International Lawyers Network

Temporary Layoffs

The following paper aims to succinctly address the question "Can an employer do temporary layoffs?"

This guide offers an overview of legal aspects of temporary layoffs in the requisite jurisdictions. It is meant as an overview in these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

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This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

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Canada - Quebec

In Canada, the primary jurisdiction in employment and labour relations law is Provincial rather than Federal. Because of the patchwork of jurisdictions, the fact that the 10 provinces and 3 territories of Canada, have different labour standards legislation, and that Quebec adheres to a legal tradition different from that of its sister provinces, means that a "one size does not fit all" response to whether an employer may "layoff" staff, needs to be remembered. Also, in no jurisdiction in Canada, is there employment "*at will*", as there is in the United States. A true termination that is not "for cause" always attracts notice, or pay in lieu thereof, both under labour standards and general employment contract law. A termination for redundancy or for economy is not "cause". Finally, because statutory notice and "common law" notice obligations are cumulative obligations, or because generally speaking, unless such right has been specifically reserved, an employer does not have a right to make unilateral changes to material conditions of work, simply giving statutory notice may well be insufficient.

The essential issue, therefore, becomes, can an employer "layoff" an employee temporarily without triggering a claim for "*constructive dismissal*", attracting notice/severance obligations, a "*constructive dismissal*" being a material change to an employee's conditions of employment that is unilaterally imposed by the employer and not voluntarily accepted or permitted by the employment contract itself. [1]

In Quebec, an employer may layoff an employee for up to 6 months, without attracting statutory notice under the *Labour Standards Act*.[2] If the layoff is caused by "*force majeure*" the statutory notice provisions don't apply at all.[3] There has been de facto judicial recognition of the principle that temporary layoffs don't terminate the employment contract, but rather suspend its effects (all this coming from the unionized sector) in general employment contract law, even though Article 2087 of the *Quebec Civil Code* recognizes that the employer's first obligation towards employees is to provide work to them, in that he must "permit the execution of the work agreed".[4]

There are those who, wrongly and exceptionally in the writer's view, that a layoff without pay, forces an employee to be available "at will" and/or that the principle that layoff for economic reasons does not entail a termination of the employment contract could not and should not apply to professional employees whose expectations are/were for employment that is insulated from cyclical ups and downs.[5]

This latter point of view is somewhat of an "*outlier*", and may derive the exceptional circumstances of the case, where there was respective and frequent use to short term layoffs and recalls and in a situation where the employer had originally forced its employees to continue working from home when it closed its brick and mortar offices.

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[1] *Farber* vs. *Royal Trust Company*, [1997]1 SCR 846. L.Q., C. N-1.1

[2] Sect. 82 *et seq.*, ***Act Respecting Labour Standards*** (hereinafter "**LSA**")

[3] See Section 83 of the above-mentioned **LSA**

[4] *Cabiakman* vs. *Industrial Alliance Life Insurance Co., 2004, 3 SCR 195, par. 37 to 42;* see also *Groupe Lelys Inc.* c. *Lang*, 2016 QCCA 68: In that case, the Quebec Court of Appeal recognized that the right to layoff for economic reasons derives implicitly from the general power of the employer to manage the enterprise and to take the necessary decisions to safeguard the interests of the business. Indeed, in accepting employment for an indeterminate period of time, employee implicitly accepts that his employment is and will be subject to the economic as vagaries that the employer may face, from time to time.

[5] See *Stepanian* c. *Réseau sans fil Calamp Inc.*, 2018 QCCS 611.

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Canada - Quebec

Bear in mind this "caveat", however, that when the number of layoffs exceed certain thresholds within a rolling two (2) month period and exceed six (6) months, they transform into "*collective dismissals*" requiring notice of varying lengths (2 to 4 months) to be given to the Minister and to the government agency overseeing the LSA (the CNESST). Failure to advise in time may lead to significant penalties.

As noted above, provisions regarding statutory notice and those relating to "*collective dismissals*" do provide an exception for "*force majeure*".

