

## The impact of Covid-19 in French Labor Law

The entire world has been facing the threat of the Covid-19 Coronavirus pandemic since its devastated China last December 2019 and spread to other states around the world.

Faced with the health emergency, the French government, especially the Ministry of Solidarities and Health and of Economy and Finances introduced health and economic measures with a single goal: to limit the spread of this virus in our country.

That's the reason why on Monday 16 March 2020, the President of the Republic Emmanuel Macron ordered<sup>1</sup> the confinement of all who are in the French territory and the closure of all businesses considered non-essential to the continuity of the nation.

This article will deal with the impact of the coronavirus in French Labor law. We wish to provide answers:

- to professionals (companies and company's bosses, business owners) who do not know whether they are concerned by the obligation of temporary closure,
- to employees who can't work in home office,
- to employees who must keep their children because of the closure of schools,
- to employees placed on short-time work.

### ***Which professional activities must be temporarily closed?***

The interdiction measure was introduced by an order of 14 March 2020 on various measures to fight against the spread of the Covid-19 virus<sup>2</sup>, supplemented by an order of 15 March 2020<sup>3</sup>.

It is not a prohibition of activity but a prohibition of opening to the public. The only thing that is prohibited is the reception of the public. If an activity is open to the public, it must in principle close.

- The list of activities forbidden to receive the public are defined by the two above-mentioned orders. They cover, for example, sales shops and shopping centers, restaurants and pubs, dance halls and gaming halls, libraries and indoor sports facilities.
- The order of 15 March 2020 establishes a list of activities that may continue to receive the public, such as general food shops, supermarkets or hotels and similar accommodation.
- Do not hesitate to refer to it to see if you are concerned by the interdiction.

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<sup>1</sup> Speech of the President of the Republic, « Adresse aux Français », March 16<sup>th</sup>, 2020. Available on: [https://www.youtube.com/watch?v=MEV6BHQaTnw&feature=emb\\_logo](https://www.youtube.com/watch?v=MEV6BHQaTnw&feature=emb_logo) ;

<sup>2</sup> Arrêté du 14 mars 2020 portant diverses mesures relatives à la lutte contre la propagation du virus covid-19. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041722917&categorieLien=id> ;

<sup>3</sup> Arrêté du 15 mars 2020 complétant l'arrêté du 14 mars 2020 portant diverses mesures relatives à la lutte contre la propagation du virus covid-19. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041723302&categorieLien=id>

### ***Which employees can move around?***

As a matter of principle, everyone is confined to their homes. But decree n°2020-260 of March 16, 2020<sup>4</sup> specifies that employees can go to their workplace or to attend professional appointments that cannot be postponed.

Model certificates have been made available to employees by the government. These certificates are much more restrictive. They state that employees must carry the certificate, which is a sworn declaration by the employer. This certificate concerns employees who are unable to work from home and people who travel for professional activities rather than for professional appointments.

If the employee does not have the certificate, he or she is liable to a fine which has been increased from 38 to 135 euros since March 18, 2020. This is indicated in decree n°2020-264 published on 17 March 2020<sup>5</sup>. Therefore, the travel allowed for employees is between home and work.

### ***What happens if the boss refuses to allow the employee to stay at home to care for the children?***

The employee may object to the legal provisions that state that employees who are obliged to look after their children under the age of 16 may stay at home. This is a right they have. They will be able to receive a daily allowance in accordance with decree n°2020-227 of 9 March 2020<sup>6</sup>. If they do not implement the procedure, they are at fault.

### ***What are the requirements for employees who request to stay at home to look after their children?***

The employee must make a certificate on his honor and send it to his employer. The company makes the declaration on Ameli.fr (social security number, the date of the beginning of the work suspension).

### ***Can paid vacation time be imposed?***

Postponement of paid leave can be imposed, but not taking it.

### ***Is a period of confinement recognized in European Union law as conforming to the purpose of the vacation time?***

It is doubtful. It is not possible to impose paid leave on the employee.

### ***Can employees refuse to come to work by invoking an individual right of retirement?***

No, employees cannot invoke their right of retirement to protect themselves from the Coronavirus since the right of retirement is collective and cannot be considered individually. If the preventive measures

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<sup>4</sup> Décret n°2020-206 du 16 mars 2020 portant réglementation des déplacements dans le cadre de la lutte contre la propagation du virus covid-19. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041728476&categorieLien=id>;

<sup>5</sup> Décret n°2020-264 du 17 mars 2020 portant création d'une contravention réprimant la violation des mesures destinées à prévenir et limiter les conséquences des menaces sanitaires graves sur la santé de la population. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041731767&categorieLien=id>;

<sup>6</sup> Décret n°2020-227 du 9 mars 2020 adaptant les conditions du bénéfice des prestations en espèces d'assurance maladie et de prise en charge des actes de télémedecine pour les personnes exposées au covid-19. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041704122&categorieLien=id>

are combined (compliance with safety instructions), the employee must go to his workplace. If he refuses to go, he will not receive his salary during his absence and can be dismissed.

***What do we need to know about home office?***

- The employer can impose it on the employee, especially in an epidemic situation.
- It is preferable for the employer to set up home office with the company's equipment. Ensure professional confidentiality and data protection.
- If the employee has an accident while home office, the costs involved will be paid by the employer.
- It is suggested that the employer controls the workload, perhaps on a weekly basis.

***Why is the use of short time working in the context of Coronavirus a problem?***

The system is not regulated by law in this context. There is a risk that the employer may receive applications that do not apply in the case of short time working. The employer has 30 days to apply for unemployment benefit.

***What is the amount of the short time working allowance?***

This allowance is equal to 70% of the gross salary (with the possibility of going up to the SMIC if the amount of the allowance is less than the SMIC) and 84% of the net salary<sup>7</sup>.

***What are the motives for not contesting short time working?***

Short time working may, for example, result from the closure of the establishment due to massive absences of employees, which is essential for the continuity of the company's activity.

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<sup>7</sup> Service-Public-pro.fr, «Rémunération d'un salarié placé en activité partielle», vérifié le 1<sup>er</sup> janvier 2020. Available on: <https://www.service-public.fr/professionnels-entreprises/vosdroits/F13898>