

Covid-19

Optimizing the long-term management of the crisis thanks to the collective performance agreement

August 7, 2020

The French government immediately responded to the health crisis created by the outbreak of the COVID-19 pandemic through situational tools allowing companies to quickly face this exceptional worldwide disaster.

As mentioned in our previous articles¹, partial activity is one of the main measures taken by the French government to allow companies, whatever their size, to put their employees on short-time work. Derogating leaves have also given employers a degree of flexibility to take into account the specific situations of individual employees. These situational measures also included the postponement of the deadlines for the payment of employers' taxes and/or social security contributions.

Together, these instruments have enabled many companies to swiftly adapt to the crisis. They also made it possible to maintain employment and, more generally, to protect businesses.

While these measures have been put in place and the most tumultuous period of the crisis seems behind us, companies must nevertheless think about finding more sustainable solutions by seeking to best adapt their organization and the use of their workforce. This is where the implementation of a collective performance agreement can be considered.

The collective performance agreement ("CPA") is defined in Articles L. 2254-2 *et seq.* of the French Labor Code. Its purpose is to respond "*to the requirements associated with the operation of a company or with a view to preserving or developing employment.*" It is, therefore, the perfect tool for companies to adapt to economic changes.

With this objective, the CPA can:

- Adapt the working hours and the way in which they are organized and allocated;
- Adapt the remuneration, in compliance with the minimum hierarchical wages;
- Determine the conditions for professional or geographical mobility within the company.

¹ <https://www.soulier-avocats.com/en/covid-19-information-center/>

How to set up a CPA?

By definition, the CPA must be the result of a collective negotiation and reflection. As such, the draft agreement must be submitted to the employees for consultation.

If the company has trade union delegates, the latter must be co-signatories of the agreement together with the employer. The CPA becomes enforceable if it is approved by the majority of the employees.

If the company does not have any trade union delegates, the CPA can still be considered. But it is subject to special conditions that depend on the size of the company's workforce:

- In companies with less than 11 employees: consultation of employees and approval by a two-thirds majority vote;
- In companies with between 11 and 20 employees: if the company does not have a Social and Economic Committee ("SEC"), the draft agreement is submitted to the employees for consultation and becomes enforceable if it is approved by two-thirds of said employees;
- In companies between 11 and 49 employees: negotiation between the employer and either one or more employees mandated by one or more trade union organizations in the company's branch or at national and interprofessional level, or one or more members of the SEC; the agreement becomes enforceable if it is approved by a majority of the mandated employees or members of the SEC;
- In companies with 50 employees or more: negotiation between the employer and the members of the SEC mandated by one or more trade union organizations in the company's branch or at national and interprofessional level; the agreement becomes enforceable if the majority of the mandated SEC members give their approval.

How to implement a CPA?

- Information of the employees: informing employees about the CPA can be done by any means, the employee being entitled to accept or refuse the application of the agreement to his/her employment contract.
- If the employee refuses the CPA: the employee's refusal may constitute a ground for dismissal, in which case the dismissal procedure may be initiated by the employer within two months from the notification of the employee's refusal.
- If the employee accepts the CPA: the CPA applies to the employee's employment contract and prevails over any contrary or incompatible clauses set forth in said contract.

- Duration: the CPA may be concluded for a fixed or indefinite period of time. If the duration is not specified in the CPA, it is concluded for a fixed term and its duration is 5 years. The CPA ceases to be effective upon its expiration.



Fabien POMART

Partner

f.pomart@soulier-avocats.com

+33 (0)1 40 54 29 29

+33 (0)6 10 32 69 94