In the present pandemic situation, when only "essential" businesses are allowed to keep open, and then, only with reduced staff, and only when able to allow for social distancing rules, some employers who did operate may at same point to layoff staff or not recall those who were already on layoff. The question of whether "*force majeure*" insulates them from giving statutory notice or notice pursuant to "*collective dismissals*" required by the *Civil Code* remains an open question. Do ever burdensome difficulties in operating equate to "impossibility" of operating, attracting "force majeure"?

Whether employees would also be exempt from providing "common law" notice might also become an issue.

One thing is evident! How the Courts will react to "*constructive dismissal*" claims and/or claims for notice pay in lieu thereof, in view of COVID-19 and its effects, while somewhat more predictable in Quebec that in other provinces, even in this jurisdiction raises some uncertainty, especially when dealing with professional and/or other upper echelon employees. In short, as the boy scouts used to say "be prepared" and as I have said on occasion, if my opinion differs from those of my betters, I differ with difference.

Chile

Chilean Legislation considers the possibility to suspend the labor relation for a determined period if both parties, employer and employee, consent to the suspension.

To date, these agreements have the following characteristics:

1. They must be recorded in writing,
2. They must point out a specific period, without limits,
3. The suspension may be agreed with or without payment of the employee's remuneration,
4. Both parties must consent.

Law N° 21.227, which authorizes access to the benefits of the Unemployment Insurance in exceptional circumstances, came into force on April 6th, 2020. The purpose of this Law is to protect employees and to avoid numerous dismissals due to the Covid-19 sanitary crisis.

This Law authorizes temporary layoffs in which the employers are not compelled to pay the employees remunerations. Nonetheless, the employees may access to the payment of the benefits of the Unemployment Insurance under the following scenarios:

1. Suspension of the labor relation *ipso facto*: The labor relation is suspended by an authority act or declaration (for example, quarantines, curfews, or any other sanitary restrictions). Under this scenario, the consent of the parties is not required.
2. Suspension of the labor relation by mutual agreement of the parties: In this case, even though there is not an authoritative pronouncement, the employer's activities are totally or partially affected by the Covid-19 pandemic.

If the employer and the employee agree to suspend the labor relation, they must subscribe a written agreement, indicate a determined period, and the employee must consent.

The effects of these agreements are:

- The employer does not have to pay the employees' remunerations.
- The employer is compelled to pay the employees social security contributions.
- The employees will be entitled to receive the benefits of the Unemployment Insurance, as a replacement of their remunerations.
- The maximum term of these layoffs is until October 6th, 2020.

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China

First of all, under Chinese Labor Contract Law, there is no concept of temporary layoffs. Instead, an employer may conduct mass layoff if the employer reduces the workforce by 20 persons or more, or less than 20 persons but accounting for 10% or more of the total number of employees when an employer undergoes one of the circumstances as follows:

1. restructuring pursuant to the Enterprise Bankruptcy Law;
2. serious difficulties in production and/or business operation;
3. changes production, introduces significant technological innovation or adjusts its business model, and still needs to reduce its workforce after amending the labor contracts; or
4. a material change in the objective economic conditions relied upon at the time of conclusion of the labor contracts, and it is impossible for the parties to perform the contract.

Meanwhile, the employer is required to consult with the opinions of the labor union or all employees 30 days prior to the mass layoff, and then the employer can only carry out the layoff after reporting the layoff plan to the relevant local labor authority. In practice, the employer should obtain the approval from the labor authority on such layoff plan.

Some employees are entitled to the special protections if an employee:

1. have concluded a fixed-term labor contract with the employer with a relatively long term;
2. have concluded an open-term labor contract with the employer; or
3. is the only employed person in the family with dependent family members who are elderly or minors.

In addition, although the Labor Contract Law provides if an employer intends to hire new employees again within six months after the mass layoff, it shall notify the employees being layoff, and such employees shall have priority to be re-hired under the same conditions, it is rare case in practice.

