

In light of the unlocking that is taking place from 11 May 2020, the French Ministry of Labour has recently issued a Q&A regarding teleworking. The below is a short summary of the Q&A along with our comments.

Preliminary notes:

- This Q&A does not bind the courts. In the event of a dispute over telework, the answers in the Q&A may not be used by either the employer or the employee. However, it does give an overview of the administration’s doctrine on those issues and, in particular, it may be useful with regard to a discussion with the Labour inspectors or elected staff representatives.
- You should always check if your company in France applies a specific company level collective bargaining agreement or “telework charter”. If this is the case, the provisions of the collective agreement or charter will have priority over the answers that you may find in the table below.

Telework and Unlocking in France: A summary table of the government Q&A		
Question	French government’s answer	Our comments
Can an employer impose teleworking on employees?	Yes. No specific form is required to implement telework in these conditions (in particular, no written agreement is required).	
Can the employer refuse to allow employees to telework?	Yes, if the health and safety conditions required to go back to work are met. However, since 17 March, and until further notice, telework has been required to be systematically favoured. Therefore, in the event of a refusal to allow the employee to telework, the employer will have to show that physical presence on the premises is essential to the business.	Even in the absence of COVID-19, since 2017, companies have been encouraged to favour telework. In particular, the 22 September 2017 Ordinance ordered that any refusal to allow telework must be “motivated”. The Ordinance does not give any further information as to what an acceptable motivation would be.
Is a contractual agreement required to implement telework?	No. Telework does not require any amendment to the employment contract.	
Can the employee choose the days on which they telework?	No. The employer determines the days of telework after discussing this with the employee.	
Do employees who reside in “red” areas (where the virus still circulates actively) have a priority for telework?	No. Telework must be a priority in all areas, including “green” areas.	
Can the employer impose that an employee must take holidays and telework during the same period?	No. An employee cannot telework if they are on holiday.	This is common sense.
Public transport is too difficult to take at the moment; is this a reason to extend telework?	Yes. The individual situations of employees must be taken into account in this regard.	In the Paris area, public transport is a highly problematic issue, and telework should be the priority every time it is possible.

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Is it possible to alternate telework and furlough (<i>activité partielle</i>)?	Yes.	In March, the French government warned against telework disguised as furlough. Some commentators interpreted this warning as a prohibition of furlough for employees who telework. This answer proves that the administration, in fact, does not see any objection for a teleworker to be on furlough (here, in rotation with telework).
Is it possible to cumulate telework and furlough?	No.	The difficulty here is making sure that teleworkers do not reply to the management's communications when they are on furlough – otherwise the administration will request the reimbursement of state aid paid to cover the furlough.
Do the teleworkers have to follow working time schedules?	Yes. Teleworkers have to follow the usual working schedule that would apply even if they were not teleworking.	Some employees are not supposed to follow any working time schedule (the " <i>cadres au forfait jours</i> ", i.e., those whose working time is calculated in days and not in hours). For them, it is still recommended to define periods during which they undertake that they are available.
Do teleworkers benefit from rest time and disconnection time?	Yes. All regulations relating to rest time and disconnection from work remain in force during telework.	For employees who work on an hourly basis, a system to record working time will have to be implemented for teleworkers (remote timeclocks).
Do the employees have to work with their personal computer?	No. The employer is supposed to provide all the equipment, including professional computers.	In practice, many employees who telework for the first time use their personal computer from home. This is not prohibited; however, if they request to be provided a professional laptop, this cannot be refused.
Can telework be refused when distance work tools are not available (e.g. VPN access, etc.)?	Yes. The employer is entitled to refuse that an employee teleworks if the company does not have the tools that allow it.	In our opinion, this answer is too optimistic for employers. Some companies may be ordered by the courts to implement distance working tools if the COVID-19 crisis continues.
Must the employer indemnify telework expenses?	No. The company is not obliged to pay an indemnity, which has the purpose of reimbursing the expenses related to telework.	This answer is misleading. According to case law (and this Q&A does not supersede case law), employers have to reimburse all expenses related to telework. This reimbursement can be made in the form of a monthly indemnity (from 10 to 50 euros, depending on the numbers of telework days per week). This form of reimbursement (i.e. monthly indemnity) is not mandatory. However, reimbursement of expenses remains mandatory. In addition, employers should check if a collective bargaining agreement or charter provides for a specific rule in this regard for your company.

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Is the teleworker covered in the case of an occupational accident?	Yes.	If telework is extended within your company, we strongly recommend implementing mandatory training related to safety at work for teleworkers in order to limit the risk related to occupational accidents that may occur at home.
Does the employee need to guarantee that they have sufficient space to work from home?	No , except as otherwise provided for in a collective bargaining agreement or charter.	Practically speaking, as a company, you will need to find a way to ensure that employees work in conditions that do not create the risk of an accident. Therefore, even if it is not mandatory to oblige the employee to have a specific space dedicated to working from home, we recommend ensuring that the employee takes all necessary measures to mitigate the risk of any accidents (e.g. training on electricity, gestures and postures, space of work, etc.).

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