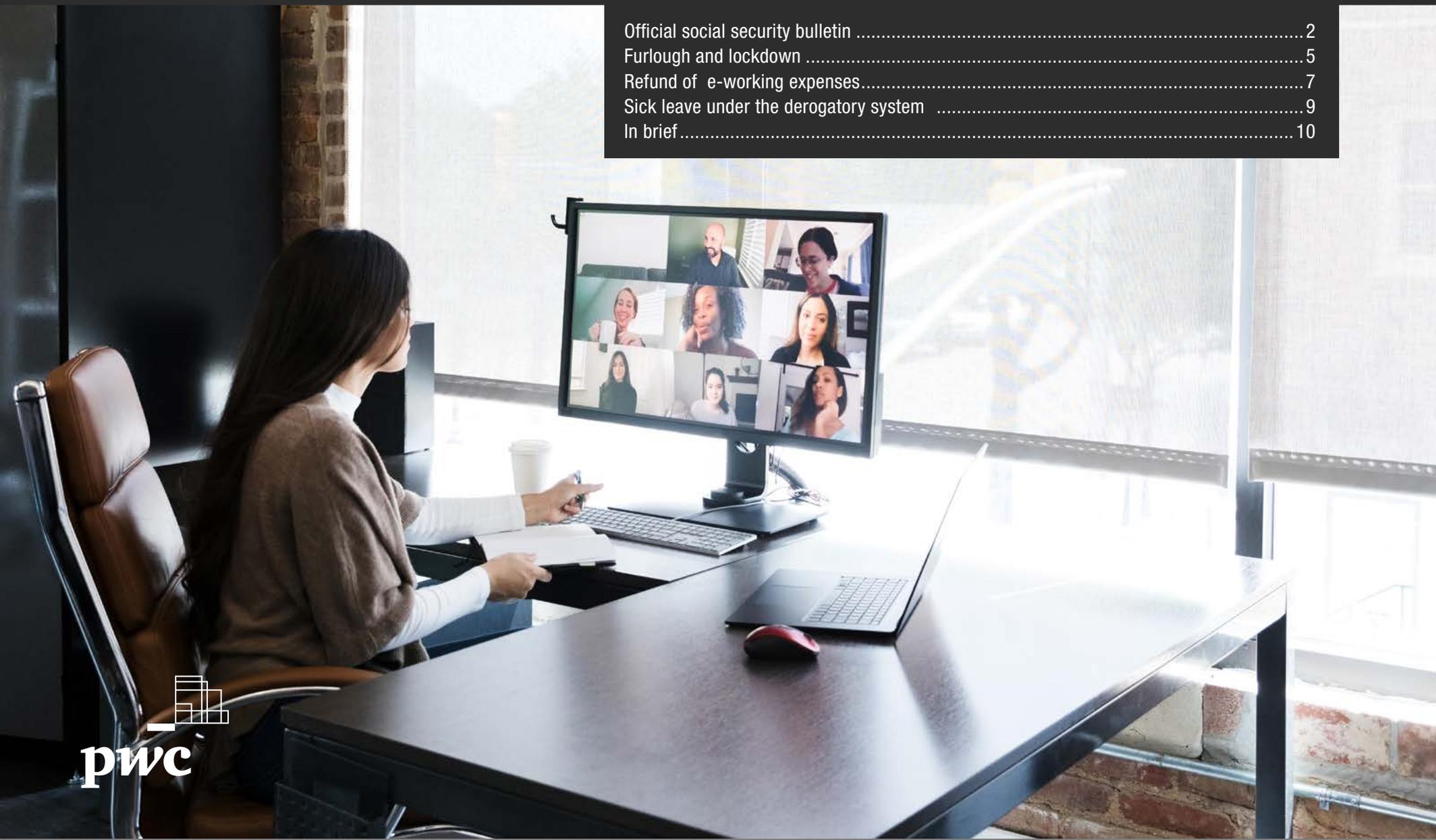


French social security update

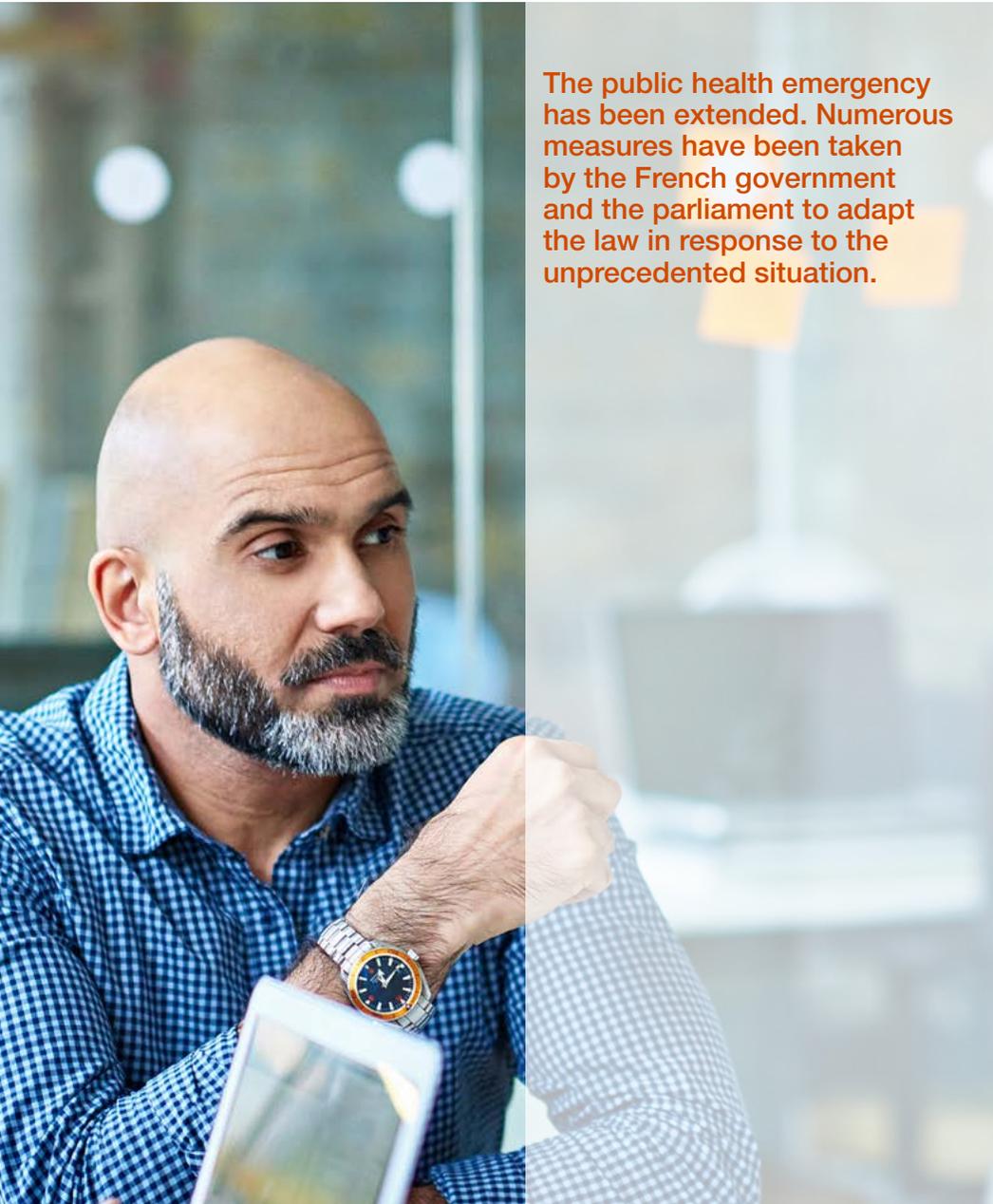
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The public health emergency has been extended. Numerous measures have been taken by the French government and the parliament to adapt the law in response to the unprecedented situation.

