

MAYER | BROWN

France - Dealing with Covid-19 in the workplace

Top ten measures to implement



France



Employers have an obligation to protect their employees from Coronavirus (or Covid-19) under Article L. 4121-1 of the French Labor Code, which requires employers to take all necessary measures to “guarantee workers’ safety and protect their physical and emotional health.”

Concerning the definition and methods for implementing measures likely to curtail the effects of Coronavirus in companies, employers are strongly advised to involve the occupational health, hygiene and safety stakeholders, such as the Social and Economic Committee (Comité Social et Economique, or “CSE”), when there is one, and the occupational physician.

With this in mind, please find below the top ten measures to implement under French law:

1. Set Up A Dedicated Unit

In companies where it is relevant given the headcount, set up a unit to (i) ensure that measures to contain the virus are complied with and (ii) anticipate and identify the effects of Covid-19 on the company’s business.

2. Inform and communicate

- Remind the employees of the Health Ministry’s health and hygiene recommendations by displaying them on the premises and by communicating them electronically, which mainly includes:
 - » To wash ones’ hands frequently.
 - » To cough and sneeze into one’ elbow.
 - » To greet each other without shaking hands and without kissing each other.
 - » To use single-use facial tissues.
 - » To not use colleagues’ equipment (pen, keyboard, etc.).
 - » To wear a mask when you are sick (prescribed by a doctor).
- Send the government’s regularly updated list of at-risk areas to all the employees by email (<http://www.gouvernement.fr/info-coronavirus>)

- Communicate frequently to all employees about how the virus is evolving. To do so, Human Resources must make sure it has the employees’ current contact information (email addresses, telephone numbers, etc.).

3. Clean the premises more thoroughly

- Tell the cleaners to (i) clean the floors and surfaces with a single-use cleaning wipe impregnated with detergent, then sanitize with bleach using a different single-use cleaning wipe; and (ii) frequently sanitize the door handles and elevator buttons.
- Make sure there is enough hand soap and hand sanitizer on the premises.

4. Limit business trips until further notice

Because the virus context is still evolving and as a precaution, it is recommended that all non-essential business trips abroad be suspended in order to limit the spread of the virus.

If travel is imperative, refer to the instructions on the government’s website (<http://www.gouvernement.fr/info-coronavirus>) and make sure, with the employee, that they are duly followed.

5. Ask the employees to fill-in a questionnaire

Send to the employees a questionnaire aiming at anticipating and/or identifying any risk of contagion.

For example:

“Over the past two weeks and to your knowledge, have you or your family:

- (i) traveled or had a lay-over in any of the at-risk areas (to be revised as the context changes: China, Hong Kong, Macao, Singapore, South Korea, Iran, Italy, etc.);
- (ii) been in direct contact with anyone who has traveled in those areas;
- (ii) been sick with symptoms such as a fever, a cough, or breathing difficulties?”

If an employee answers “yes” to any of these three questions, deny them access to the premises (“confinement”) and recommend one of the measures indicated in sections 6 or 7 below.

6. Institute teleworking (as soon as possible)

- When there is risk of an epidemic, teleworking does not require the employee’s consent or any particular formality.
- In general, all so-called “fragile” employees (pregnant women, people who have immune deficiencies or respiratory problems, etc.) must be encouraged to work remotely as much as possible.

7. Use sick leave

The need for this may arise in the two following cases:

- If confinement is required and teleworking is impossible (given the characteristics of the job), the employee may also ask for an appointment

with the regional health agency physician who may, where applicable, prescribe leave for the length of the recommended isolation (14 days in high-risk cases). The employee will enjoy the same rights to compensation as employees who are on sick leave.

- If it is necessary to take care of a child under the age of 16 affected by a school closure, the employee may be placed on sick leave and compensated. In such case, the employer must declare the leave on the dedicated website (<http://www.ameli.fr>) and ask the employee to send a statement in which they (i) certify that they are the only parent asking for leave to take care of their child at home, and (ii) indicate their child’s name and age, and the name of the child’s school and the town it is in.

8. Managing fluctuations in business

8.1 Think about training

Companies can request FNE-training to take advantage of a slowdown in activity and thus invest in their employees’ skills. This system is formalized through an agreement between the DIRECCTE and the company (or the OPCO : a French body that funds training and vocational contracts) and makes it possible to implement training to obtain new qualifications or to validate skills acquired through experience, etc.

The government may finance up to 50% of the eligible costs (which include remuneration and training-related costs). In that case, the company must commit to continuing to employ the trained employees for a period of time equal to at least the term of the agreement plus 6 months.

8.2 Request a change to part-time activity

If it is impossible to continue the business (government closure of the establishment, a massive number of employee absences, etc.), the company can request the government’s assistance to change to part-time activity.

The employment contracts of employees placed on part-time status will be suspended. To make up for the lost salary attributable to the closure of the establishment or the reduction of their working hours below the legal working time, the employees will receive (in accordance with the decree issued by the State Council) compensation equal to at least 70% of their prior gross remuneration.

To help it pay this compensation, the employer will receive a lump-sum allowance co-financed by the government and the French unemployment authorities ("Unedic") of:

- » €7.74 for companies that have 1 to 250 employees;
- » €7.23 for companies that have more than 250 employees.

All requests to change to part-time activity must be made online (<http://activitepartielle.emploi.gouv.fr/aparts/>) either before the employees are placed on part-time status or within a reasonable time after the requested period begins.

The administrative authority has at most 15 days to review the request.

8.3 Adapt the working hours

If business increases, the French Labor Code allows for derogating, as an exception, from the maximum working time and time off.

Such derogations may be implemented in emergencies and over limited periods of time, after the labor inspectorate has been informed and the CSE has been consulted, if there is one.

8.4 Change the dates of vacations that have already been approved and/or require employees to take working-time reduction days (JRTT)

If an employee has submitted their vacation dates, the company can require them to change the dates to cover the period during which they must not be on the premises.

8.5 Exempt the employee from working

If none of the above solutions is possible or desirable given the company's position, an employee can be exempted from working. Their pay must be maintained and their absence must be treated as a period worked as usual.

9. Postpone financial deadlines

In the event of significant economic difficulties related to Coronavirus, the company can ask to postpone payment of social contributions and/or tax obligations by sending a request by email directly to the relevant agencies (URSSAF/ complementary retirement fund/Tax office).

10. Update the single risk assessment document (Document unique d'évaluation des risques, or "DUER")

The DUER and the prevention, information, and training measures, as well as the provision of resources for it, must be updated to reflect the evolution of the virus's effects and the assessment of the occupational risks arising therefrom.

The employees will be informed of the DUER and related updates.

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our "one-firm" culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. "Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2020 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.