

Covid-19 | An Overview of the Last Measures Taken by the Government Impacting the Employment Sphere

Following the increase in contaminations due to Covid-19 and its repercussions for the public health situation, the Belgian government has implemented new measures which affect the organisation of Belgian employers, based on a new Ministerial Decree of 1 November 2020 (the **Ministerial Decree**).

Most of the new measures are effective as from 2 November 2020 and apply up to and including 13 December 2020 (with a possibility to be extended).

Based on the Ministerial Decree:

- All restaurants, bars and certain retail stores (such as clothing stores) must be closed. Online shopping and takeaway remain possible. The list of businesses up for closure are included in the Ministerial Decree and can be consulted [here](#) (pages 78931 through 78933) ;
- Many businesses (which are not open to the public) are considered to be serving Belgium's vital interests and the needs of its population (including the food and food processing industry, the financial institutions, the life sciences industry, etc.). These essential businesses can remain operational. A list of the essential services and industries can be consulted [here](#) (pages 78936 through 78943) ; and
- Teleworking is again mandatory unless this is not possible due to the nature of the function or for the safeguarding of the continuity of the business, its activities or its services.

The below overview lists the most important consequences of the new measures for Belgian employers.

1. TELEWORKING

Although several readings of the Ministerial Decree are possible, the Social Inspectorate has confirmed the following position: **the implementation of teleworking is mandatory for all businesses** regardless of their nature (public or private) and whether they can be considered as an essential business or not.

In this respect, teleworking **must be organised on a full-time basis for all employees unless this is not possible due to the nature of the function or in order to safeguard the continuity of the business, its activities or its services.**

If telework cannot be applied due to the nature of the function performed (e.g. blue collar employees) or in order to guarantee the continuity of the business (e.g. the IT department of an organisation) or the activities, the Ministerial Decree obliges the employers to:

- provide their employees who cannot telework with a **certificate** proving that their presence on the work floor is required ; and
- take sufficient measures to ensure **maximum compliance with the rules on social distancing and the prevention of Covid-19 contaminations.** The general guidelines ([click here](#)) and the

sectoral guidelines ([click here](#)) and/ or specific protocols should be observed at all times in this respect.

Compliance with these obligations will be monitored strictly by the Belgian Social Inspectorate.

How can VBB assist? VBB would be pleased to assist with the drafting of all the necessary documentation in relation to the implementation of telework and the legally required employer's certificate for the employees concerned whose presence is required on the work floor. In addition, VBB can assist with all requests in relation to the safe and adequate organisation of the work floor whilst complying with social distancing rules and other regulatory requirements.

2. REGIME OF TEMPORARY UNEMPLOYMENT – SIMPLIFIED PROCEDURE FOR PARTICULARLY AFFECTED SECTORS

In our Newsletter of 19 March 2020 (See, [Newsletter March 2020](#)), we informed you about the temporary unemployment schemes which allow employers to temporarily suspend the employment contract of their employees and, consequently, to temporarily suspend the payment of their remuneration.

The following two schemes can be applied:

- the temporary unemployment regime for *force majeure*; and
- the temporary unemployment regime for economic reasons.

Considering the Covid-19 pandemic, the formalities in order to apply temporary unemployment for *force majeure* **were reduced significantly**. Any employer who suffered from the consequences of Covid-19 could invoke temporary unemployment for *force majeure*.

Currently, the possibility to apply this simplified regime has been restricted to businesses considered by the Government as "**particularly affected**" by the pandemic.

Certain businesses, such as the ones belonging to the hospitality industry (e.g., food service establishments and bars) are considered as particularly affected employers. Consequently, such employers can continue to benefit from the simplified procedure for temporary unemployment for *force majeure*.

The entire list detailing all the industries which are currently considered as particularly affected can be consulted [here](#) (pages 66844 and 66845). The list makes a distinction between:

- Joint Committees (*Paritair Comité/Commission Paritaire*) which are entirely considered as particularly affected sectors (Joint Committee Nos. 140.02, 227, 302, 303.03, 304, 329 and 333); and
- Joint Committees for which only specific activities are considered as particularly affected (Nos. 100, 109, 111, 126, 139, 140.01, 140.04, 149.01, 200, 209, 215, 226, 314 and 315).

If a business does not belong to one of these industries or, as the case may be, if the business does not exercise an activity which is listed as particularly affected, it can, for the time being, apply for the regime of temporary unemployment for *force majeure* subject to the below condition.

In such an event, **the business should demonstrate at least 20% of temporary unemployment days in the second quarter of 2020** due to a lack of work for economic reasons or for *force majeure* compared to the overall number of workings days as communicated to the National Social Security Office (*Rijksdienst voor Sociale Zekerheid / Office National de Sécurité Social* ; the **NSSO**).

If none of the above conditions are complied with, a business may still apply the regime of temporary unemployment for economic reasons subject to several conditions.

It appears that the list of particularly affected businesses is no longer adapted to the new measures taken by the Government in the Ministerial Decree. Indeed many businesses have been forced to close (for example clothing stores) until at least 13 December 2020 whereas the industry to which they belong has not been listed explicitly as particularly affected. Hence, such businesses can only apply the simplified regime of temporary unemployment due to *force majeure* if they demonstrate at least 20% of temporary unemployment days in the second quarter of 2020. Considering the first lockdown, this hopefully should not be an issue for most employers.

According to the information from the relevant authorities, the Government currently envisages broadening the list of particularly affected industries taking into account the provisions of the Ministerial Decree.

How can VBB assist? VBB would be pleased to verify whether or not your organisation can apply the regime of temporary unemployment and, if so, subject to which conditions. VBB can also assist with all the necessary formalities and the communication towards the employees in that respect.