

L&E Global webinar – <u>DETAILED</u>

Coronavirus: your essential workplace update

23 March 2020



L&E Global – A warm welcome







L&E Global COVID-19 microsite: your essential overview of all workplace-Corona related implications from across the globe:

knowledge.leglobal.org/corona

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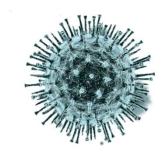
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Coronavirus: your essential workforce update



- Germany
- France
- Italy
- Poland
- The Netherlands
- Spain



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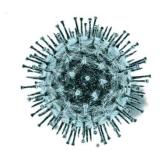
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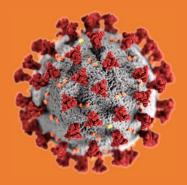


Round Table Discussion



Frequently Asked Questions (FAQ) for employers In:

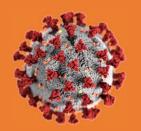
- France
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What about employees who must stay at home to take care of their children due to school closures?



FAQ1 (1): What about employees who must stay at home to take care of their children given the school's closure?





In France, there are several options:

- Home office: if feasible, the simplest solution to face this situation
 - the reasons for the refusal must be expressly communicated to the employee
- Relocation of paid holidays already laid down (with new legal flexibilities see FAQ 2)
- A specific "work stoppage" implemented by the Government in case no other option is available
 - As this measure can only benefit to one of the two parents of a child under 16, the employee would have to officially state in writing that he will be the only parent to ask to benefit from this work stoppage



- Home office arrangements, if possible
- Use of existing overtime balance
- Use of paid annual leave or unpaid leave
- Controversial if entitlement to paid absence under Civil Code
 - Personal performance obstacle (controversial for closures)
 - Exists for a "non-substantial time" (if not temporary, no entitlement at all, not even partially) Problem in case of a closure for several weeks
 - Provision can be and is often excluded in individual and collective agreements
- Best practice at many companies: up to 5 days are granted, but legal debate ranges from 1 day to 6 weeks
- Draft new law: possible state reimbursement for up to 6 weeks of up to 67% of net wage (capped at €2,016/month) for parents of children up to 12 if no other childcare arrangements and no other workplace arrangements such as taking overtime are possible



In Spain: there are several options:

- Home Office by the employer's order
- Also employee have the right to get an adaptation and/or reduction of working hours in case they can prove duties of care of their spouse, partner and relatives to the second degree of consanguinity, attending to exceptional circumstances related to the actions necessary to prevent the spread of COVID-19. These exceptional circumstances occur when the attendance of the employee is necessary to attend those people, who due to age, illness or disability, need personal and direct care. This right is individual to each parent or caregiver and must be justifiable, reasonable and proportionate in relation to the situation of the company.
- The right of adaptation must be requested by the employee, and it may consist of a right of adaptation of working hours, change of shift, change of schedules, flexible hours, midday break or continuous work day, change of functions, etc.
- The right to a special reduction of working hours shall be accompanied by a proportional reduction of salary and must be communicated to the company 24 hours in advance and may reach 100% of the working day if necessary.
- The employer may not grant accrued holidays unilaterally

FAQ1 (2): What about employees who must stay at home to take care of their children given the school's closure?





In Italy:

- pursuant to Law Decree No. 18 dated 17.03.2020, starting from March 5, parent employees are entitled to benefit from leaves, continuous or split, not exceeding 15 days (total between the two parents) in order to take care of children not older than 12 years, during which an allowance equal to 50 % of their salary is granted (the age limit does not apply to children with proven disabilities). The leave is granted on the condition that both parents are employed, and no one is receiving an unemployment indemnity.
- Alternatively, parents can choose to receive a baby-sitting bonus equal to € 600,00.
- For sons/daughters from 12 to 16 years old, parent employees may abstain from work for the whole duration of the school suspension, without any allowance.



In Poland there are several options:

- Home Office by the employer's order
- if employees must take personal care of their child up to 8 years old during the closure period (nurseries, kindergartens and schools now: March 12- April 14) they can use special leave and are granted child care allowance paid from the public social founds (80% of base salary) the right to be used by one parent only
- by individual employer's decisions release from work obligation with right to remuneration
- all overdue annual leaves may be granted by the employer unilaterally, current holiday need individual arrangements



In the Netherlands, based on "good employment practices":

employees should be allowed to work from home, if reasonably possible; and

from both the employer and the employee a reasonable level of flexibility can be expected to make this work.

