MAKE A *FRENCH* START
10 insights to grow your business in France

LABOR LEGISLATION IN FRANCE

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FOREWORD

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France is the leading host country in Europe for job-creating foreign investments for the 4th consecutive year and number 1 for the location of industrial and R&D projects[1]. France's appeal grew in 2022, despite a highly unsettled global economic environment. With more than 1,725 investment decisions (+7%), France has benefited from 58,810 jobs created or maintained (+30%).

These extremely good results can be explained by the number and strength of the country's structural assets:

- A qualified, operational workforce in sufficient numbers that is one of the most productive in the world,
- The fastest growing cost-competitiveness of the major Eurozone countries,
- A strong entrepreneurial spirit: France is the third most popular country for the creation of start-ups after Canada and the United States (OECD ranking),
- Strategic geographic positioning supported by operational infrastructures that ensure freight transport both within France and abroad,
- A tax policy that supports innovation and research, in particular through one of the best research tax credits in the OECD countries,
- A resolutely pro-employment social policy with massive investment in the skills of the future.

Building on its strengths, in the summer of 2017 France also started implementing the structural transformation of its business environment through in-depth reforms of labour law, taxation and the streamlining of administrative procedures.

With greater flexibility and security in labor management, a corporate tax rate that has gradually fallen to 25% since 2022, a fall in production taxes, a reduction in the taxation on capital income, a tax regime for impatriates, particularly to encourage the influx of international talent and a reduction in the cost of labor, France's appeal has increased decisively.

In addition to this basis of structural reforms, there are ambitious policies to support businesses, develop vocational training, foster innovation and re-industrialisation, as well as massive investments in the sectors of the future and the ecological conversion of the entire economy. Thus, the France 2030 investment plan is deploying €54 billion to support companies in meeting the technological and ecological challenges of the world of tomorrow.

Convinced of the appeal of France, Mazars and Business France have joined forces to design three booklets aimed at facilitating your projects to establish your business in France (taxation, social environment and corporate law).

Mazars is an internationally recognised consulting, audit, tax and accounting services firm operating in 95 countries and territories, now with more than 47,000 professionals, including 17,000 within Mazars North America Alliance.

Business France is the French agency in charge of internationalising the economy. Present in 55 countries, it is responsible for fostering export growth by French businesses, as well as promoting and facilitating international investment in France.

Happy Reading and Welcome to France!

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1. Annual report on foreign investments, Business France, 2020

DISCLAIMER

MAKE A *FRENCH* START
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Drawing on conversations with hundreds of foreign business leaders looking to set up in France and all of their combined experience, Business France and Mazars have identified **10 key questions on this issue to which this guide seeks to provide some initial answers.**

However, by their very nature, the various schemes discussed hereafter are subject to potential regulatory changes. Should you wish to obtain the very latest information, and for any further enquiries, we would therefore recommend that you contact Mazars and Business France experts, whose details can be found at the end of this guide.

INSIGHTS

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WHAT HAVE BEEN THE MAJOR LABOR LAW REFORMS IN RECENT YEARS?

For the past ten years, France has been engaged in a movement to transform the French social model, through successive labor law reforms that have restored flexibility and predictability to companies and facilitated the professional mobility of their employees.

Thus, the reforms implemented allow companies to negotiate agreements with employee representative bodies that are as close as possible to the needs of the company, to secure and anticipate the deadlines and costs of any termination of the employment contract and also to adapt the skills of employees to changes in the labor market.

The government has also initiated measures to reduce social security contributions (in particular the transformation of the Competitiveness and Employment Tax Credit into a permanent reduction of social security contributions) representing a gain for companies of €20 billion per year.

Two areas have been prioritized to address tensions on the labor market:

- Full employment for young people with the reform of apprenticeship. In 2022, 837,000 apprenticeship contracts were concluded, an increase of 14% compared to 2021. In order to maintain this momentum and achieve the goal of one million apprentices in 2027, the government decided to extend aid for businesses until 2027 i.e. €6,000 for the first contract year in 2023,
- The roll-out of a plan to ease recruitment tensions in order to anticipate demand for skills and implement sectoral strategies in the occupations of the future.

Simplification and strengthening of social dialogue at company level

The Ordinances of September 22, 2017 reform many aspects of social dialogue and labor relations, in particular by broadening the scope of collective and corporate bargaining, by transforming the organisation of employee representative institutions, and by modifying the rules for validating agreements.

A PRAGMATIC SOCIAL DIALOGUE CLOSER TO THE NEEDS OF EMPLOYEES AND EMPLOYERS:

— **CONSECRATION OF THE PRIMACY** of the company agreement

Negotiation at the company level takes precedence over the rules defined at the branch level, apart from certain specifically listed subjects (such as professional equality, minimum social benefits, disability, etc.).

— **THE POSSIBILITY OF ANTICIPATING AND QUICKLY** adapting to upward or downward moves in the market, through simplified majority agreements on working time, remuneration or mobility. Company-wide agreements will take precedence over employment contracts.

— **A MORE FLEXIBLE** and adaptable negotiation for the benefit of all

New areas of negotiation are open **to the company that now is personally responsible for negotiating** on working time, remuneration, mobility, training, night work, and more generally the organisation of work. This allows greater cooperation of all stakeholders - employees, staff representatives and employer. The social context is peaceful, with employees more committed and more motivated to ensure the success of the company.

— **A SIMPLIFIED SOCIAL** dialogue

Employee representatives, which were until now spread across 3 different bodies, are now brought together in a single works council, the Social and Economic Committee (SEC). This allows the employer to have a single contact person kept informed of all economic and social issues and able to negotiate pragmatically, as closely as possible to the needs of the company and the expectations of employees.

— **MORE FLEXIBILITY** for VSEs/SMEs

SMEs/VSEs are now able to negotiate directly with their employees in the absence of a trade union in the company, or to determine rules specific to small companies in branch agreements - these are pragmatic measures, in line with current labor practices.

— **THE DIGITAL** Labor Code

Access to a Digital Labor Code leads to an improved understanding of the law. Clear, accessible, and understandable, it answers the questions raised by VSE/SME business leaders and employees.

Predictability and security of working relationships

Beyond an ambition to overhaul the functioning of social dialogue, the other major act defined by the Ordinances relates to the trust placed in companies and employees by giving them the ability to anticipate and adapt in a simple, rapid and secure manner.

A LABOR MARKET THAT ENCOURAGES INVESTMENT AND EMPLOYMENT

— **ECONOMIC DIFFICULTIES** assessed at the national level

A French subsidiary of an international company, which is experiencing difficulties in France, may declare redundancies by justifying them solely based on its difficulties in France. Furthermore, it must make redeployment proposals to redundant employees in France only. As is the case in the vast majority of European countries.

— **PREDICTABILITY OF DISMISSAL PROCEDURES** and making them more secure

The limitation period for requests relating to the termination of the employment contract has been reduced, from 24 months to 12 months.

Dismissal procedures have been simplified with the implementation of a dismissal form stating the rights and obligations of each party.

— **CREATION OF THE EARLY CONTRACTUAL TERMINATION** by agreement

This termination method is based on the mutual agreement of the employer and employees and is intended to provide a framework for voluntary redundancies, excluding dismissal or resignation. It is based on the combination of a collective agreement (between the employer and the trade unions or authorised signatory organisations) and an individual agreement.

— **CAPPING** of damages

A scale of minimum and maximum compensation is binding on judges and is put in place in the event of unfair dismissal (except in the event of discrimination, harassment, or violation of the fundamental rights of employees). This provides the employer with security and visibility.

Compensation simulator in the event of unfair dismissal:

https://www.service-public.fr/simulateur/calcul/bareme-indemnites-prudhomales#main

Investing in skills

A major act of modernisation of the French social model, the law for the freedom to choose one's professional future, promulgated on September 5, 2018, secures employee career paths, and gives companies greater flexibility.

The main objectives of this law are to give people new rights and allow everyone to choose their professional future throughout their career and facilitate access to training.

This reform also strengthens companies' investment in the skills of their employees through regulatory simplifications, the development of social dialogue, and the adaptation of integration tools, in particular the obligation to employ disabled workers.

A MAJOR LEVER FOR CORPORATE COMPETITIVENESS

— **ADAPT WORKFORCE TRAINING** to corporate requirements

The implementation or non-implementation of a skills development plan by the employer allows workers to adapt to their place of work, to changes in jobs, as well as to job retention schemes, and to be involved in developing their skills.

— **SIMPLIFICATION OF THE APPROACHES** adopted by companies to encourage apprenticeships - Incentivizing students to choose this path

— **EMPLOYEES BECOME STAKEHOLDERS** in their vocational training

A new CPF application (personal training account) available since autumn 2019 gives all individuals easy and equal access to training. As a result of the application, each individual, with its CPF and without an intermediary, can compare the quality of training of certified organisations, success rate, and user satisfaction, and thus find the training that corresponds to their professional aspirations. They can also register and pay online.

INVESTMENT IN SKILLS TO PROMOTE A RETURN TO EMPLOYMENT

The Skills Investment Plan (PIC), with a budget of €15 billion from 2018 to 2022, aims to build a skills society and speed up the far-reaching transformation of training provisions. The PIC aims to offer training to 1 million low-skilled or unskilled job-seekers and 1 million young people excluded from the labor market. Starting in 2023, it will be managed by France Travail.

Simplify corporate workforce thresholds

The obligations relating to workforce thresholds have been considerably reduced and simplified by the PACTE law, in order to create a legal and social environment that is more favourable to business growth.

THRESHOLDS CONSOLIDATED AT LEVELS OF 11, 50 AND 250 EMPLOYEES

The workforce threshold levels have been streamlined and refocused on 3 levels since January 1, 2020. The threshold of 20 employees is removed with the exception of the threshold of the obligation to employ disabled workers (OETH). The thresholds of 10, 25, 100, 150, 200 employees have also been removed.

The obligations resulting from these thresholds are reduced and thus make it possible to remove any potential obstacles to hiring and to promote business growth.

— **A NEW THRESHOLD ASSESSMENT PERIOD:** a 5-year «freeze».

The obligations will be effective only when the threshold has been crossed for 5 consecutive years.

— **A HARMONISED CALCULATION** method

The method of calculation provided for by the Social Security Code is generalised, to simplify corporate life. The employer's annual salaried workforce determined on 1 January (average annual workforce of year N) corresponds to the average workforce of each month of the previous calendar year.

To calculate this average, there is no need to take into account months when no employee is employed. The workforce is calculated at company level, for all establishments taken together.

— **NEW RULE FOR TRIGGERING** the obligation to implement profit-sharing

A profit-sharing agreement must now be put in place by companies or economic and social units of at least 50 employees from the first financial year opened after a period of five consecutive calendar years during which this threshold was reached or exceeded. (for more information, see sheet 7).

France 2030, a strategy for the future to support the transformation of the economy

The France 2030 plan, launched on 12 October 2021 by the President, proposes major investments with the creation of new industrial and technological sectors to support the ecological and digital transitions. Unprecedented in its scale with an endowment of €54bn, France 2030 supports the entire life cycle of innovation through to its industrialisation.

€2.5 billion of the France 2030 plan are dedicated to speeding up the development of new training courses or adapting existing training courses to the skills needs of new sectors and the occupations of the future. 450,000 people will be trained each year by 2030 through the «Skills and occupations of the future" call for expression of interest.

The training projects supported will make it possible to diagnose skills needs, establish training schemes for future occupations, supported by consortia, and rethink the mechanisms for providing information and making the occupations concerned more attractive within the framework of the projects selected.

OBJECTIVE: FULL EMPLOYMENT!

In September 2022, the government launched eight priority projects to achieve this goal of full employment:

- To renovate the public employment service by creating France Travail,
- To reform support for RSA work/welfare benefit recipients and better integrate those most excluded from employment,
- To continue the roll-out of the Youth Engagement Contract (CEJ),
- To develop unemployment insurance,
- To boost the momentum of apprenticeships,
- To prepare the workforce for the skills of tomorrow,
- To support the employment of senior citizens and secure the future of our pension system,
- To work better.

Two projects have already been completed:

- Pension reform, enacted on 14 April 2023, which will come into force in September 2023
  - The extension of the legal retirement age from 62 to 64 years (gradual increase of three months per generation, starting with insured parties born on 1 September 1961 and reaching 64 years of age from the generations born in 1968),
  - A contribution period for a full pension of 43 years from 2027,
  - A full retirement age (without penalty) that remains at 67,
  - An adjusted long-term career mechanism (minimum of 43 years of contributions): those who started work before the age of 16 will be able to retire aged 58; between 16 and 18 from the age of 60; between 18 and 20 from the age of 62; between 20 and 21 from the age of 63.
- An adjustment to the unemployment insurance reform at the beginning of 2023, with the introduction of a new mechanism to adjust the unemployment insurance period according to the situation on the labor market, according to a so-called «contracyclicity» principle. The idea is to tighten benefit rules when the situation on the labor market is positive and when jobs are available and to relax these rules when the situation deteriorates.

OVERVIEW OF THE FRENCH SOCIAL ECOSYSTEM

1. Legal and regulatory framework: What are the rules governing labor law in France?

In France, the life of a company in regard to social matters is governed by the Social Security Code, the Labor Code and collective bargaining.

THE CODES

- **The French Labor Code:** all the provisions constituting the labor regulations that set the rights applicable to all employees as well as the obligations incumbent upon employers.
- **The French Social Security Code:** all provisions governing the funding and operation of Social Security.

NATIONAL COLLECTIVE BARGAINING AGREEMENTS

- A collective bargaining agreement is the result of collective bargaining between the «social partners», i.e., employer organisations and employee unions. Its purpose is to define the general rules relating to employee working conditions and social guarantees, in a particular sector of activity. In many areas, collective bargaining agreements provide absolute guarantees. Indeed, a company-wide agreement concluded on one of these themes can only apply if it provides guarantees that are at least equivalent to those provided for by the branch-wide agreement.

THE COMPANY-WIDE AGREEMENT

- The company-wide agreement is an agreement negotiated between the company's management and the employee representatives. It aims to adapt the general rules provided for by the Labor Code to the specific needs of a company.

EMPLOYMENT CONTRACT

- This defines the essential elements of the employment relationship between the employee and the employer such as remuneration, functions, status, or the terms of the calculation of working time.

EMPLOYER DECISIONS

- **Unilateral decision by the employer (DUE):** the unilateral decision by the employer is a written document in which the employer gives an undertaking to its employees within the framework of its management power. The advantage of this type of decision lies in the fact that it does not lead to negotiations with the employees. Employers have recourse to this in particular when they wish to unilaterally introduce collective protection and health guarantees within their companies.

— **Common practice:** a right that the employer grants unilaterally and implicitly to its employees without being required to do so by the law, collective bargaining agreements, or company-wide agreements. However, a practice does not necessarily become common company practice. It must be a constant, general, and fixed practice.

Since 2016, French legislation has promoted collective bargaining at the company level in order to develop a logic of proximity allowing company-wide agreements to be concluded that are as close as possible to the economic reality of each company.

With this in mind, the company-wide agreement now offers the possibility of derogating from branch-wide agreements in many areas, particularly in terms of working hours and vacations.

Thus, the scope of collective bargaining carried out at company level is extremely broad and offers many opportunities that companies must seize, in order to draft labor law suited to their situation **(*see* sheet 3)**

2. Stakeholders: Who is involved in the life of a company in France?

NEGOTIATING BODIES:

At the national level:

— **Employer and employee trade unions:** a grouping of employers and employees that defend the interests of their members. They are involved in particular in negotiating national collective agreements.

