



IS OFFERING WFH AN OBLIGATION FOR EMPLOYERS LOCATED IN FRANCE?

Offering WFH is **strongly recommended to employers in accordance with** the following bases:



Compliance with the **safety obligation**: the employer must take all measures to ensure the safety and protect the health of the employee¹



The French government has published a **health protocol** which provides that WFH is mandatory – up to 100% where applicable – for all activities that permit it².



The health protocol is **not legally binding**, but contains recommendations which the employer must take into account³

WHAT POSITIONS ARE CONCERNED BY WFH?

WFH should be generalised for **employees who can perform their tasks remotely**

WFH should be ruled out:



- ✓ For tasks that can only be performed at the company premises
- ✓ For employees whose autonomy is insufficient

HOW TO OFFER WORK FROM HOME (WFH) IN FRANCE DURING THE HEALTH CRISIS?

In the case of a pandemic, WFH may be implemented without any particular formalities



POTENTIAL PENALTIES FOR AN EMPLOYER LOCATED IN FRANCE FOR REFUSING TO OFFER WFH

The employer may be exposed to conflicts, particularly:

- ✓ **Employee actions**: right to withdraw, whistle-blowing, damages for breaches of the safety obligation, recognition of occupational illness, etc.
- ✓ **Staff representative actions**: whistle-blowing, petitioning an urgent applications judge to suspend the activity or to require WFH, liability suits, etc.
- ✓ **Actions by labour inspectors**: observation letters, notices, urgent application suits to suspend activities, temporary closure orders, etc.
- ✓ **Possible criminal penalties**: actions based on the risk caused to others, violation of the obligation to prevent biological risks, etc.



CAN EMPLOYEES REFUSE WFH?

- The **pandemic risk** may make WFH necessary without the employee's consent⁴
- **Refusing WFH by the employee** may constitute a breach of their safety obligation with regard to other staff members⁵



Disciplinary action up to and including termination may be taken on that basis⁶



Inter-professional negotiations on WFH were opened on 3 November 2020 and resulted in the conclusion of a draft national inter-professional agreement on 26 November 2020. That agreement is subject to change.

¹ French Labour Code., Art. L. 4121-1

² National protocol for protecting health and safety of company employees, updated as of 29/10/2020

³ French Council of State, order of 19 October 2020, No. 444809

⁴ French Labour Code., Art. L. 1222-11

⁵ French Labour Code., Art. L. 4122-1

⁶ Cass. soc., 7 July 2016, No. 14-26.388