Proskauer

The French Government Responds to COVID-19

International Labor and Employment Law Blog on **April 16, 2020**

COVID-19 Q&A Partial unemployment

Confronted with the outbreak of the Covid-19, in order to avoid massive contract termination, employers rely on the possibility to use the French partial unemployment scheme.

Please note that the hereunder information is likely to be amended and adapted in accordance with current legislative and regulatory developments.

Partial unemployment scheme

Question 1 – What is partial unemployment?

Partial unemployment is a solution available to private companies dealing with temporary difficulties, whatever their workforce or sector of activity is.

This scheme enables compensation to be paid to employees for their loss of income due to:

- either the reduction of their working hours below the legal (*e.* 35 hours per week), conventional or contractual working time,
- or the closure of the establishment.

The State helps employers to finance this compensation.

Question 2 – What are the conditions to benefit from the partial unemployment scheme?

The company's difficulties must originate from one of the five (5) conditions listed below:

- the economic situation;
- difficulties in the supply of raw materials or energy;
- a disaster or bad weather of an exceptional nature;

- the transformation, restructuring or modernization of the Company;
- any other circumstances of an exceptional nature.

The Ministry of Labor seems to consider that companies could benefit from partial unemployment on the basis of '*other exceptional circumstances'.*

Please find hereafter, a detailed table summarizing examples of qualifying cases for partial unemployment scheme.

In the context of the current health crisis, the main justifications for the use of partial unemployment would be, in the following order of priority:

- Administrative closure of the establishment,
- Decrease in activity due to the epidemic,
- Impossibility to implement preventive measures required for the protection of employees (telecommuting, barrier gestures, etc.).

Question 3 – How long is the use of the partial unemployment permitted?

In regular times, partial unemployment authorization is granted for a maximum period of 6 months. However, this duration **was extended to 12 months** because of the present crisis**.** It may be renewed if certain commitments are made by the employer (such as maintaining employees in service for up to twice the period of authorization or setting up of specific training actions for employees placed in partial unemployment).

Question 4 – Which employees are eligible?

Qualifiying employees	Non qualifying employees

All employees are entitled to benefit from this scheme, including:

- Part-time employees,
- Employees still on their trial period,
- Temporary employees (if the establishment to which these temporary workers have been working has placed its own employees in partial activity).
- Employees whose working hours are determined on the basis of a fixed annual working time in days or hours.
- Interns,
- Sales representatives ("*VRP*"),
- Employees with a French law employment contract working on sit located in third countries.

Question 5 – Can partial unemployment be applied to certain activities or does it have to apply to the whole company or establishment?

The partial activity can concern an **entire establishment or part of it**: production unit, workshop, department, team in charge of carrying out a project, etc.

Question 6 – Can partial unemployment be compulsory for protected employees?

Due to the current health crisis, partial unemployment **is compulsory for protected employees** as well, without the need to get their explicit agreement as long as partial unemployment affects all employees of the company, establishment, department or workshop to which the concerned staff representatives are assigned or attached.

Question 7 – How to apply for the benefit of partial unemployment? What are the deadlines for processing the application?

The transmission of the request of partial unemployment requires **prior subscription** to the DIRECCTE secure website (https://activitepartielle.emploi.gouv.fr).

The employer must provide:

- the information necessary for its identification;
- the name of the person authorized to proceed with this request;
- an e-mail address.

This prior subscription and membership gives the employer access to the filing of his dematerialized application for partial unemployment.

With regard to requests made in the context of the current health crisis, the online application must specify:

- the reasons justifying the need to put employees on partial unemployment (exceptional circumstances and Covid-19);
- the detailed circumstances and economic situation giving rise to the request;
- the foreseeable period of underemployment (which may extend until June 30, 2020 from the first request);
- the number of employees concerned;
- the forecast number of hours of unemployment.

Until December 31, 2020, the time limit for express acceptance of requests for authorization is reduced from **15 to 2 days**. Consequently, in the absence of a response within two days, the authorization is tacitly granted.

Employers are allowed:

- to collect the opinion of the CSE after the request and transmit it to the administration within a maximum of two months from the request;
- to send their request within 30 days of the placement of employees in partial activity.

Multi-establishment companies will be able to apply for partial activity in one go.

Question 8 – Can partial unemployment be effective before the date on which the request is sent?