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Czech Republic

Czech law does not include the notion of layoffs in employment relations. The closest concept that could be mentioned is "Kurzarbeit", literally translated as "partial unemployment", but in fact that is an obstacle to work on the employer's side. Let's review the obstacles which have been used in practice during the COVID-19 period.

Generally, if the employer is not able to allocate work for the entire working hours, or at all, due to obstacles on its part, the employee basically stays at home, his/her contract remains unchanged and he/she is entitled to salary compensation, unless transferred to other work. However, the employer may transfer the employee to another job only with his/her consent.

There are several types of obstacles on the part of the employer, but the most important ones in the current environment are:

a) **input availability limitations** (caused, in particular, by failure to supply raw materials or power) – the defect or obstacle must not be caused by the employer. If the employee has not been transferred to another job (with his/her consent), he/she is entitled to a wage or **salary compensation of at least 80% of the average earnings**;

b) **other obstacles** – other than those mentioned under a), the employee is entitled to salary compensation equal to **100% of his/her average earnings**.

According to the Ministry of Labour and Social Affairs, such a situation is considered when the employer's establishment (shop, restaurant, hotel, fitness centre, etc.) was closed due to the COVID-19 government measures issued during the state of emergency.

Other obstacles apply also when the employer had to close due to the fact that the majority of its staff was in quarantine or took paid childcare.

c) **partial unemployment** – the employer cannot allocate work to the employee within the weekly working hours due to the **temporary restriction of the sales of its products or the demand for the services** provided by the employer.

In the event that there is an agreement with trade unions or the employer issues an internal regulation on the adjustment of compensation in such a situation, the employee is entitled to **a minimum salary compensation of 60%**. Depending on the specific situation, the employer may only allocate work for some days, for which the employee will be entitled to a salary for the time worked and the remainder of the remuneration in the amount stipulated by the agreement or internal regulation.

Employers whose economic activity has been threatened due to the spread of the COVID-19 infection are, based on online application, granted a **refund contribution from the Antivirus Programme** to reimburse partially the salary compensation paid to employees because of an obstacle on the part of employees (quarantine) or on the part of employers (see above) if it is proved that the obstacle to work has been due to COVID-19. **The contribution covers 60 to 80% of super gross salary compensation with certain caps**.

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England

General principles

There is no statutory provision under English law entitling an employer to temporarily lay off its staff.

Therefore, if an employer wants to lay people off, it must either rely on an express contractual right to do so in the employee's contract of employment or a relevant collective agreement, or get the employee's consent.

Of course, if an employee is working under a casual or zero hours contract with no guaranteed hours or pay, then the employer can reduce their hours (possibly to zero) in response to a downturn in work.

Contractual right to lay off

Lay-off clauses are not usually included in employment contracts as standard practice in the UK. These provisions tend to be used routinely only in certain industries where work is known to fluctuate, for example, in the construction industry. Lay-off clauses are however being used more and more and we expect this trend to continue in the wake of the Covid-19 crisis and its damaging impact on businesses.

Securing consent

If there is no contractual right to lay off staff, then an employer may be able to secure the employee's consent. If the alternative to securing consent would be to dismiss 20 or more employees within a period of 90 days, then the employer is required to engage in a collective consultation process with employee representatives.

Entitlement to pay

A full time employee with normal working hours who is laid off may be entitled to a statutory guarantee payment for five days in any three month period (and a pro rata entitlement is available for part time employees). In some circumstances, employees who are laid off for four consecutive weeks (or for six weeks in any 13 week period) have a right to terminate their employment and claim a statutory redundancy payment.

The UK Government's Coronavirus Job Retention Scheme

There is currently another option available to employers in the UK. In response to the Covid-19 crisis, the UK Government has implemented the Coronavirus Job Retention Scheme (**CJRS**), which supports employers by paying 80% of a "furloughed worker's" pay, up to a cap of £2,500 per month. The scheme is available until the end of October 2020. Currently, (although this is set to change from August onwards), furloughed workers must cease all work in relation to their employment to be eligible for the scheme. Therefore workers are, in effect, laid off while furloughed.