If the employee is not able to perform work due to child care, the employee can be entitled to 1-2 days paid emergency leave. If the employee cannot not resume work after these days, the employee is not entitled to salary payments. Dutch law provides the following options:

the employee can take vacation days;

the employee can take unpaid (parental) leave;

if one of the employee's family members is sick and the employee is the only one who can provide the necessary care, the employee may be entitled to a maximum of two weeks short time care leave which is partially paid (70% with a cap).

NB: if the employer wishes to make us of the Temporary Emergency Bridging Measure for Sustained Employment it is expected that the employer must continue to pay the employees full salary.

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FAQ 2:



Can employees be asked to take their leave or have the dates of leave changed without notice? What about the use of time saving accounts?



FAQ2 (1): Can employees be asked to take their leaves and the employer change their dates of leaves without notice? What about the use of time saving accounts?





For paid leave:

- if the employee has already taken leave, the employer can move it to another period
- if the employee has not set leave dates, the employer cannot impose them (but he can propose it)

Nevertheless, according to the emergency legislation to deal with the Covid-21 outbreak, the government could allow a company or branch agreement to authorize the employer to impose or modify the dates for taking part of paid leave up to a maximum of six working days, by derogating from the periods of notice and the procedures for taking such leave laid down

For "RTT" days and saving time accounts:

- "RTT" days: in principle, only those that are at the disposal of the employer may be freely positioned by the employer (see the collective agreement)
- Saving time accounts: in principle, it depends on the wording of the collective agreement that set up the saving time account (

But regardless of the provisions of the collective agreement, any employee may, in agreement with his employer, use the rights allocated to the time savings account to supplement his remuneration) According to the "emergency legislation to deal with the Covid-21 outbreak", employers could be allowed to impose or modify unilaterally the dates of "RTT" days, rest days provided for in flat-rate agreements and rest days allocated to the employee's time savings account, in derogation of the terms and conditions provided for by the agreement or by law



Leave

- No unilateral change of leave already granted
- Works council: works agreement on company holiday possible, maximum 3/5 of annual holidays cannot apply if holidays for the year have already been approved
- No works council: normally leave wishes by employee to be considered, however exceptions for operational reasons may be possible. Case law is old and pre-dates the stricter case law of ECJ and FLC on leave of recent years, therefore risk that leave not validly granted cannot be excluded

Working time accounts

- Use of previous overtime/time saving accounts depends on individual/collective contracts and has to be carried out in line with those
- Possible deviations may be agreed with individual/works council/unions
- Usually notice required: working time accounts 3 days probably reasonable; normal overtime next day



In Spain: Annual paid leave:

- Holidays must be agreed by the parties with 2 months in advance. This right has not changed now, so all overdue leaves cannot be imposed unilaterally by the employer. Most employers are trying either to:
- Make employees use their holidays in agreement with the employer;
- Agree on a way where both parties incur part of the cost. Therefore, the formula for every two days of work at home, employee will use one day of holiday, is a measure that is gaining quite a number of success. This is a way for both employee and employer pay equally the cost of this situation.
- Some companies have what we call "bolsa de horas" or savings account. These of course may be used as it has been agreed for in the collective bargaining agreement or any other agreement between works council and employer. There is not special mention in the Royal Decree 8/2020 to saving accounts, but of course the problem now is that there is absolutely no need to use them as there is no work to be done, at least in the majority of cases.
- Unpaid leave may be requested by the employee anytime, and it must be at least 4 months of duration, until 5 years. The employer will not have to pay any social security contribution, not salary.

FAQ2 (2): Can employees be asked to take their leaves and the employer change their dates of leaves without notice? What about the use of time saving accounts?





In Italy:

In order to limit the diffusion of the illness, by way of several decrees enacted over past days, the Government expressly recommended the companies to encourage their employees making use of holidays, paid leaves and measures provided for by collective bargaining agreements (including saving account if provided).

