

## Continuation of salary in case of inability to work because of illness

The Act of 8 April 2018 spells out the elements to be taken into account in calculating salaries to be paid by the employer in the event of absence due to illness. It puts an end to the legal insecurity resulting from divergent interpretations and the (hitherto) inconsistent application of Article L. 121-6 (3) of the labour code.

By way of reminder, when an employee is unable to work, the employer is required to continue to pay his full salary for the first 77 days of incapacity.<sup>1</sup> The employer will be reimbursed 80% of this payroll expense by the mutual benefit insurance. Beyond these first 77 days, the *Caisse nationale de Santé (CNS)* [National Health Fund] will take over from the employer and compensate the employee who is unable to work.

The new Article L.121-6 (3) of the Labour Code introduces first of all a distinction depending on whether the working time was or was not fixed, at least until the end of the calendar of the month during which the incapacity for work occurred:

- For an ill employee who had a fixed work schedule, the employer will have to pay his base salary plus all common bonuses and supplements as well as increases to which the employee would have been entitled if he had worked in accordance with the scheduled hours of work.
- For an ill employee who did not have a fixed work schedule, the employer will have to pay compensation taking into account the average daily salary of the six months preceding the illness. Non-periodic benefits, gratuities and performance bonuses, incidental expenses incurred for the work as well as overtime are not taken into account for the calculation of the compensation.

It is worth pointing out that the Act of 8 April 2018 has no effect on employee declarations to be made to the Social Security Office nor on the reimbursements of the employers' Mutual Benefit Insurance, which will continue to make the reimbursements according to its own provisions.

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<sup>1</sup> In the event of incapacity for work, the employee is entitled to continue receiving his salary from the employer until the end of the month in which the 77th day of incapacity for work is situated, calculated over a reference period of 12 consecutive calendar months.