

***Covid 19 (ex: 2019-nCov Coronavirus),  
How French companies can take the epidemic risk  
into consideration?***

**(Par Me Eric Pouliquen - Spécialiste en droit du travail – Willway Avocats)**

The 2019-nCoV coronavirus appeared in late 2019 in the Chinese province of Wuhan.

On January 20, 2020, 278 cases were identified in China and 4 cases in the rest of the world. As of January 31, 2020, China had registered more than 11,200 cases and the rest of the world 153. Since then, the figures for the spread of the epidemic have increased significantly, although the epidemic is, as it stands, confined mostly to China.

An American information site keeps up to date daily, the degree of spread of the disease, based on official data provided by the various states in the world, and first of all China. This information is available at the following address :

<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594>

The epidemic continues to progress steadily and significantly. It is not excluded that it may impact other countries in the world in the coming months. Current scientific reports are rather reassuring about the relatively low degree of lethality of the disease.

However, absenteeism in companies is likely to be quite high during an epidemic and employee absences could be relatively long, so it is advisable to think about it now.

**1) Learn and assess the risks.**

It is important first of all, to consult the official sites which are best able to provide reliable information on the evolution of the situation. Among these, we can cite, from France :

- The Ministry of Foreign Affairs, [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr).
- The Government site, [www.gouvernement.fr](http://www.gouvernement.fr).
- The Ministry of Health, [www.solidarites-sante.gouv.fr](http://www.solidarites-sante.gouv.fr).
- The WHO website, [www.who.int](http://www.who.int).
- For Europe, the ECDC website, [www.ecdc.europa.eu](http://www.ecdc.europa.eu).

It can also be considered to create its own internet watch, specially adapted to the needs of its business, in order to take into account the impact of the daily evolution of the epidemic on the activity of its business, while avoiding "Fake news".

The information collected can make it possible to more finely assess the economic risks to which his company is potentially exposed and to better anticipate the possible consequences.

## 2) Economic risk.

If employee absenteeism is likely to affect all companies, on the other hand, their economic situation can be very variably impacted :

- For some of them, there could be a drop, even a temporary cessation of their activity (entertainment companies, shops, establishments open to the public ...).
- Others, on the other hand, could have little or no impact on their volume of activity (security companies, construction companies, etc...).
- Finally, some companies may have to cope with an increase in activity (typically manufacturers of surgical masks or hydroalcoholic gel, health establishments, but also, if necessary, companies in the agrifood sector if the population begins to constitute, for example, stocks of precautionary food).

In addition, other elements will also be taken into account, such as :

- The international nature of the company's activity; should we reduce or not, international activities? Or at least travel abroad?
- The degree of dependence of the company on suppliers, subcontractors or customers, who could themselves be impacted by the epidemic. At the moment, it could be partners located in China or themselves dependent on companies located in China.

Depending on these very different situations, the need to adapt can vary significantly, from one company to another.

A number of companies have already established a **Business Continuity Plan (BCP)** which aims to enable them to continue operating in a degraded environment. It is important to validate that this BCP takes into account the epidemic risk, and if necessary to update it.

For those who do not yet have such a Plan, it is still possible to initiate this approach and apply it, initially, only to the epidemic risk.

It is recalled that a BCP is not intended to remove the risk that may or will occur, but to reduce the degree of uncertainty and unpreparedness for its occurrence, by anticipating a certain number of actions to be taken when it occurs (such as the supply of masks, gloves, disinfectants, hydroalcoholic gels; the activation of measures such as telework, distance training, reduction of trips, reorganization of work stations ).

## 3) Legal risk.

With regard to French law, it is necessary to overturn a preconceived idea that companies could benefit from exceptional legal measures in a situation of exceptional crisis.

Apart from a few specific devices organized on the fringes by the legislator, or even exceptional measures that could be taken urgently by the public authorities during the epidemic, the law, and in particular the labor law, are not modified by the sudden effect of the crisis. The applicable Labor Code remains exactly the same, with a few minor adjustments.

There is no exceptional labor law, which would adapt to an exceptional crisis situation. The maxim "Dura Lex, Sed Lex", or in other words, "The Law is hard, but it is the Law", finds its perfect illustration of inflexibility here.

It is also necessary to take into consideration, the possible interventions of the public authorities in the management of the crisis, which can have a direct impact on the situation of companies.

Among these measures, it is possible to cite in a non-exhaustive manner: border closures, restrictions on the movement of people and goods, restrictions on the opening of establishments open to the public or their closure outright, the judgment forced activities, quarantine measures, requisitioning of goods or people, including businesses, the recall of reservists (soldiers, police, volunteer firefighters, security, health reserve, communal reserve etc.)...

#### **4) The health risk.**

It is necessary, from now on, to take into account the epidemic risk linked to Coronavirus 2019-nCov, based on the latest medical information available. As it stands, these are fragmented, being the appearance of a new disease.

However, a certain number of measures can already be anticipated which could make it possible to reduce, as far as possible, the health risk, if the epidemic affects France. The issue of epidemic risk must be taken into account in the company's single professional risk assessment document (DUERP), which must be updated if necessary.

Beyond the company's endowment in surgical masks or hydroalcoholic gels, a whole series of questions can arise:

- Should I reduce international travel, especially currently to China?
- Should I impose quarantine measures on employees when I return?
- What attitude should be adopted if an employee presents apparent signs of the illness?
- Do I have to reorganize workstations to take into account the risks of contagion?
- Should I consider teleworking measures?

It is also necessary to anticipate the risk of psychosis which could lead to paralyze an organization, as well as the epidemic itself (exercise of the right of withdrawal; refusal to perform certain tasks etc ...).

On these subjects, the recommendations of the INRS can be invaluable ([www.inrs.fr](http://www.inrs.fr)).

#### **5) Organizational risk**

As we have seen, from an economic point of view, businesses will be impacted very differently from one another.

- Some may see their activity reduced, with the consequence of having to wonder about the use of paid holidays, days of leave linked to the reduction in working time (RTT), short-time working, etc.
- Others may see their activity remain stable or increase, with the need to resort to overtime, possible reorganization of work, telework, fixed-term contracts, temporary workers, external service providers, etc.

However, the risk of massive and prolonged absenteeism of part of the employees, as well as service providers or subcontractors, must be taken into account. In this perspective, it is important for example:

- To consider what are the essential activities, essential to the continuation of the business and the ancillary activities, which can be temporarily stopped or slowed down, and this by work station,

- To ensure that everyone can pass the instructions to one or more other employees, in case of absence (such as, for example, computer codes or other),
- To wonder about alternative solutions to the temporary shortage of such or such employee, supplier, service provider etc.

## 6) Managerial risk

In terms of corporate governance, leaders will be asked to ask themselves a certain number of questions regarding the solidity and resilience of their organization:

- How will my business react to the storm?
- How will the members who compose it behave? What is the risk of being their possible attitude towards their work environment or even towards their leaders?
- What attitude should I adopt when I have to communicate about this health crisis?
- What advice should I give to each other; what actions should i take?
- And finally, can this crisis call into question the mode of governance of my company?

In conclusion, if it is a fact that the worst is never certain, we lend to Cardinal Richelieu the following maxim: "We must not fear everything, but prepare everything".

If you need more information, you can contact :

**Me Eric Pouliquen - Willway Avocats**  
2 Rue des Colonels Renard - 75017 PARIS  
Tél. 01 53 30 26 62 / Portable : 06 74 77 13 26

 [www.willway-avocats.com](http://www.willway-avocats.com)