> The main employer unions are MEDEF, U2P and UPA.

> The main employee unions are CFDT, CGT, FO, CFTC.

Membership of an employers' union provides entitlement, in certain branches, to personalised legal advice and decision support cells free of charge.

At the company level

At company level, the employer negotiates with:

— **The Social and Economic Committee (SEC):** employee representative body set up in companies with more than 11 employees after professional elections. Its skills, composition and operation vary depending on the size of the company **(*see* sheet 3).**

To find out more, click on the following link:
Social and Economic Committee (ESC) | Service-public.fr

— **Union delegates (DS):** in companies with more than 50 employees, a union delegate may be appointed by unions that have obtained enough votes in the SEC elections to qualify as "representatives". The appointment of the union delegate is not mandatory, and a large number of small and medium-sized enterprises (SMEs) do not have an appointed delegate.

JUDICIAL BODY

— **The Industrial Tribunal (CPH):** the CPH is responsible for settling individual conflicts between employers and employees.

COLLECTION AGENCIES

— **URSSAF:** organisation responsible for collecting social security contributions (illness, workplace accident and occupational illness, basic and supplementary pension, family, etc.)

— **Pôle Emploi:** organisation tasked with calculating and paying unemployment benefits to job seekers.

— **Other collection bodies:** since January 1, 2019, income tax has been deducted at source. Each month, the employer pays the tax deducted to the General Directorate of Public Finance (Dgfip). Contributions are also paid each month to insurance companies and mutual insurance companies to finance supplementary social protection schemes.

SUPERVISORY BODIES

- **DREETS:** DREETS is a regional organization that carries out a range of missions in relation to the economy (e.g. development of sectors, support for companies, etc.), employment (e.g. development of employment and skills), solidarity (e.g. combating insecurity) and work. It ensures the proper application of French labor law through the Labor Inspectorate.

- **Labor inspection:** the labor inspectorate is carried out by inspection officers whose mission is, in particular, to ensure that labor law is applied and, as such, they have investigative powers enabling them to carry out inspections either directly on the company's premises or on the basis of documents provided by the company. They also have an advisory and information role with regard to employers, employees and employee representatives regarding their rights and obligations and a role as conciliator where necessary.

For further information, click on the following link: https://travail-emploi.gouv.fr/droit-du-travail/le-reglement-des-conflits-individuels-et-collectifs/article/l-inspection-du-travail

- **URSSAF:** performs periodic non-systematic checks in order to check that the company has correctly paid all the social contributions for which it is liable over the 3 years prior to the check. If it has not, then the URSSAF applies an adjustment.

PREVENTION BODY

- **Occupational medicine:** its purpose is to protect the health of employees through advice and prevention schemes. The aim is to avoid the employee's work in any way harming their health and to check the employee's ability to carry out the tasks entrusted to them. Depending on the circumstances surrounding their work, employees are provided with medical check-ups. Depending on the company's workforce, the occupational health service is organised in the form of either an independent health service within the company's premises (internal body), or an inter-company health service (external body).

3. What social protection schemes are applicable in France?

The social protection system includes basic cover managed by dedicated public bodies and so-called «complementary» social protection implemented at the level of each company. In addition to this mandatory scheme, the employer or employee may decide to take out additional optional cover.

A) COMPULSORY SCHEME

1) Compulsory basic scheme

The basic scheme is financed by social contributions, at rates set by the State. The employer cannot therefore adjust the contribution rates and the level of cover.

- **Illness (healthcare):** compensation in the event of absence, reimbursement of medical expenses, etc.
- **Workplace accidents and occupational diseases:** payment of medical expenses, compensation in case of temporary or permanent inability to work.
- **Pension:** basic pension and supplementary pension.
- **Family:** family allowances, housing allowances, additional income.
- **Unemployment Insurance:** unemployment insurance is a compulsory insurance to which all employees and employers in the private sector contribute. Thus, via the related body, Pôle Emploi, and as a result of the contributions paid, employees who lose their jobs involuntarily may be awarded income in the form of benefits and support towards returning to employment via interview simulations, editorial assistance, certified training, etc. Pôle Emploi is also a partner of employers in their recruitment efforts, as it receives offers from companies and puts them in contact with job seekers.

It should be noted that the application of the general reduction in employer contributions allows reduced contributions for remuneration of less than 1.6 times the minimum wage (SMIC), up to a total exemption from the minimum wage (*see* sheet 6)

For further information about contribution rates, click on the following link: https://www.urssaf.fr/portail/home/taux-et-baremes/taux-de-cotisations/les-employeurs/les-taux-de-cotisations-de-droit.html

2) Mandatory supplementary schemes

Mandatory supplementary schemes are financed by contributions paid to private insurance and mutual companies. The employer can therefore adjust the contribution rates based on the coverage rate and the level of cover of the policy taken out.

- Supplementary health and provident insurance - to supplement the benefits paid by the basic social security scheme, companies must set up supplementary schemes. These consist of:
  - **Supplementary health (or mutual) insurance** aiming to cover employees with regard to their health costs.
  - **Supplementary provident insurance for managers** aiming to cover employees with managerial status against death risks.

B) OPTIONAL SUPPLEMENTARY SCHEMES

Optional supplementary schemes are financed by contributions paid to private insurance and mutual schemes. The employer can therefore adjust the contribution rates based on the coverage rate and the level of cover of the policy taken out.

- **Supplementary provident insurance for non-executives:** subscription to an additional provident scheme is not mandatory for non-executive employees. However, some collective bargaining agreements require from the employer to put in place a provident insurance contract for non-executive employees. This scheme sometimes includes guarantees that go beyond simple protection against the risk of death (incapacity, invalidity, maternity, sickness).
- **Supplementary health cover:** the employee or employer may further increase the health coverage from which they benefit by taking out an additional so-called «supplementary healthcare" contract. This contract will supplement the reimbursements of compulsory health insurance in order to reduce the own contribution of the insured.
- **Supplementary pensions:** the employer may subscribe to supplementary pension schemes that add to the benefits of the basic plan and the supplementary plan.

The implementation of these schemes provides substantial managerial advantages. It promotes the recruitment, motivation and loyalty of employees insofar as they constitute an element of remuneration that can be valued. These schemes also provide attractive tax and social benefits for employers and employees.

C) EXAMPLES

— **An employee is absent due to illness:** social security covers 50% of the employee's reference salary from day 4 (*), provided that the employee meets the required conditions. Unless there are more favourable contractual provisions, the company only pays the employee a differential so that compensation is equal to 90% or 66.7% of their reference salary.

(*) Unless otherwise agreed, a waiting period is applied and compensation starts from the 4th day of illness.

NOTE:

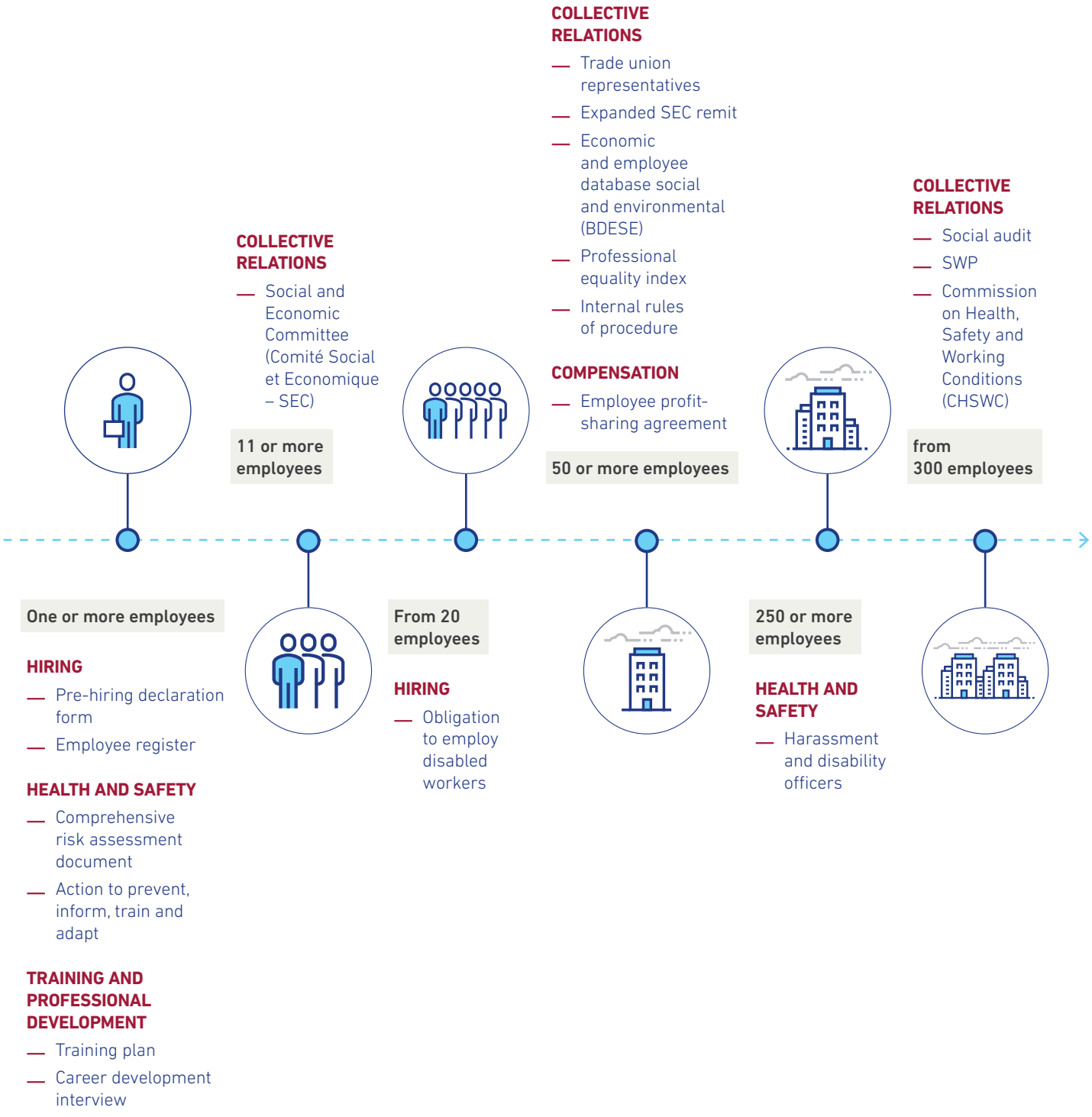
if the employee has less than one year of service, he or she does not generally receive a supplementary salary paid by the employer (unless agreed otherwise in the contract).

— **A female employee is on maternity leave:** social security takes over to compensate the employee. The employer has no legal obligation to provide compensation during maternity leave. Some collective agreements provide for the payment of a supplement by the employer.

FUNDAMENTAL RULES OF HUMAN RESOURCES MANAGEMENT AND COLLECTIVE BARGAINING

1. Overview of obligations in relation to human resources management

The following diagram gives an overview of applicable rules on human resources management with which employers must comply, depending on the size of their workforce:



2. Analysis of obligations in relation to human resources management

A) Obligations applicable to all businesses

1) HIRING

Pre-hiring declaration form *(Declaration prealable a l'embauche* - DPAE)

A pre-hiring declaration form (*Déclaration préalable à l'emploi* – DPAE) must be submitted to the URSSAF (the agency responsible for collecting social security contributions) **before an employee is hired.** This form establishes employees' entitlement to social security cover. It also ensures that the employer is covered if the employee in question is involved in a workplace accident, avoids penalties relating to concealed employment and is entitled to exemption from social security contributions, if applicable.

Comprehensive employee register

French regulations require all establishments with employees to maintain a **register of personnel.** The forenames and surnames of all persons employed by the establishment in any capacity whatsoever must be added to this register at the time of hiring. The register must also show nationality, date of birth, gender, role, qualifications, and start and end dates for each employee.

2) HEALTH AND SAFETY

Comprehensive professional risk assessment document (DUERP)

This document contains an **inventory of risks** identified within each of the company's work units and sets out measures put in place to eliminate or reduce risks as far as possible. It must be made available to employees, the occupational doctor, employee representatives and the Labor Inspectorate. It constitutes a key component of measures to prevent risks and **protect employees' health and safety.**

Action to prevent, inform, train and adapt

Employers are required to take the necessary steps to ensure their employees' safety and protect their physical and mental health. These steps include the following: :

- Take action to prevent occupational risks.
- Develop information and training systems.
- Make appropriate arrangements for organizing work and physical resources.

3) TRAINING AND PROFESSIONAL DEVELOPMENT

Training

To help develop their employees' career prospects and employability, employers must draw up and implement a training policy. They must then **draw up a training plan** in line with the provisions of any industry-wide agreement applicable to the company.

Career development interview

Employers must arrange interviews with each of their employees at least once every two years to discuss their professional development prospects. A career development **review** must also be undertaken for each employee **every six years**. This review is intended to check that each employee has had the required **compulsory career development interviews** over the preceding six years and has benefited from salary increases and/or career advancement opportunities.

B) Human resources management in businesses with 11 or more employees

1) COLLECTIVE RELATIONS

The Social and Economic Committe (SEC)

If a company has more than 11 employees, it must set up a body to represent its employees, the Social and Economic Committee (*Comité social et économique* – SEC). The role of the SEC is to:

- put forward employees' individual and collective claims to the employer.
- promote health, safety and improving working conditions.
- alert the employer if employees' rights, health or freedom are unduly infringed.

Members are elected for a four-year term through employee elections organized by the employer. Elected members are together invited to meet with the employer monthly throughout their term of office.

C) Human resources management in companies with 20 or more employees

Obligation to employ disabled workers

Every employer with 20 or more employees must employ people with disabilities in a proportion of 6% of the total workforce. Newly-created companies, or those whose workforce has reached the threshold of 20 employees, have a period of five years before being subject to this obligation.

D) Human resources management in businesses with 50 or more employees

Expanded SEC remit

When a business has more than 50 employees, the remit of its Social and Economic Committee is **expanded** as follows:

- It expresses **employees' collective views.**
- It is informed of and consulted in connection with issues concerning the **organization, management and general running of the business.**
- It helps **protect employee health and safety.** In this capacity, it has at its disposal certain resources to help it fulfil its duties (right to be informed, right to call on experts, right to conduct surveys, etc.).
- It looks after, oversees and helps manage **all social and cultural activities** (gift vouchers, Christmas trees, sports activities, etc.).

Appointment of union representatives

When a business has 50 or more employees, trade union representatives may be appointed from among the candidates standing in employee elections. Trade union representatives represent their union in dealings with the employer and work to negotiate company- or establishment-wide agreements. That being the case, they benefit from special protection against being dismissed.

It should be noted that trade union representatives are not always appointed and many businesses with 50 or more employees have no appointed union representative.

Social And Environmental Employee Database (BDESE)

In businesses with 50 or more employees, the employer must provide the SEC with access to an economic and employee database (*base de données économiques et sociales* – BDES). This database contains, in particular, information about the business's strategic goals, economic and financial position, and employee policy in relation to working conditions and employment as well as the environmental consequences of its activity. The purpose is to provide employee representatives with complete and accurate information: the database is used in compulsory annual SEC consultations on the aforementioned topics.

The professional equality index

All companies with at least 50 employees must calculate and publish their gender equality index each year by 1 March at the latest.