The Government has however made clear that normal employment laws continue to apply to furloughing employees and therefore, unless the employee's employment contract already allows an employer to reduce hours and pay, the employer will still need to obtain the employee's consent to furlough them – the employer cannot impose furlough status unilaterally. Therefore, depending on the number of employees involved, it may become necessary for the employer to engage in a collective consultation process to secure agreement to changes to the employees' contractual terms.

Any decision to place an employee on furlough (even if the terms of their contract are not changing) should be agreed with the employee in writing and a record of this must be kept for five years.

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France

In France, a system allows companies to:

- Reduce the working hours of employees below the legal working time (i.e. 35 hours per week);
- Or to temporarily close all or part of the company. Employees are then no longer required to go to their place of work.

This mechanism is called **"partial activity"** (activité partielle).

In the context of the Covid-19 epidemic, this scheme helps the companies to cope with economic difficulties and avoid economic redundancies. It is therefore strongly recommended to use partial activity before commencing any redundancy process.

In case of implementation of partial activity, **employees benefit from a standard indemnity, paid by their employer, covering 70% of their gross hourly wage (approximately 84% of their net hourly wage).** A Collective Bargaining Agreement (CBA) may provide for higher compensation. In return, **the employer receives an indemnity paid by the French State.** The repayments by the State is capped at 4.5 times the French minimum wage (i.e., EUR 4,849.17 gross).

During this period, employment contracts are not terminated, but simply suspended. In other words, the employees have the right to return to their jobs immediately afterwards.

Please find below the conditions to benefit from the partial activity (1) and the application process (2). Please note that the rules have been adapted during the Covid-19 crisis.

1. Conditions to benefit from partial activity

An employer may benefit from this mechanism only in certain specific situations (article R. 5122 of the French Labour Code). These include the economic situation or any other exceptional circumstances. According to the French Government, a drop-in activity linked to the Covid-19 epidemic is an exceptional circumstance.

The consent of employees is not required. In case of refusal, the employee would be subject to sanctions.

Please note that there are specific rules for foreign companies that do not have an establishment in France.

2. Application to partial activity

To apply for partial activity, the employer must:

- Inform and consult the staff representatives (Social and Economic Committee or « *CSE* ») (if there is no CSE in the company it is highly recommended to inform the employees);
- Then apply for authorization to the French Labour Administration (called the "Direccte").

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France (cont'd)

Due to the emergency measures related to the Covid-19 crisis, this consultation may be organized after the request has been sent. The employer has 30 days to apply with a retroactive effect *(article R. 5122-3 of the French Labour Code)*. He must include the opinion of the CSE with his application *(article R. 5122-2 of the French Labour Code)*.

The request to benefit from this scheme must detail (i) the reasons for the request (ii) The forecast period of artial âctivity and the number of hours requested and (iii) the number of employees affected by the request.

The French Administration has, in the context of the pandemic, 2 days to respond (this delay applies until 31 December 2020). If no reply is received within this deadline, the authorization is considered tacitly accepted.

In France, the "stay at home period" is progressively lifted since 11 May. June 2nd should normally constitute a second stage. The French Prime Minister has announced that the partial activity mechanism will remain in place until June 1st. It will then be gradually adapted. After this date, the company may have to take over part of the wages of the employees who will remain on partial activity.

Germany

It is one of the principals of the civil law in Germany that the termination of a contract has to be final and unconditional. So there is no legal way for employers to unilaterally bring an employment only temporarily to an end.

Therefore, employers might consider (i) to terminate employments by giving notice (ii) combined with an offer to agree upon another employment starting at a later point of time. Legally, this way to go does not resolve the fundamental issue of most of the ordinary terminations of employments in companies in Germany. As stated in the so-called Protection Against Unfair Dismissal Act there are high obstacles to be passed to make an ordinary termination legally effective. We don't have to go into details in this context – please take it as a given that from a legal point of view it is a contradiction and – as a consequence – makes the termination ineffective in most scenarios if this termination is combined with a job offer to restart the employment at a later time. And there are even more reasons why the termination served by the employer might not be effective.

