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France: Working time flexibility

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France

Phase:

Management

Type:

Working time flexibility

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Native name:

Code du travail Ordonnance n° 2020-346 of 27 March 2020

English name:

Labour Code Ordonnance n° 2020-346 of 27 March 2020

Article

L.5122-1, L.5125-1 to L.5125-7; L.2254-2. Whole ordonnance.

Description

Apart from the common measure of partial activity (activité partielle or chômage partiel), the legislator has added a new scheme in 2013, the agreement to maintain employment to help a company during times of economical downturn without having to dismiss its employees.

Partial activity

Partial activity is directed at companies experiencing :

- either a reduction in their usual working time
- or a temporary closure of all or a part of the company.

It is possible to implement partial activity if the reduction or the temporary suspension in the activity is due to :

- the economic situation
- supply difficulties
- a disaster or weather conditions of an exceptional nature
- the transformation, restructuring or modernisation of the company
- or any other exceptional circumstance such as the loss of a main client

The principle is to compensate earning losses experienced by workers due to the reduction in their working time under the legal, conventional or contractual duration (within the limit of 1,000 hours per year and per worker, a quota that is laid down by ministerial decision) while helping employers to fund this compensation.

Workers are granted an hourly differential, paid by the employer, equal to 70% of their gross hourly wage (approximately 84% of the net hourly wage). In any case, their remuneration cannot go below the statutory minimum wage. Workers placed under the partial activity scheme can benefit from training. In this case, the compensation is increased to 100% of of the net hourly wage.

The employer receives an allowance jointly from the state and the unemployment insurance body. For a company employing fewer than 250 workers, the employer receives €7.74 per hour per worker. For a company with more than 250 workers, the employer receives €7.23 per hour per worker.

During partial activity, the employment contract between the employee and the employer is only suspended. Therefore, the employee is still linked to his employer by the initial employment contract.

Before placing its employees under partial activity, the company must ask the labour inspectorate for authorisation. The labour inspectorate has 15 days to answer.

Partial activity is allowed for a maximum period of 6 months, with the option to renew once.

Agreement to 'maintain employment'

Articles [L.5125-1 to L.5125-7 of the Labour Code](#) introduce a new category of collective agreements: the agreement 'to maintain employment'. In companies which are facing serious cyclical economic difficulties, these agreements are supposed to help to temporarily adjust the organisation of working time and the remuneration while avoiding dismissals.

These agreements are concluded between the employer and employee representatives. To be valid, they have to be signed by one or more trade unions representing at least 50% of the votes cast at the last professional elections. Special provisions apply for companies without unions.

The agreement 'to maintain employment' aims at adjusting the organisation of working time and the remuneration. In return, the employer is committed to maintain the employment for the whole duration of the agreement. This may include for instance a reduction of the remuneration and the working time or an increase in working time without increasing the remuneration. The agreement can be applicable to all employees or just to a portion of the workforce.

Once the agreement is signed by both parties, employees still have to give their opinion. If the employee agrees, the terms and conditions of his/her contract that are contrary to the agreement are suspended for the duration of the agreement and he/she cannot be dismissed on economic grounds. If the employee refuses, he/she will be individually dismissed on economic grounds which since the adoption of the [law 2015-990 of the 6 August 2015](#) is considered justified on actual and serious grounds. As a consequence, the employer does not have to comply with the requirements of a collective dismissal, even if several employees are dismissed (namely, he/she will not have to negotiate a redundancy plan).

In any circumstances, an agreement 'to maintain employment' cannot lead to deprive the employees from certain essential protective provisions, called the 'social public order' (statutory working time, minimum wage, paid leave, etc.). Besides, if the agreement provides for a reduction of the remuneration, this one can not be reduced to an amount below 120% of the minimum wage. Therefore, an employee who is earning 120% of the minimum wage (€1,552 in 2019) or less cannot be subject to a reduction of his/her remuneration.

An agreement 'to maintain employment' is signed for 5 years and is not renewable. The signatories have to launch an assessment after the two first years. They can also ask for a suspension of the agreement.

An agreement for the preservation or development of employment

The law n° 2016-1088 of 8 août 2016 has introduced a new scheme to negotiate flexibility (including on working time) on company-level. The law creates a new type of collective agreement: the agreement on the preservation or development of employment. Its purpose is to allow companies to adapt their organisation to changes in activity (Labour Code, [article L. 2254-2](#)). Unlike the agreement to 'maintain employment' (Labour Code, article L.5125-1, see above), this agreement does not have to be justified by serious economic difficulties.

