



# The Social Security Financing Act for 2023

27 February 2023

The Social Security Financing Act (LFSS) led to the use of Article 49.3 twice before subsequently being referred to the French Constitutional Council. It was finally promulgated on 23 December and published in the Official Journal the following day.

The Social Security Financing Act (LFSS) for 2023 provides for measures relating to healthcare, improved access to health services, support for families in terms of childcare and care for elderly people facing a loss of independence, etc.

The act also provides for measures which concern businesses. Among these are measures relating to the fight against social fraud, to payroll, and to the extension of the derogatory rules covering compensation in cases of sickness resulting from Covid 19.

**1<sup>st</sup> Part: the act includes several measures aimed at strengthening the legal tools put in place for French administrations and social bodies in order to detect and sanction social fraud.**

With regard to illegal and undeclared work, the LFSS provides in particular that the **penalties applied to Principals in the failure to respect their duty of care are now variable according to the seriousness of the act committed**. In the fact, the maximum penalty is different depending on whether the Principal has failed in his duty of care for the first time or is a repeat offender (this is determined in reference to the 5 years preceding the offense committed).

**The right to communication attributed to officers of the URSSAF is extended**, now giving them the right to obtain banking information and documents. The defense of banking secrecy cannot be raised by a Principal, as the objective is indeed to facilitate the recovery of sums owed due to work being undeclared.

In addition, **the granting of new cyber-investigation powers to administration officers is envisaged i.e.**

**investigations carried out on the internet under an alias**. This concerns officers both in the debt collection services, the labour inspectorates and the *Pôle Emploi* (French Employment Office) and is granted for investigations carried out via the internet into the existence of illegal work.

In addition to these provisions, the commercial courts are now authorized to pass information on to the social security bodies where a suspicion of fraud exists regarding the payment of contributions.

**2<sup>nd</sup> Part: the LFSS also provides for measures intended to facilitate URSSAF inspections:**

- In companies with less than 20 employees on their payroll, the duration of the inspection is limited to a period of 3 months (renewable once). However, this duration of inspection is not applicable in certain cases as for instance, that of undeclared work. 2 other cases have now been added to this exception:
  - ✓ where supporting documents are only sent by the contributor more than 15 days after receiving the request for such by the inspecting officer,
  - ✓ where a request is made by the contributor to postpone the visit of an inspecting officer.
- In cases where a company belongs to a group, the inspector may, on the condition they inform the company being inspected, use documents and information obtained during the audit of another entity in the same group. This measure is subject to an implementing decree.

**3<sup>rd</sup> Part:** as from 1 January 2023 concerning the provisions relating to payroll, the URSSAF are given the right to unilaterally correct DSNs (nominative social declarations). This right will be applied when following adversarial discussions with the URSSAF, the employer refuses to make requested corrections to erroneous information.

The practical questions regarding the formalism of correction requests from the different organizations and administrations receiving the DSN is to be determined by a decree. The terms and procedures for corrections made directly by URSSAF will also be detailed.

**From 1 January 2024, employers paying compensatory or replacement income to employees (or assimilated persons) or to former employees (or assimilated persons) will have to declare this through the DSN.**

**4<sup>th</sup> Part:** a new measure of a flat-rate deduction of employer's contributions on overtime in companies with a workforce of 20 to 250 employees, which provides for the deduction of the employer's contributions amount on the global remuneration of any overtime paid and is no longer limited to only the contributions due in the remuneration of the overtime supplement of an employee. This deduction should also be applied to the cashing-in of RTT days.

**5<sup>th</sup> Part:** in view of the continuing uncertainties in the development of the health situation, the 2023 LFSS extends the derogatory rules covering compensation in cases of sickness from Covid-19.

As such, individuals covered under the French Social Security, who test positive to Covid-19 and are unable to work (even remotely) are entitled to the daily sick leave allowance. Individuals who are employees are also entitled to the employer's legal salary supplement. This is intended to apply without controls on the conditions for eligibility, without application of any qualifying period and with no maximum time limit in terms of indemnities.

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Our team at *Grant Thornton Société d'Avocats* remains at your disposal to assist you in the implementation of these new measures in the framework of your company's HR policy and we can put you in touch with the Payroll experts in Grant Thornton.

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