The index, out of 100 points, consists of 4 or 5 indicators:

- The gender pay gap
- The difference in the distribution of individual increases
- The difference in the distribution of promotions (only for companies with more than 250 employees)
- The number of employees receiving a pay rise after returning from maternity leave
- Parity among the 10 highest earners.

Internal rules of procedure

In businesses with 50 or more employees, the employer is required to draw up **internal rules of procedure**. Their purpose is to set out disciplinary, health and safety rules that must be observed within the business, together with applicable penalties (warning, suspension, dismissal, etc.). They also set out the procedural guarantees to which employees are entitled (statutory limitation periods; right to be accompanied by an employee representative) as well as legal provisions on sexual and psychological harassment.

COMPENSATION

Employee profit-sharing agreements

Employee profit-sharing is an arrangement whereby a portion of a business's profits is redistributed among its employees based on a formula defined by law. It is compulsory in companies with 50 or more employees. Profit-sharing is put in place by way of an agreement between an employer and its employees or their representatives. This agreement sets out, in particular, the rules for calculating, awarding and managing profit-sharing. It also states how long the agreement will remain in force. Where no agreement is in place in a business that is legally required to establish an employee profit-sharing arrangement, the Labor Inspectorate will impose a mandatory profit-sharing arrangement.

E) Human resources management in businesses with 250 or more employees

In businesses with 250 or more employees, the employee must appoint:

- A harassment officer tasked with guiding, informing and supporting employees in relation to sexual harassment and sexist behavior.
- A disability officer tasked with guiding, informing and supporting employees with disabilities.

F) Human resource management in companies with 300 or more employees

The social audit

The social audit is mandatory in companies with more than 300 employees. It summarizes the main figures on employment, remuneration and related charges, health and safety conditions, other working conditions, training, industrial relations, the number of seconded employees and the number of seconded workers received as well as other living conditions of employees and their families insofar as these conditions depend on the company.

The information in the social audit must be included in the BDESE database (see above).

Skills and workforce planning (swp)

Companies with at least 300 employees are required to negotiate job and career management every three years. The SWP is a forward-looking method aimed at adapting jobs, staff and skills to meet the requirements arising from the company's strategy and changes in their environment.

For further information, see factsheet No. 9.

Commission on health, safety and working conditions (chswc)

A CHSWC must be set up in companies with at least 300 employees. This is a specific commission created within the Social and Economic Committee (SEC). By delegation from the latter, the CHSWC exercises all or part of its functions with regard to health, safety and working conditions.

3. Collective bargaining process

DEFINITION OF COLLECTIVE BARGAINING

Collective bargaining refers to negotiations between an employer and employee representatives on **employment, training** and **working** conditions and **guaranteed employee benefits**. When successful, collective bargaining results in an industry-wide, company-wide or establishment-wide agreement, depending on the level at which the negotiations took place.

Negotiations can take place at various levels (cross-industry, industry-wide, group-wide or company-wide). Recent labor law reforms are intended to encourage **negotiations at company level** to enable employers to enter into agreements that allow them to establish rules tailored to the specific characteristics of their business.

However, collective bargaining agreements entered into an industry sector level maintain rights and guarantees with which employers must comply.

— Bargaining process in businesses with fewer than 50 employees:

1 WITHOUT A SEC

Less than 20 employees

- Proposal of a draft agreement by the employer;
- Approval of the employees by a 2/3 majority referendum;
- Publicity and filing;
- Entry into force.

From 20 to less than 50 employees

- Negotiation and conclusion of the agreement with an employee madated by a trade union;
- Approval of employees by simple majority
- Publicity and filing;
- Entry into force

2 WITH A SEC

Employee mandated by a trade union

- Negotiation with the mandated employee;
- Approval of the employees via a simple majority referendum;
- Publicity and filing;
- Entry into force.

Member of the SEC with or without a trade union mandate

- Negotiation and conclusion of the agreement with the elected members of the SEC;
- Publicity and filing;
- Entry into force.

— Negotiation process in companies with 50 or more employees:

1 WITH A UNION REPRESENTATIVE

The shop steward has a monopoly on negotiating company agreements

2 WITHOUT A UNION REPRESENTATIVE

SEC members mandated by a trade union

SEC members not mandated by a trade union

- Negotiation of the agreement with the elected members of the SEC;
- Approval of the agreement by the majority of the employees by referendum;
- Publicity and filing;
- Entry into force

Employee mandated by a trade union

- Negotiating the agreement with an employee mandated by a trade union;
- Approval of the employees by a simple majority referendum;
- Publicity and filing;
- Entry into force.

FREQUENCY OF COMPULSORY NEGOTIATIONS

In businesses with at least one appointed trade union representative, the employer must take the initiative of holding negotiations on the following topics:

— Compensation, working hours and the sharing of added value.

— Gender equality and quality of life in the workplace

— Management of jobs and career paths and gender diversity (for companies with more than 300 employees only).

Employers may enter into a collective agreement to adjust the frequency of such negotiations, provided they are held at least **once every four years**. In the absence of such an agreement, these negotiations must be held **annually.**

To find out more, click on the following link: https://travail-emploi.gouv.fr/IMG/pdf/comment_n_c3_a9gocier_dans_votre_entreprise.pdf

HOW TO RECRUIT EMPLOYEES

INTRODUCTION

Companies facing recruitment difficulties

To meet companies' recruitment needs, the level of remuneration is no longer the sole factor to attract people. Companies have thought about retention schemes, often agreed with employees. These are different types of mechanism, for example:

- Teleworking: some companies no longer hesitate to offer positions with teleworking options of up to 100% of the time for the most sought-after profiles, such as developers.
- The company's social and environmental commitment, for example with the status of a «company with a mission" (société à mission), partnerships with associations or internal teams working «in project mode» on this type of issue.
- Flexible working hours.

INTRODUCTION

- The appeal of the premises, with a distinction between spaces according to their use: spaces for creativity, individual reflection, etc.

In this context, recruitment firms can support companies in their recruitment choices. Thanks to their expertise in the French labor market, they can help their clients define the outlines of their recruitment offers, identify their strengths as an employer and, of course, attract the best profiles to meet their needs. The firms are a showcase for the company and ensure a good match between the profile and the employer to enable a successful collaboration.

Laurent de BELLEVUE,
Partner responsible for the Recruitment & Transition Management offer, Mazars

MAKE A *FRENCH* START
10 insights to grow your business in France

Recruiting an employee has a direct impact on how a company's business is organised. For each recruitment, the employer needs to consider the profile they are looking for and the most suitable form of employment contract, plus what prior formalities need to be completed (in particular when recruiting a foreign employee).

Recruitment

During the recruitment process, the employer must follow a number of essential steps:

- Drafting a job offer in French after having previously defined a need and estimated the cost of recruitment.
- Publishing the job offer.
- Preparing and carrying out job interviews.
- Hiring proposal specifying the job, the date of joining the company, remuneration and the place of work. This proposal constitutes an offer of an employment contract or a unilateral promise of an employment contract.

An employer is not obliged to inform Pôle Emploi about the offers. It may use other means to recruit, such as advertisements in the press, professional social networks, recruitment firms, temporary employment agency, trade fairs.

As part of its public service mission, Pôle Emploi (*for more information, see sheet 2*) can help companies recruit their employees.

Thanks to a dedicated space on Pôle Emploi, employers can directly manage their recruitment needs: submit their offers, present their activity and contact job seekers who meet the profiles they are looking for.

Recruitment assistance tools are also available:

- **Guide to Legal guidelines for job offers;**
- **Guide to Best practices for writing job offers;**
- **Tools for preparing successful interviews**

Hiring formalities

Once the future employee has been identified, the company must complete a declaration before hiring them (**DPAE**). This DPAE must be completed online within 8 days before an employee is recruited and is done with the local URSSAF office covering the recruiting establishment.

It makes it possible to carry out several formalities: registration with the employee's social security system (except secondment), affiliation to occupational medicine, organisation of the mandatory medical check-up (during the trial period) and affiliation to the unemployment insurance organisation (Pôle emploi).

The DPAE can be carried out on **net-entreprises.fr**, which has published an **entry guide** for the form online.

The DPAE does not have to be done for members of the Titre Emploi-Service Entreprise (TESE), the Titre Firmes Etrangères (TFE) and the Chèque-Emploi associatif (CEA), this procedure being already included in these systems.

SIMPLIFICATION OFFERS: TESE; TFE; CEA

- **TESE : Optional system intended to simplify the social formalities related to employing staff and to save time for employers in the administrative management of their personnel. It is aimed at companies in mainland France covered by the general scheme.**
- **TFE : System aimed at simplifying the social formalities related to the employment of staff by companies without an establishment in France.**
- **CEA : The URSSAF's system allows associations employing (or wishing to employ) a certain number of employees, full-time or part-time, to complete all the formalities related to the hiring and management of its employees using a single document.**

In addition to the DPAE, it is necessary to:

- Declare the first employee hired to the labour inspectorate.
- Register with the **supplementary pension funds** within 3 months of the company's creation.
- Register the employee in the single staff register (guaranteeing the transparency of jobs in each establishment).
- Carry out the formalities required to hire a foreign employee (non-European). For more information, please see the summary sheet "**Employees recruited by a company in France**" on the **Welcome To France** website.
- Inform new employees about the company's working conditions by providing them with a list of the essential components.

Employment contract

THE CHOICE OF A DIRECT RELATIONSHIP

The permanent employment contract: a long-term contract

The permanent employment contract (CDI) is the normal and general form of the employment relationship. If the company wishes to permanently fill a position related to the company's normal and permanent activity, it must conclude a permanent employment contract (CDI).

By definition, this contract does not state a date on which it ends and may be terminated at the initiative of the employer, the employee or by joint decision (for more information, see the sheet 10).

Only a full-time permanent contract may be unwritten (unless otherwise provided by contractual provisions requiring the drafting of a written contract). However, when it is verbal, the employer is obliged to provide the employee with a written document that includes the information contained in the pre-employment declaration (DPEA) sent to the URSSAF.

The employment contract recorded in writing must be written in French. However, there may be times when the employment covered by the contract can only be referred to by a term in a foreign language that has no equivalent in French; in this case, the employment contract must include an explanation in French of the foreign term.

The employer and the employee are responsible for determining the content of the employment contract and any specific clauses that may need to be included in it depending on the circumstances (mobility clause, non-competition clause, etc.), bearing in mind however that:

- Clauses contrary to public order are prohibited: clause on celibacy, remuneration lower than the minimum wage, discriminatory clause, etc.
- Contracts whose wording is mandatory must include, as a minimum, the information provided for by the French Labor Code.

A project-specific permanent contract enables an employer to hire an employee for a role whose duration is uncertain. The end of the project in question constitutes specific grounds for terminating the working relationship. This gives the company greater flexibility and security in its working relationships. Unlike an ordinary permanent contract, a project-specific permanent contract cannot be used in just any circumstances. Its use must have been agreed in advance by way of an extended industry-wide agreement. The following industries have already made such provision: building and civil engineering, property development, landscaping and rail transportation. In the absence of such an agreement, this type of contract may only be entered into in sectors "where its use is usual in line with normal practice in the industry in question as of January 1, 2017" (ship repair, aerospace and mechanical construction).

THE FIXED-TERM CONTRACT: RESPONDING TO OCCASIONAL NEEDS

A fixed-term employment contract (contrat de travail à durée déterminée or CDD) is an effective response to a temporary need.

It enables a company to hire an employee for a limited period. The contract must be in writing and include a precise definition of its purpose.

Fixed-term contracts generally span a specific period, with fixed start and end dates. In some cases, the end date may not be specified, in which case a minimum period of employment must be stated.

There are various reasons for using fixed-term contracts, which are an effective way for companies to meet their business constraints.

PART-TIME AND INTERMITTENT EMPLOYMENT CONTRACTS: ADJUSTED WORKING HOURS

What do you do if the vacancy to be filled does not require a full-time position? Companies can opt for a part-time contract if they need to hire someone to work fewer hours than the norm within their business, or for an intermittent contract defining alternating work and non-work periods (provided this is allowed for by an extended industryor company-wide agreement).

Part-time contract

- Stipulates working hours below the statutory minimum, or below the agreed minimum where this is lower than the statutory minimum
- Must be in writing and include mandatory particulars

Intermittent contract

- For sectors subject to significant fluctuations in activity
- No fixed end date
- Mandatory particulars
- Advantages: Employee flexibility and retention; a permanent contract that takes into account busy and quiet periods

Permanent temping contract

- Includes periods during which the temp will be working and periods during which they will not be working (intermission periods)
- Conclusion of a secondment contract between the temporary employment agency and the user company, then a letter of engagement issued by the establishment
- Total duration of an assignment for an employee on a temporary permanent contract: 36 months maximum

ALTERNATING CONTRACTS: DEVELOPING TALENT

Professional training contracts and apprenticeship contracts enable companies to take on employees who alternate between working within the company and undertaking theoretical learning. Such employees are paid an adjusted salary that is usually below the statutory national minimum wage.

Professional training contract

— A fixed-term contract of 6-12 months (maximum 36 months in certain cases)

— Or a permanent contract with a 6–12-month professional training period (exceptionally up to 24 months)

— Advantages: exemption from certain employer's contributions in some cases (jobseekers aged over 45); recruitment subsidies paid by Pôle Emploi under certain conditions.

Apprenticeship contract

— A fixed-term contract of 1-3 years (6 months to one year in some cases, and up to four years for workers with disabilities)

— Or a permanent contract beginning with a period of apprenticeship of a duration equal to that of the training cycle leading to the qualification in question

— Advantages: exemption from certain employer's contributions; compensatory allowance fixed by the regional council; tax credit; apprenticeship tax is tax deductible under certain conditions.

1. Indirect relationships: temporary employment, umbrella companies, microbusinesses and commercial agents

In this type of contractual relationship, a company opts for a simplified working relationship by transferring administrative responsibility to another organization or working directly with independent professionals.

TEMPORARY EMPLOYMENT IS ANOTHER WAY OF RESPONDING TO OCCASIONAL NEEDS.

With this form of employment, the company does not enter into an employment contract with the employee; rather, it signs a provision agreement with a temporary employment agency. The temporary member of staff is then made available to the company for the duration of the assignment, but remains an employee of the temporary employment agency, which is responsible for administrative management (declaration of recruitment, pay, etc.).

Generally speaking, a temporary employment assignment may not exceed 18 months including any renewals.

UMBRELLA COMPANIES

The use of an umbrella company entails a three-way contractual relationship whereby an employee tied to an umbrella company by an employment contract performs duties for client companies. In this type of relationship, the employee is employed by the umbrella company but has a high degree of autonomy, for example in offering their services to companies or negotiating prices.

Working with an umbrella company allows an employer to negotiate directly with qualified workers and maintain full control over the duties performed within the company

MICROBUSINESSES

To meet occasional needs, a company may call on the services of an external provider (e.g.: a microbusiness or freelancer). In such cases, the company need not enter into a contractual relationship governed by the French Labor Code. It should, however, check that there is no economic dependence or employer-employee relationship with the chosen provider.

Microbusinesses are restricted to individuals wishing to carry on an independent business, whether as their main activity or a supplementary activity, provided that their annual business income does not exceed a given threshold. Microbusinesses are subject to simplified rules governing the calculation and payment of social security contributions, and are exempt from VAT.