Agreements for the preservation or development of employment are company agreements. To be valid, they must be signed by one or more representative trade union who have collected more than 50% of the votes at the last workplace election. Such agreement could be negotiated and signed since the 10 August 2016, even if the decree to implement the law has been adopted on in December 2016 ([Décret n° 2016-1909 of 28 December 2016](#)).

In companies without a union representative (délégué syndical), such agreement may be negotiated and concluded by elected employee representatives appointed by one or more representative trade unions, or if there are no employee representatives, by employees receiving a mandate from a representative trade union. Therefore, a mandate from a trade union is mandatory and no agreement can be concluded only with elected employees' representatives. An expert, who will be paid by the employer, can be nominated to support the negotiators representing employees.

An agreement on the preservation or development of employment must be concluded for a limited period of up to 5 years. Such agreement must contain an introduction to explain its goals and the measures to maintain or develop employment affecting, for example, wages or working time. The agreement must also foresee how employees will be informed on the implementation of the agreement and how the individual situation of employees complaining about important impacts on their family or personal life will be considered.

According to article L. 2254-2, I of the Labour Code, if a company agreement is concluded with a view to the preservation or development of employment, its provisions automatically replace the contrary and incompatible clauses of the employment contract. This substitution also applies to provisions concerning the remuneration of the employee and hours of work. However, the agreement cannot have the effect of reducing the monthly remuneration of the employee. The law provides employees with the possibility to refuse the modification of their employment contract resulting from the application of the agreement (Labour Code, L. 2254-2, II). Then the employer may decide to dismiss the employee (Labour Code, L. 2254-2, II). In this case, the law states that the termination of the employment contract is based on a 'specific reason' (neither personal nor economic) which constitutes a real and serious cause.

During the preliminary interview, the employer is obliged to offer the employee the benefit of an accompanying device: the personalised accompaniment path (PAP). With this scheme, an employee with at least 12 months of seniority will receive an allowance for 12 months higher than the unemployment benefit allowance he/she is entitled to (70% of their former salary). During the 12 months, the former employee is supported by the public employment service (Pôle Emploi) to elaborate a new career plan and to receive training.

During the COVID-19 pandemic, the French government issued ordinances to allow derogation to the current partial activity (*activité partielle*) rules and to enlarge it in order to avoid redundancies.

Extension of short-time working to new categories of workers. The 'Extension du chômage partiel à de nouvelles catégories de travailleurs' ordinance enacts 'emergency measures' related to short-time working which was published in France's official journal on 28 March ([Ordonnance n° 2020-346 of 27 March 2020](#)). It temporarily modifies the rules on how certain employees (part-time workers, apprentices and individuals on professional training contracts) are compensated. The ordinance opens up the system to groups that are normally excluded (public companies, individuals who work from home). As a result, the short-time working scheme covers all employees of the private sector. With the new provisions adopted to cope with the COVID-19 crisis, the partial activity allowance paid by the State to the company - co-financed by the State and by the joint body that manages the unemployment insurance scheme (Unédic) - is no longer a lump sum, but is proportional to the remuneration of employees placed in partial activity. It also modifies the rules for employees that do training during the short-time working period as well as short-time working in the case of protected employees (for example staff representatives). The emergency measure expires on 31 December 2020 at the latest.

Public allowance received by the employer. From 1 March 2020 to 31 May 2020, the partial activity allowance received by the employer was equal to 70% of the employee's gross hourly pay (with a minimum hourly rate of €8.03 and a maximum hourly rate of €45.67). This represented an increase in public allowance dedicated to short-time working periods. The 'remainder payable' by the employer, i.e. the amount of the remuneration which the employer must pay to the employee, was zero for all employees whose remuneration is less than 4.5 gross SMIC (€45.67 per hour or €6 927.39 per month). From 1 June 2020, in order to take into account the partial resumption of economic activity, the public allowance has decreased: companies will thus be reimbursed 60% of the gross salary, instead of the previous 70%. Sectors subject to particular legislative or regulatory restrictions due to the health crisis (tourism, hotels and restaurants, the sports and cultural sectors) are not concerned by this decrease.

Compensation of earning losses experienced by workers. During the partial activity, the employee still receives 70% of his gross remuneration (approximately 84% of the net salary), and at least the net hourly SMIC (€8.03). The measure applies whatever the job tenure, form of the employment contract (open-ended, fixed term, apprenticeship, etc.) or working time (part-time or full time) are. As a result, part-time workers enjoy the same rights to minimum monthly remuneration as full-time employees. However, apprentices and employees on a professional training contract will be compensated with 100% of their usual remuneration, meaning the minimum net hourly SMIC (€8.03) might not apply in their case. Specific measures are planned for employees of private employers (cleaning ladies) and childcare assistants (who look after young children) who are usually paid by the hour with a job voucher system. The partial activity allowance paid to the employee is a replacement income: it is not subject to social security contributions; it is subject to the CSG and the CRDS at a rate of 6.70% after a deduction of 1.75%.