Official social security bulletin

The official French social security bulletin (*Bulletin officiel de la sécurité sociale* – BOSS) is the equivalent of the French tax authorities’ official tax bulletin (BOFiP). The BOSS brings together all the legal texts governing the authorities’ action during audits and/or in the event of differing viewpoints on the interpretation of the regulations further to such audits. It entered into force on 1 April 2021 and may be updated over time, as is the case with the BOFiP.

Content

The BOSS is a legal library comprising six different sections:

- general assessment base (for social security contributions);
- general reductions (in social security contributions);
- geography-based exemptions (from contributions);
- benefits in kind and business expenses;
- termination benefits;
- supplementary social protection.

The section on the general assessment base for social security contributions includes a Q&A on the latest related circulars, including the circular of 19 December 2017 issued after the reform of the assessment base and the re-wording of Article L.136-1-1 of the French Social Security Code (*Code de la sécurité sociale*) on the CSG base. However, corrections may be made to the BOSS or new clarifications added.

Prorating the “annualised days” ceiling

Until now, it has been impossible to pro rate the ceiling applicable to employees on annualised days contracts where the number of days worked per year is less than 218, insofar as employees on “reduced” annualised days contracts did not qualify for part-time status. In response to a preliminary question regarding the exclusion of employees on “reduced” annualised days contracts from the gradual pension system, the French Constitutional Court condemned the legislative restriction. There is probably a link between this legislative decision and the change in the guidelines.



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As is already the case for part-time employees, a pro rata ceiling can now be applied to calculate the contributions for employees on annualised days contracts where the number of days worked per year is less than the number of full-time days, as defined by law.

According to the BOSS, the applicable formula is as follows:

$$\text{Value of monthly ceiling} \times (\text{days worked per year} / 218 \text{ days})$$

Benefits in kind and business expenses

With respect to benefits in kind and business expenses, the BOSS takes up the provisions of the 2002 and 2005 decrees, together with examples of several case law decisions.

It also refers to the rules issued by the French tax authorities, insofar as they relate to the deductibility or non-deductibility of these benefits or expenses for taxpayer employees.

The scale below will be used for 2020 taxable income (French Tax Code [Code général des impôts], Appendix IV, Article 6 B): a 20% mark-up applies for electric vehicles.

Taxable horsepower	Car mileage allowance (1)		
	Up to 5,000 km	5,001 km to 20,000 km	More than 20,000 km
Up to 3 hp	$d \times 0.456$	$(d \times 0.273) + 915$	$d \times 0.318$
4 hp	$d \times 0.523$	$(d \times 0.294) + 1,147$	$d \times 0.352$
5 hp	$d \times 0.548$	$(d \times 0.308) + 1,200$	$d \times 0.368$
6 hp	$d \times 0.574$	$(d \times 0.323) + 1,256$	$d \times 0.386$
7 hp and more	$d \times 0.601$	$(d \times 0.34) + 1,301$	$d \times 0.405$

d represents the distance travelled in kilometres.
 (1) Allowance increased by 20% for electric cars.

Social security and exemption thresholds

Under the BOSS, the way in which exemption limits for employer contributions to supplementary pension and welfare plans are calculated has been amended.

Previously, employer contributions (under mandatory group plans) to supplementary pension and/or welfare plans paid on behalf of their employees and their beneficiaries were excluded from the social security contribution base within certain limits.

For mandatory group supplementary welfare plans, the contribution exemption limit is equal to 6% of the social security ceiling plus 1.50% of the employee's gross remuneration. The aggregate amount of exempt contributions for a given employee may not exceed 12% of the social security ceiling.

The contribution exemption limit for mandatory group supplementary pension plans (including PERE-OB plans) was equal to the higher of:

- 5% of the social security ceiling applicable to a given employee;
- 5% of the employee's gross remuneration, up to a maximum of five times the social security ceiling.