COMMERCIAL AGENTS

A commercial agent is an independent professional not bound by any employment contract who acts as a representative tasked with negotiating and potentially concluding sales, purchases, leases or service provision agreements for and on behalf of producers, manufacturers, traders or other commercial agents. In this type of relationship, the company tasks an independent agent with finding new customers for its business; the agent is compensated under a commission system.

HOW DO I ORGANIZE EMPLOYEES' WORK SCHEDULES WITHIN MY COMPANY?

There are various tools available for adapting working time to suit a company's needs.

HOW LONG IS THE WORKING WEEK?

In France, the statutory working week is 35 hours, equating to 1,607 hours a year. This is not a limit, but rather a baseline beyond which overtime is calculated.

This statutory working week applies to all companies, irrespective of size or industry sector, and covers all employees apart from senior executives and employees who perform their duties autonomously (who may be covered by a flat-rate pay agreement).

The legal duration is not a mandatory standard: the employer may provide for a shorter or longer duration, subject to compliance with the maximum weekly durations and the regulations on overtime.

Employers have a great deal of latitude to make use of overtime or calculate working hours over periods longer than one week, up to a maximum of three years. By agreement, they may also operate to working hours that differ from the statutory working week based on a fixed number of hours (per week, month or year) or days (per year).

WHAT IS THE MAXIMUM NUMBER WORKING HOURS?

Maximum weekly durations laid down in European Union law

Public Order	**48 hours in any given week (44 hours over 12 consecutive weeks)**
Company- or establishment-wide agreement (or, failing that, industry-wide agreement)	Possibility of increasing the limit from 44 hours to **46 hours over 12 weeks**
In the absence of negotiations within the company	Up to a maximum of 46 hours, authorized by the labor inspectorate

Maximum daily working hours

Public Order	**10h** **<u>Except:</u> in emergency; where agreed by the Labor inspectorate; whether provided for in a company-wide agreement**
Accord d'entreprise	The 10-hour maximum may be exceeded in 2 cases: - aincreased activity - or for reasons related to the organisation of the company. **12h limit**

HOW DOES OVERTIME WORK?

What is overtime?

Overtime is any time worked, at the employer's request, over and above the statutory 35-hour working week.

Who can work overtime?

All employees apart from those contracted to work a fixed number of days per year and those classed as senior executives.

How does overtime work, and what limits apply?

Overtime is worked at the employer's written or verbal request, up to the maximum allowed number of working hours. Overtime hours are counted on a weekly basis. Overtime is calculated per week.

The amount of overtime is laid down in an annual quota defined in a company-wide collective agreement or, failing that, an industry-wide agreement. Where no such agreement is in place, the quota is fixed at 220 hours per employee per year.

What is the impact on pay?

- Overtime pay is calculated by applying an overtime premium laid down in a company- or industry-wide agreement, which may not be less than 10%.
- Where there is no company- or industry-wide agreement, the statutory premium is 25% for the first eight hours and 50% for any additional hours.

Overtime pay may be partly or fully replaced by an equivalent amount of compensatory time off.

How else are employees compensated for overtime?

Overtime hours worked over and above the fixed quota (by default 220 hours per employee per year) automatically entitle the employee to compensation in the form of time off in addition to overtime pay: 50% of overtime hours worked over and above the quota and 100% for companies with more than 20 employees. A higher rate of compensatory time off may be allowed for by a company- or industry-wide agreement.

Some employees work part-time, i.e., for less than the working time of a full-time employee. In this case, the part-time employee is required to work for a minimum period, which is specified in the employment contract. Part-time employees may need to work additional hours, within certain limits. Additional hours are covered by an increase in salary.

Additional hours may be worked up to 1/10th of the weekly or monthly working hours provided for in the employment contract.

For example, for a working time of 30 hours per week provided for in the employment contract, the employee may work a maximum of 3 additional hours.

However, the limit of the number of additional hours may be increased to 1/3 of the weekly or monthly working hours provided that this is stated in a company agreement or convention.

Additional hours must not bring the employee's working hours to the level of the legal duration (or to the contractual duration applicable in the company if it is lower).

An employer and an employee agree to a fixed remuneration including the usual salary and overtime by signing a flat-rate agreement. The fixed amount may be annual in hours or days.

Annual fixed number of days agreement: must be written and signed by the employer and the employee.

It formalises the conditions enabling the employee to work a fixed number of days. The conditions applicable to the employee are set:

- Either by a collective company- or establishment-wide agreement.
- Or by a branch-wide agreement or convention.

An individual agreement for a fixed number of days per year may only be offered to:

- Managers who organise their schedules independently, and whose functions do not require them to follow the collective timetable applicable within the workshop, department, or team to which they belong.
- Employees whose working time cannot be predetermined and who are truly independent when organising their schedule to fulfil the responsibilities entrusted to them.

The working time of the employee is not calculated in hours. Employees working a fixed number of days are required to work a certain number of days in the year (218 days maximum).

However, a collective company- or establishment-wide agreement (or, failing that, a branch convention or agreement) may set a number of working days lower than 218.

An employee who has entered into an agreement for a fixed number of working days may waive part of their rest days in return for an increase in their salary. The employer's agreement is mandatory and established in writing.

Annual fixed hours agreement: must be written and signed by the employer and the employee.

It makes it possible to integrate a certain amount of foreseeable overtime into an employee's working time over an anticipated period.

The fixed hours are weekly, monthly or annual.

This agreement may only be offered:

- **To managers having functions which do not allow them to apply the collective working hours in force within the workshop, department, or team to which they belong,**
- **To employees that benefit from a real autonomy in organising their schedule,**
- **And provided that a collective company- or establishment-wide agreement (or, failing that, a branch convention or agreement) provides for the implementation of fixed hours over the year.**

WHAT IS THE LEGAL AMOUNT OF DAILY REST?

Unless an exception is made, all employees are entitled to a daily rest period of at least 11 consecutive hours. A company- or establishment-wide agreement may derogate from this daily rest period under certain conditions, in particular for activities that justify the need to ensure continuity of service or production or by periods of work that are split up.

There are also certain exceptions to the legal amount of daily rest:

— In the event of an exceptional increase in activity, a company-wide convention or agreement may provide for a reduced period of daily rest. However, this cannot be less than 9 consecutive hours.

  In the absence of a convention or agreement, the employer may derogate from the statutory daily rest period, after authorisation from the labor inspectorate.

  The exemption from the statutory duration is possible provided that the employee is granted at least an equivalent rest period (or, failing that, an equivalent consideration).

— The employer may derogate from the daily rest period when urgent work needs to be carried out without delay (rescue measures, prevention of imminent accidents, repairs to accidents that have occurred to the equipment, installations, or buildings).

The exemption from the statutory duration is possible provided that the employee is granted at least an equivalent rest period (or, failing that, an equivalent consideration).

WHAT ARE THE REGULATIONS ON PAID LEAVE?

All employees, regardless of contract duration, working hours or length of service, are entitled to paid leave. **Practical arrangements for taking leave are subject to the employer's agreement.**

How many days' leave can an employee take?

The amount of leave varies depending on the rights acquired: both part-time and full-time employees are entitled to 2.5 working days per month of actual work, equating to 30 working days (five weeks) for a full year's work.

When must employees take leave?

The period during which paid leave must be taken is laid down in a company- or industrywide agreement or, failing that, by the employer after consulting any Works Council or employee representatives.

In any event, it must include the statutory period from May 1 to October 31.

Who defines the order of precedence for taking leave?

The order of precedence for taking leave is laid down in a company- or industry-wide agreement or, failing that, by the employer after consulting any Works Council or, failing that, employee representatives.

HOW CAN WORKING TIME BE ORGANIZED TO SUIT THE COMPANY'S NEEDS?

Working hours can be organized to best meet the company's needs:

Over several weeks or years

A majority collective company-wide agreement may define the procedures for adjusting working time and organise the distribution of working time over a period exceeding a week or year or, if authorised by a branch-wide agreement, 3 years.

This collective agreement must provide for the reference period, the conditions and notice periods for changes in working time, overtime, and employee remuneration.

Where a company is subject to alternating periods of high and low levels of activity, it may adjust its working hours over periods longer than a week for some or all of the year. Over the period in question, employees may be required to work more or less than 35 hours a week depending on activity levels. Employees are not due overtime pay if the number of working hours smoothed over the year does not exceed the equivalent of 35 hours a week.

The change in working time may be up to 3 years if a majority agreement is obtained within the company and provided that a branch-wide agreement has envisaged this possibility.

This will concern very specific cases, i.e., investment projects and industrial production cycles that extend over several years. Employees will be protected because, on the one hand, this adjustment will have no impact on the maximum working hours, which must be complied with and, on the other hand, the agreement must provide for a weekly «upper limit» beyond which overtime will be paid with the salary of the month in question, without waiting for the end of the reference period.

It may also set compensation for employees.

The employer may also organize working time in the form of cycles, the duration of which is fixed over several weeks, thus catering for regular fluctuations in activity. Working patterns are the same within each cycle. Within a cycle, the average working week is 35 hours. Hours worked over and above this limit are considered overtime.

Relay and shift work

This method of organisation consists in dividing employees into different teams and making them work on everything in the same day, at different times of day. Teams may be alternating or overlapping.

— Alternating teams -> team A: 06:00-10:00 /14:00-18:00; team b: 10:00-14:00/ 18:00-22:00

— Overlapping teams -> team A: 06:00-14:00; team B: 09:00-17:00; team C: 12:00-20:00

Shift work consists of organising workdays differently. Employees do not all have the same working days or the same rest days. A company or establishment can thus operate 6 days or 7 days a week, the latter case being reserved for companies authorised to allow weekly rest on a rolling basis.

Work by relay or on a rolling basis may be authorised by decree or by convention or extended branch agreement, or company or establishment agreement.

Shift work or work in successive teams

In the case of shift work, teams follow one another on the same workstation without overlapping. This allows a company to function without interruption or for an extended period of time. There are two types of shift work:

- Continuous shift work, which allows a company to operate 24 hours a day, 7 days a week, including Sundays and public holidays. The implementation of this form of work requires that the company obtains an exemption from the Sunday rest rule.
- Continuous or semi-continuous work (of the 3x8 or 4x8 or 5x8 type): organised in cycles, during which (a period of several weeks) each team occupies different workstations (alternating working hours), with a distribution of the working time repeated identically over the next cycle.
- Teams of substitutes (or end of weeks) may also be designated.

A shift work organisation must be provided for by a collective agreement, a branch agreement or a company agreement and must be justified based on technical requirements or economic reasons.

In the absence of a collective agreement, an exemption may be granted by the general labor inspectorate after consultation with the staff representatives and opinion of the SEC.

When employees work permanently in successive shifts according to a continuous cycle, the working time may not exceed 35 hours per week worked over a year.

Examples:

5x8 organisation

10-day cycle (1 week and 3 days)
6 days worked on a cycle
48 hours of work on a 10-day cycle
or 33,6 hours on 7 days

Team \ Day	1	2	3	4	5	6	7	8	9	10
Team 1	Morning	Morning	Afternoon	Afternoon	Night	Night	Rest	Rest	Rest	Rest
Team 2	Afternoon	Afternoon	Night	Night	Rest	Rest	Rest	Rest	Morning	Morning
Team 3	Night	Night	Rest	Rest	Rest	Rest	Morning	Morning	Afternoon	Afternoon
Team 4	Rest	Rest	Morning	Morning	Afternoon	Afternoon	Night	Night	Rest	Rest
Team 5	Rest	Rest	Rest	Rest	Morning	Morning	Afternoon	Afternoon	Night	Night

4x8 organisation

8-day cycle (1 week and 1 day)
6 days worked on a cycle
48 hours of work on an 8-day cycle
Or 42 hours over 7 days (or 8 hours a day)

Team \ Day	1	2	3	4	5	6	7	8
Team 1	Morning	Morning	Afternoon	Afternoon	Night	Night	Rest	Rest
Team 2	Afternoon	Afternoon	Night	Night	Rest	Rest	Morning	Morning
Team 3	Night	Night	Rest	Rest	Morning	Morning	Afternoon	Afternoon
Team 4	Rest	Rest	Morning	Morning	Afternoon	Afternoon	Night	Night

Personalized work schedules

Employees with personalized work schedules work a 35-hour working week. However, they are free **to carry forward or make up hours from one week to another** to better balance their work and personal constraints.

IS SUNDAY AND/OR NIGHT-TIME WORKING POSSIBLE?

Sunday Working

An employee may work no more than six days a week: he/she must have at least one day off (24 hours, plus a minimum of 11 hours' rest each day) each week and, in theory, Sundays (repos dominical or Sunday rest). However, there are a number of exemptions to the "Sunday rest" requirement, notably in establishments that must continue to operate or remain open due to production or activity constraints or public needs (statutory exemption). Compensation, particularly salaries, may be set by the collective agreement.

Some collective agreements provide for permanent exemption from Sunday rest. As a rule, such exemptions are provided for when work is organized continuously for economic reasons. In the absence of any collective agreement, exemption from Sunday rest may be granted by the Labor Inspectorate after consulting union representatives and the SEC.

In 2018, **19 %** of the working population worked on Sundays.[4]

Night-time working

Night-time working must be exceptional and justified by a need to ensure continuity of economic activity or socially beneficial services. Night-time working may be provided for in a company- or industry-wide agreement. Such agreements must specify various items, including in particular the justification for night-time working and the corresponding amount of compensatory rest or pay.

In 2018, **9%** of the working population worked at night.[5]

4 et 5 : Dares Survey, June 2018, « Le travail en horaires atypiques : quels salariés pour quelle organisation du temps de travail ? » https://dares.travail-emploi.gouv.fr/sites/default/files/pdf/2018-030.pdf

LABOR COSTS

Labor costs are all the expenses incurred by an employer in employing an employee and consist of gross salary, i.e., net salary plus employees' and employers' social security contributions.

Employers' and employees' social security contributions are by far the leading contributors to the financing of France's social welfare system. They finance social security, unemployment insurance and supplementary pensions.

1. Gross salary

Basic salary is negotiated between employee and employer and stated in the employee's employment contract. Its amount may not be less than either the minimum wage laid down in any collective bargaining agreement applicable to the company or the statutory minimum wage (€1,742.20€ a month gross on May 1, 2023, assuming a full-time working week of 35 hours).

An employee's gross salary consists of basic salary plus any variable items (bonuses, paid leave, etc.). Variable items may flow from the French Labor Code, a collective bargaining agreement or a company-wide agreement, or they may be determined by agreement between employee and employer.

An employee's gross salary includes employers' social security contributions.

2. Social security contributions

There are two types of social security contributions: **employer's contributions,** payable by the employer and calculated on the basis of gross salaries paid, and **employees' contributions,** payable by employees (deducted directly from their gross salary). These contributions help fund various types of insurance.

