

Legal news: Covid-19 and short-time working – under which conditions?

Article R5122-1 of the French Labour Code provides:

"The employer may place his employees in a position of partial activity when the company is forced to reduce or temporarily suspend its activity for one of the following reasons:

- 1° The economic situation;*
- 2° Difficulties in the supply of raw materials or energy;*
- 3° A disaster or bad weather of an exceptional nature;*
- 4° The transformation, restructuring or modernization of the company;*
- 5° Any other circumstances of an exceptional nature."*

The current epidemic situation in France is due to exceptional circumstances which allow the application of short-time working to preserve employment within companies. But under which conditions?

The application of partial activity can take several forms:

- a reduction in the number of hours worked
- a closure of one or more company departments
- a total closure of the company

The partial activity benefit is limited to 1000 hours per year per employee.

In the case of companies with more than 50 employees, the employer must first consult the Social and Economic Committee (*Comité social et économique - CSE*) to state on:

- the reasons for using the partial activity benefit
- the occupational categories and activities concerned by the measure
- the criteria for reducing working hours

Under normal circumstances the employer must submit a prior request for a partial activity permit to the *DIRECCTE* (regional directorates of companies, competition, consumer affairs, labour and employment) of the respective *département*. However, given the current situation, companies can apply for it directly and have 30 days to make this application with retroactive effect.

All applications must be made online: <https://www.service-public.fr/professionnels-entreprises/vosdroits/R31001>.

These new arrangements are currently effective until 30 June.

The request must specify:

- the reasons justifying the application of partial activity;
- the estimated period of underemployment;
- the number of employees concerned;
- the detailed circumstances and economic situation giving rise to the request;
- the estimated number of hours of unemployment.

It must be accompanied by the prior statement of the Social and Economic Committee (*CSE*) if necessary, or, failing that, the employer must indicate the date on which the *CSE* will be consulted and submit its statement within two months.

The decision of the *DIRECCTE* is made within 48 hours. Failing this, the request is considered accepted.

The partial activity authorisation is only granted for a **maximum of 12 months and is renewable**.

From a practical point of view, during the period of short-time working, the employer pays his employees as usual for the hours worked and compensates up to 70% of the last gross salary, i.e. approximately 84% of the last net salary (100% if the employee is on minimum wage or in training) for the hours not worked.

A collective or branch agreement may provide higher compensation.

The employer then benefits from a lump-sum benefit co-financed by the state and by *Unédic* (national interprofessional union for employment in industry and commerce), paid via the Services and Payment Agency, equivalent to 7.74 euros per hour of unemployment per employee for companies with fewer than 250 employees and 7.23 euros for those with more than 250 employees.

However, in the current health and economic crisis, the government has announced that 100% of the compensation paid will be covered by the state and by *Unédic* up to a limit of 4.5 minimum wage (5,485 euros net in 2020).