Employees who, during the period of short-time working, follow a training course are normally compensated by their employer with 100% of their remuneration. For training programmes agreed between employees and employers after the entry into force of this ordinance ([Ordonnance n° 2020-346 of 27 March 2020](#)), employees will only receive 70% of their remuneration. When short-time working is applied for all employees at a company, establishment, department or workshop to which a protected employee is assigned or posted, the employer's decision is binding on protected employees. As a result, until the end of the health crisis, the employer does not have to obtain the agreement of protected employees to put them on short-time working.

Administrative authorisation to place workers under partial activity: Companies now have up to 30 days from the day they placed their employees in partial activity to file their application online, with retroactive effect. The labour inspectorate has 48 hours, instead of 15 days in normal circumstances, to answer. Without response within this period, the authorisation is tacitly granted. Partial activity is allowed for a maximum period of 12 months, instead of 6 months. These provisions apply up to 31 December 2020.

Temporary derogation from working hours in essential services. Following consultation with the social partners, in certain sectors (agri-food, large-scale distribution, undertakings which contribute to the activity of hospitals) particularly necessary for the security of the nation or the continuity of economic and social life, undertakings in these sectors will be able to derogate from the rules on working hours, weekly rest and Sunday rest. The list of these sectors will be fixed on a case-by-case basis by decrees.

The Ordinance provides for many possible exemptions, which may vary according to the sector of activity. Several decrees specify the sectors concerned and the applicable derogation regimes. The employer may:

- Unilaterally derogate from the rules of public policy on working hours and from the applicable contractual stipulations. It may thus do so by reducing the daily rest period to nine consecutive hours, subject to a compensatory rest period equivalent to the length of the rest period not taken. (It is currently set at 11 a.m., unless an exception is made);
- Increase the maximum daily working time to 12 hours (it is now set at 10 hours, unless there is a derogation);
- Fix the maximum average weekly working time at 48 hours over 12 consecutive weeks or 12 months for certain farmers or agricultural undertakings (today it is fixed at 44 hours, unless there is a derogation);
- Set the absolute weekly maximum at 60 hours (currently set at 48 hours, unless there is a derogation);
- Set the maximum daily working time of a night worker at 12 noon, subject to the granting of a compensatory rest equivalent to the duration of the overrun (today it is set at 8 a.m. with the right to an equivalent rest, unless there is a derogation);
- Set the maximum average weekly working time of a night worker at 44 hours over 12 consecutive weeks (today it is set at 40 hours, unless there is a derogation).

Comments

Partial activity

The DARES (direction of research, studies and statistics of the Ministry of Labour) publishes every three months data about the number of hours and expenses spent on partial activity, as well as the number of employees involved.

In Q3 2018, a decline in part-time hours consumed on a gross basis, excluding the automotive sector, was observed, down 15% year-on-year. In Q3 2018, the decline affected almost all sectors, the most significant being registered in agriculture, construction as well as specialised, scientific and technical activities.

Overall, partial activity has increased since the beginning of the 2008 crisis and has started to slow down by the end of 2009. In 2010, it reached its lowest level since the beginning of the crisis, but in 2012 it started increasing again. In 2013, almost 26 million hours of partial activity were used (+ 11% in comparison to 2012). Each month, on average, about 65,000 workers were placed under partial activity with an average of a 33 hours reduction in their monthly working time (DARES, 2015). In 2015, more than 23 million hours of partial activity were used (10% less than in 2014). The decline is mainly concentrated in the last quarter of 2015. Each month, around 60,400 employees, which represent 0.4% of total paid employment, were affected by the partial activity, with an average 32 hours reduction in their monthly working time (DARES, 2017).

Research carried out on over 36,000 French companies (with at least 50 employees) using partial activity between 1996 and 2004 has shown that participation in the scheme does not reduce layoffs when companies face an economic downturn. This is especially so in cases of long duration of partial activity (Calavrezo et al, 2009). In addition, the uptake of partial activity tends to be an early indicator of dismissal that will follow. These results do not necessarily suggest that partial activity is an inefficient job security policy instrument. It may be the case that short-time working and layoffs play a complementary role to each other in addressing temporary economic difficulties.