Categories of contribution	SOCIAL SECURITY	UNEMPLOYMENT INSURANCE AND SALARY GUARANTEE	SUPPLEMENTARY PENSION	PROTECTION AND HEALTHCARE COSTS
Related benefits	> Sickness, maternity, disability, death (compensation, medical expenses) > Workplace accidents and occupational risk > Family (family allowance, housing allowance, income support) > Old age (basic pension) > Workplace accidents and occupational risk	> Allowances > Jobseeker's assistance > Salary guarantee if employer experiences economic difficulties	> Old age (income support)	> Medication, hospitalization, care > Optional: - Disability - Incapacity - Death

3. Exemption from employers' social security contributions

Since January 1, 2019, there have been three schemes in place to reduce employers' contributions:

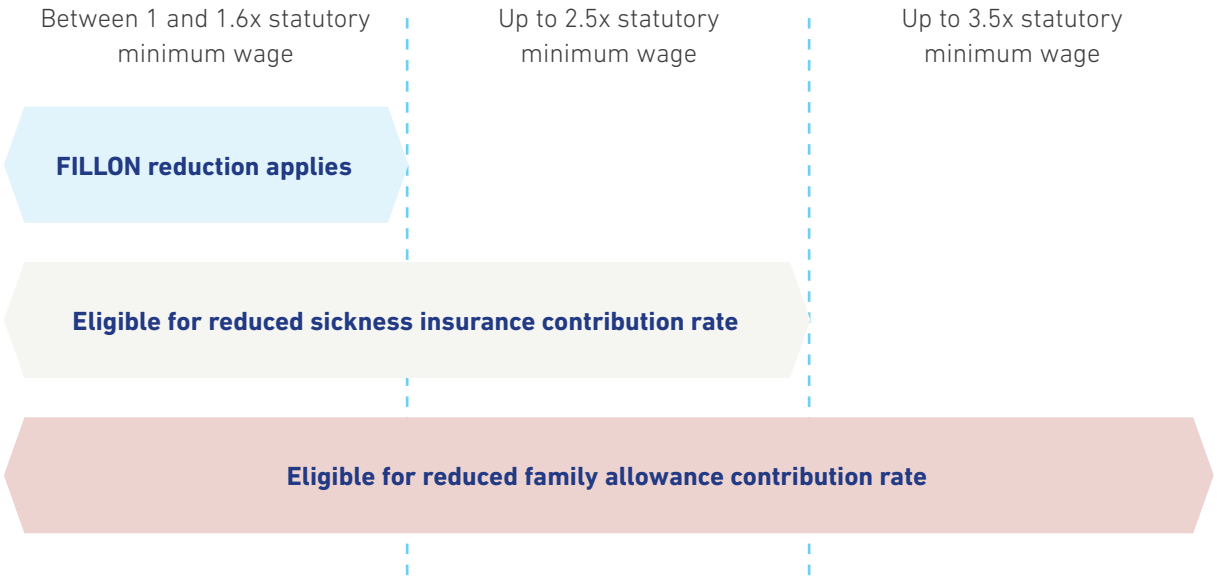
- Across-the-board reduction in employers' contributions
- Reduced rate for family allowance contributions
- Reduced rate for sickness insurance contributions

The following table sets out these three schemes and explains how they work:

Scheme	Threshold	Explanation
Across-the-board reduction	1.6x statutory minimum wage	Scheme reducing employers' contributions for URSSAF, supplementary pension and unemployment insurance
Sickness insurance contributions	2.5x statutory minimum wage	Scheme applying a reduced rate of 7% (rather than 13%) for sickness insurance contributions
Family allowance	3.5x statutory minimum wage	Scheme applying a reduced rate of 3.45% (rather than 5.25%) for employers' family allowance contributions

N.B : The amount of the across-the-board reduction is calculated on a sliding scale, whereas the application of reduced contribution rates for sickness insurance and family allowance is contingent on strict compliance with the relevant thresholds.

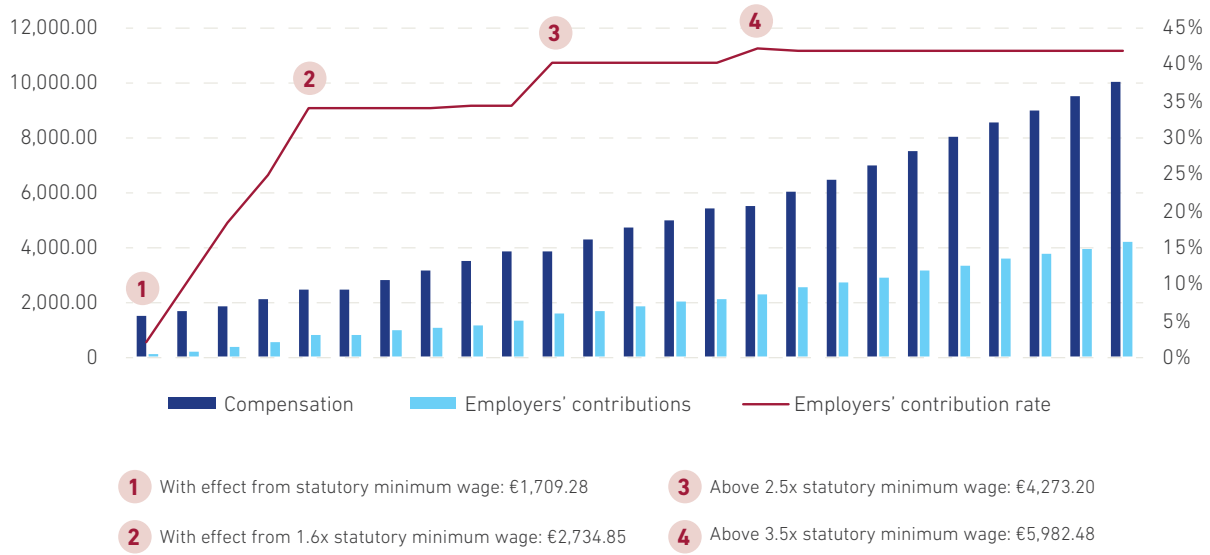
The following diagram shows how the applicable exemption schemes apply for different salary levels. :



Other exemptions and sliding-scale mechanisms for social security contributions exist, notably for contributions subject to criteria relating to the size of the workforce.

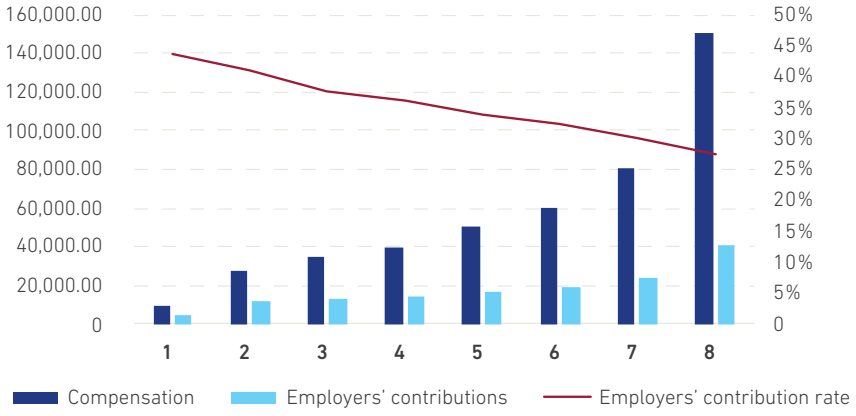
The following chart shows how employers' social security contributions increase with salary:

Increase in employers' contributions with salary (January 1, 2023)



For some contributions, the calculation basis is capped, thus lowering the contribution rate for higher salaries. This is shown in the following chart.

Effect of caps on contribution basis



N.B : The above models do not include social security contributions intended to fund protection and healthcare cover.

For more information, a tool for estimating contributions can be found on the URSSAF website at: https://www.urssaf.fr/portail/home/utile-et-pratique/estimateur-de-cotisations.html?ut=estimateurs

Examples of available data based on a gross monthly salary of €2,500

Labor cost Spent by the company	**€3,237**
Gross salary Reference gross (excluding premiums, allowances and surcharges)	**€2,500** Median earnings, SMIC
Net salary Received by the employee	**€1,957**
Net salary after income tax Transfered on the bank account	**€1,848**

Distribution of total amount

Disposable income **57.1%** Tax **3.4%** Social contributions **39.5%**

4. Distinction between net salary and net taxable salary

NET SALARY

Net salary is the amount an employee actually takes home. In principle, it consists of the following:

Gross salary

– all employees' social security contributions

+ any allowances not subject to contributions

NET TAXABLE SALARY

Net taxable salary corresponds to the salary on the basis of which pay-as-you-earn tax deductions are calculated.

In principle, it consists of the following:

Gross salary

– certain employees' social security contributions (only those that are tax-deductible)

+ amounts paid by the employer towards health insurance

NB : Since January 1, 2019, income tax has been deducted at source when employees are paid. Employers act as collectors, applying the pay-as-you-earn deduction rate communicated by the tax authorities to net taxable salary.

EMPLOYEE SHARE OWNERSHIP AND RETAINING TALENTS

In France, employee share ownership has grown thanks to an incentivizing public policy that allows employees and employers to benefit from tax and social advantages. As a result, most companies have put in place share allocation mechanisms aimed at senior managers. But it is also possible to extend employee share ownership more widely among employees, through the various employee savings systems. With this in mind, the 2019 PACTE Act reformed the employee share ownership and employee savings schemes to facilitate their implementation and make them more attractive for both companies and their employees.

In addition, the introduction of welfare and health insurance schemes also makes it possible to attract and retain employees.

1. Employee share ownership

Employee share ownership mechanisms are forms of remuneration that do not require the direct payment of money to the employee, but rather allows the company to recover cash and increase its capital. In addition, they encourage performance and good corporate results, since they are only of interest if the value of the shares increases.

A) STOCK-OPTIONS

System:

The stock option mechanism allows the company to set a purchase price for acquiring its shares. The benefit of the system lies in the fact that employees receiving a purchase option can acquire shares in the company at a preferential price compared to their actual value at the time of their acquisition. They can therefore choose:

- To keep the shares and become shareholders of the company at a lower cost. This will allow them, in particular, to receive dividends.
- To sell the shares acquired at a low price to realise a capital gain.

Gains from the exercise of options are exempt from social security contributions, regardless of how long the securities are held. The employer must pay an employer contribution of only 30%.

At the tax level for the beneficiary, the acquisition capital gain is subject to income tax, social security contributions on earned income and the specific wage contribution. The capital gain on disposal is subject to tax based on a single flat-rate levy and social security contributions on household income.

B) BSPCE

System:

Founders' Share of Subscription Warrants (BSPCE) are a special category of stock options with a more attractive tax regime. However, the conditions allowing BSPCEs to be issued are more restrictive than for the allocation of simple stock options.

Indeed, the right to award these BSPCEs is reserved for a particular category of companies according to the following criteria, defined by law:

- Joint stock company
- Existing for less than 15 years
- Liable in France for corporation tax
- Market capitalisation value < than €150 million.
- Held by at least 25% natural persons (since its creation) or by legal entities which are themselves at least 75% owned by natural persons.

The allotment of BSPCEs and/or BSAs does not result in either the employer or the employee having to pay any additional social security contributions.

In terms of tax, the capital gain on disposal resulting from the difference between the sale and acquisition prices is subject to income tax (IR) and social security deductions (PS), the rate of which varies according to the beneficiary's seniority.

C) BONUS SHARE ISSUES (AGAS)

System:

Unlike stock options and BSPCEs, bonus share issues (AGAs) allow beneficiaries to allot shares directly without having to exercise an option or subscribe for a warrant. In order to increase its attractiveness, the Macron Act in 2015, supplemented by the PACTE Act in 2019, helped to simplify and streamline the legal, tax and social regime for bonus shares.

The decision in principle to allow employees to benefit from free shares is the responsibility of the Extraordinary General Meeting of shareholders (EGM). The EGM can determine the allotment of shares according to criteria (performance, length of service, etc.) and therefore choose the categories of employees concerned with regard to their needs.

Free share allocations are in principle subject to an employer contribution at the rate of 20% of the value of the shares on the acquisition date. Nevertheless, some companies may be exempt from this employer contribution under certain conditions.

Subject to meeting the conditions laid down in the Commercial Code, gains derived from bonus shares are exempt from employer's and employee's social security contributions, regardless of how long they are held.

At the tax and social level for the beneficiary:

- **The capital gain on acquisition** is taxable at 30% at the single flat-rate (PFU) (12.8% IR + 17.2% PS) after a 50% reduction on its gross amount. The effective rate after the reduction is therefore 23.6% of the gross amount.
- **The capital gain on disposal** is subject to 30% PFU on its gross amount (12.8% IR + 17.2% PS) without any reduction.

2. Employee savings

In addition to the mechanisms relating to the employee shareholding, employee savings schemes also make it possible to allow employees to benefit from the company's performance and profits. This system can cover various forms (investment agreement, profit-sharing agreement, company savings plan, retirement savings plan) and represents an excellent motivating factor for all employees.

A) OVERVIEW OF THE VARIOUS MECHANISMS

1) Compulsory profit sharing

Under compulsory profit sharing, a portion of the company's profits is redistributed among its employees based on a formula defined by law. It is mandatory as soon as the company exceeds the threshold of 50 employees without interruption for the last 5 years. It can also be put in place voluntarily using a formula other than that laid down in law.

2) Voluntary employee profit-sharing

Voluntary employee profit-sharing ("intéressement") gives all employees a stake in the company's results and performance. It is calculated based on criteria laid down in a collective agreement. Under this approach, the variable portion of pay is linked to strategic business indicators (customer satisfaction rate, ratio of defect-free parts produced, safety targets, etc.).

3) Employee savings plans

An employee savings plan ("plan d'épargne entreprise" or PEE) is a group savings plan enabling employees to build up a securities portfolio with the company's help. Employee payments may be topped up or matched by the company. Amounts are locked in for at least five years, apart from in exceptional cases where they may be unlocked early. An employee savings plan may be put in place for a number of companies not belonging to the same group (known as a "plan d'épargne interentreprises" or PEI).

4) The collective company retirement savings plan (PERECO)

The PERECO is a long-term savings plan. It enables people to save during their working life in order to obtain, with the help of the company, a capital sum or an annuity when they reach retirement age. Employee membership is optional. Employees can contribute to their PERECO with voluntary payments, profit-sharing or incentive plan payments, or with rights registered in a time savings account (CET). Under certain conditions, the employee's contributions may be supplemented by top-ups from the company.

5) The mandatory company retirement savings plan (PERO)

The PERO is a plan open to all employees or reserved for certain categories of employees. Subscription is mandatory. Employees contribute to their PERO with voluntary payments, mandatory payments, profit-sharing and incentive plan payments, amounts from the transfer of other retirement savings plans or the rights registered in a CET. The PERO can be funded by mandatory contributions from the company.

B) THE SOCIAL AND TAX REGIME:

Social regime:

The sums paid under these schemes benefit from a preferential scheme and are excluded from the basis for social security contributions and are only subject to an employer contribution known as the «forfait social» (corporate social contribution) of 20% and a wage contribution in connection with the CSG CRDS of 9.7%. The profit-sharing scheme, the company savings plan/ intercompany savings plan (PEE/PEI) and the retirement savings plan (PER) are also subject to a solidarity contribution of 7.5% (employee contribution).

In order to encourage employee savings, recent legislative changes have allowed the total or partial abolition of the "forfait social" on employee savings schemes depending on the size of the company.

Thus, since January 1, 2019, the forfait social has been abolished:

- On profit-sharing, incentive schemes and matching contributions in companies with less than 50 employees.
- On profit-sharing in companies with less than 250 employees.

This elimination of the social package represents a tremendous opportunity for VSEs and SMEs to optimize their compensation policy.

Tax regime:

As regards taxation, profit-sharing payments paid into a PEE or PEI employee savings plan or a PER group retirement savings plan are exempt from income tax. These amounts are locked in for a minimum of five years for PEEs and PEIs and until retirement for PER.

In case of immediate release: the amounts become subject to income tax (but remain exempt from social security contributions).

3. Supplementary and additional social protection plans: security for employees

Companies can put in place supplementary and additional social protection plans to reward and retain their employees by offering disability, incapacity, healthcare, and additional retirement cover. (For more information, see sheet 2).