In principle, the request for authorization for partial unemployment must be made before the scheme being effective. However, for all requests placing employees in partial unemployment since March 1st, 2020:

- a 30 days period is now granted to employers to submit their request for partial unemployment in case of exceptional circumstances,
- the opinion of the Economic and Social Committee can be sent within two months of the request for prior authorization.

Partial unemployment compensation

Question 9 – Which hours are eligible for compensation?

The number of hours justifying compensation corresponds to the difference between:

- the legal working hours (*e.* 35 hours per week), over the period in question (or, when it is lower, the collective working hours or the ones stipulated in the employment contract), an
- the number of hours actually worked over the aforementioned period.

For instance, if an employee usually works 39 hours per week with 4 hours of overtime, he will only be compensated on the basis of the 35 hours. The 4 hours between the 36th and 39th hour are considered to be off work but do not give entitlement to partial unemployment allowance or any compensation by the employer.

Question 10 – How is the employee paid?

Employees are entitled to a compensation up to 70% at least of their previous gross hourly remuneration (i.e. approximately 84% of the net hourly remuneration). However, some branch collective bargaining agreements require a compensation rate higher than 70% (for instance the *Syntec* collective bargaining agreement or the Metallurgy one).

The hourly rate shall not be less than 8.03€ (except for employees on an apprenticeship professionalization contract, and for par-time employees when their remuneration is below the minimum wage).

In any event, hours worked beyond the legal duration (or, when it is lower, the collective working hours or the ones stipulated in the employment contract) do not give entitlement to a compensation allowance.

Question 11 – What is the calculation basis for the allowance?

Practically speaking, the remuneration (gross) taken into consideration shall be the one of the month preceding the leave. The calculation basis is the one-tenth rule referred to for calculating paid leave indemnity.

For instance, the following elements should be included:

- the gross base salary;

- the wage supplements (overtime hours payment, etc);
- paid leave indemnity of last year;
- seniority bonuses at the rate in force during the reference period;
- attendance bonuses paid monthly;
- target bonuses when they are awarded on the basis of the employee's personal results (they should then be prorated);
- advantages in kind;
- lump-sum reimbursements of expenses.

Question 12 – What is the tax and social regime of partial unemployment compensation allowance?

Partial unemployment compensation allowances are not qualified as salary and are exempt from taxes and social security contributions up to 70% of the employee's gross remuneration.

Nonetheless, these allowances are subject to:

- both CSG and CRDS contributions, respectively up to 6,20% and 0,50%,
- withheld income tax.

Question 13 – How is the employer reimbursed?

The allowance will be reimbursed in full (jointly by the State and the unemployment insurance organization) up to a ceiling equal to 4.5 times the hourly rate of the minimum wage, i.e. €45.68 in 2020, whatever the size of the company.

Below the aforementioned upper limit, the employer has no remaining expenses. On the contrary, above this ceiling or in the event of an increase in the rate of 70%, the employer bears the financial burden of the differential.

This amount will be multiplied by the number of hours off work up to a maximum of 35 hours per week, unless the employment contract provides for a lower number of hours.

The non-worked hours are compensated up to a limit of, currently, 1,000 hours per year and per employee (*i.e.* around 6.5 months for a full time employee). This limit should be increased by the government in the coming days.

To be reimbursed the allowances paid to employees in partial unemployment, the employer must submit an online request for partial activity allowance every month on the site (activitepartielle.emploi.gouv.fr/aparts/).

Effects on the employment contract

Question 14 – What are the effects on the employment contract? On a staff representative term of office?

During partial unemployment, the employment contract is suspended but not terminated. Consequently, during this period, employees do not have to remain at the disposal of their employer or comply with his instructions. Employees continue to acquire paid leave for the totality of the hours off work.

Partial activity has no impact on the mandate of the staff representatives, which continues even if the employment contract is suspended.

Question 15 – Can the employee carry out another activity during the periods not worked under a partial unemployment scheme?

Employees will only be allowed to carry out such an activity if their employment contract does not include an exclusivity clause: they shall then inform their employer of:

- their decision to exercise a professional activity with another employer and,
- the expected working time. Indeed, working for several employers shall not release employees from their obligation to comply with legal provisions on working hours.

When there is a contractual exclusivity clause, employees need prior waiver from their employer.

The employee will be able to cumulate the indemnity in accordance with partial unemployment regulations and the indemnity due for the other employment.

In any case, the employee will remain subject to his obligation of loyalty and therefore cannot work for a competitor of his employer, or on his own account on a competitive activity.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

View Original