COVID-19: EMPLOYEES' RETURN TO WORK - HOW EMPLOYERS CAN PREPARE FOR A GRADUAL AND SAFE TRANSITION

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French Labor, Employment, and Workplace Safety Alert

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On 28 April 2020, the French Prime Minister issued the National plan for the end of the lockdown. Further to this announcement, the French Health Ministry published a national map reflecting the intensity of the COVID-19 epidemic in the French departments on 30 April 2020. This map aims at helping public decision-makers in their decisions relating to the end of the lockdown in France as of 11 May 2020.

The national map classifies French departments in two categories (red and green) depending on (i) the number of emergency visits concerning suspicions of COVID-19 cases in the last seven days, and (ii) the proportion of resuscitation beds occupied by COVID-19 patients. From 11 May 2020, the conditions for the end of the lockdown will depend, for each department, on its color: “green” departments will be able to organize a softer resumption to “normal” life whereas “red” departments will have to implement stricter measures.

On 4 May 2020, the French Labor Ministry published a “National protocol regarding the end of the lockdown for companies to ensure health and safety of the employees” (National Protocol). This document is addressed to employers and sets out the general principles of prevention regarding the protection of health and safety in the context of the end of the lockdown. Employers have an active role to play in the implementation of the end of the lockdown.

The gradual release of the lockdown as of 11 May 2020 was confirmed by the French Prime Minister on 7 May 2020, including for red departments (except for Mayotte), for which the number of contamination cases remains very high.

The French government recommends maintaining remote work whenever possible and encourages a gradual return to work on the company's premises if remote work is not possible.

Therefore, it is crucial to determine as soon as possible the organization and arrangements necessary for a gradual and safe return to work. Below are the five main steps for the preparation of the employees' return to work:

1. *Establish an upstream operational diagnosis* in order to determine:

- employees/departments whose physical presence on premises is necessary for the resumption of the activity. For these employees, the employer must ensure that travel certificates are provided if they use public transport in the Ile-de-France region; and

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- employees who must continue to work remotely depending on their personal situation: presence of a sick person at home, parent of a child who is less than 16 years old and whose school is still closed, public transport constraints, etc.

At the beginning, employers can organize their employees' return to the company's premises on a voluntary basis.

2. Prevent risks related to the employees' health and safety in a way that is adapted to the characteristics of the company:

- Remind and ensure compliance with barrier gestures by providing employees with safety tools such as soap and hydroalcoholic gel, etc.;
- as a priority, implement collective prevention measures: reorganize workstations to guarantee a space of 4m2 per employee, consider staggered working hours and shift rotation, modify break times, anticipate and organize traffic flows on the site, install protective glasses, disinfect the company's premises that have been used in the last 5 days, ensure daily cleaning, etc.;
- alternatively, apply individual preventive measures if social distancing is not always possible (corridors, etc.): by providing employees with appropriate safety equipment such as safety masks, etc.; and
- update the Risk Assessment Document (« *Document Unique d'Évaluation des Risques* »)

3. *Implement* a gradual return-to-work plan for May - June 2020 in order to stagger the dates that employees return to the company's premises, taking into account:

- the French government's safety recommendations;
- the employees' personal situations; and
- the company's economic constraints.

4. *Collaborate* with the labor doctor and the Social and Economic Committee (« CSE ») for the implementation of the updated work organization and its consequences, in order to:

- adapt the barrier measures to the company's constraints;
- ensure that employees working in the premises of the company as well as employees working remotely are provided proper information on the risks of contamination, the barrier measures to be
- applied in the context of COVID-19 and the actions taken by the company; and
- ensure compliance with safety regulations and recommendations, in particular by designating at least one “COVID-19 referent” among the employees.

5. *Define* a procedure with the labor doctor in case of symptomatic employees in order to:

- isolate the employee presenting signs of contamination in a dedicated room;
- identify the persons who have been in contact with this employee and check the evolution of their health situation;

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- organize the return home of the symptomatic employee or his/her transfer by emergency services, as the case may be; and
- provide a training to the employees of the company on the established procedure.

The National Protocol issued by the French Labor Ministry considers that compulsory screening organized by the employer at the entrance of the company's premises is not permitted. Furthermore, the document specifies that systematic temperature checking on the premises' entrance is not recommended. However, such action may be considered if (i) an information note is brought to the attention of the employees, and (ii) sufficient guarantees are provided to them (prior information, in particular on the maximum temperature allowed on the premises and the consequences of a positive check, compliance with the internal rules of procedure regarding data protection related to personal information, compliance with the European General Data Protection Regulation, etc.).

The actions required to be taken by the employer in connection with a return to work are numerous, and the company and its legal representatives are criminally liable for the employer's security obligation. Therefore, employers must pay particular attention to the safety conditions relating to the employees' return to work. Employers who fail to provide employees with sufficient and appropriate protective equipment or fail to implement social distancing measures could face litigation and could be held liable for not ensuring their employees' safety and security on the workplace.

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