Amounts paid by employers to fund additional protection plans are not subject to social security contributions or income tax.

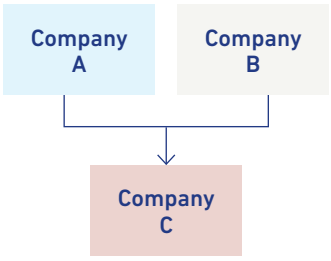
COMPANY TRANSFERS: SOCIAL RULES APPLICABLE IN THE EVENT OF MERGERS, DISPOSALS, DEMERGERS.

Restructuring or transfers of companies may occur over the lifetime of a company: such as mergers, disposals, demergers, etc. These are all events that may impact the employment relationship between the employer and its employees, and which are governed by French labor law.

Indeed, a transfer of a company is an operation through which an economic activity is entrusted to a new operator, the second employer, this transfer has an effect on both the employees' employment contracts and on collective labor relations.

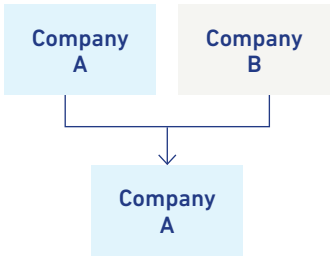
The following diagram shows the main types of transactions that impact a company's structure:

Merger



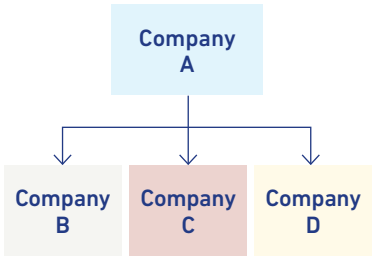
Two or more companies dissolve to form a new company that takes over their entire assets.

Merger-Absorption



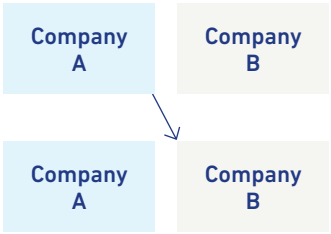
An absorbing company named A receives the assets and liabilities of a company named B, which disappears.

Demerger



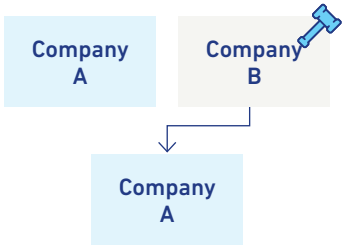
Company A transfers all its assets to new or existing companies and then disappears

Transfer



A company named A transfers a portion of its assets to a company named B. Both companies continue to exist.

Takeover before a Court



Company B, subject of collective insolvency proceedings, transfers its assets to Company A without including a takeover of debts (with some exceptions.) Company A must dispose of the necessary sums for the cash redemption.

For more details, particularly on mergers, please take a look at the booklet «Make a French Start!: Setting up business in France» by Business France and Mazars.

1. Automatic transfer of employment contracts

The change in the legal situation of the employer with which the employment contract was signed may result from a sale, transformation of a fund, a company merger, etc. In principle, employment contracts are maintained **for as long as the economic entity retains its identity.**

- **Employees concerned:** contracts are maintained automatically for all employment contracts in place when the employer's legal situation changes. No notification to the employee is required.
- **Effect of maintenance:** the employment contract continues to be performed under the same conditions and in accordance with the same procedures. The employee therefore retains his/her seniority, qualification, remuneration and any benefits that he/she has acquired.
- **Effect on employee representatives:** employee representatives (members elected to the social and economic committee - SEC, employee representative, trade union representative, trade union representative in the SEC, etc.) retain their mandate. **Nevertheless, in the event of merger-absorption, the law makes the continuation of mandates within the absorbed entity conditional upon maintaining the legal autonomy of the company, while the mandates of the absorbing entity are not called into question.** In the event of merger-creation, the pre-existing SECs will disappear with an obligation for the new entity to organise new elections. .

N.B : the employer retains the option of terminating an employee for personal reasons (e.g.: misconduct) or for economic reasons under certain conditions.

2. Fate of collective agreements in the event of a company transfer.

A) THE PRINCIPLE OF AUTOMATIC CALLING INTO QUESTION OF COLLECTIVE COMPANY-WIDE AGREEMENTS

1) The substitution agreement negotiated after the transfer

When a merger, transfer, demerger, or any other change in the legal situation of a company is envisaged, **the collective agreements and conventions applicable to this company are automatically called into question.**

However, the law provides that these agreements are maintained for a period of up to 15 months (3 months' notice and 12 months of survival of the agreement), pending the negotiation of a substitution agreement. In the absence of a substitution agreement, the employees concerned can no longer claim the provisions of the agreements in question but benefit in return from a guarantee of their former remuneration.

— Traditional substitution agreement:

> **Parties concerned:** agreement concluded between the employer and the trade union organisations of the host company. In cases where the existing trade union organisations in the home company are different from those in the host company, all trade union organisations representing the transferee and transferor companies must be invited to negotiate the substitution agreement.

> **Objective:** this agreement aims either to adapt to the newly applicable contractual provisions, or to draw up new provisions.

> **Application:** this agreement applies as soon as it has been concluded and filed. The previous agreement that was questioned ceases to apply on the effective date of the substitution agreement.

2) Agreements negotiated before the transfer

With a view to adapting to corporate buyouts, French law has changed and now offers new possibilities to soften the harmonisation of social rules between different companies in the event of a merger or demerger. Indeed, the employer can now negotiate early substitution agreements. These allow the rules applicable to the entities concerned to be adjusted before transferring and questioning the convention or agreement. There are two new types of agreement:

— Early transition agreement:

> **Parties concerned:** agreement concluded between the employers of the companies concerned and the trade unions representing the transferring company.

> **Objective:** this agreement is intended to replace the collective agreement soon to be called into question in order to ensure the transition with the status of the host company. Its provisions apply only to those employees transferred.

> **Application:** this agreement enters into force on the date of completion of the transfer, for a maximum period of three years. On expiry of this agreement, the conventions and agreements applicable in the absorbing company apply to the employees transferred.

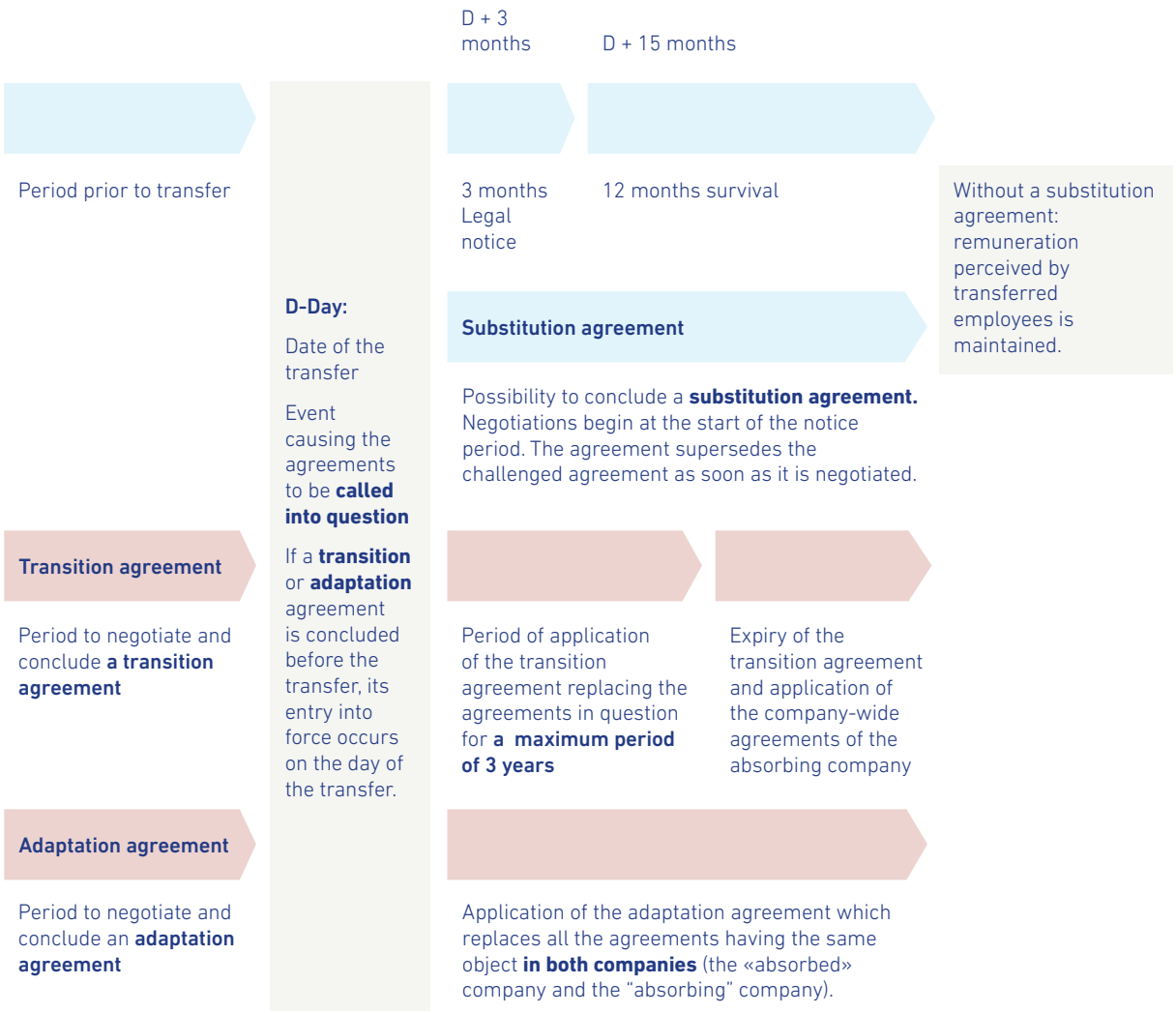
— Early adaptation agreement:

> **Parties concerned:** agreement concluded between the employers concerned and the trade unions representing the two companies, assignor and assignee.

> **Objective:** this agreement is intended to replace the collective agreement in question by revising the conventions and agreements applicable in the host company in order to create a new unique status for all employees.

> **Application:** this agreement enters into force on the date of completion of the event and is not subject to any maximum duration of existence.

B) SUMMARY TABLE OF NEGOTIABLE AGREEMENTS IN THE EVENT OF TRANSFER



3. The employer's obligations

A) OBLIGATION TO PROVIDE INFORMATION

In 2014, the Hamon Act introduced an obligation to inform employees in the event of the sale of the company that employs them, so that they may have time to present a possible takeover offer.

This concerns managers of companies with less than 250 employees who are considering selling the company's securities or business assets.

— **For heads of companies with less than 50 employees:**

> Inform employees of the intention to sell the business asset no later than two months before the date of conclusion of the sale contract in order to allow one or more employees of the company to make an offer to acquire the business.

> If the employees inform the manager that they do not wish to take over before the expiry of the two-month period, the sale may take place without waiting for the end of the period.

— **For heads of companies with 50 to 249 employees:**

> Inform employees of the desire to sell the business at the latest, at the same time as the information and consultation of the SEC, in order to allow one or more employees of the company to make an offer to acquire the business.

> No deadline is fixed to allow employees to make an offer and the sale may take place at any time after the employees have been informed.

Employees may be informed by any means likely to make certain the date it is received by the latter (information meeting, email, hand delivery, registered letter with acknowledgement of receipt, etc.).

In the event of failure to comply with this obligation, a liability lawsuit may be initiated. The court involved may, at the request of the public prosecutor, order a civil fine, which shall not exceed 2% of the amount of the sale.

B) THE OBLIGATION TO SEARCH FOR A BUYER

The law of March 29, 2014 known as the «Florange Law» establishes, for certain companies, an obligation to find a buyer within a certain period of time when the closure of an establishment is envisaged which would result in a collective redundancy plan leading to the implementation of a job protection plan.

The companies concerned are those that employ in France or in Europe at least 1,000 employees, taking into account, where applicable, the group to which they belong.

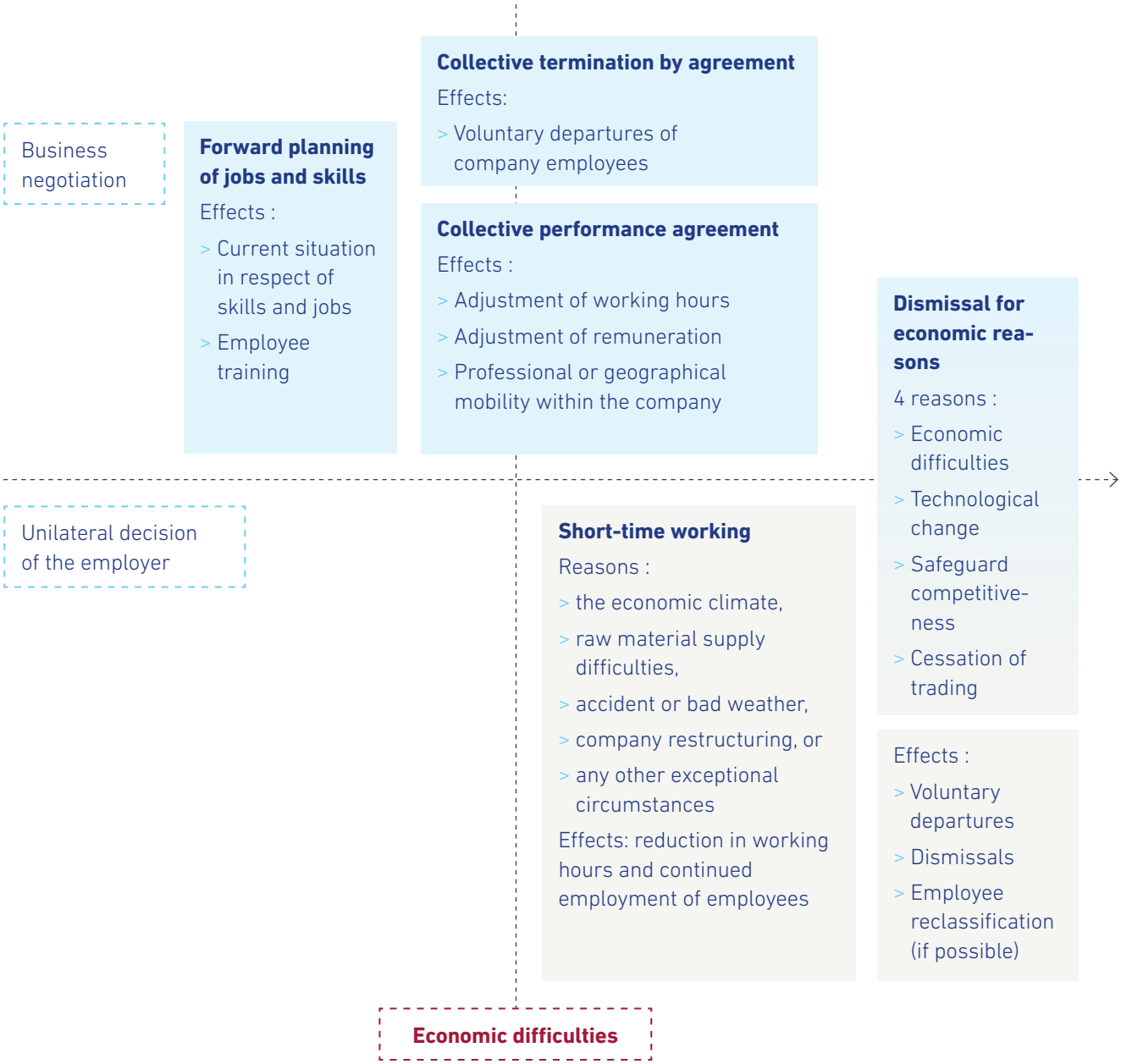
CONFRONTING ECONOMIC DIFFICULTIES

France offers various tools for preventing economic difficulties and adapting to strategic developments. This restructuring phenomenon is an integral part of corporate life. The causes are known: acceleration of technological changes, loss of a market or slowdown in economic activity, redefinition of the economic model.