Although not expressly provided, in this exceptional scenario and also in light of some interpretations of Government indications, it seems possible for the employer to evaluate unilaterally imposition to its employees, without notice, of holidays and paid leaves (at least, if they have been accrued until the end of 2019).



- Annual paid leave:
 - all <u>overdue</u> leaves may be granted to the employee unilaterally
 - current annual leaves its use or change of dates requires employee's consent (the employer can only propose it)
 - may be cancelled if there are unforeseen circumstances, not existing when the employee began the leave
- Unpaid leave requires the <u>mutual agreement</u> of parties
- There are no time saving accounts. Instead, it is possible to extend the settlement period for calculation of working time up to twelve months based on the Agreement with Trade Unions or Employees Representatives (not a Works Council).



The Netherlands:

- The employer can ask employees to take their vacation days. However, employees cannot be forced to take vacation days.
- Dutch law does not provide any statutory rules for time saving accounts. Whether employees can be forced to use their time saving accounts will depend on the specific regulations. These rules may be laid down in company policies and/or collective bargaining agreements.

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FAQ 3:



Short time work:

- How does it work?
- Conditions
- Timeframe and formalities
- Duration and
- Indemnification







In France:

- Two types of short-time work:
 - the temporary closure of all or part of the company site;
 - the reduction of working hours under the legal working time (35 hours) in all or part of the company site
- Grounds: short-time work can be justified, in particular, by « exceptional circumstances »
 - According to the Labour Minister, the Covid-19 pandemic is an "exceptional circumstance" qualifying for short-time work
- Duration: maximum twelve months
- Employees concerned: all the employees having an employment contract with the company
 - Suppression by the draft decree of the exclusion of employees whose working hours are fixed in hours or days over the year
- The "emergency legislation to deal with the Covid-21 outbreak" authorizes the government to modify the rules of short-time work in particular by temporarily adapting the social scheme applicable to the allowances paid in this context, extending it to new categories of beneficiaries
- For protected employees: in principle, an employer cannot impose short-time work (their prior consent must be obtained)
- Compensation: an allowance, paid by his employer:
- corresponding to 70% of his gross pay and exempted from the payment of social security contributions (but subject to the CSG and the CRDS on replacement income after application of a 1.75% deduction) and subject to income tax subject to future changes as a result of the emergency legislation.
- without being lower than the minimum wage
- monthly at the usual pay dates
- The Applicable CBA can contain more favourable provisions

Focus on how to implement short time work





In France (cont'd), there are several steps to follow:

Step 1	Information and consultation of the Social and Economic Committee (CSE) (in companies having more than 50 employees)
Step 2	Subscription to the online platform
Step 3	Online request for authorization from the administration
Step 4	Examination of the request by the administration
Step 5	Administration's decision, silence during fifteen days is regarded as an implicit acceptance (or two days if exceptional circumstances)
Step 6	Communication of the administration's decision to the CSE
Step 7	Information of the employees on the implementation of short-time work Prior consent required for protected employees
Step 8	Implementation of short-time work
Step 9	Request for compensation





In Germany:

- ⁻ Temporary reduction of working time (partially or fully) based on collective or individual agreement
- Short-time work allowance (KUG) by labour agency for up to 12 (24) months: 60% or 67% (with children) of net wage difference (capped at social security income ceiling) I new regulation due to COVID 19 to extend application of KUG
 - significant loss of working hours, which results in loss of remuneration
 - economic reasons or unavoidable event result in loss of working time of at least 10% of the employees of the business in the calendar month; employees are affected by a loss of remuneration of more than 10% of their gross remuneration
 - Temporary, ie after expiry of KUG period return to normal working hours to be expected
 - Unavoidable loss of hours: remaining annual leave for past years to be taken, positive working time balance/overtime to be used no need to build up negative working time balance
- (-) for terminated employees, mini jobbers and apprentices
- No employer social security payments on KUG by employer





In Germany (cont'd):

- KUG only possible if there is a legal basis, ie collective agreement or provision in employment contract, therefore no unilateral introduction
 - Relevant agreements may need to be concluded now at short notice
 - Individual agreements may be easier to achieve in some industries if top-up payments are promised
- Notification to labour agency necessary on basis of standard forms possible on ePortal I normally comprehensive and precise maybe less so at this stage, still:
 - Reasons for the loss of working hours; comparative figures showing underutilization
 - Information on products/services; main clients or contractors
 - Information on the temporary nature on the loss of working hours
 - To be submitted at the latest by end of the month for which KUG shall be first claimed
- Proper introduction and notification of short-time work: employer can apply for reimbursement of KUG, three months' preclusion period, ie claims for March to be made by 30 June
- Mistakes in the process may result in full loss of KUG and employee may claim unreduced salary!!!





