

HOW TO DEAL WITH PAY ARREARS IN YOUR COMPANY ?

- April 14, 2020 -

The ordinance published in the OJ of 26 March 2020 and several decrees published in recent days detail the special conditions for compensating employees unable to work due to the coronavirus epidemic.

N.B. The information below takes account of the legislative provisions. In any case, it is advisable to check your collective agreement.

SOCIAL SECURITY DAILY ALLOWANCES

In accordance with the emergency law to deal with the Covid-19 epidemic, all insured persons will receive the IJSS sickness benefit without waiting period (Law 2020-290 of 23 March 2020, art. 8, JO of 24).

This measure will apply to all insured persons (general scheme, civil servants, etc.) **from 24 March 2020** (date of publication of the law) until the end of the state of health emergency (Law 2020-290 of 23 March 2020, art. 4, JO of 24).

It concerns all work stoppages, whether **related to Covid-19 or not** : work stoppages issued to persons with a pathology, vulnerable persons with an increased risk of developing a serious form of Covid-19 infection or parents forced to keep their children due to the closure of their school or day-care centre.

WAGE TOP-UP BY THE EMPLOYER

Until August 31, 2020, employees who have stopped working benefit from the «employer's» complementary indemnity without having to meet the condition of a minimum seniority of one year in the company.

All work stoppages are covered by salary maintenance, whether or not they are related to Covid 19 :

- work stoppage prescribed in the context of the covid-19 epidemic (isolation, eviction or home maintenance measure),
- (e.g. a child under 16 years of age who is himself or herself subject to such a measure and who, for one of these reasons, is unable to continue working).
- absence due to illness, whether or not related to covid-19, or due to an accident.

On the other hand, the waiting period for additional pay remains applicable for «classics» judgments (not related to Covid 19).

By way of derogation, until 31 August 2020, the supplementary allowance is also extended to employees working at home, seasonal workers, intermittent workers and temporary workers when they are off work, under the same conditions as other employees (Ordinance 2020-322, art. 1).



HOW TO DEAL WITH PAY ARREARS IN YOUR COMPANY ?

- April 14, 2020 -

Reduced formalism :

Abolition of the condition that employees who benefit from a prescribed work stoppage in the context of the covid-19 epidemic and who are not ill (isolation, home care, etc.) must send their work stoppage to their employer within 48 hours and be treated in France or in one of the other EU or EEA Member States.

ENTRY INTO FORCE AND IMPLEMENTING DECREES

This ordinance enters into force on 26 March 2020 (ordinance 2020-322, art. 3). **However, it is not specified whether its measures apply to work stoppages prescribed before that date.**

Type of stop	Prescriber	Waiting period	IJSS	Employer Maintenance *	Comments
1. Classic sick leave	Attending physician or classical physician	Yes, except in special cases **	Yes	Yes	NSN reporting with the reason «disease».
2. Derogatory judgment***	Attestation on the honour of the employee	No	Yes	Yes	Declaration by the employer on declare.ameli.fr + report in DSN with the reason «illness».
3. Risk cases with isolation measure	Consultant doctor of the CPAM	No	Yes	Yes	NSN reporting with the reason «disease». Formerly issued by LRA
4. High-risk persons (1)	Declaration via declare.ameli.fr	No	Yes	Yes	Declaration to be made directly by the persons concerned as from 18/03 (with retroactive effect to 13/03)

* The Labour Code lays down conditions for the maintenance of wages for employees on sick leave after one year's seniority (Article L1226-1, Labour Code). However, some collective agreements contain more favourable provisions

** Elimination of the waiting period for Covid-19 from 25 March 2020

*** For employees forced to look after their children, only if it is impossible to telework and only for children under 16 years of age and with no age limit for disabled children.

(1) Employers are subject to a duty of prevention. As such, you must inform employees that certain diseases are associated with a significant risk of developing a severe form of Covid-19. This information can be done by any means (posting, mail...).

If you detect an employee in a high risk situation, you must encourage him/her to go directly to the declared site. ameli.fr (<https://declare.ameli.fr/>) to ask to be placed on sick leave for an initial period of 21 days.

HOW TO DEAL WITH PAY ARREARS IN YOUR COMPANY ?

- April 14, 2020 -

For information, people whose health condition presents a risk of developing a severe form of Covid-19 are those suffering from :

- Chronic respiratory diseases (asthma, chronic bronchitis)
- Chronic respiratory insufficiency
- Cystic fibrosis
- Heart failure from all causes
- Coronary heart disease
- History of Stroke
- Hypertension
- Chronic renal failure on dialysis
- Insulin-dependent type 1 and type 2 diabetes

The following are also concerned:

- Pregnant women
- People with immunosuppression: cancer and haematological pathologies, transplantations of or-gan and haematopoietic stem cells, inflammatory and/or autoimmune diseases receiving immunosuppressive treatment, people infected with HIV.
- People with chronic liver disease with cirrhosis
- Obesity with a body mass index (BMI) equal to or greater than 40.

SICK LEAVE AND PARTIAL ACTIVITY

Within this regulatory framework, to help you identify your obligations as an employer, we have drawn up a list of questions and answers to help you better understand the relationship between sick leave and partial activity.

THE QUESTIONS :

1. My employee is on sick leave due to illness prior to the company being placed in partial employment?
2. My employee is on a special leave of absence (isolation or childcare) before the company was partially active?
3. My employee falls ill after the company has been partially employed (excluding work stoppage for childcare or for people at risk (vulnerable))?

1. My employee is on sick leave due to illness before the company was placed in partial employment?

- The employee **remains on sick leave until the end of the prescribed leave.**
- Adjustment of the employer's supplement to maintain the employee's remuneration at the level of the compensation due for the partial activity (i.e. at least 70% of the gross salary).
- **Employer's supplement subject to social security contributions.**
- **At the end of the work stoppage, the employee will be placed in partial activity.**

Please note : the employer's supplement cannot lead to the payment of a higher amount to the employee than the amount he or she would receive if he or she were not on leave.

HOW TO DEAL WITH PAY ARREARS IN YOUR COMPANY ?

- April 14, 2020 -

2. Is my employee on a special work stoppage (isolation or childcare) before the company is placed in partial employment?

If total or partial closure of the establishment is required

The employee is placed in partial employment. In concrete terms, the employer must therefore report the interruption of the employee's work stoppage to the health insurance. It is left to the employer to wait for the end of the initial derogatory work stoppage. On the other hand, this stoppage cannot be extended or renewed.

NB: for people at risk (vulnerable): the extension of the work stoppage is automatically carried out by the CPAM. In this case, the employer is obliged to report the early end of the stoppage.

Reduction of activity

The employee remains on exceptional sick leave and cannot be placed on partial employment.

3. My employee falls ill after the company has been placed in partial employment (except for childcare or vulnerable persons).

- **Interruption of the partial activity scheme until the end** of the employee's work stoppage.
- **Payment by the employer of a supplement adjusted** to maintain the employee's remuneration at a level equivalent to the amount of compensation due in respect of the partial activity (i.e. at least 70% of the gross salary).
- **Employer's supplement subject to social security contributions.**

Please note : the employer's supplement cannot lead to the payment of a higher amount to the employee than the amount he or she would receive if he or she were not on leave.