



# New National Protocol as of 31 August 2020

**3 September 2020** (additional notes to our news flash of 25 August 2020)

The new version of the French National Protocol confirms the systematization of the obligation to wear a facemask in the workplace. This new protocol also reviews and reaffirms the employer's obligation to put in place protection measures for all employees

The objective as announced in the title of the Protocol itself is "*to ensure the health and safety of employees in companies in the context of the covid-19 epidemic*". The project and its framework is of significant size as employers will have to determine the measures to be put in place in accordance with their business operations and activity.

## What procedures should be put in place for these protective measures?

The protocol underlines the importance of **social dialogue** in the implementation of such measures in a company. The employer must **involve the employee representatives and trade union representatives** in order "*to facilitate the implementation of measures*" and this, according to the real nature of the company's activity, and both its geographical location and the situation of the epidemic.

In addition, **all employees** must be duly informed and consulted within each work unit or department. The objective defined is to identify the necessary operational solutions and to ensure that there is total confidence in the company's ability to continue the activity safely. The protocol should be adapted and "tailor-made" for the company.

It is important that **the ESC of a company is consulted** and informed of the measures and that **information memos are communicated to all employees**.

In our opinion, this note should be considered as an appendix to the Internal Regulations of the company (applicable with immediate effect) and comply with

the filing and publication formalities under ordinary law.

Furthermore, although this subject is not clearly addressed by the Protocol, an amendment should be made to the DUERP (*Document Unique d'Evaluation des Risques Professionnels*) to take into account the new protective measures put in place and in particular the obligation to wear a mask.

**A covid-19 referent must be designated within a company** (this can be the manager in smaller structures).

## Which specific types of employee and situation should the employer pay particular attention to?

The employer must ensure that all employees are fully aware of the measures and in this context, ensure that **non-permanent employees** are also included and informed. This includes employees on fixed-term contracts, seasonal workers, temporary workers and employees on secondment. The protocol states as a reminder, **the obligation of vigilance** incumbent on an employer in its capacity as either project owner or contractor, and this in order to respect all compliance with the rules relating to health and safety at work in a subcontracting context.

It should also be noted that for those employees considered "*at risk of serious forms of covid-19*", as defined by the French Public Health Council (*HCSP*), or those living in the home of persons at risk, the recourse to teleworking is to be prioritized following a request from the employees concerned.

## What is the current situation regarding teleworking?

Except in cases of high-risk workforces, employees are expected to carry out their activities "on site or teleworking". The protocol repeats that teleworking should remain a recommended practice. The health authorities, in consultation with the social partners, reserve the right to incite employers to have greater recourse to teleworking, according to different health indicators.

For companies that continue at least partially to use teleworking, we strongly recommend defining a framework and providing for the means to carry out the professional activity at home.

## What are the measures advocated by the new protocol?

All hygiene and physical distancing measures remain in place as before. The employer can define (and communicate) a specific measurement standard per workspace. A minimum standard of 4m<sup>2</sup> in space is recommended.

The new protection measure imposed by the protocol is the **obligatory wearing of masks in companies**. The mask should be one of the type available to the general public, preferably reusable and complying with health standards, more particularly in terms of protection from spittle. It should be noted that a surgical type mask must be worn when dealing with someone who shows the symptoms of the virus.

There are only a few exceptions to the obligation to wear a mask: other than the case of someone working in an individual office, certain arrangements can be made for example in the case of workshops (subject to adequate ventilation and airing of workspaces, a small number of people present and a large distance between them).

The **temporary removal of the mask** during the day may be authorized provided that rules relating to air circulation are respected and that protective screens between workstations and visors are provided. These conditions may differ if the company is located in an area of low or zero presence of the virus. Therefore, in high-risk, red zones such as the Ile de France, Bordeaux, the Alps and the South Coast, all work premises must have mechanical ventilation and a guaranteed minimum space of 4m<sup>2</sup> for each employee in addition to the initial measures provided for.

As facemasks are clearly qualified as personal protective equipment and are **now obligatory**, the responsibility for their provision lies with the employer under the health and safety legislations in force, and as such **should be at the expense of the employer**.

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**Grant Thornton Société d'Avocats can help you with the legal implementation of these new rules in France.**

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