The social security ceiling used to calculate the annual exemption limit is the ceiling applicable to the employee in question. Accordingly, the social security ceiling could be pro rated (e.g., employees on part-time contracts or with more than one employer) or reduced (e.g., unpaid leave, arrivals/departures during the year).

By way of simplification, the BOSS now considers that the reference expressed as a percentage of the social security ceiling is an identical flat rate for all employees, since it corresponds to the annual social security ceiling in force. The new interpretation came into force on 1 April 2021 and supersedes all previously published guidelines.



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Social security ceiling and furlough

The BOSS guidelines are therefore aligned with the BOFiP guidelines, which have never used a pro rated or reduced social security ceiling to determine the tax exemption threshold for employee and employer contributions to supplementary pension and welfare plans.

The BOSS takes up all the provisions of all the circulars issued by the Social Security Department or the Ministry, as well as offering clarifications on how the legal texts should be interpreted and applied. For example, the BOSS cites the amendment introduced by the 2021 Social Security Finance Act to the rules governing the compensation that employers must pay to furloughed

employees. Regardless of the amount, the furlough compensation is deemed to constitute replacement income and is not subject to payroll taxes. However, sub-section 2 of paragraph IV of Article 8 of the aforementioned Law provides that:

“By way of derogation from sub-section 1 of paragraph IV, when the amount of the legal furlough compensation and the additional compensation paid by the employer pursuant to a collective bargaining agreement or a unilateral decision is more than 3.15 times the growth-indexed minimum hourly wage, the portion of additional compensation that exceeds this amount is subject to the social security contributions and payments applicable to employment income under the conditions defined in Articles L.136-1-1 and L.242-1 of the French Social Security Code.”

The BOSS summarises the information published in the circular of 19 December 2017 (Q/R no. 11), indicating: “when using furlough arrangements, in accordance with the provisions of Article L.5122-1 of the French Labour Code, there are

two ways of reducing activity: closing the company temporarily or reducing working hours. Where a company closes under furlough arrangements, the ceiling is reduced for the periods during which the employee does not work, by applying the ordinary rules applicable to unpaid leave. (...) Where working hours are reduced, the ceiling is reduced by applying the ordinary rules applicable to part-time work.” However, the BOSS adds that: “When the furlough compensation is subject to contributions under the conditions defined in section IV of Article 8 of the 2021 Social Security Finance Act, the ceiling should not be reduced by applying the ordinary rules applicable to paid leave. These provisions apply until 31 December 2021.”

The restriction is temporary because it emanates from the 2021 Social Security Finance Act which, by definition, is limited to 2021. However, it is very likely that other laws will follow and extend the effects of the restriction. In any event, the rule is not part of the standard furlough system and cannot remain. ■



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Furlough and lockdown

Adjustments to furlough compensation and allowances postponed

After announcing that adjustments to the rates used to calculate furlough compensation and allowances would be postponed until 1 March 2021 and then 1 April 2021, the French government issued two decrees on 30 March postponing the changes to 1 May 2021 for companies not operating in a “protected” industry or not meeting the definition of “companies in major difficulty”. For these companies, the furlough compensation will decrease from 70% to 60% as from 1 May 2021, while the furlough allowance refunded to employers by the French Services and Payments Agency (*Agence de Service et de Paiement* – ASP) will decrease from 60% to 36% of the hourly remuneration (capped at 4.5 times the minimum wage), with a minimum of €7.30 (down from €8.11).

For companies in protected industries whose decrease in revenue does not meet the relevant conditions, the compensation payable to employees will remain set at 70% of the hourly remuneration until 31 May 2021 (capped at 4.5 times the minimum wage), while the furlough allowance received by employers from the ASP will decrease from 70% to 60% as from 1 May 2021 and then to 36% as from 1 June 2021.

For companies in S1 and S1bis industries whose revenue has decreased by at least 80%, the compensation payable to employees and the furlough allowance received by employers from the ASP will remain set at 70% of the hourly remuneration (capped at 4.5 times the minimum wage) until 30 June 2021. As from 1 July 2021, the furlough allowance will decrease from 70% to 36% of the hourly remuneration (capped at 4.5 times the minimum wage) and the furlough compensation from 70% to 60%.

