

New measure for phased return to work on health grounds

The Act of 10 August 2018 introduced a new measure called “phased return to work on health grounds.” This measure has abrogated and replaced the arrangement for part-time work on health grounds as of 1 January 2019.

This new measure was introduced to support and facilitate the return to work of seriously ill persons. Employees who are still ill will therefore be able to return to work by adjusting their working time and/or tasks.

1. What is the process to be followed in order to benefit from this measure?

Several steps have to be taken and conditions met:

- **Employee’s incapacity to work**

Employees must be incapacitated for work when they apply for phased return to work on health grounds. Furthermore, they must have been incapacitated for at least one out of the three months prior to their application.

- **Doctor’s and employee’s application**

The application must be filed by the employee with the *Caisse Nationale de Santé* (CNS) [National Health Fund] using a standardized form entitled “Application for phased return to work on health grounds,” in which the attending physician certifies that this measure will have a beneficial effect on the insured employee’s state of health. This form is available on the CNS website under the heading “Forms.”

The date indicated on the form will be of crucial importance. It will in fact serve as a reference for the CNS to ascertain whether the conditions for phased return to work are met. As indicated above, employees must be incapacitated for work at the time they apply. So if an employee indicates 1 March 2019 on the form, the CNS must receive a certificate of incapacity for work on that date also.

- **Employer's consent**

Once the doctor and the employee have completed and signed the form entitled "Application for phased return to work on health grounds," the latter must submit it to the employer. The employer's consent for phased return to work must be obtained without fail. Once said consent is obtained, the application must be sent to the CNS.

- **Consent of CNS**

The CNS must give its consent based on the reasoned opinion of the *Contrôle Médical de la Sécurité sociale* (CMSS) [Social Security Medical Inspectorate]. The phased return to work may commence only once this consent has been received.

Therefore, once the employee's application is received, the CNS asks the CMSS for its reasoned opinion. The reply will be forwarded to the employee and to the employer as promptly as possible.

A phased return to work can consequently not take place retroactively, since the CMSS has to give a favourable opinion before the insured employee can return to work gradually.

Example: The CNS receives this application (dated 20 February 2019) on 1 March 2019.

The CMSS gives its opinion on 10 March 2019.

The insured will be authorized to return to work gradually only as of 10 March 2019 (and not as of 20 February 2019, the date which appears on the application).

2. What happens during the phased return to work?

During the period of the phased return to work on health grounds, the insured employee is considered as being incapacitated for work and must produce a certificate of incapacity for full-time work. These periods are taken fully into account in calculating the maximum benefit period. By way of reminder, the entitlement to sickness cash benefit is limited to 78 weeks over a reference period of 104 weeks.

The legal provisions do not provide for a fixed rate for phased return to work (as was the case for part-time work on health grounds with a return to work on a 50% basis). Consequently, employees may return to work gradually taking their state of health into account.

It is worth noting that any interruption of the employee's incapacity for work will put an end to the phased return to work, for instance, if the employee wishes to apply for leave.

3. What about the employee's compensation?

During this phased return period, the sickness cash benefit continues to be paid in full by the CNS on condition that the latter is required to pay the benefit. If such is not the case, the employer will have to pay the full-time salary, and will then be reimbursed 80% of that wage burden by the *Mutualité des Employeurs* [Employer's Mutual Insurance Fund]

It is in this respect that the new measure really differs from the former part-time work on health grounds where the employee's presence at the work place was remunerated by the employer. This new measure therefore entails a transfer of the employer's share in the payment of the employee's salary to the CNS. If payment of the salary is assumed by the CNS, the employer will have no payments to make during the phased return to work.

4. What about part-time work on health grounds?

The new measure of "phased return to work on health grounds" has abrogated and replaced the arrangement for part-time work on health grounds as of 1 January 2019. Any certificate of incapacity for part-time work on health grounds will therefore be void as of that date.

Employees who were previously on part-time work will have to file a new application for phased return to work. In fact, arrangements for part-time work on health grounds will not be automatically converted to phased return to work.

More specifically, employees working part-time on health grounds up to 31 December 2018 who wish to avail themselves of the new measures will have to submit a 100% medical leave together with their application for phased return to work. They will then have to stay at home and will not be able to return to work under any circumstances until they hear from the CMSS/CNS.

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