

ARTICLE

COVID 19 - EMERGENCY STATE AND LABOUR LAW : UPDATE ON THE SWEEPING ORDER OF APRIL 15,2020

| 21/04/20 |

This order supplements and amends several Orders issued in recent weeks in order to specify the temporary regulations put in place in response to the state of health emergency.

Review of key labour law provisions.

On the Order n°2020-346 of March 27,2020 for emergency measures in respect of partial activity:

- Specifies the terms of **compensation for employees on apprenticeship or professionalization contracts** placed in partial activity depending on their usual remuneration being less than or equal to/greater than the minimum wage ("SMIC")
- **Limits the use of partial activity for senior managers** ("cadres dirigeants") to the hypothesis of a temporary closure of the establishment or part of the establishment.
-> This scheme is not applicable to senior managers in the event of a reduction in the working hours in force in the establishment or part of the establishment below the working time.
- **Provides** that employees with an open-ended contract ("salaries portés") may be placed in partial activity during periods without service to a client company.
- Provides that **employees of temporary employment agencies** placed in partial activity receiving an allowance below the minimum wage will be entitled to an additional allowance equal to the difference between the minimum wage and the amount actually received in respect of the partial activity.
- Specifies the social treatment of the allowance in the partial activity of which the net amount received after application of the "CSG", which cannot be less than the minimum wage.
- Specifies that these provisions shall apply from March 12,2020.

On the Order n°2020-387 of April 1,2020 for emergency measures in respect of professional training,

- Provides that where **the holder of a professionalization contract** which is theoretically to end between March 12, .and July 31,2020, failed to complete his/her training cycle due to the postponement or cancellation of training sessions or exams, the professionalization contract can be extended by amendment to the initial contract until the end of the training cycle initially continued.
- Provides for **adjustment to the duration of apprenticeship and professionalization contracts**, the duration of the training period and of the maximum age of the apprentices and beneficiaries of professionalization contracts.

On the Order n°2020-306 of March 25,2020on the extension of time limits during the health emergency period and the adaptation of procedures during this same period.

- Adapts the time-limits for the conclusion and the extension of collective agreements entered into up to one month after the health emergency state and whose purpose is **to face the economic, financial and social consequences of the spread of the Covid 19 epidemic.**

Thus and only for agreements concluded for this purpose the deadlines are adapted as follows:

- For branch agreements:

The time limit for opposition for representative trade unions is of 8 days instead of 15 days from the date of notification of the agreement (L.2232.6 of the labour code.)

-> This reduced period shall apply to branch agreements entered into from March 12,2020, not notified to the trade unions on the date of entry into force of this Order which is April 16,2020.

The time limit for opposition to the request for extension for employer's representative professional organisations shall be of 8 days instead of one month. (L.2261-19 al.3.of the labour code.)

-> This reduced period shall apply to the extension procedure of branch agreements entered into from



March 12,2020 whose extension notice was not published in the Official Gazette on the date of entry into force of this Order which is April 16,2020.

- For company's agreements:

Agreements signed by one or several trade unions having obtained between 30% and 50% of the votes cast in favour of representative trade unions in the first round of the last elections of "CSE" full members. These unions have **8 days instead of one month** as from the signing of the agreement to inform of their intent to organize a consultation of the employees (L.2232-12 al.2 of the labour code.)

Non-signatory unions have to decide whether they chose to ratify or not the agreement within **5 days instead of 8 days** as from the decision to consult employees (L.2232-12.al.3. of the labour code.)

In companies without union representative but with a CSE (companies with at least 50 employees),the elected CSE members may indicate their willingness to bargain within **8 days instead of one month** from their knowledge of the employer's intention to bargain.(L.2232-25-1 of the labour code.)

In companies without union representative (with an habitual headcount of less than 11 employees), the employer may propose a draft agreement or a revision to the employees by organising the employees consultation within a delay of **5 days minimum from the communication to each employee of the draft agreement** (instead of a minimum delay of 15 days)(L.2232-21 of the labour code.).

These exceptional provisions apply only to periods which have not begun to run on the date of entry into force of the present Order which is April 16,2020.

It is to be noted that article 2 of the Order n° 2020-306 of March 25,2020 on the extension of time limits does not apply to time limits referred to in the above Order.

On the Order n° 2020-322 of March 25,2020 temporarily adopting the terms and conditions for awarding the supplementary allowance provided for in article L.1226-1 of the labour code and amending, in exceptional circumstances, the deadlines and the procedure for payment of the sums paid in respect of profit-sharing and participation schemes.

- Amends the **rules on supplementary compensation by the employer** in the event of a work stoppage of its employees –and this is supplemented more substantially by the decree 2020-434 of April 16,2020,(details of the work stoppages concerned ,as from March 12,compensation up to 90% of the gross remuneration during the whole stoppage period).

- Specifies that these provisions (1) apply to existing work stoppage on March 12,2020 and to those having started after said date and (2)will cease to apply on a date to be determined by a decree and not after December 31,2020.

....AND NEW PROVISIONS CONCERNING CONTRACTUAL TERMINATION ("RUPTURE CONVENTIONNELLE")

Another Order published on the same date brings **enlightenments on the extension of time limits in matter of contractual termination.**

- Provides that article 2 of the Order of March 25,2020 on suspension of expired time limits during the health emergency state :**"shall not apply to reflexion, withdrawal and waiver periods provided by Law or regulation**, nor to the delays provided for the reimbursement of money in the event of the exercise of these rights".

- It does not however revert to article 3 of this Order which stipulated that *"the administrative measures of investigation and authorisation whose term expires during that period shall be "ipso jure" extended until the expiry of a period of 2 months before the end of that period"*.

-> It can be inferred that they **would be no extension for the delays applicable to the parties to a contractual termination** (reflexion, withdrawal,..) but that there should be an extension of the time allowed for the administration to instruct and approve the application for a contractual termination.

However, it should be noted, that the DGT Instruction of April 7,2020 reacted to this point by specifying that the suspension or postponement of the starting point of time is not a prohibition to act when the administration has the means to take a decision with full knowledge of the facts **"Thus, the labour Inspector must decide the application without waiting for the end of the period of suspension of time when an application does not require a deep investigation.(individual contractual termination)"**.

In any case it is recommended to apply for an express approval and not to be satisfied just with an implied decision.