With regard to companies that are fully or partially closed, companies located in trading areas surrounding

ski resorts and companies subject to specific public health restrictions due to their location, the compensation payable to employees and the furlough allowance refunded to employers by the ASP will remain set at 70% of the hourly remuneration (capped at 4.5 times the minimum wage) until 30 June 2021, with a minimum of €8.11 per hour. As from 1 July 2021, the furlough allowance will decrease from 70% to 36% of the hourly remuneration (capped at 4.5 times the minimum wage) and the furlough compensation from 70% to 60%.

Where employees are furloughed because they are clinically vulnerable or because they cannot e-work and must stay at home to look after their children, the furlough allowance received by employers will remain set at 60% or 70%, depending on their industry, until 30 April 2021. As from 1 May 2021, the furlough allowance refunded by the ASP for these employees will be capped at 60% of the gross reference remuneration (capped at 4.5 times the minimum wage), with a minimum of €7.30 per hour.

Maximum validity of the furlough authorisation

The entry into force of the measures limiting the maximum furlough authorisation period has been postponed by four months to 1 July 2021.

Under the 2021 Social Security Finance Act, the furlough authorisation should have been limited to a maximum of three months, renewable subject to conditions for an aggregate of six months (consecutive or not) over a consecutive 12-month period. Until 1 July 2021, there are no changes and the authorisation can be granted for up to 12 months.



Consequences of the new lockdown

Pending the publication of the related legislation, according to the announcements made by the French Ministry of Finance, businesses closed due to the government measures will be eligible for support from the solidarity fund, whose scope has been extended, of up to €10,000 per month or 20% of their revenue within the limit of €200,000.

The fixed costs of businesses whose monthly revenue exceeds €1 million will be covered by grants, within the limit of 70% for companies with more than 50 employees and 90% for those with fewer than 50 employees. The furlough compensation payable by these businesses to their employees will be covered in full and they will be exempt from social security contributions.

Closed businesses will also be eligible for a €500 grant to cover a portion of the expenses incurred in moving online and setting up click & collect facilities.

Contributions – Exemption and payment assistance

A decree of April 12th, 2021 (n° 2021-430) preceded by an inter-ministerial instruction (instruction no. DSS/5B/SAFSL/2021/53 of 5 March 2021) published on 24 March provides clarifications on the exemption from employer contributions and the assistance with the payment of social security charges and contributions mechanism, introduced by the third

2020 Amending Finance Act to help companies that have been strongly hit by the health crisis.

This decree provides in particular that, for eligible companies in the S1 and S1bis industries, the provisions of the 2020 Amending Finance Act taken up by the 2021 Social Security Finance Act apply to employment periods up to 28 February 2021 at the latest, subject to any specific provisions extending the application of the exemption and payment assistance for employers subject to a ban on dealing with the public. Accordingly, the contribution exemption and payment assistance measures apply until the last day of the month preceding that during which the ban on dealing with the public is lifted.

For eligible companies in S2 industries, the measures apply to compensation due in respect of employment periods from 1 to 31 October 2020 and, where applicable, to subsequent employment periods for employers subject to a ban on dealing with the public that has had a major impact on their business.

Under the EU Temporary State Aid Framework, the total amount of aid received in the form of direct subsidies, repayable advances or tax benefits (exemptions and payment assistance, solidarity fund, CFE company property tax rebate, etc.) could initially not exceed €800,000 per company. But the European Commission has increased this ceiling to € 1,800,000 per company. So the decree increased this ceiling to € 1,800,000 per company.

The cumulative amount received, including the exemptions and payment assistance received under the measures introduced by the third 2020 Amending Finance Act and the 2021 Social Security Financing Act, cannot therefore exceed the new ceiling (€270,000 for companies in the fishing and aquaculture industries and €225,000 for companies in the agricultural production industry).