Nevertheless, it is naïve to assume that due to this legal situation no company will come to such "temporary layoffs" as we may call it. For example, there are companies where it is standard practice to terminate employments during off-season only to offer new employments when the next season starts. Also in small businesses it might by common practice to layoff employees when business is down combined with the guarantee to rehire the employees when business is up again. Typically, the employees, who were laid off, will be entitled for social benefits such as unemployment pay made by the Federal Employment Agency. So the period of unemployment can be bridged. Nevertheless, the employees also have the option to file a lawsuit and to challenge the termination – and then to negotiate a lump-sum as compensation or to insist on continued employment. Furthermore, this strategy bears the fundamental risk for the employer that employees who were terminated will not accept the offer to restart the employment. Why should they if the found another maybe even better suited employment in the meantime? In particular, this is a risk when employers lay off high performers.

This is one of the reasons why many years ago the German legislator introduced the so-called short-time work. When due to an economic crisis employees (or works council) and the employer agree upon a temporary reduction of working time and therefore upon a reduction of pay, the Federal Employment Agency under the rules and conditions as stated in Sec. 95 et. seq. Social Code, volume III, will compensate the loss of remuneration in the amount of 60% of the omitted net salary. This so-called short-time allowance ("Kurzarbeitergeld") even increases to 67% when the employee has to pay child support. Short-time allowance is paid up to 12 months. During the current COVID-19 pandemic the legislator already modified the rules to make it easier to receive short-time allowance and to increase the amount of short-time allowance. More modifications are expected to come. Whether this will prevent companies from extensive – non-temporary - layoffs we will know at the end of the current crisis.

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Greece

I. According to General Provisions

Greek Law 3198/1955 allows employers to set the whole or part of their employees to a situation of temporary layoff ("Diathesimotita") in case their financial activity has suffered a severe limitation. In these cases, the employer has the right, instead of terminating the employment contract, to suspend, in writing, the contracts of some or the whole of the employees for a maximum time period of three (3) months per year. The law sets as a prerequisite for this measure a previous consultation with the legal representatives of the employees. During this period of suspension, the employer is obliged to pay to the employees, whose contracts have been suspended, an amount that equals the ½ of their regular remuneration. Furthermore, the Institution of Employment of Labor Force (OAED) provides to the affected employees who remain unemployed during the time period of suspension, an amount of 10% of their regular remuneration.

II. According to Special Provisions Due to Coronavirus (COVID-19) Pandemic

The Legislative Act dated 20 March 2020 (Article 11, par. 2A) has provided that employers and businesses which are seriously affected by the negative consequences of the Covid-19 virus spread, have the right to suspend the employment contracts of a part or of all of their employees in order to adjust their operational needs to the new financial conditions. A special purpose state compensation of eight hundred euros (800 €) has been already granted to those employees whose employment contract has been suspended on the initiative of the employer for the period from 15 March 2020 until 30 April 2020.

The most recent Legislative Act of 1 May 2020 (Article 10, par. 1) has provided that the abovementioned employers and businesses who have suspended the employment contracts of their employees, may extend the duration of the suspension for 60% of the suspended employees for a period not exceeding 30 days and, in any case, to no later than 31 May 2020. In case they exceed the percentage of 60%, employers will be obliged to pay salaries to the affected employees. According to the par. 3 of the same article, the employees that remain in a temporary layoff situation are entitled to a special purpose compensation in proportion to the days of this extension.

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Hungary

Hungarian law does not recognize the concept of temporary layoff. In purely legal context, the employment can be terminated by the employer for reasons related to the employer's operation, but such termination is deemed final.

