As the coronavirus and the illness it causes, COVID-19, continue to spread, employers in France are taking into account the risk of an epidemic caused by the increase in the number of people who may become affected, both in France and abroad.

To this end, employers may want to limit their employees’ travel, consider teleworking arrangements, plan for employee sick leave, and anticipate the concerns of employees and their representatives. They also need to take into consideration the recommendations of the supervisory authority regarding the privacy of employees’ personal data.
On February 28, 2020, France’s Ministries of Health and Labour published a series of questions and answers to assist companies and employees concerned about workplace issues due to COVID-19. These questions and answers were then updated on March 9, 2020. Similarly, on March 6, 2020, the French Supervisory Authority (CNIL) provided its own recommendations concerning specific aspects of privacy law (see question 5 below).

**Question 1. How can employers secure employee travel?**

As part of their safety obligation to employees (Article L. 4121-1 of the Labour Code), employers must limit their employees’ business trips to areas considered to be at risk.

The government first issued a list of at-risk areas, which was then removed in the March 9, 2020, version of the Q&A due to the virus’s spread throughout the world and in France.

For employees identified as being at risk, the government recommends that protective measures be put in place, including teleworking, the use of paid leave or the reduction of working time (réduction du temps de travail (RTT)) at the employer’s initiative, or the limitation of meetings at which employees are not required to attend during the 14-day protection period.

**Question 2. How can employers organize telework?**

In order to limit the risks of contamination between employees, the government recommends the use of telework when the nature of the employees’ activity allows it.

Indeed, the risk of an epidemic may justify the use of telework without the employee’s consent (Article L. 1222-11 of the Labour Code). While the government indicates that no particular formalism is necessary, it would nevertheless seem appropriate to bring the terms and conditions for telework to the attention of the employees concerned, and in particular to inform them of the duration of this exceptional situation and, where appropriate, the arrangements under which they will be informed of the renewal or the reduction of this measure.

**Question 3. How are social security benefits and employers’ complementary payments ensured?**

When telework is not possible, it is up to the employer to let the employee work on his or her premises.

If an employee is likely to be a carrier of the virus, he or she may consult a doctor authorized by the Regional Health Agency who may prescribe sick leave corresponding to the recommended isolation period of 14 days. Where a child of an employee has been confined, the employer may ask the Social Security services to grant leave to one of the parents for the duration of their child’s confinement. Pursuant to Decree n° 2020-73 of January 31, 2020, and Decree n° 2020-193 of March 4, 2020, the employee is not subject to any waiting period, whether in terms...
of daily social security benefits or the employer’s complementary payment.

In the absence of sick leave, it is possible to grant an activity exemption to the employee, who then remains remunerated during this period.

**Question 4. How can the concerns of employees and their representatives be handled?**

The government’s guidance indicates that the risk of an epidemic could justify the transition of companies to partial activity—for example, if employees essential to the continuity of the company are infected by the virus or if the government puts in place measures to restrict travel.

The guidance also reminds employers to consider amending the risk assessment document, which records all risks on the premises of the company and safety measures put in place. However, by stating that this amendment must be made “within a reasonable time,” the government appears to be giving employers a delay.

Similarly, while the company’s social and economic committee must in theory be consulted prior to any major change in the organization of work (e.g., to make use of teleworking), recourse to partial activity, or prior to any derogation from the rules on working hours and rest (if the employer wishes to change the dates of leave for employees who have already taken their leave), the government provides that “if the urgency so requires, the employer may take precautionary measures before carrying out the consultation.” The consultation can also be done by videoconference to limit physical contact.

Lastly, employers may be concerned about a massive use among their employees of the right of withdrawal. Under the Labour Code, employees can exercise the “right of withdrawal” by withdrawing from a situation that they have reasonable grounds to believe poses serious and imminent danger to their lives or health. The guidance states that the government considers that the condition of “grave and imminent danger” that is necessary for the individual right of withdrawal to be considered well-founded is not met if the employer follows in good faith the national coronavirus recommendations for protecting workers’ health and safety.

**Question 5. Can employers collect data concerning their employees’ health?**

CNIL provided guidelines concerning the handling of the health crisis with regard to personal data privacy.

Employers must refrain from collecting information on possible symptoms displayed by employees/visitors and their relatives, be it in a general way or through individual inquiries and requests.

It is therefore not possible to collect the body temperature of employees or visitors in a systematic way at the entrance of the employer’s premises.

However, employers can raise employee awareness to encourage employees to
report to their employers or to health authorities their possible exposure to the virus.

Upon request by health authorities, employers may communicate information relating to the health of employees and the nature of the exposure to the virus.