In Spain:

- All contract suspensions and reductions of working hours that are directly caused by loss of activity as a consequence of COVID-19, "including the declaration of the alarm state, that imply suspension or cancellation of activities, temporary closure of public places, restrictions on public transport and, in general, on the mobility of people and / or goods, lack of supplies that seriously impede the continuous performance of the activity, or in urgent and extraordinary situations due to the contagion of the staff or the adoption of preventive isolation measures decreed by the health authority, which are duly accredited ",shall be considered as situations of force majeure.
- In these cases, the following specifications shall be applied to the employment regulation procedure:
- The procedure shall start with the company's application, which shall be accompanied by a technical report proving that the loss of activity is a consequence of COVID-19, and the corresponding supporting documentation.
- The company must communicate its application to the employees and must deliver the aforementioned report and the supporting documentation to their representatives.
- The existence of force majeure must be verified by the labor authority.
- The decision of the labor authority shall be issued within five days after the application, with a previous report from the Labor and Social Security Inspection and it must be limited to verifying the existence of the force majeure alleged by the company, which shall decide about the application of measures to suspend contracts or reduce working hours, which shall be effective on the date of the fact that causes the force majeure.
- The report of the Labor and Social Security Inspection, whose request shall be optional for the labor authority, shall be delivered within the non-renewable period of five days.

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In Spain (cont'd):

- In Spain, there are several steps to follow:
- FORCE MAJEUR.- No minimum nor maximum duration. Must be justified by employer. For force majeur, most companies are requesting 2-3 months at this point.
- Companies whose collective reduction or suspension of contracts have been authorized due to force majeure related to COVID-19:
- 1. If on February 29, 2020 the company had less than 50 workers registered in Social Security, it shall be exempt from paying:
 - a) Employees' salaries
 - b) The company contribution provided in article 273.2 of the TRLGSS; and
- 2. If on February 29, 2020 the company had more than 50 workers registered with Social Security, the exemption from the obligation to pay shall reach 75% of the company contribution.
- REGULAR SUSPENSIONS/REDUCTION OF WORKING HOURS
- Procedures of contracts suspension and reduction of working hours due to economic, technical, organizational and production reasons, the following specialties shall apply:
- 1. In the event that there is no workers' legal representation, a representative committee must be set up within the non-extendable period of 5 days:
 - a) The representative committee shall be composed of the most representative unions of the sector to which the company belongs. The committee shall be made up of one person for each of the unions that meet these requirements, making decisions by majority.
 - b) If this representation is not set up, the committee shall be composed of three company workers, elected in accordance with the provisions of article 41.4 of the Workers' Statute.
- 2. The consultation period should not exceed the maximum period of seven days.
- 3. The report of the Labor and Social Security Inspection, whose request shall be optional for the labor authority, shall be delivered within the non-extendable period of seven days.





In Italy:

- Due to Decrees enacted in past days (in particular, Law Decree no. 18 dated 17.03.2020), all the companies which suspend or reduce the time work in light of COVID-19 emergency, may request an economic indemnity from the Government to be paid to the employees to partially integrate the remuneration lost (*i.e.*, temporary mass lay-off, called "Cassa Integrazione" in Italian legal parlance). Accordingly, employees should be entitled to around 80% of the remuneration due to them, as indemnity for the hours not worked (however, very likely a cap to such indemnity is expected to be introduced).
- Such measure, which is granted for a maximum period of 9 weeks, shall be requested through procedures which are different depending on the business field in which the employer perform its activities. By way of example, it could be requested to file an application to the Social Security Contributions Authority, or to ask authorization to the competent Region. Moreover, although such procedures would be simplified (compared to ordinary ones), in principle a consultation with the Unions would be required anyway (to be carried out, eventually, by telematic instruments).
- The measure is granted within the limits of financial helps allocated (such limits depend on employers' business field, and currently ranges between 338,2 and 3.293,2 million of euros).
- The lay-off period due to COVID-19 is not considered in the calculation of the maximum period of ordinary lay-off allowed pursuant to the law.
- Clarifications and further indications on concrete operation of special temporary lay-off described above, are expected soon.





