

MERIT BONUS

- April 21, 2020 -

As we announced in our communication of March 26, an order no. 2020-385 of April 1, 2020, published in the Journal Official of April 2, 2020, modified the deadline and conditions of payment of the exceptional purchasing power bonus known as the «Macron Bonus» created in response to the Yellow Vests Movement.

In its questions/answers of 17 April 2020, the Ministry clarifies the conditions for the payment of this bonus. We remind you that this document is not a circular and therefore cannot be invoked against URSSAF in the event of an audit.

1/ PREMIUM AMOUNT

- **The bonus can be paid from April 2 to August 31, 2020.**
- **Amount of €1,000**, exempt from social security contributions and income tax*.

For companies implementing a **profit-sharing agreement**, this ceiling is raised **to €2,000**. In addition, the possibility of concluding a profit-sharing agreement of a derogatory duration is extended, as is the deadline for payment of the bonus, **to 31 August 2020**.

** As initially, the bonus remains exempt only for employees who, over the 12 months preceding its payment, received remuneration of less than three times the annual SMIC, calculated based on the working time provided for in the contract.*

The bonus may not replace any of the elements of remuneration paid by the employer or which become mandatory under legal, contractual, or customary rules. Nor may it replace increases in remuneration or bonuses provided for by a wage agreement, the employment contract, or the practices in force in the company.

2/ REQUIRED FORMALISM

We recall that:

- The premium must be provided for **by collective company agreement or unilateral decision of the employer**, which lays down the terms and conditions for its payment and the criteria for modulation.
- The employer must inform the ESC, where the company has one, of the content of the unilateral decision before the premium is paid

This formalism must be respected to avoid any risk of URSSAF recovery.

There is no priority of the company agreement over the unilateral decision. The employer is thus free to choose the solution that suits him best.

3/ NEW MODULATION CRITERION

Initially, the amount of the bonus could be modulated between employees according to different criteria:

- Compensation,
- Classification,
- Contractual working hours in the case of part-time work,
- Effective presence over the past year (with assimilation to a duration of effective presence of certain leaves of absence)

A new modulation criterion is introduced by the Ordinance: *working conditions related to the coronavirus epidemic (Covid-19)*.

ORCOM's opinion : In the light of the texts currently in force, it appears that all the company's employees should in principle benefit from the PEPA bonus, and not only those who have continued their activity in the context of the health crisis, in their usual workplace.

In its Questions/Answers, the Ministry of Labour indicates that the bonus could be reserved for employees present in the workplace. There is no legal basis for this statement, and it should be handled with the utmost caution.

4/ DETAILS OF ELIGIBLE EMPLOYEES

Comme As at present, the bonus benefits **employees linked to the company by an employment contract on the date of payment of the bonus** or, **adds the ordinance**, from now on, **on the date of submission of the company agreement or the signature of the employer's unilateral decision** setting up the exceptional purchasing power bonus.

As at present, this agreement or unilateral decision may reserve the allocation of the bonus to employees whose remuneration does not exceed a certain ceiling (where appropriate, it may be set at a level below the threshold of 3 SMICs which governs the exemptions).

Temporary workers must also benefit from it, under the same conditions as the company's employees (the bonus will then be paid by the temporary employment agency).

Our social department teams remain at your disposal for any further information.