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## AVOCATS A LA COUR



### **Employment & Social - 19 March 2020**

#### **Coronavirus as an economic threat to companies: what options do Luxembourg companies have with regard to their staff?**

On 16 March 2020, the Luxembourg Government has issued a ministerial order by which decisions have been taken in order to limit gatherings of people in Luxembourg.

For some service based companies which have close contact with clients (such as restaurants, cafés etc.), these measures have had a very high impact.

On 18 March 2020, the Government has officially declared a state of crisis by means of regulation. In this framework, the protective measures have been tightened, and business who do not respect the legal provisions (for example: closing of seating areas of restaurants and cafés) will be risking penalties of up to 4000 EUR.

The economic impact of these decisions on companies can be extreme.

#### ***But what options do businesses and companies have?***

In order to protect jobs and thus prevent redundancies, our Labour Code allows businesses to resort to various types of short-time work under certain conditions and depending on the nature of the difficulties encountered.

Due to the extremely high demand for short time working applications in the last few days, the Government has decided on 18 March 2020 to add an option for an accelerated procedure for businesses which are directly impacted by Government decisions since the order of 16 March 2020, in addition to the option of the regular application procedure for short time work applications.

#### ***Accelerated procedure for short-time working applications***

This new possibility is open to companies that have to cease all or part of their activities following a Government decision, such as those covered by the ministerial order of 16 March 2020, or any

subsequent decision.

In the coming days, the ADEM website will issue an online system which will allow companies to claim reimbursement for unworked hours during short time working. All companies are invited to wait until the system will be put into place (which will be published by communication to the general public), in order to make these requests. The reimbursement is limited to 80% of the normal salary up to a maximum of 250% of the minimum social wage for non-qualified employees (i.e. EUR 2,141.99 x 2.5) and will be retroactive if applicable.

*Regular procedure for short-time working applications in case of force majeure (COVID-19)*

Companies and businesses, which remain open but are still affected (normal functioning of activity is no longer possible) still have the option to apply for short time work in for cases of "force majeure", specifically COVID-19, and send their application to the secretariat of the *Comité de Conjoncture* at the Ministry of the Economy.

The application form can be downloaded from [adem.lu](http://adem.lu) and from [guichet.public.lu](http://guichet.public.lu).

The *Comité de Conjonctue* has informed us that regular deadlines (application to be sent in until 12 of the month before) do not apply in this specific situation, and that requests for the month of March can still be submitted, and will be granted with retroactive effect to 16 March 2020 where applicable. Requests for the month of April can also be submitted until 12 April 2020, and, if applicable, they will be granted with retroactive effect on 1 April 2020.

Applications for short-time working must be sent to the staff representatives and, as far as possible, also signed by them.

***Which employees are eligible for short time working (accelerated or regular)?***

- employees with a permanent or fixed-term employment contract legally employed by a company legally established in Luxembourg at the time of unemployment (this excludes temporary workers, but includes apprentices are eligible as well as persons under measures in favour of employment, including in particular employment initiation contracts and employment reinsertion),
- who are fit for work, and
- under the age of 68, and
- who do not receive an old-age pension, an early old-age pension or a disability pension, who are normally employed at a place of work in Luxembourg and who are insured as employees with the Luxembourg social security bodies.

(please note that, during this specific period, people who are teleworking or on leave for family

reasons are not eligible for short-time working)

***What other options remain for businesses and companies, which do not fit either category, or want to avoid redundancy or dismissal measures?***

It is important to note that general labour law rules still apply, and that the company's prior resources need to be exhausted first.

These include the following options :

- non-renewal of fixed-term contracts that have expired,
- no recourse to new fixed-term contracts,
- exhaustion of the remaining leave,
- no recourse to temporary employees
- the introduction of temporary lending of workforce
- Teleworking options, wherever possible. The Government is currently negotiating with the border states Germany, France and Belgium in order to elaborate solutions to the tax issues relating to teleworking for border crossing employees.

Further, in absence of a general confinement, or other governmental decisions (as mentioned above) forcing companies to close, and provided that sufficient health and safety measures are taken by the company, employees remain obligated to legally justify their absence from work. In these specific cases, provided all elements are taken into account, any non justified absence by employees may be sanctioned as usually.

Please also note that employees who are on leave for family reasons, who, such as people with sick certificates (including quarantine certificates) remain protected against dismissal.

Please note that all our lawyers are working remotely and can be contacted by phone or by email at any moment for any questions you may have.

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