There are preventive tools, which can be activated ahead of economic difficulties, by unilateral decision of the employer, or through collective bargaining, thus ensuring the need to preserve jobs.

A company may also run into such severe economic difficulties that it needs to rationalize its operations for a predetermined period, while retaining its employees and their expertise within the company.

Lastly, when laying off employees becomes unavoidable, reforms implemented over the past few years mean the procedure for laying off staff on economic grounds is simpler and more secure.



1. Short-time working: a job preservation tool operated by the employer

PRINCIPLES

Short-time working is a state-funded tool to prevent layoffs on economic grounds. It enables companies to temporarily reduce or suspend their employees' activities. Employees keep their jobs, and the company is able to retain or even increase its skills when faced with short-term economic difficulties.

Employers pay remuneration to employees put onto short-time working, with the state guaranteeing to pay part of the cost of compensation for unworked hours.

Employers may receive a short-time working allowance for their employees up to a limit of

- 1000 hours per year and per employee, in any professional branch
- 100 hours per year and per employee if short-time working is due to modernizing the company's installations and buildings

WHEN IS SHORT-TIME WORKING USED?

There are a number of grounds for making use of short-time working:

- An unfavorable economic climate (e.g.: leading to a decline in orders)
- Supply difficulties affecting raw materials or energy
- An incident or bad weather of an exceptional nature
- Transformation, restructuring or modernization of the company
- Any other exceptional circumstance (e.g.: loss of main customer) leading to an interruption or reduction in activity

IMPLEMENTATION

Before being able to place its employees on short-time working, the company must:

- Consult the SEC before making the administrative request and then inform it of the decision on receipt thereof. In the absence of an SEC, the employer directly informs the employees of its decision to use this system, detailing the provisional duration planned and the number of employees concerned.

- Submit an online **authorisation request to the Departmental Unit of the DREETS via a secure portal.**

The Administration then has **15 days** to respond and may, if it agrees, do so with conditions. If no response is received within this deadline, authorization is deemed to have been granted.

CONSEQUENCES FOR THE EMPLOYEE AND THE EMPLOYER

Employers must maintain a part of the employees' remuneration by paying an indemnity equal to 60% of the gross salary (about 84% of the net) to their employees within the limit of 4.5 times the minimum wage.

The employer receives an allowance corresponding to 36% of the gross hourly remuneration limited to 4.5 times the minimum hourly wage.

Employees may also be eligible to receive professional training during periods when they are not working, in which case the employer receives an allowance funded jointly by the state and the agency that manages the unemployment insurance regime.

The employee may not refuse to be placed on short-time working. Although it leads to his/her employment contract being suspended, it is not a change to it. The employee may undergo training during this period.

DURATION OF THE AGREEMENT

The short-time working authorisation may be granted for a maximum period of 3 months renewable.

FORWARD PLANNING OF JOBS AND SKILLS: A TOOL FOR ANTICIPATING ECONOMIC CHANGES IN THE COMPANY

The employer is free to decide on the strategy to adopt to develop the company. Nevertheless, it has a duty of social responsibility towards its employees, which translates into an obligation to adapt employees to their workstation and the need to implement forward-looking job management.

For example, forward planning of jobs and skills (Gestion prévisionnelle des emplois et des compétences or GPEC) enables a company to adapt its workforce to requirements resulting from its strategy and changes in its economic, social, and legal environment.

The system must be negotiated at least once every four years in companies and groups with at least 300 employees, as well as in companies and groups with a community dimension having at least one establishment or company with at least 150 employees in France.

Forward planning of jobs and skills can also be implemented outside mandatory collective bargaining in companies with less than 300 employees, if the company wishes to ensure that employees adapt to developments in their job.

2. Collective performance agreements: a company restructuring tool

PRINCIPLE

Ordinances reforming the French Labor Code have created a single type of company-wide agreement to meet companies' operating needs, as well as protecting jobs. This replaces internal mobility agreements and competitiveness agreements (maintaining employment or protecting and developing employment).

WHEN SHOULD IT BE USED?

This agreement may be signed whether the company is facing economic difficulties or anticipating such difficulties.

IMPLEMENTATION

The agreement applies to all companies, whether or not in difficulty, that have entered into a majority company-wide agreement.

In the presence of a trade union representative in the company, the collective performance agreement is a negotiating tool which must be signed by the employer and the trade union representative (or the trade union representatives).

The draft agreement must be submitted for employee consultation and is confirmed if it is approved by the majority.

In the absence of a trade union representative, the employer may also offer employees a collective performance agreement. Special conditions apply depending on the payroll within the company:

- **Fewer than 11 employees:** the draft agreement is submitted for employee consultation and is confirmed if it is approved by a two-thirds majority.
- **Between 11 and 49 employees:** the draft agreement can be negotiated between the employer and:
  - > either one or more employees mandated by one or more trade union organisations of the branch of the company.
  - > or one or more members of the SEC

The agreement is confirmed if it is approved by the majority of mandated employees or by the majority of members of the SEC.

- **50 employees and more:** the draft agreement is negotiated between the employer and members of the SEC. The agreement is confirmed if it is approved by the majority of the members of the SEC.

CONTENT OF THE AGREEMENT

The collective performance agreement enables a company to:

- Adjust working hours and their organization and distribution
- Adjust employee pay, provided this remains above the minimum wage
- Determine the conditions applicable to role transfers and geographical moves within the company

Stipulations in the agreement are designed to temporarily replace clauses in the employment contracts of employees who agree to them. Those who reject them may be laid off; employees have one month to notify their employer of their decision.

Duration of the agreement

The collective performance agreement may be concluded for an indefinite period or a fixed term. If no term is specified for the agreement, it is concluded for 5 years.

3. Dismissal on economic grounds

Principle

Dismissal on economic grounds must have been made necessary by one or more reasons not inherent to the person of the employee, resulting from a suppression or a transformation of employment (such that it is not possible for the employee to adapt to the new role), or the employee must have rejected any change to their employment contract.

Like any dismissal, to be justified, dismissal on economic grounds must be for cause.

Layoffs on economic grounds are said to be **collective** if they affect more than ten employees over a 30-day period. In companies with more than 50 employees, the employer must put in place a job preservation plan (Plan de sauvegarde de l'emploi or **PSE**).

Reasons

The law provides for four reasons for dismissals on economic grounds:

- If the company experiences economic difficulties characterized by significant changes in at least one economic indicator (a decline in orders or sales, operating losses, a deterioration in the company's cash position or gross operating profit, etc.). For groups, difficulties are assessed at the national level (i.e. all group companies located in France and operating in the same industry sector).
- If the company is faced with technological changes, even where it encounters no economic difficulties, or its competitiveness is not threatened.
- If the company ceases trading.
- If the company needs to be reorganized to safeguard its competitiveness assessed as whole, at industry sector level for a group of companies.

Implementation

The employer must consult the employee representatives on the reasons and conditions for the dismissals.

It must also inform the DREETS of any planned and declared dismissals, under conditions that vary according to the number of redundancies envisaged. Employee support measures must be implemented.

For collective economic dismissals, the employer has the possibility of negotiating an agreement with the representative unions to determine the content of the redundancy plan (PSE) and the conditions for implementing the redundancies.

The employer may also deal with all these points in a unilateral document on which the SEC will have been consulted beforehand.

Duration of the procedure

Consultations of employee representatives may not exceed 4 months.

The limitation period for actions relating to the termination of the employment contract was set at 12 months by the Ordinances dated September 22, 2017.

For more information on dismissal for economic reasons, please consult sheet 10 «How to terminate an employment contract?".

HOW TO TERMINATE AN EMPLOYMENT CONTRACT?

Termination of the employment contract may be initiated by the employee (resignation or retirement), initiated by the employer (personal or economic dismissal), or by mutual agreement (contractual termination or settlement).

1. Resignation

DÉFINITION

Resignation is a when **an employee decides** to leave the company. An employee may resign at any time, including when their contract is suspended (e.g.: when on sick leave).

KEY STEPS IN THE PROCEDURE

Reasons need **not be given for resignation**, and **no specific formalities** need be completed. However, the employee must **clearly and unambiguously express** their desire to terminate the employment contract. Once an employee has notified their decision to resign, it can only be rescinded with the employer's agreement. Furthermore, employees resigning must also give **prior notice** (statutory or contractually agreed).

COST

No compensation is paid by the employer. The employee is not entitled to any unemployment allowance unless their resignation is deemed legitimate by the unemployment insurance regime.

2. Contractually agreed termination: the only way to terminate an employment contract by mutual consent

INDIVIDUAL TERMINATION BY AGREEMENT

Definition

An individual contractual termination is an amicable termination of the employment contract, by **mutual agreement** between the employer and the employee. Contractual termination is only open to employees employed on permanent contracts only. The system does not apply to employees on fixed-term or temporary contracts.

Key steps in the procedure

The employer and the employee agree to a **preliminary interview to negotiate the terms of departure** (date and amount of compensation). Once the parties have signed a document agreeing to the terms of departure, **a 15-day cooling-off** period must be observed to allow either party to change its mind.

At the end of this period, the agreement is **approved by the DREETS within 15 days**. If the DREETS has not responded within 15 days, the agreement is approved.

In the event of a refusal to approve, the DREETS must justify its decision (in particular in the event of non-compliance with a stage of the procedure or doubt about the free consent of the parties).

Until the contract has ended, the employee continues his/her activity under the usual conditions and may take paid leave during this period.

Cooling-off period

Time frame varies according to Cooling-off period

1. Contractual termination proposal (at the initiative of the employer or employee)
2. Letter of invitation to a negotiation interview
3. Negotiation interview (date of termination of contract, amount of compensation)
4. Signature of termination agreement

Cooling-off period

Time frame of 15 calendar days

1. Observation of a withdrawal period open to the employer and employee
2. In the event of withdrawal: continuation of the contract or resumption of negotiations

Confirmation

Time frame of 15 working days

1. Notifying the agreement to the DREETS
2. Letter requesting approval from the DREETS
3. In the event of refusal to approve: continuation of the contract
4. Approval or lack of response: termination of the contract on the agreed date (at the earliest the day after expiry of the approval period)

COST

In the event of contractually agreed termination of a contract agreed between an employer and an employee in an approved agreement, the employee is entitled to receive specific compensation. The amount of such compensation, and the associated social security and tax exemptions, correspond to statutory severance pay. As such, compensation may not be less than:

— One-quarter of a month's salary per year of service for the first ten years.

— Then 1/3 of a month's salary per year from the 11th year.

Caution: Mutually agreed or contractual provisions or accepted practice may provide for a formula more favorable to the employee than that used for statutory severance pay. Additional compensation (known as supra légale, or over and above the statutory amount) may be negotiated and added to severance pay.

Examples: Calculation of legal compensation

The formula is as follows: *[gross salary x bracket of seniority] x number of years in the employee's company.*

— Legal severance pay for an employee with **5 years** of service and gross remuneration of **€2,500** over the last 12 months: [2,500 x (¼)] x 5 = €3,125

— Legal severance pay for an employee with **12 years** of service and gross remuneration of **€1,800** over the last 12 months: [(1,800 x ¼) x 10] + [(1,800 x 1/3) x 2] = €5,700

— Legal severance pay for an employee with **15 years** and **6 months** of seniority and gross remuneration of **€3,000**: [(3,000 x ¼) x 10] + [(3,000 x 1/3) x 5] + [(3,000 x 1/3) x (6/12)] = €13,000

To carry out a simulation and find out the amount of the legal severance pay: https://www.telerc.travail.gouv.fr/accueil

3. Collective termination by agreement

DEFINITION

Introduced by the Ordinance of September 22, 2017, collective termination by agreement (rupture conventionelle collective or RCC) is **a new method of terminating an employment contract that excludes dismissal** and is entirely voluntary for employees. Under this method, the employment contract is terminated by mutual consent. Termination must not be preceded by closure of an establishment or followed by dismissals. Once an employee's voluntary application is accepted, that employee may not challenge the termination of their employment contract.

KEY STEPS IN THE PROCEDURE

This method can be used when a company has been found to be **overstaffed**. There are **four key steps** that must be observed:

— Signature of **a majority collective agreement concluded at company or establishment level, determining the content of a collective contractual termination excluding any dismissal.**

— The validity of this majority collective agreement is subject to its signature by, on the one hand, the employer and/or on the other hand, one or more trade union organisations of representative employees having received more than 50% of the votes cast in favour of representative organisations in the first round of the last elections of the holders to the social and economic committee, regardless of the number of voters.

— If there are no representative trade union organisations within the company, the agreement may be signed with representatives appointed or not by a representative trade union organisation.

— It is also possible to submit an agreement to employees by referendum (2/3 majority) in companies with fewer than 11 employees and in companies of between 11 and 20 employees that do not have employee representatives.

— Submission of the collective majority agreement on the RUPCO portal: single and secure entry point.

— Notify and obtain agreement from DREETS within 15 days. Failure to respond, after this period, constitutes implicit acceptance.

— Employees applying to leave must submit their requests in writing in accordance with the terms laid down in the agreement. On acceptance of a request by the employer, the employment contract is deemed to have been terminated by mutual consent. The employee receives the agreed compensation and can claim unemployment insurance. Requests must be examined objectively. If a request is rejected, reasons must be given and must be based on the terms laid down in the agreement (e.g.: the employee does not meet the length of service requirements stipulated in the plan).;

Implementation review: the employer must draw up an implementation review and submit it to DREETS within one month of the collective termination plan being put into effect.

Intention to negotiate a collective agreement of CTA	Submission of the agreement to the DREETS	Employee acceptance of the CCT	Terminations
Time frame varies according to negotiation	*15-day time frame*	*Variable time frame*	
1. A At the employer's initiative 2. Obligation for the employer to immediately inform the DREETS and the SEC 3. Start of negotiations with trade union delegates, or, in their absence, with: • Mandated employees • By referendum	1. Filing of the agreement for confirmation (RUPCO portal) 2. Compliance review (mandatory content and regularity of the procedure for informing the SEC) 3. Confirmation (approval or lack of response) or motivated refusal	1. TSending of applications for departure to the employer 2. Examination of applications for departure by the employer 3. Acceptance by the employer and signature of individual termination agreements in the manner provided for in the agreement	Assessment of the CTA sent to the DREETS by the employer no later than 1 month after its implementation

In companies with at least 1,000 employees, or that belong to a group, if the job cuts affect the balance of the employment area in which the company is established, a revitalisation agreement is signed with the administration, within 6 months after validation of the agreement, thus making it possible to recreate employment in the territories affected by restructuring.

4. Dismissal for personal reasons (for cause)

REASONS

Dismissal for personal reasons is when an employee is dismissed for reasons specific to that employee. It may be based on the following:

- **Disciplinary reasons:** Simple negligence, gross negligence or willful misconduct
- **Non-disciplinary reasons:** Incompetence, repeated or prolonged absence, etc.

