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CORONAVIRUS - PARTIAL ACTIVITY SHOULD REMAIN THE LAST RESORT

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On Thursday, March 19th, the President Macron called on "*businesses essential to our economy to continue their activity while complying with health and safety rules*". He referred to "*the companies' civic responsibility to continue their activity whenever possible*".

The same day, this position was conveyed by the Medef (French employers' federation) in a letter sent to all the companies' heads in France to urge them to "*imperatively continue to produce during this period of containment*".

Many companies have indeed contemplated applying for partial activity, particularly after the Ministry of Labor announced an extension of the partial activity scheme by decree to be published in the following days. This decree should, in particular, provide for an increase of the State's reimbursement of the indemnification paid by companies to their concerned employees.

However, this does not necessarily mean that the coronavirus pandemic shall *per se* justify partial activity.

This strong message from the President has been reiterated by many ministries and administrations.

For example, the Ministry of Internal Affairs (*Ministre de l'Intérieur*) reminded that containment measures do not justify closures of businesses "*that do not usually generate customer gatherings*".

Some French Labor administrations also conveyed this message received from the State: "*too many companies are closing down because they think they are forced to do so*".

To date, what should we learn from these declarations, which may appear contradictory ?

- Facilities open to the public which are listed by the decree dated March 15th, 2020 supplementing the decree dated March 14th, 2020 must close, unless this same decree authorizes them to continue certain activities because they are essential. For example, retail stores must close but supermarkets are allowed to continue their activity while respecting sanitary measures (*mesures barrières*).

- As a baseline rule other businesses shall continue operating:

Either by having employees work from home. As stated by the Minister of Labor, "*every work that can be performed from home shall be performed from home*".

Or by complying with sanitary measures i.e. social distancing, marks on the floor, implementing protection means around employees in contact with the public, making personal protective equipment available to employees, etc.,

- **By exception, partial activity may be implemented. However, based on recent declarations, applications will be scrutinized by the administration.** It is, therefore, necessary to justify partial activity for each establishment or department : supply issues, cancellation of orders, etc. It should be reminded that the partial activity scheme makes it possible to adapt the business to the decrease of activity depending on departments on a case by case basis. This could lead either to complete closure of some departments or only to a partial reduction of working hours.

Finally, an emergency law to react to the COVID19 outbreak dated March 23, 2020 has empowered the government to issue labor law Ordinances that will make it possible to delay the implementation of partial activity. In particular, subject to an industry-wide or company-wide collective agreement, companies will be allowed to impose or modify paid leave acquired by employees, up to a maximum of 6 days.

