



# New National Lockdown and Health Measures

The new version of the Health Protocol in Companies was updated on 29 October and emphasises the obligation of full-time telework for those activities that can be done remotely. The new version also provides a framework for the organisation of work for employees whose activity is partially or totally incompatible with teleworking.

## 2 November 2020

As announced by the Minister of Labour, Elisabeth Borne, at last Thursday's press conference, *"Telework is not an option but an obligation for all workers, be they employees or self-employed when their activity can be performed remotely"*. This principle is clearly reflected in the newly published health protocol for companies.

### THE GENERALISATION OF TELEWORK

The new protocol states that for those employees who can carry out their work remotely this should **now be applied at 100%** of their working time.

The new health protocol thus clearly states that **telework must now be the rule** for all those activities that allow it.

- **What measures should be put in place for activities that are partially or totally incompatible with this?**

In those cases where it is not totally applicable, *"the organisation of work should be such that the time spent commuting to and from work is reduced, as well as the time spent at the company to carry out tasks that cannot be carried out by teleworking, and this in order to reduce any social interaction to a minimum"*.

As stated by Elisabeth Borne, those workers who can only carry out part of their activity remotely **will be able to go to their workplace when necessary** (an attestation will have to be provided by the employer), but **their organisation should be adapted to group together any activities or tasks that have to be carried out** in the workplace itself thus **limiting travel**.

Those workers whose activity cannot be carried out remotely at all, will be able to go to their work premises **provided they have an attestation**.

In any case whatsoever, the employer has the obligation to adjust working times to avoid employees being in rush hour traffic.

- **Is teleworking really an obligation?**

Formally, telework is not a legal obligation. Neither the law nor the Labour Code should be amended regarding this point, and as such only the national protocol binds employers to the measure.

Nevertheless, the legal scope of the provisions should be taken into consideration in light of the latest decision of the State Council dated 19 October 2020 <sup>[1]</sup>.

It should however be stated that faced with a resurgence of the pandemic and the health risks incurred, this health protocol should **constitute an indispensable reference in the event of a control by the work inspectorate, and the liability of the employer will most certainly be held and considered as that of inexcusable misconduct**.

The main issue at stake will be to define the outlines and contexts of those activities that cannot be carried out remotely, and it will be the responsibility of the employer to justify, document and explain them to the working communities concerned in consultation with the employee representative bodies.

### WHAT NEW MEASURES HAVE COME IN TO COMPLEMENT THE EXISTING ONES?

Employers will **have to inform employees about the application "TousAntiCovid"** (AllAgainstCovid) and the importance of activating it during working hours.

In addition, Covid-19 screening tests can be offered to employees, but these must be fully financed by employers and carried out under conditions that guarantee both the proper performance of the tests and strict medical confidentiality.

<sup>[1]</sup> Plastalliance. 19 October 2020: « protocole sanitaire en entreprise : le conseil d'Etat confirme que le protocole n'a valeur que de recommandation ».

## OTHER THAN THE MEASURES PROVIDED FOR IN THE PROTOCOL, WHICH SECTORS WILL BE ABLE TO CONTINUE TO OPERATE IN THE CONTEXT OF THIS NEW LOCKDOWN?

As detailed by the French Government on its website, "All establishments which are essential to the life of the Nation, and in particular closed or open food markets and food shops (including food drive-throughs), pharmacies, service stations, banks, tobacconists and press distribution" will be able to continue their activity, as was the case during the first lockdown.

The list has nevertheless been extended compared to last spring. As an example, the following activities may continue to operate as usual.

- ✓ Maintenance and servicing, repairs, equipment and technical tests of motor vehicles, agricultural vehicles and machinery and equipment, motorbikes and bicycles;
- ✓ Retail sale of frozen foods and general food, convenience stores, supermarkets, hypermarkets, and retail sale in specialised food shops;
- ✓ Retail sale of IT, communication, telecommunications and computer equipment, as well as repair outlets for such equipment and materials;
- ✓ Retail sale of building and DIY materials, hardware, paints and glass in specialised shops;
- ✓ Retail sale of pharmaceutical products in specialised shops;
- ✓ Rental and leasing of motor vehicles, other machinery,

goods and equipment, agricultural machinery and equipment, construction machinery and equipment;

- ✓ Financial and insurance activities;
- ✓ Wholesale trade;
- ✓ Interim and labour employment agencies;
- ✓ Tourist and other short-stay accommodation where this constitutes a regular place of residence for the persons living there;
- ✓ Personal and care services at home;
- ✓ Transport services.

This list is likely to change as the President of the Republic has suggested that **fortnightly reassessments** of the situation may occur.

For other businesses, **all delivery or order collection activities can be maintained.**

Moreover, unlike the March confinement, the construction and public works sector, as well as factories and farming activities can continue to operate.

Post offices and public service offices remain open. Court hearings are expected to continue during the lockdown as well.

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## Contacts



### Cécile Didot

Attorney-at-law – Director  
E: [CDidot@avocats-gt.com](mailto:CDidot@avocats-gt.com)  
T: +33 1 41 16 27 06



### Caroline Luche-Rocchia

Attorney-at-law - Partner  
E: [CLuche-Rocchia@avocats-gt.com](mailto:CLuche-Rocchia@avocats-gt.com)  
T: +33 1 41 16 27 37



### Islem Berkani

Attorney-at-law  
E: [IBerkani@avocats-gt.com](mailto:IBerkani@avocats-gt.com)  
T: +33 1 41 16 27 40

**Grant Thornton Société d'Avocats**  
29, rue du Pont  
92200 – Neuilly-sur-Seine, France  
[www.avocats-gt.com](http://www.avocats-gt.com)



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