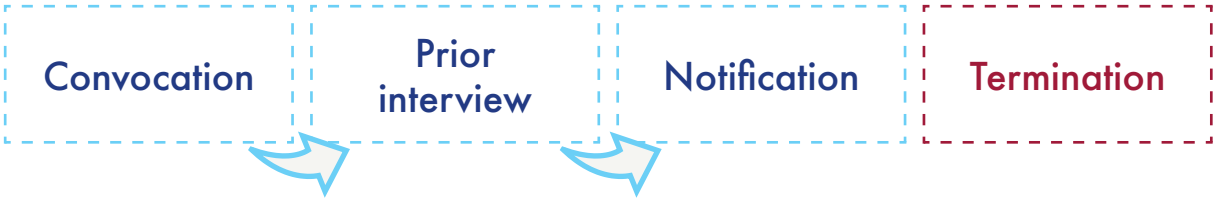
To be justified, dismissal must be for cause: the allegations must be objective and serious enough to make dismissal inevitable (i.e.: the employee will not be able to stay with the company).

KEY STEPS IN THE PROCEDURE

Procedure to be followed:

- Letter of **invitation** to a prior interview (letter templates available).
- 5 working days (minimum) after receipt: **interview** to obtain the employee's explanations.
- 2 working days (minimum) and 1 month maximum after the interview: notification to the employee by registered letter with acknowledgement of receipt of his/her **dismissal**.
- -If the employee requests details about the reason: 15 days to inform him/her.
- Notice: the employee must provide notice unless exempted by the employer or dismissed for serious or gross misconduct.

Since the Ordinances of September 22, 2017, the procedural defect is no longer ground for the dismissal annulment. Nonetheless, failure to comply with the procedure may have consequences on compensation.



1. Convocation to the interview prior to dismissal: by registered letter with acknowledgement of receipt or by hand
2. Content of the letter of convocation: projected redundancies, date, time and place of the interview, possibility for the employee to be accompanied at the interview

1. Detailed description of the reason for dismissal by the employer to the employee
2. Response of the employee to the grounds for dismissal

1. Notification of dismissal by registered letter with acknowledgement of receipt
2. Date of termination of the employment contract corresponds to the day the letter notifying the dismissal is sent
3. 15 days to request clarification on the grounds for dismissal by the employee
4. 15 days to respond to the employee

1 year to challenge the dismissal in court

COSTS:

To claim **legal compensation** for dismissal, the employee must have at least 8 months of continuous service with the same employer and have been dismissed for a reason other than gross or serious misconduct. The compensation may not be less than the following amounts:

— One-quarter of a month's salary per year of service for the first ten years

— One-third of a month's salary per year thereafter.

In the event of a dispute, the Ordinances of September 22, 2017 introduced a cap on damages, applicable depending on company size and employee length of service.

5. Dismissal on economic grounds: to confront economic difficulties and safeguard competitiveness

BEFORE ANYONE IS LAID OFF

The employer must consult employee representatives over the reasons for and terms of any layoffs. It must also inform the DREETS of any planned and announced layoffs, under conditions that vary depending on the number of planned layoffs. Measures must be put in place to support affected employees.

REASONS

The law provides for four reasons for layoffs on economic grounds:

- **If the company experiences economic difficulties characterized by significant changes in at least one economic indicator** (a decline in orders or sales, operating losses, a deterioration in the company's cash position or gross operating profit, etc.). For groups, difficulties are assessed at the **national level** (i.e. all group companies located in France and operating in the **same industry sector**).
- If the company is faced with **technological changes**, even where it encounters no economic difficulties, or its competitiveness is not threatened.
- If the company c**eases trading.**
- If the company needs to be **reorganized to safeguard its competitiveness assessed as a whole,** at industry sector level for a group of companies.

Furthermore, the layoffs must have been made necessary by one of the economic grounds set out above: The affected employee's job must have been scrapped or changed significantly (such that it is not possible for the employee to adapt to the new role), or the employee must have refused any change to their employment contract.

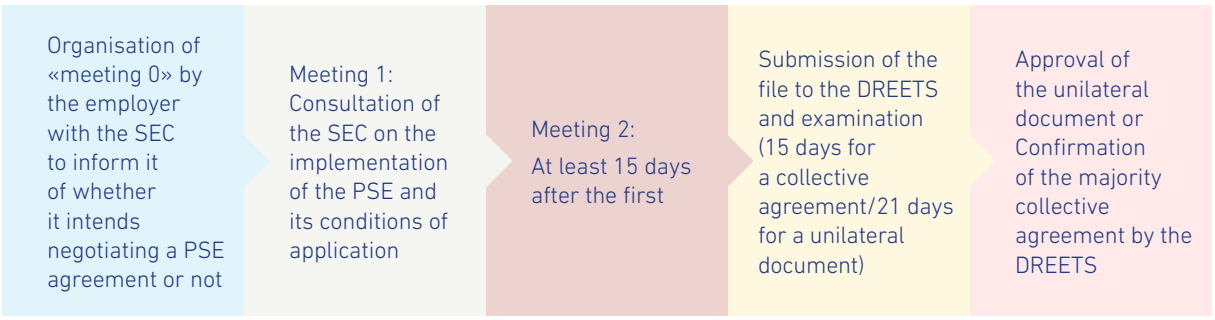
Layoffs on economic grounds are said to be **collective** if they affect **more than ten employees** over a 30-day period. In companies with more than **50 employees, the employer must put in place a job preservation plan (Plan de sauvegarde de l'emploi).**

Worforce	N° of employees affected	Procedure to be followed
Between 11 and 49 employees.	**< 10**	> **Inform/consult the SEC** (review period of 1 to 3 months) which is required to hold 2 meetings separated by a maximum period of 14 days. > **Convocation to a preliminary interview** > **Interview**: 5 working days (minimum) after invitation is received > **Letter of dismissal:** 7 working days (minimum) after interview > Possibility of benefiting from a professional security contract (CSP) and reclassification leave • Priority rehiring • If the employee asks for detailed reasons: 15 days to notify them > **Notify the DREETS:** within 8 days (max) following the letter
	≥ 10	> **Consultation of the SEC** (examination period of 1 to 3 months) on the redundancy plan and its conditions of application > **Notification to the administration:** sending of the project to the DREETS > **Invitation to a prior interview** > **Interview:** 5 working days (minimum) after invitation is received > **Dismissal letter:** sent to employees after the expiry of a period of 30 days following notification of the redundancy plan to the DREETS • Possibility of benefiting from a CSP and reclassification leave • Rehiring priority • If the employee requests details about the reason: 15 days to inform them > **Notify the DREETS:** within 8 days (maximum) of the letter > **Procedure under the control of the administration**

Worforce	N° of employees affected	Procedure to be followed
A partir de 50 salariés	< 10	> **Information/consultation of the SEC** > **Convocation to a preliminary interview** > **5 working days (minimum) after receiving the convocation:** interview > **7 working days (minimum) after the interview:** letter of dismissal > Possibility of benefiting from a CSP and reclassification leave > Priority rehiring > If the employee asks for detailed reasons: 15 days to notify them > **Notify DREETS:** within 8 days (max) following the letter
	≥ 10	> Obligation for the employer to set up a **Job Preservation Plan (JPP)** > Consultation of the SEC prior to the planned operation and its conditions of application. The SEC must submit its opinion after its consultation: 2 months when the number of dismissals is less than 100, 3 months for a number between 100 and 249 and 4 months from 250 dismissals. > Inform the DREETS of the redundancy plan from the day after the first meeting with the SEC. > Compliance check of the DREETS consultation, which must then: • Validate the majority agreement within 15 days of its receipt; • Or approve the unilateral document within 21 days > **Invitation to a prior interview** > **5 working days (minimum) after receipt**: interview > **Dismissal letter addressed to employees:** • After notification of validation or approval of the JPP by the DREETS • Or at the end of the deadlines provided for its decision (15 or 21 days) - Possibility of benefiting from a CSP and reclassification leave - Rehiring priority - If the employee requests details of the reason: 15 days to inform them > **Within 8 days (maximum) of the letter**: notify the DREETS

The SEC must give its opinion

- Within 2 months if the number of dismissals is less than 100
- Within 3 months if the number of dismissals is between 100 and 250
- Within 4 months if the number of dismissals is at least equal to 250
- A majority collective agreement may modify this timetable



DEADLINE

Employee representatives must be consulted within **four months.**

EMPLOYER'S OBLIGATIONS

Priority redeployment

The employer must give the employee first refusal over a job in the same category as their current job (or equivalent) at an equivalent level of pay.

In companies or establishments with 1,000 or more employees: redeployment leave

The employer must offer the employee redeployment leave enabling the latter to receive training and benefit from the services of a support unit to help find work, for a maximum of 12 months.

In companies with fewer than 1,000 employees: re-employment support agreement

A re-employment support agreement (contrat de sécurisation professionnelle or CSP) gives employees access to a number of measures designed to favor a rapid return to lasting employment.

Priority rehiring

Priority rehiring means an employee who makes an application is given priority when a position becomes available within the company. The employee is eligible for such priority treatment for one year from the date on which their employment contract is terminated. The employer must refer to the right to priority rehiring and any associated conditions in the letter of dismissal.

COST

Calculation of the **statutory severance allowance** (for employees with at least eight months' unbroken service, except in the event of gross negligence or willful misconduct):

- One-quarter of a month's salary per year of service for the first ten years
- One-third of a month's salary per year thereafter.

In the event of an employment tribunal dispute, when the judge acknowledges that a dismissal is unjustified, without a real and serious cause, they shall award the employee compensation at the expense of the employer. The amount of compensation varies depending on the employee's seniority and the number of employees in the company. This cap on damages was put in place by the Ordinances of September 22, 2017.

Example: It is possible to simulate the minimum and maximum amounts of compensation for damages in the event of wrongful dismissal or without a real and serious cause.

Employee's seniority in the company	5 years	10 years	15 years
Type of company	11 or more employees	11 or more employees	
Minimum compensation	3 months gross salary	3 months gross salary	3 months gross salary
Maximum compensation	6 months gross salary	10 months gross salary	13 months gross salary

To go further: https://www.service-public.fr/simulateur/calcul/bareme-indemnites-prudhomales

The employee has a period of 12 months from notification to challenge the regularity of the dismissal.

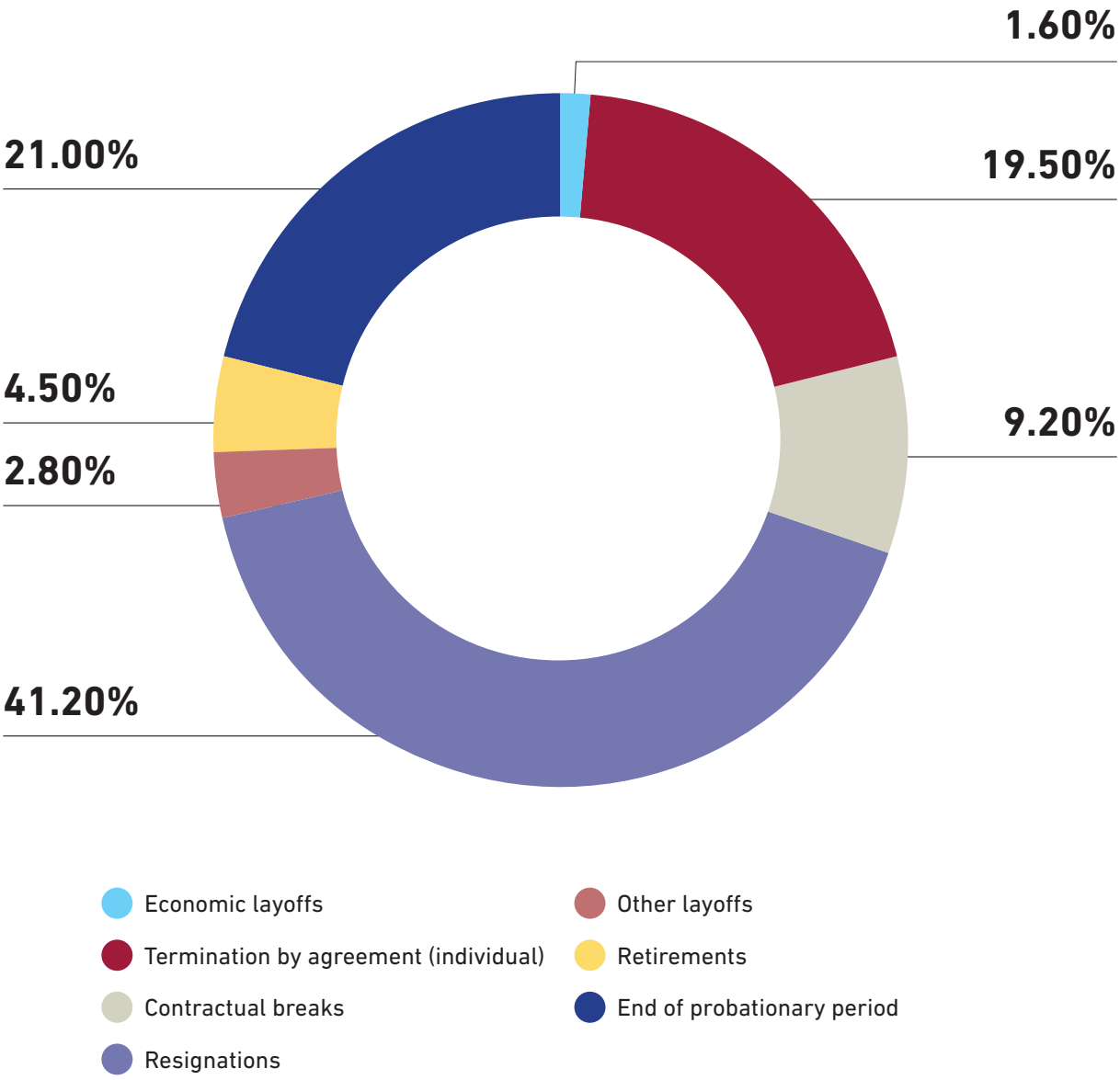
In the event of dismissal deemed without a real and serious cause, the industrial tribunal may propose to the parties (employer and employee) that the latter be reintegrated into the company. In this case, this cannot be imposed on you: both parties are entitled to object to this reintegration.

KEY FIGURES

- Employees have **12 months** to challenge a dismissal (regardless of the grounds for such dismissal).
- Only **1.6%** of the grounds for economic redundancies were contested in 2018 (justice.gouv.fr)

METHODS OF TERMINATING EMPLOYMENT CONTRACTS IN FRANCE IN 2023[10]

Breakdown of reasons for terminating employment contracts 2023



10 : Source : DARES 2023

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It is responsible for fostering export growth by French businesses, as well as promoting and facilitating international investment in France.

It promotes France's companies, business image and nationwide attractiveness as an investment location, and also runs the VIE international internship program.

Business France has 1,420 personnel, both in France and in 55 countries throughout the world, who work with a network of partners.

Since January 2019, as part of the reform of the state support system for exports, Business France has given private partners responsibility for supporting French SMEs and mid-size companies in the following markets: Belgium, Hungary, Morocco, Norway, the Philippines and Singapore.

For further information, please visit: www.businessfrance.fr

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— Help with employee recruitment and induction

— Drawing up employment contracts

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MAKE A *FRENCH* START
10 insights to grow your business in France

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