



## PARTIAL ACTIVITY

- April 21, 2020 -

**We come back to you today with regard to two texts of 15 and 16 April 2020 relating to partial activity.**

## 1/ ORDER NO. 2020-428 OF 15 APRIL 2020

**An order dated 15 April and published in the OJ of 16 April 2020 makes further changes to the partial activity scheme.**

In particular, the text extends the benefit of partial activity to certain categories of employees and specifies the methods for calculating the partial activity allowances paid to employees on work-study contracts.

Please note that this order no. 2020-428 of 15 April 2020 containing various social provisions to deal with the covid-19 epidemic modifies order no. 2020-346 of 27 March 2020 on emergency measures for partial activity. Certain information published in our memorandum of 30 March 2020 has been modified by this amending order.

Here are the rules applicable to date.

- **Can executives benefit from short-time working?**

The ordinance specifies that senior executives may only be placed in partial employment in the event of the temporary closure of their establishment or part of an establishment. They cannot therefore benefit from partial activity in the event of a reduction in working hours.

- **What are the compensation rules for apprentices and holders of a professionalisation contract?**

For employees on work-study contracts, the amount of the partial activity allowance varies according to their previous remuneration:

- those whose remuneration is lower than the minimum wage receive a partial hourly activity allowance, paid by their employer, in an amount equal to the percentage of the minimum wage applicable to them under the provisions of the Labour Code and, where applicable, the contractual provisions applicable to the company.
- those whose remuneration is greater than or equal to the minimum wage receive from their employer an hourly allowance corresponding to 70% of their previous gross hourly pay, where the result of this calculation is greater than EUR 8.03 (i.e. the gross hourly amount of the minimum wage). Where this result is less than or equal to 8.03 euros, the hourly allowance for partial activity is equal to 8.03 euros.



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- **What are the rules for compensating employees of temporary employment agencies?**

Temporary workers on CDII benefit, including during periods of intermission, from the guaranteed minimum monthly remuneration (RMM), which in practice means a minimum hourly allowance equal to the net SMIC.

*The Order sets 12 March 2020 as the date of entry into force of the provisions of Order No. 2020-346 of 27 March 2020 on emergency measures for partial activity. At this stage, the scope of this provision is unclear. Indeed, it is possible to question its articulation in Article 2 of Decree No. 2020-325 of 25 March 2020:*

*«The provisions of this decree apply to claims for compensation addressed or renewed to the Services and Payment Agency pursuant to Article R. 5122-5 of the Labour Code as of the date of entry into force of this decree, in respect of the placement of employees in a partial activity position since 1 March 2020. »*

- Order No. 2020-428 of 15 April 2020 on various social provisions to deal with the covid-19 epidemic
- Order 2020-346 of 27 March 2020 on emergency measures for partial activity (amended by Order 2020-428 of 15 April 2020)

## 2/ DECREE N°2020-435 DATED 16 APRIL 2020

**Decree n°2020-435 of 16 April 2020 defines the rules for partial activity compensation for certain categories of employees.**

- **What is the fate of variable or monthly remuneration?**

Consequently, if the employee benefits from variable remuneration or remuneration paid on a non-monthly basis, they must be taken into account in this gross remuneration as follows: the monthly average of these elements must be calculated over the 12 months preceding the employee's placement on short-time working.

On the other hand, reimbursements of professional expenses and elements of remuneration which are not paid in return for work performed or which are not affected by the reduction or absence of activity of the employee and which are paid for the year are excluded.

That is, if the employee's remuneration contains a share corresponding to the holiday pay payment, this share should not be taken into account when calculating the partial activity allowance.



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#### • **What are the compensation rules for lump-sum employees?**

For the calculation of the partial activity allowance for flat-rate employees in hours or days over the year, the number of hours, days or half-days not worked by the employee for the permitted partial activity period must be taken into account.

The conversion into hours is made as follows:

- A half-day not worked corresponds to 3.5 hours not worked;
- a day not worked corresponds to 7 hours not worked;
- a week not worked corresponds to 35 hours not worked.

Days of paid leave, rest or public holidays not worked, corresponding to working days occurring during the period of partial activity, are converted into hours according to the same procedures and deducted from the non-worked hours taken into account for the calculation of the allowance and the partial activity allowance.

#### • **What are the compensation rules for sales representatives?**

For VRP employees who are not covered by a working time arrangement applicable in the company, the indemnity and partial activity allowance are calculated as follows:

- the monthly reference remuneration used to calculate the partial activity allowance and the partial activity allowance corresponds to the average gross remuneration received during the last 12 calendar months, or where applicable, all the calendar months worked if the employee has worked less than 12 months, preceding the first day of partial activity in the company or establishment.
- where remuneration includes a fraction of remuneration corresponding to the payment of holiday pay, that fraction shall be deducted in order to determine the basis for calculating the allowance and the partial activity allowance, without prejudice to the payment by the employer of holiday pay.
- the hourly amount used to calculate the allowance and the partial activity allowance is determined by relating the amount of the monthly reference pay to the legal working time.
- the loss of remuneration is the difference between the monthly reference remuneration and the monthly remuneration actually received during the same period.
- the number of hours not worked that are eligible for compensation corresponds, within the limit of the legal working time, to the loss of remuneration in relation to the hourly amount.

**ORCOM's OPINION :** Although the decree does not distinguish between exclusive and multi-card sales representatives, there is still some doubt as to whether multi-card sales representatives are supported. The DIRECCTE Ile de France has confirmed to us that multi-card sales outlets can be supported as a partial activity. However, the DIRECCTE in each region sometimes adopt divergent positions.



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- **What are the rules for compensating the intermittent workers in the show?**

For casual entertainment workers and models, the number of hours not worked used to calculate the allowance and the partial activity allowance corresponds to the number of hours worked:

- to 7 hours per contractually scheduled, but not carried out due to a cancellation linked to the covid epidemic19 ;
- up to 7 hours per working day for workers to whom the stamp is not applicable.

*These calculation methods are applicable to claims for partial activity compensation made since March 12, 2020 in the context of the COVID-19 health crisis, until December 31, 2020.*

- Decree No. 2020-435 of April 16, 2020 on emergency measures for partial activity

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