A result similar to the temporary layoff can be achieved only by mutual agreement of the parties. The employer and the employee can agree to terminate the employment, and to start a new employment once the reasons for the temporary layoff are not prevalent anymore. In the agreement, the parties can agree on other terms of restarting the employment, like considering it continuous with the terminated one, or providing the employee a bonus upon termination or upon the return to work. This, however, requires the employee's consent and this solution is rarely used in Hungary even in the current situation.

Another solution may be to agree with the employee to take unpaid leave instead of terminating his or her employment. This solution also requires the employee's consent. The main drawback for employees in this case was, before the Covid-19 outbreak, that they were not entitled to any healthcare benefits during the term of the unpaid leave, unless they paid healthcare contributions on their own. This restriction, however, has been lifted due to the pandemics situation, and as at now, employees who are on unpaid leave because their performance of work is not possible due to the pandemics, can also receive healthcare benefits.

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The Philippines

On 16 March 2020, the President of the Philippines declared that an enhanced community quarantine ("ECQ") was to be imposed on the island of Luzon. Since then, the ECQ has been extended, enlarged, and/or otherwise modified invariably. Regardless, however, of the ECQ's finer details, only private establishments deemed 'essential' were effectively allowed to physically open by virtue of this measure. All other establishments were ordered to temporarily close their physical offices, subject to alternative work schemes.

As a result, a vast number of entities were eventually confronted with imminent, if not actual, business losses. Although the government has, on several occasions, encouraged the private sector to be creative in approaching the employment issues entailed by these business losses, this call has understandably been merely persuasive rather than prescriptive. Ultimately, business establishments have had to consider the harsher option of mass layoffs which, although painful, remains a viable management prerogative under Philippine labor laws.

In the Philippines, layoffs may be effected permanently or temporarily.

Article 301 of the Labor Code[1] expressly allows the temporary suspension of employment for a maximum period of six (6) months pursuant to a *bona fide* suspension of the operation of a business or undertaking. According to *Article 301,* such suspension will not terminate employment, and in all such cases, the employer must reinstate the employee to his or her former position without loss of seniority rights if the employee indicates his or her desire to resume work not later than one (1) month from the resumption of business operations. During this period of temporary suspension, employees are deemed "floating" and are not entitled to any emoluments provided by law. For purposes of adopting such a *bona fide* suspension of operations, jurisprudence requires that the proper DOLE Office be given at least one (1) month prior notice.

The benefits of *Article 301* should, however, be distinguished from the effects of a temporary closure by virtue of the ECQ setup. In light of the indefinite nature of the government-imposed closure of businesses, companies have been legally required to temporarily close and/or suspend their operations, without any need to pay the salaries of their employees. A business establishment that temporarily closes under this setup only needs to report such fact with the DOLE and may opt to resume business as usual as soon as the ECQ is lifted.

Finally, the *Labor Code* likewise recognizes permanent retrenchment as a right of the management to meet clear and continuing economic threats or during periods of economic recession to prevent losses[2]. Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls over shortage of materials.[3] Implementing retrenchment includes the requirement to give notice of termination to both the employee and the appropriate DOLE Office within thirty (30) days from the date of termination of employment, sufficient proof of business losses, and the payment of separation pay equivalent to one (1) month pay or one-half (1/2) month pay for each year of service, whichever is higher.

These are the legally possible ways to effect mass layoffs in the Philippines as a consequence of the COVID-19 pandemic.

[1] *Presidential Decree No. 442, as amended and renumbered.*
[2] *Read-Rite Philippines, Inc. vs. Francisco,* G.R. No. 195457, 16 August 2017, 816 PHIL 851.
[3] *Pepsi-Cola Products Philippines, Inc. vs. Molon, et al.,* G.R. No. 175002, 18 February 2013, 704 PHIL 120.

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Romania

From the start of the COVID-19 pandemic to the beginning of May 2020, the number of temporarily laid off employees increased in Romania to 1,000,000.