However, it should be noted that these are not new contribution exemption and payment assistance measures. ■

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Refund of e-working expenses

Fixed e-working allowances

In the BOSS, the URSSAF confirms its position as regards the exemption of fixed allowances granted to e-workers.

It explains that rather than refunding business expenses for the actual amount incurred, employers can make a fixed payment to employees based on the number of days e-worked. The allowance is deemed to be used for its intended purpose and is exempt from social security contributions and charges where it does not exceed €10 per month for each e-working day per week. Therefore, an employee who e-works two days every week may receive up to €20 per month to cover expenses, without having to provide any supporting documents. The allowance is capped at €50 per month.

Where the fixed allowance is determined on a daily basis (rather than a monthly basis), it is deemed to be used for its intended purpose and is therefore exempt from social security contributions and charges where it does not exceed €2.50 per day and €55 per month.

The notice made available by the URSSAF on the BOSS provides further clarifications on the rule in the event that a collective bargaining agreement includes provisions on the amount of the fixed e-working allowance: “If an industry-wide collective agreement, a professional or inter-professional agreement or a group-level agreement provides for a fixed allowance, the allowance is deemed to be used for its intended purpose and is exempt from social security contributions and charges where it does not exceed the limits set out in such collective agreement, provided the allowance is granted based on the actual number of days e-worked.”

Where the refund exceeds the above limits, the allowance can only be exempt from social security contributions and charges if supporting documents are provided in the event of an audit.

E-working expenses from a tax standpoint

In a press release issued on 2 March 2021, the Ministry of Finance announced that allowances paid by employers to cover costs incurred by their employees due to e working (compensation, fixed payments, refunds of actual expenses) “will still be exempt from income tax”, but employers will have to specifically identify this type of payment in the information given to the tax authorities.

In addition, the Ministry stated that fixed allowances are exempt from tax within the limit of €2.50 per day e-worked, representing a maximum of €50 per month for 20 days e-worked, capped at €550 per year.

E-workers who opt to deduct business expenses for their actual amount (subject to supporting documents) may also deduct any fixed allowances received in the same way. However, they retain the option to deduct the allowances for their exact amount if more favourable.



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E-working and meal vouchers

Two courts recently ruled on the principle of equal treatment between two employees in comparable situations with respect to e-working and meal vouchers.

They issued their opinions on the same question (10 March for Nanterre and 30 March for Paris): is it illegal to refuse to grant meal vouchers to e-workers?

The government considered that it was illegal and made recommendations to the effect that employers should apply the same rules to employees working from home as employees working in the office.

The Nanterre court noted that while e-workers and on-site employees do have the same rights, the national inter-professional agreement on e-working states that e-workers and on-site employees have identical rights and benefits when they are

“in comparable situations”. However, the Nanterre court concluded that e-workers and on-site employees are not in comparable situations and hence a breach of the principle of non-discrimination cannot be established: while the former can have their meal at home, the latter must – given the circumstances – buy their meals.

The same question was submitted by another company to the Paris court, which methodically rejected the arguments presented by this employer on the grounds that:

- on the one hand, the purpose of meal vouchers is to enable employees to eat when the working day includes a lunch break, without requiring that a space be available for them to prepare their meals themselves;
- on the other hand, the conditions for using meal vouchers are fully compatible with e-working, as they are designed to enable employees to take meals when their working day includes a lunch break.

On that basis, the Paris court concluded that: “e-workers are in an equivalent situation to on-site employees”.

Looking at the two different judgements, we have a glass-half-full, glass-half-empty situation. In our opinion, only the Court of Cassation can decide on the matter.

For its part, the BOSS (which is binding as from 1 April 2021) states that if on-site employees are entitled to meal vouchers, the same applies to employees working at home, mobile workers or employees working in satellite offices. According to the authorities, meal vouchers allocated to e-workers are eligible for the same exemptions as meal vouchers allocated to on-site workers, under the same conditions (BOSS, Business expenses, § 1800 – 01/04/2021). ■





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Sick leave under the derogatory system

Decree no. 2021-271 of 11 March 2021 extends until 1 June 2021 (inclusive) the provisions of the decree of 8 January 2021 under which certain categories of employees are eligible for the social security daily allowance and the additional legal allowance under the derogatory system.