Employees' entitlements to unemployment benefits and future pension entitlements are not negatively affected in situations where they have been placed under the partial activity scheme. A good level of consensus between the social partners has facilitated the implementation of urgent measures in response to the global recession. Finally, the scheme provides affected employees with the right to training days provided by different employers.

Following [Law n°2013-504 of June 2013](#) on job security, the partial unemployment scheme has been reformed (and renamed into partial activity). This reform is supposed to simplify the previous scheme that was considered too complex: different levels of compensation were cumulated throughout different reforms. This new scheme is also supposed to provide better compensation for workers and advantageous support for companies.

Agreements to maintain employment

In March 2015, according to an [assessment](#) of the Ministry of Labour launched two years after this instrument was implemented, only

9 companies had signed agreements to maintain employment. While it helps to avoid dismissals, it is deemed to be a cumbersome and constraining scheme. Social partners have launched an assessment and have suggested some legal changes in June 2015 to increase the number of such agreements. The changes have been introduced in the Labour Code by the [law 2015-990 of 6 August 2015 for growth, activity and equal economic equality](#) (Loi Macron). Since, an agreement can be signed for 5 years instead of 2 year, a period considered too short to allow a company to restore its competitiveness, and some adaptations have been made to facilitate the dismissal process of employees refusing the content of such agreement. It has to be noted, however, as mentioned by Dares ([DARES 2015, Des négociations collectives plus orientées vers l'emploi en 2013, Dares Analyses n°94, December 2015](#)) that even if the number of agreements to maintain employment is low, social partners have signed company-level agreements since 2013 to agree on an employment safeguard plan. In such agreements, which can be signed by one or several unions representing at least 30% of the workforce (instead of 50% to conclude a valid agreement to maintain employment), provisions affecting working time (increase of working time) or/and wages (increase of working time with no wage increase, or freeze of wages etc., can be introduced. In 2013, about a hundred of such agreements were signed according to Dares (2015).

Cost covered by

Employer
National government

Involved actors other than national government

Employer organisation
Public employment service
Trade union
Works council
Other

Involvement others

The employer has to ask the labour inspectorate for authorisation. The labour inspectorate has 15 days to grant or deny authorisation. This request for authorisation has to be accompanied by the opinion of the employees' representatives.

Thresholds

No, applicable in all circumstances

Sources

-  [Labour Code, Article L5122-1](#)
-  [Labour Code, Articles L.5125-1 to L.5125-7](#)
-  [Décret n° 2016-1909 du 28 décembre 2016 relatif aux accords de préservation ou de développement de l'emploi mentionnés à l'article L. 2254-2 et suivants du code du travail et au parcours d'accompagnement personnalisé](#)
-  [Government's website on partial activity \(in French\)](#)
-  [Government website on agreements to maintain employment \(in French\)](#)
-  [Governmental website, 'Accords de préservation de l'emploi et parcours d'accompagnement : les suites de la loi Travail'](#)
-  [DARES \(2015\), Des négociations collectives plus orientées vers l'emploi en 2013, Dares Analyses n°94, December 2015](#)
-  [DARES \(2016\), 'L'activité partielle en 2015', Dares Analyses n°01, January 2016](#)
-  [DARES quarterly publications on partial activity](#)
-  [Ministry of Labour, Bilan de la loi de sécurisation de l'emploi du 14 juin 2013](#)
-  [Calavrezo, O., Duhautois, R., Walkowiak, E. \(2009\), The short-time compensation program in France: An efficient measure against redundancies? CEE Working Paper No. 114, Centre d'Études de l'Emploi, Paris.](#)
-  [Calavrezo, O.; Duhautois, R.; Walkowiak, E., 'Chômage partiel et licenciements économiques', Connaissance de l'emploi n° 63, Centre d'études de l'emploi, March 2009](#)
-  [Le Monde, La CFDT s'engage à signer l'accord de compétitivité chez Renault, 9 January 2017](#)
-  [Newspaper article assessing the efficiency of agreements to maintain employment](#)
-  [Eurofound \(2010\), ERM report 2010: Extending flexicurity – The potential of short-time working schemes, Publications Office of the European Union, Luxembourg.](#)
-  [Eurofound. ERM Restructuring Supports Instruments Database: Partial Activity](#)
-  [Eurofound. ERM Restructuring Supports Instruments Database: Agreement to maintain employment](#)
-  [DARES \(2017\), L'activité partielle en 2015](#)
-  [Smic \(Salaire minimum de croissance\)](#)
-  [Ordonnance n° 2020-346 of 27 March 2020](#)

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