The Romanian Labour Code provides that in case of a temporary decrease or interruption of business activities, an employer may unilaterally suspend the labour agreements of its employees without the necessity of any consultations with the trade union/representatives of the employees. As a result, the employees are sent home, while they remain available to be recalled to work and are granted a monthly indemnity of at least 75% of their basic salary.

There are no time limits for this measure, and no thresholds as regards the extent of the decrease of the business activities which would enable the employer to apply this mechanism. However, during the temporary layoff, the employees retain their status as employees.

During the state of emergency instituted, and prolonged, in Romania by presidential decrees (i.e., from 16th of March until 15th of May), Romanian employers can obtain the coverage of the indemnity of 75% of the basic salary of employees (but not more than 75% of the average gross salary for 2020 (i.e., no more than RON 4,041.75, approximately EUR 825), provided by the social insurance budget law) from the unemployment state budget, provided that:

(a) The employers reduce or interrupt their activity totally or partially following the effects of the COVID-19 epidemic;

(b) Their legal representative issues and submits to the competent authorities a statement in lieu of an oath, containing the names of the affected employees.

If the employer does not envisage the temporary full layoff of its employees, but it does envisage a temporary decrease of the business activities lasting more than 30 working days, the employer has the possibility to decrease, temporarily, the employees' working time from 5 days a week to 4 days a week.

As opposed to full layoff, the above-mentioned alternative option requires consultations with the trade union or, if there is no trade union in place, consultation with the representatives of the employees. In this case, the working time of the employees is reduced with a corresponding decrease in salaries (which in practice is a decrease of approximatively 20%).

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Russia

Russian labor law does not empower employers to temporary lay off its employees. The Labor Code provides an exhaustive list of grounds for dismissal. (Articles 71, 77-80 of the Labor Code). Additional grounds for dismissal may be established in relation to the employees working under a remote employment contract (Article 312 of the Labor Code). Such grounds must be spelled out in the employment contract. Mostly, these additional grounds relate to the employee's failure to fulfill her/his duties.

The Labor Code provides the following grounds for termination of the employment contract:

- by mutual agreement of the parties;

- at the employee's will;

- expiration of an employment contract;

- at the employer's initiative: (1) liquidation of the organization; (2) redundancy; (3) inconsistency of the employee with job; (4) repeated failure by the employee without good cause to perform her/his employment duties, if the employee has a disciplinary sanction; (5) single gross breach of employment duties (unexcused absence; appearing at the workplace in a state of alcohol, drug or other toxic intoxication; disclosure of secrets protected by law; committing a theft at the workplace; violation by the employee of the labor protection requirements; submission of forged documents, etc.); (6) failure to pass the test when applying for a job within the probationary period.

In order to temporarily suspend the employees' activities, the employer may declare a downtime (Article 157 of the Labor Code of the Russian Federation). Downtime can occur due to the fault of the employer, for reasons beyond the control of the employee and the employer, and through the fault of the employee.

In the case of declaring downtime due to the fault of the employer, the employee does not fulfill his labor functions and he retains a salary of at least 2/3 of the average salary.

In the case of a downtime due to reasons beyond the control of the employee and the employer, the employee is saved with a salary of at least 2/3 of the salary.

Downtime through the fault of the employee is not paid.

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Scotland

The UK Government Coronavirus Job Retention Scheme:

What are the main changes that have been introduced?

1. The government has announced the furlough scheme will now be in place until the end of October 2020 (the government covers 80% of the employee's wages up to a cap of £2,500 per month).There may be further extensions dependent on how long lockdown measures remain in force. After that employers will have to contribute towards the cost.

2. The HMRC portal is now live (as from 20th April 2020) and employers can submit claims for relevant workers from this date. Claims can be made 14 days in advance of any relevant pay period for employees who claims are being made for.

3. The scheme could initially be used in respect of workers who were paid via PAYE on 28th February 2020. Now, any worker who was registered with HMRC via an employer's PAYE payroll scheme (through submission of an RT1 form) by 19th March 2020 will be eligible for the scheme (albeit on day 1 of the HMRC portal being live there were reports of it rejecting claims for workers registered after 16th March).

