derogating from Sunday rest** by allocating a weekly rest period in shifts.

A decree should specify, for each sector of activity, the categories of derogation allowed, the maximum working hours or the minimum rest period that may be set by the employer.

Recourse to one of these measures **will require the social and economic committee (CSE) and the labour administration to be informed without delay and by any means** (except *a priori* for the derogation from Sunday rest). We draw your attention to the fact that this is a simple information and not a consultation.

2. **Executive order n°2020-322 relating to supplementary sick pay and profit-sharing and incentive schemes**

- **Concerning the additional indemnity provided for by Article L. 1226-1 of the French Labour Code**

The Executive Order removes certain conditions to benefit from the additional indemnity paid in addition to the daily social security allowance ("IJSS") pursuant to Article L. 1226-1 of the French Labour Code.

Thus, until **August 31, 2020**, this additional indemnity will be paid to all employees, **without seniority conditions**, who benefit from sick leave:

- ✓ Resulting from a measure of isolation, eviction or house confinement due to Covid-19 ;
- ✓ Resulting from the care of their child under the age of 16 for these same reasons;
- ✓ Justified by incapacity resulting from illness or accident.

It is also due to **home-based employees, seasonal employees, intermittent and temporary employees.**

- **Concerning profit-sharing and incentive schemes**

The Executive Order **adjusts the deadlines for the payment of sums due in respect of profit-sharing and incentive schemes** pursuant to Articles L. 3314-9, L. 3324-10 and L. 3324-12 of the French Labour Code.

In principle, the sums resulting from profit-sharing and incentive schemes must be paid to the beneficiaries or allocated to an employee savings plan or a blocked current account before the 1st day of the 6th month following the end of the company's financial year (i.e. before 1 June 2020 for companies with a financial year that corresponds to the calendar year).

This deadline is extended to December 31, 2020 to allow establishments holding employee savings accounts and the companies to which they are delegated not to be penalized by the exceptional circumstances of the epidemic.

3. **Executive Order n°2020-324 "on emergency measures relating to replacement income mentioned in Article L. 5421-2 of the Labour Code"**

Jobseekers who had exhausted their rights by 12 March 2020 will have their rights extended.

The duration of this extension will be fixed by decree but may not go beyond **31 July 2020**.

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