In Poland, no feasible and universal statutory short time measures are available

The following general measures may be applied (but never less than minimal statutory salary):

- a change of remunerations in any way the Agreement with Trade Unions or Employees Representatives (not a Works Council),
- the Stoppage declared by the Employer's ordinance to avoid payment of additional salary elements during the temporary closure of reduction of business activity

Both solutions concern all employees, including the protected ones. Can be implemented for all of selected groups

The Agreement:

- suspension of chosen internal labour law provisions (incl. CBA) including bonus regulations and other or /and reduction of salaries up to minimum statutory level c/a 580 EUR
- justified by employer's financial situation confirmed by the parties to the agreement
- can be concluded for max. 3 years
- enters into force for the future on the date determined in the agreement
- must be reported to the competent Labour Inspector

No changes of employment contracts of internal regulations or collective procedures are required.

If there is a Works Council in the company, the employer should inform the Council of the intention to conclude such agreement.

Focus on how to implement short time work





In Poland (cont'd):

- The Stoppage:
 - employees are entitled only to a monthly base salary
 - is justified by any reason pertaining the employer (not of the economic nature),
 - is implemented for as long as the employer sustains the reasons existing,
 - enters into force immediately
 - the employer's Ordinance must be announced to the employees

There are a few steps to conclude the Agreement:

Step 1	Deterioration of the employer's financial conditions
Step 2	Consultations with the Trade Unions or Employees Representatives
Step 3	Conclusion of the Agreement for a period not longer than 3 years
Step 4	Submitting of the Agreement to the competent regional labour inspector
Step 5	the Agreement may enter into force on the day of its conclusion or later





In the Netherlands:

- The Reduction of Work Hours regulation has been withdrawn with immediate effect on 17 March 2020.
 - New applications or extensions cannot be requested anymore.
- The Reduction of Work Hours regulation will be replaced by the Temporary Emergency Bridging Measure for Sustained Employment (the "NOW"). The NOW is currently drafted. The exact rules are thus not available yet.
- The main elements of the NOW that have been announced are:
 - Employers who suffer a loss of turnover of at least 20% can apply for a financial compensation. The criteria will thus be loss of turnover instead of reduction of work hours.
 - The financial compensation amounts to a maximum of 90% of the total wages paid by the employer the exact amount will depend on the loss of turnover.
 - The regulation applies to loss of turnover as from 1 March 2020 onwards (hence the regulation will have retroactive effect).





In the Netherlands (cont'd):

- The employer can claim a compensation for 3 months, with the possibility to extend it once, for a further 3 months (extra conditions may apply to an extension application).
- Advance payments will be made of 80% of the expected compensation. After the 3 month period a final calculation will be made, which can lead to additional payments or repayment obligations.
- Additional conditions to apply for a compensation:
 - The employer cannot dismissal employees during the compensation period on the basis of economic grounds.
 - The employer should continue to fully pay the employees' salaries during the compensation period.
- Applications cannot be filed yet. The government expects to have the regulation ready and available by 31 March 2020.

FAQ 4:



How to manage works councils statutory meetings and other duties?



How to manage works councils statutory meetings and other duties?





Works councils meetings:

- it is still mandatory to organize works councils statutory meetings and to collect mandatory opinions
- The employer may decide unilaterally to use videoconferencing (within the limit of 3 meetings per year)
- The "emergency legislation to deal with the Covid-21 outbreak" authorizes the government to take measures to enable the works council to deliver the necessary opinions within the time limits laid down.
- Right of alert for serious and imminent danger.



