WINSTON & STRAWN LLP

CLIENT ALERT

Coronavirus COVID-19: Employee Protection - FRANCE

MARCH 25, 2020

In this Covid-19 epidemic crisis situation, the Government wished to make the partial activity mechanism more flexible in order to facilitate the access thereto and to reduce the amounts to be paid by employers.

Winston & Strawn's labor law team proposes reviewing precisely this measure.

WHAT IS IT?

In case of a decline in business and/or if the coronavirus-related quarantine situation does not make it possible to continue the business, the company may then resort to the partial activity mechanism in order to reduce (through a reduction of working time) or cease temporarily its activities.

The purpose of partial activity is to compensate the loss of income caused for employees by the reduction of their working time below the legal working time, set in the collective bargaining agreement or in the contract, while at the same time helping employers to finance said compensation.

The Government distributed a list of cases eligible for partial activity, namely:

- Administrative closure of a facility;
- Prohibition to hold public events following an administrative decision;
- Absence of employees who are essential to the company's business: if the essential employees are quarantined and make it impossible to continue the business, the other employees may be subject to partial activity;
- Temporary interruption of non-essential activities;
- Suspension of public transportation following an administrative decision: all employees who are not able to go to their place of work due to the absence of public transportation may be subject to partial activity;
- Decline in business due to the epidemic that may be related, for instance, to supply difficulties, a deterioration of sensitive services, or the cancellation of orders, etc.

HOW TO RESORT TO IT?

The application for partial activity shall be made online on the dedicated website according to the following procedure:

- The employer makes, on the dedicated website (https://activitepartielle.emploi.gouv.fr/aparts/), an application for a prior authorization in relation to all contemplated partial activity hours to the local unit (*unité départementale* – UD) of the Direccte (labor authorities) located in its department. In case of multiple facilities, the employer will only have to make one application for a prior authorization to the local unit of the place where the registered office of the company is located.
- The application, which is, in theory, a prerequisite, may, in light of the difficulties related to the coronavirus epidemic, be made afterwards, within 30 days. The coming decree will specify the date from which the hours may be considered as covered by the partial activity mechanism.
- The theoretical period of 15 calendar days for examining the application and granting the administrative authorization for the partial activity was reduced to 48 hours. **Failure to make a decision within two days shall be deemed a tacit approval of the application.**
- Once the application is authorized, the employer asks a compensation in relation to the partial activity allowance examined by the local unit (UD) and paid by the services and payment agency (*agence de services et de paiement* – ASP). That application shall also be made through electronic means. The time period to make the partial activity allowance application is one year from the end of the partial activity authorization period.

The maximum period of the partial activity authorization shall be increased from 6 to 12 months and may be renewed.

DO I HAVE TO CONSULT THE CSE?

In theory, **in companies of at least 50 employees**, the social and economic committee (*comité social et économique* – CSE) shall be consulted before the implementation of partial activity and its opinion shall be communicated in the application for authorization to the authorities.

However, if emergency measures and in particular the prohibition to hold meetings make this consultation especially difficult, the provisions of the coming decree shall authorize the employer to send the opinion of the CSE within two months from the application for prior authorization.

The application for prior authorization shall then specify the planned date of the consultation with the CSE.

HOW MUCH WILL MY EMPLOYEES RECEIVE?

The employees shall receive an hourly compensation, paid by their employer, amounting to 70% of their gross hourly salary (or about 84% of their net hourly salary). However, some collective bargaining agreements, such as SYNTEC, provide for a more favorable compensation of the employees.

In any cases, the remuneration received by the employee may not be less than the minimum monthly remuneration of the net SMIC (minimum wage).

WHAT WILL BE THE COST FOR THE COMPANY?

The Government decided to increase the amount of the partial activity allowance paid to employers. The hourly rate of the partial activity allowance paid to the employer shall amount to 70% of the gross remuneration limited to 4.5 times the hourly rate of the SMIC and may not be less than €8.03, or the net hourly SMIC, regardless of the size of the company.

In concrete terms, the employer shall be fully reimbursed for the compensation paid to the employees whose salaries do not exceed 4.5 SMICs.

Supposing that you subject one of your employees to partial activity, and that said employee benefits from a remuneration equal to 5 SMICs. You have to compensate him with 70% of his gross remuneration. You will then be reimbursed by the State for 70% of 4.5 gross SMICs and you will only have to pay the equivalent of 70% of 0.5 gross SMIC.

WHAT NON-WORKING HOURS ARE COMPENSATED?

Only the non-working hours below the legal working time (or, if less than that, the collective or contractual working time) shall be compensated by the employer in relation to partial activity, except for more favorable contractual provisions.

If the employer compensates extra hours, it may not receive any reimbursement from the State.

WHAT ARE THE CONSEQUENCES ON THE EMPLOYMENT CONTRACT OF MY EMPLOYEES?

The employees subject to partial activity shall have their employment contract suspended (in all or in part) but not terminated. Thus, during non-working hours or periods, your employees shall not be in their place of work.

Moreover, the employees subject to partial activity may not work from home (teleworking).

ARE THE EMPLOYEES SUBJECT TO A GIVEN NUMBER OF DAYS OR HOURS (*FORFAIT*) ELIGIBLE?

The employees whose working time is set by an agreement providing for a given number of days or hours (*forfait en heures ou en jours*) shall now be eligible for the entire partial activity mechanism, and not only in case of a closure of the company.

NOTE

THE BENEFIT OF THIS MECHANISM IS NOT AUTOMATIC. INDEED, THE AUTHORITIES ARE CURRENTLY CONTROLLING THE APPLICATIONS STRICTLY. IF THE COMPANY APPEARS TO BE ABLE TO CONTINUE ITS BUSINESS WITH AN ADAPTED ORGANIZATION AND WITH PREVENTION MEASURES, THE AUTHORITIES SHALL REJECT ITS APPLICATION. ONLY CLAIMING THE HEALTH CRISIS SITUATION IS THEREFORE NOT ENOUGH.

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