

ARTICLE

COVID-19 : NEW ORDINANCES SPECIFY IMPACTS LABOUR LAW

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LIFE SCIENCES & HEALTHCARE

Pursuant to the Emergency Law of march 23,2020 five new Ordinances on Labour Law and social security have been published this april, 2nd, 2020.

Feedback on the essential measures:

1- Ordinance modifying the deadline and the payment terms of the exceptional purchasing power premium ("Prime exceptionnelle de pouvoir d'achat -PEPA")[1]

- The deadline to pay the premium has been postponed to August 31,2020.
- The condition of having an interest agreement ("accord d'intéressement") is no longer required. All companies may pay an exempted PEPA premium up to 1.000 euros. This amount is increased to 2.000 euros for companies with an interest agreement.
- Interest agreements signed between January 1, 2020 and august 31,2020 may last for a period one to three years and will be exempted from social security contributions.
- Will be eligible to the premium employees present on the date of the filing of the agreement or on the date of signature of the employer's unilateral decision fixing the amount of the premium.
- A collective bargaining agreement or an unilateral decision of the employer may provide for a new criterion to modulate the amount of the premium depending on " working conditions linked on Covid -19 epidemic.

2- Ordinance on emergency measures for staff representative bodies "IRP"

- Suspension and postponement of professional elections.

- The suspension of the election process produces its effect as from march 12,2020,save if the election process has given rise to certain formalities after said date.
- The suspension affects all the delays of the electoral process including referral time and decision of the administrative authorities or the judge in case of challenge.
- The regularity of the first round of the elections is not affected by the suspension occurring between the first and the second round,no matter the length of the suspension.
- The resumption of the election process will have to be made at the employer's initiative within three months from the date of cessation of the state of health emergency.
- During the period of the deferred electoral process,will be extended the current terms of the elected staff representatives as well as the specific protection period of candidates, members of the CSE or of CSE's trade union representatives.

- Information and consultation of staff representatives bodies.

- Derogatory and temporary, all staff representatives bodies are allowed to resort to visio-conference for their meetings. The limit of three meetings per year is removed (during the state of health emergency) and it is possible under certain conditions to organise meetings by way of conference call and alternatively by instant messaging. A decree to be issued will set out the conditions for holding meetings by conference call and instant messaging.
- Pursuant to the emergency measures provided in the Ordinance n° 2020 -323 of march 25,2020 the employer is given the possibility to inform the CSE ,by all means, concurrently with the implementation (1) of the ability to impose days of rest or to change their dates or (2)to deviate from Sunday working. The opinion of the



CSE may be rendered within one month of this information - In practice, the employer may therefore consult the CSE after having implemented the option or a specific derogation provided for by Ordinance No. 2020-323 of 25 March 2020.

3- Ordinance concerning the postponement of the vote to measure the union hearing with employees in companies with less than eleven employees and to extend the terms of the labour court's judges and members of the regional joint interprofessional committees.

- Postponement of the vote to measure the union hearing with employees in companies with less than eleven employees in the first semester 2021 (the election were to take place from november 23 ,to December 6,2020) The election period will be determined by decree.
- The terms in force of the labour court 's judges are extended to December 31,2022 at the latest.
- The terms in force of the members of the regional joint interprofessional committees are extended to December 31,2021 at the latest.

4- Ordinances adapting the exercise conditions of occupational health services missions to the health emergency and modifying the regime of prior requests to authorize partial activity.

- Derogatory and temporary, the Ordinance provides:
 - The ability for the occupational doctor to prescribe and renew a sick leave in case of infection or suspicion of infection with Covid-19 and to proceed with a screening for Covid-19.
 - The possibility of deferring at the latest to December 31,2020 the planned visits as part employees' health monitoring (without preventing hiring or returning to work) as well all other health services interventions in the companies not linked with the Covid-19 such as the incapacity procedure.
- The Ordinance provides that the postponement of the implicit delays for the administration to accept a prior request for partial activity resulting from article 7 of the Ordinance of march 24,2020, does not apply to prior requests presented even before april 2,2020 pursuant to I of the article.5122 -1 of the Labour Code.

5- Ordinance on emergency measures concerning professional training.

- Deferring to December 31,2020 the obligation for the employer to carry out the meetings on the status of employees professional career and suspension of the sanctions attached.
- Facilitating access to validation of gained experience.
- Authorisation to extend apprentice and professionalisation contracts.

[1] At the end of 2018 the government gave employers the possibility to grant to their employees earning less than 3 SMIC a premium of 1000 euros maximum exonerated from income tax and social security contributions provided said amount was not a substitute to part of the employee remuneration ,it was to be paid before june 2020 and since 2020 the employer had to put in place an interest agreement.

