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# Hughes Hubbard & Reed

## COVID-19: An Overview of the Principal Emergency Measures on Short-Time, Working Hours, Rest Periods and Paid Leave, and Profit-Sharing and Incentive Schemes (France)

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In order to deal with the economic, financial and social consequences of the spread of the COVID-19 epidemic, the French government has taken several emergency measures following the adoption of the Public Health Emergency Law on March 23, 2020.

On one hand, a Decree on March 25, 2020 and a Ministerial Order on March 27, 2020 have exceptionally adjusted the short-time working scheme to facilitate access and reduce the cost assumed by employers.

On the other hand, a Ministerial Order on March 25, 2020 allows employers to require, under certain conditions, employees to take paid leave and rest days. In addition, it opens up the option for certain business sectors to derogate from legal working hours, rest periods and Sunday rest periods. These derogations will cease on December 31, 2020.

Finally, the deadline for paying profit-sharing and incentive scheme bonuses has been extended until December 31, 2020, as well as an option for companies with fewer than 250 employees to pay the “Macron bonus,” even if there is no profit-sharing agreement in the company.

### **Short-time working**

Short-time is a mechanism which makes it possible for a company faced with economic difficulties to temporarily shut all or part of the company (production unit, department, workshop or team responsible for a project), or temporarily reduce employee working hours, individually and in shifts, if necessary, e.g. by rotating shifts in a production unit. During this period, the employer pays an indemnity to employees in proportion to their salary. In return, the State compensates the employer by paying it an allowance.

To avoid layoffs and mitigate the effects of reduced activity linked to COVID-19, a Decree on March 25, 2020, followed by a Ministerial Order on March 27, 2020, have adjusted and extended the system of applying for short-time authorizations filed since March 26, 2020 for time not worked since March 1, 2020.

### **Grounds for recourse to this measure**

Companies may apply to implement short-time working for one or more employees unable to work if they are either affected by Decrees requiring the closure of the business, or are faced with falling activity and/or supply difficulties, or when it is impossible for them to set up the necessary preventive measures to protect employee health (homeworking, barrier gestures, etc.) for all their employees.

The Administration will be carrying out checks afterwards to ensure that companies have not abused the system.

### **Status of the employee subject to short-time working**

The employees concerned, including protected employees, cannot refuse short-time working. This entails suspension of their employment contract for unworked hours but does not constitute a change in the contract.

### **Administrative formalities and deadlines**

1. Making the application: the administrative formalities for short-time working are paperless and all online, carried out via a secure and confidential internet portal (<https://activitepartielle.emploi.gouv.fr/aparts/>). The application must specify the reason for using these measures (exceptional circumstances + coronavirus), the detailed circumstances of the economic situation leading to the application (the effects of the COVID-19 epidemic on the company's activity), the foreseeable period of under-employment (which may extend until June 30, 2020, as of the first application), the number of employees concerned, and the provisional number of unworked hours.
2. Retroactive effect of the application: employers have up to 30 days as from the day on which employees were put on short-time to file an online application with retroactive effect.
3. Processing time: 48 hours, at the end of which the request is deemed to have been validated by the Administration.
4. Consultation of the Social and Economic Committee (SEC): in principle, the SEC must be consulted prior to the request. However, in the context of the COVID-19 epidemic, the SEC's opinion may be issued and sent within 2 months of the application for short-time working.
5. Length of the measure: authorization for short-time working may be granted for a maximum period of 12 months, which may be renewed.

### **Eligible employee**

The scheme is open to all employees with an employment contract, regardless of their seniority in the company, their contract (indefinite, fixed-term, apprenticeship, sales representative, etc.) and their working hours (part-time or full-time).

Employees with a flat-rate for days and hours over the year can benefit from partial activity, both in the event of a reduction in working hours and in the event of total closure of the establishment.

However, the following categories are not eligible for the scheme: trainees, company managers and corporate officers, and employees with an employment contract under French law working at sites located in third countries.

### **Financial consequences**

Employees receive an hourly indemnity equivalent to 70% of their gross salary, i.e. approximately 84% of net salary, with the assurance of maintaining a minimum monthly salary equal to the net minimum wage.

Specific provisions have been made for employees with a fixed rate of hours or days. To calculate the short-time working indemnity, the legal working time corresponding to the days on which the establishment is closed or the days on which working hours are reduced at the establishment are taken into account, in due proportion to the reduction. The scheme provides that a closed day corresponds to 7 hours, and a half-day closed to 3.5 hours.

There is nothing to prevent employers from indemnifying employees in excess of 70% of the gross salary if they wish to do so, or if a collective agreement or company agreement so provides.

Employers will be reimbursed the amount of the partial activity indemnity in an amount up to 70% of the gross salary, i.e., up to a maximum of 4.5 times the French minimum wage. The remaining amount payable by the company is therefore zero for employees whose remuneration does not exceed 4.5 times the French minimum wage. On the other hand, if an employer pays employees an indemnity of more than 70% of their former salary, this additional payment is not borne by the State.

With regard to payroll taxes and social contributions, the short-time working indemnities are exempt from these, but are subject to CSG and CRDS at a reduced rate (6.20% and 0.50% respectively).

### **Working hours, rest periods and paid leave**

#### **Paid leave**

Employers may, throughout the public health emergency period, impose or modify employees' paid leave for periods not exceeding six working days, subject to compliance with a minimum notice period of one clear day. This option is subject to conclusion of a company or branch agreement.

This option, which cannot be extended beyond December 31, 2020, applies to leave acquired before May 31, as well as leave normally due to be taken as from June 1, also within the limit of six working days.

Reduced working time days, rest days under a flat-rate agreement and rest days assigned to an employee's time savings account.

Taking these rest days may be imposed or modified unilaterally by employers without the need for a collective agreement but is subject to a minimum notice period of one clear day. The total number of rest days which employers may require employees to take or whose date may be changed by the employer may not exceed ten.

#### **Working time**

The new provisions allow employers in business sectors “particularly necessary for the security of the nation or continuity of economic and social life” to temporarily derogate from the rules set out in the French Labor Code and the collective bargaining rules on working hours, weekly rest periods and Sunday rest periods.

A Decree to be published shortly will list the sectors concerned. These should include the energy, telecoms, logistics, transport, agriculture and food processing sectors.

The exemptions allowed are as follows:

- an increase from 44 to 46 hours in the weekly working time authorized over a period of 12 consecutive weeks;
- an increase from 48 to 60 hours for working time authorized in a single week;
- authorization to work on Sundays;
- a reduction in the compensatory rest period between two working days from 11 to 9 hours.

Employers using at least one of these derogations must inform the Social and Economic Committee and the French Labor Inspectorate immediately and by any means.

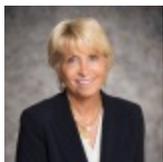
### **Profit-sharing and incentive schemes**

Incentive and profit-sharing bonuses, which should have been paid by companies before June 30, 2020, may be delayed until December 31, 2020.

In addition, the French Economy and Finance Minister has announced that the government will suspend the requirement for companies with fewer than 250 employees to have a profit-sharing agreement so that they can pay a bonus of up to €1,000 without payroll taxes or taxes to reward employees physically present in the workplace. Accordingly, in these companies, the exceptional spending power bonus, known as the “Macron” bonus, can be paid to employees even if there is no profit-sharing agreement.

If you have any questions about the measures, please contact the experienced attorneys in HHR’s Paris employment team.

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