4. It is for HMRC to determine what evidence an employer initially requires and must retain in terms of record keeping. The only clear guidance issued to date states that the employer must be able to produce a written record of the fact the worker has been notified they are being placed on furlough (see below) which must be retained for 5 years.

5. Importantly, the Treasury Direction does place some more certain parameters on when an employer can make a claim under the scheme for an affected worker. A claim can be made:

a. Where the worker has been instructed by the employer to cease work;

b. That instruction will have affect for at least 21 calendar days; and

c. The instruction has been given because of circumstances relating to the

coronavirus or by reason of coronavirus disease.

This third criteria is wide but does mean that there are some limits to those workers claims can be made for.

6. The worker must be given written notice of the fact they are being placed on furlough. It is uncertain whether an employer does requires a written acceptance from the worker (but the worker must agree without the employer having a lay off clause/ the employer running the risk of claims being raised). As above, the written confirmation should be retained for 5 years. Employers would be well advised to ensure they have written consent from workers and if this is not presently held, should be chased up as quickly as possible so as to ensure any otherwise valid claim is not rejected or payment of the grant is delayed.

7. Placing workers on furlough will amount to a variation of their terms and conditions of employment in most occasions (except where the contract of employment includes a right to lay off the worker). As such, as the scheme is subject to normal employment law rules, employers must ensure they follow due process in trying to introduce this change. The most obvious way to do this is to get worker's individual agreement to the change.

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Sweden

Up until the outbreak of the COVID-19 pandemic the Swedish legal standpoint was that employees who were laid off were entitled to continue receiving the same pay as usual. Thus, lay-offs as a means of dealing with a temporary financial challenge was very rarely used. Instead employers were forced to solve the situation by redundancy termination.

When the Swedish Government realised that the covid 19 pandemic was likely going to trigger mass redundancies on the Swedish Labour Market it dawned on the Government that it would have to take immediate action in order to mitigate the losses for employers in the private industry by introducing a possibility for employers to lay-off employees with reduced salaries during 2020 and to provide an allowance to the employer as an incentive to keep the workforce in employment.

During 2020 short-time working can be utilised when companies are faced with temporary financial challenges as a consequence of something unexpected happening. What this means in practice is that the company's employees reduce their working hours for a period of time (unpaid leave or reduced pay layoff) at the same time as the Government comes in and provides financial support in the form of a short-time work allowance. Please find below a short summary of the relevant rules.

- The short-time work allowance is financial support whereby the employer's costs for personnel can be reduced by one-half at the same time as the employee receiving 90 percent of his or her regular salary/wages. The financial support is available to both legal entities and natural persons which/who conduct a business enterprise or similar activity. The owners/employers are encompassed within the programme, and this includes limited liability companies, partnerships, charitable/non-profit associations and foundations.
- In order for the employer to be eligible for the financial support the employer must have entered into a collective bargaining agreement or an agreement with the employees that will be subject to a reduction of their working time and salary. Another requirement for being able to receive the support is that the employer first must have taken those measures available to reduce the cost of labour, for example by laying off non-permanent personnel who are not considered to be -critical to the operations of the company.
- Employers may reduce their employees' working hours by 20%, 40% or 60%.The salary ceiling for the financial support is SEK 44,000 per month.
- The employer pays the applicable reduced amount of the salary to the employee. The financial support is paid to the employer, not to the employee. What the financial support reimburses the employer is for hours worked. Absence due to illness and parental leave are absences from work and are not included in the financial support.
- The maximum amount the financial support may be is SEK 26,030 (EUR 2,600) per person/per month. This is the amount if the regular base salary is SEK 44,000 (EUR 4,400)or more and the reduction in working hours is 60%. During May, June and July the reduction in working hours may be 80 %,

The financial support can cover the period starting from 16 March 2020. It will be possible to submit an application for financial support until the end of 2020.

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