In Germany:

- Difficult topic, especially as works councils are needed to implement measures like new works agreements on issues like leave arrangements, short-time work etc.
- Law provides that works council meetings need to be in person and non-public
- Controversial if virtual meetings are possible, prevailing opinion currently: (-)
 - Consequence: Resolutions made in such meetings not effective, risk that employees could challenge disadvantages resulting from such meetings even if employer agrees to virtual meetings
- Practice: Agreement with works council on virtual meetings, works agreements need to be signed in wet ink by both parties on same document; where possible: postpone conclusion of works agreement, otherwise take risk but at least sign properly
- Discussions whether there should be a short-term legal solution by the Government in current crisis



In Spain:

- Nothing is said in the law regarding this. Meetings very probably cannot take place in the worksite, but they can always be done via skype or any other online manner. The administration is being very flexible in this point precisely due to the fact that this is totally an exceptional situation.
- Rest of work council's duties will also have to be managed by videoconference. Employer will facilitate the necessary materials for this to be able to happen.

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How to manage works councils statutory meetings and other duties?





In Italy: As a general rule, Unions meetings within companies' premises are not allowed in this period. As provided for in a Protocol dated 14.03.2020, entered into among the social parties, in the event meetings cannot be carried out by means of telematic systems, and the reunions are strictly necessary or urgent, the number of attendees must be reduced as much as possible and precautionary measures must be adopted (by way of example, distance of 1 meter between people, cleaning and ventilation of offices).



In Poland: no obligation to organise works councils statutory meetings

- Rules of cooperation may be modified and adjusted accordingly, e.g. videoconferences, calls, shorter deadlines, e-mail protocols, etc.
- Formal annexes to the agreement with the Council determining these rules are not necessary



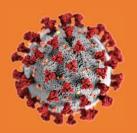
In the Netherlands: The rights of the works council under the Dutch Works Councils Act continue to apply. The company and the works council should agree on how to practically execute these rights. Technological means of communication should provide a workable solution for most situations.

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FAQ 5:



Are redundancies prohibited?



Are redundancies prohibited?





In France, at this time, no official prohibition of dismissals.

Nevertheless, the "emergency legislation to deal with the Covid-21 outbreak" authorizes the government to take measures to limit dismissals.



In Germany, In principle redundancies are not prohibited, however employer needs to prove that the role is permanently eliminated -> Problem: unless permanent closure or foreseeable permanent reduction of work (objective prognosis that role will fall away for indefinite period of time)

Short-time work and redundancies exclude each other: (i) Temporary vs permanent reduction of work; (ii) Only possible if there is business decision that eliminates need for role in the future: (iii) Treatment may be different in different parts of the business: (iv) Difficult to move from short-time work to redundancies – need for additional circumstances that may have changed > Risk that claim to short-time payments by State falls away as labour agency may argue that employer had wrongfully stated temporary reduction of work



In Spain: currently, no legal restrictions or prohibition to conduct redundancies.



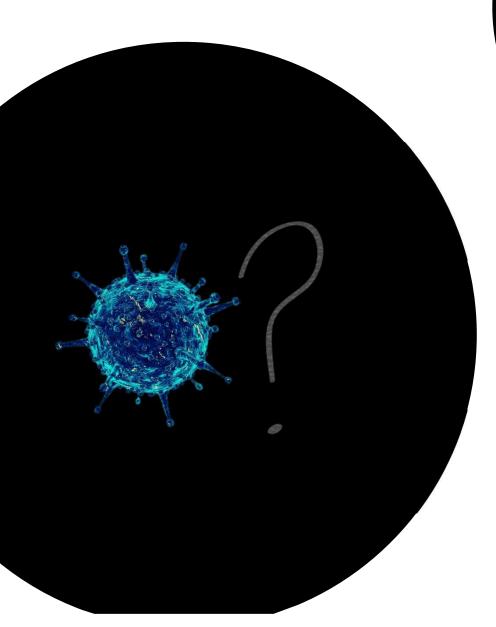
In Italy: Pursuant to Law Decree No. 18 dated 17.03.2020, employers are prevented from executing dismissals for economic /reorganisational reasons (both individual dismissals and mass lay-offs), in the 60 days following the approval of such Law Decree (i.e. such dismissals are prohibited until 16.05.20).



In Poland: currently, no legal restrictions or prohibition to conduct redundancies.



In Netherlands: there is no prohibition of redundancy dismissals. However: if employers dismiss employees based on redundancy, they cannot make us of the Temporary Emergency Bridging Measure for Sustained Employment (the "NOW").





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Q&A



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