Sick leave under the derogatory system is actioned by the French health insurance body (Assurance maladie) based on an online declaration via the dedicated website (<https://declare.ameli.fr> or <https://declare.msa.fr> for agricultural sector employees).

The decree of 11 March 2021 also temporarily extends the allowance to certain employees affected by isolation and quarantine measures starting no earlier than 22 February 2021.

Specifically, two types of isolation or quarantine are covered by the derogatory sick leave system.

First, the seven-day isolation required by law. The sick leave can last up to a maximum of 9 days (7 days of isolation and up to a maximum of 2 days for the result of the Covid-19 test). The isolation order covers travellers:

- arriving into mainland France from a foreign country other than EU countries, Andorra, the Holy See, Iceland, Liechtenstein, Monaco, Norway, San Marino and Switzerland;
- departing from or arriving into Guadeloupe, French Guyana, Martinique, Reunion, Mayotte, Saint Barts, Saint Martin, Saint Pierre and Miquelon, Wallis and Futuna, French Polynesia and New Caledonia.

Second, the isolation or quarantine measures decided by the relevant prefecture for travellers arriving into Guadeloupe, French Guyana, Martinique, Mayotte, New Caledonia, French Polynesia, Reunion, Saint Barts, Saint Martin, Wallis and Futuna or Saint Pierre and Miquelon. Like any other sick leave under the derogatory system provided for by the decree of 8 January 2021, the

social security daily allowance is paid automatically and immediately and is not taken into account when calculating the maximum period during which an employee is eligible for this allowance. The additional employer allowance should also be paid under the same conditions as for the other sick leave under the derogatory system. ■





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Re-introduction of the exceptional bonus to boost employee purchasing power in 2021

The exceptional bonus to boost employee purchasing power (PEPA) – also known as the “Macron bonus” – granted in 2019 and 2020 will be re-introduced in 2021 to “recognise employees whose presence at work has proved essential in keeping the country’s economy going during the crisis”. However, all employees will be eligible for the new PEPA provided they meet the related conditions.

The 2021 PEPA will be exempt from income tax and social security contributions, within the limit of €1,000. The limit may be increased to €2,000 in two cases:

- if the company sets up an incentive plan agreement within the first six months of its financial year;
- if the related industry – or failing that, the employer – takes measures to improve the working

conditions of those employees “whose presence at work has proved essential in keeping the country’s economy going during the crisis”.

The tax and social security exemptions linked to the bonus will remain subject to a remuneration ceiling that has not yet been determined, but is expected to be less than three times the annual minimum wage, as was the case for the 2019 and 2020 PEPA.

Apprenticeship grants

The French Ministry of Labour has announced that the apprenticeship grant scheme has been extended until the end of 2021 and will remain unchanged.

Hiring grants – Young people aged under 26

extended and amended as from April and until the end of May 2021. It is now reserved for employees paid less than 1.6 times the minimum wage (versus two times previously). After the end of May 2021, the grant will be discontinued.

Daily rest – CJEU perspective

In a decision dated 17 March 2021, the Court of Justice of the European Union (CJEU) concluded that when an employee has several employment contracts with the same employer, the rule whereby every employee should have at least 11 consecutive hours of daily rest applies to all the contracts taken together and not to each of the contracts individually.



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No compensation for illegal Sunday work

In a decision dated 17 February 2021, the Social Security Chamber of the Court of Cassation concluded that an employee who is forced to work on a Sunday in breach of the provisions of the related collective bargaining agreement is not eligible for the compensation defined in that agreement. However, the Court ruled that the employee is entitled to receive damages for the harm suffered by being forced to work on a Sunday (Court of Cassation, 17 February 2021, case no. 19-21.897 FSP). ■



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