THE EMPLOYMENT CONTRACT

IMPORTANT POINTS TOCHECKWHEN ENTERING INTO AN EPLOYMENT CONTRACT

The employment contract is the instrument by which a person, the employee, undertakes to perform a work performance for the benefit of another person, the employer, under whose subordination he places himself in exchange for remuneration. Under this relationship of subordination, the employer has a power of direction allowing him to give orders and instructions, to control the activity of the employee and, if necessary, to punish him.

It is advisable, on the day of the signature of the employment contract, to check certain formalities relating to the conclusion of the employment contract and its validity. In effect, once signed, the contract must be respected to the letter.

1. **The formalities to be carried out**

**The pre-employment declaration “La déclaration préalable à l’embauche” (DPAE).**

Upon entering the position, the employee must ensure that the employer has completed the DPAE.

The DPAE puts in place, for the employee, all of the social rights; including insurance cover in the event of an accident at work.

The hiring of an employee can only take place after nominative declaration made by the employer to the competent social welfare organisations. The DPAE must be carried out, at the earliest, eight days before taking up the actual position and, at the latest, on the first day of work (articles L 1221-10 and R. 1221-4 of the “*Code du travail* “ or “Code of Employment”). The DPAE is carried out with URSSAF (Union of recovery of social security contributions and family affairs), which serves the company or the establishment. This declaration allows the registration of the employee to the primary health insurance fund (CPAM), (or, if it is an agricultural employee, in the agricultural social insurance fund), application for membership to an occupational health service which may include a request for information and prevention visit, or a medical assessment according to the activity carried out.

The employer must give the employee a copy of the DPAE unless he has given him a written contract of employment, specifically stating the organisation which will receive the declarationdirectly (Article R. 1221-9 of the Code of Employment).

This formality prior to hiring is essential because the Code of Employment expressly prohibits employers from using undeclared work (Article L 8221-1). An employer who,intentionally,does not carry out the declaration prior to hiring is liable to a conviction for undeclared work by concealing salaried employment, which is punishable under Article L 8224-1 of the Code of Employment (3 years of imprisonment, € 45,000 fine).

*Note: Employers using the simplification of hiring formalities (service companyjob title “titre emploi service entreprise : Tese”),universal service employment check“chèque emploi service universel :Cesu” and voluntary employment check are exempt from making the declaration prior to hiring.*

**Affiliation to the company mutual health insurance.**

The conclusion of the employment contract entitles the employee to a compulsory supplementary cover for the reimbursement of health expenses. The employee benefits from the company mutual insurance (or health scheme) corresponding to a set of benefits intended to supplement those of the Social Security to cover their medical expenses and, where appropriate, the risk of death, incapacity and invalidity. At the time of signing the employment contract, the employer must provide the employee with an information about the company mutual health insurance scheme. *(For more information, see the guide to the mutual health insurance scheme).*

1. **The validity of the employment contract: nature, remedies, form and content**

**Nature, remedies and form of employment contract.**

The employer will inform the employee of the nature and form of the employment contract, which can be concluded for an indefinite, or a fixed, period. The duration of the employment contract determines its form.

- **The employment contract of indefinite duration “*Le contrat de travail à durée indéterminée*”(CDI).**

**Contract concluded without determination of duration**. The employment contract of indefinite duration is the normal and general form of the employment relationship (Article L 1221-2 of the Code of Employment).

**Remedies**. As the permanent contract is the normal and general form of the employment relationship, the employer must use this type of contract, unless it can justify a situation that permits the employer to use another type of contract.

**Absence of formalism**. **The CDI is not necessarily written.** The European Directive n ° 91-533 of 14 October 1991 imposes the **handing over in writing**to any employee, whatever the nature of their contract, their contract **within two months of starting work**. However, the Code of Employment provides that the contract of employment may be established according to the form that the contracting parties decide to adopt. The Ministry of Employment considers that the **delivery of a pay slip** and a **copy of the pre-employment declaration** are sufficient to comply with the European Directive (Rep. Min., JOAN, 25 Apr. 1994, 2079). Even if it is not compulsory in French law to have a written contract,it is **strongly advised** to do so to avoid possible disputes.

*Note:* ***The law or applicablecollective convention may require a written form of contract****. Written form is compulsory for certain types of contract, in particular for part-time work, domestic workers, occupational doctors, apprenticeships, intermittent employment, salaried lawyers, qualification as well as fixed-term employment.*

However, when a CDI is established in writing, the European Directive of 14 October 1991 provides that the employment contract must contain the following elements:

The identity of the parties, place of work; job title, status, quality of work or category of employment or summary description of the work, date of commencement of the contract or employment relationship, duration of paid holiday, the notice period to be observed by the parties in the event of termination of the contract,daily or weekly hours of work, the amount and frequency of the remuneration,reference tothe applicable collective convention or agreement governing working conditions

**- The fixed-term employment contract “*Le contrat de travail à durée déterminée”*(CDD).**

**Contract with a defined term**. The employment contract may include a fixed term from the outset. The term may also reflectthe purpose for which the contract was entered into (Article L 1221-2 of the Code of Employment).

**Remedies**. The employer can only use the fixed-term contract in cases expressly provided for by law (Articles L 1242-2 and L. 1242-3 of the Code of Employment). The fixed-term employment contract can therefore only be concluded for the **execution of a specific and temporary task,** and only in the following cases:

* Replacement of an employee or a company manager, temporary increase in activity, seasonal jobs or for jobs in which it is customary not to use the permanent contract (CDI) because of the nature of the activity performed and the temporary nature of these jobs, the recruitment of engineers and executives to achieve a defined purpose, to encourage the recruitment of certain categories of unemployed persons and to provide additional training for the employee.

Apart from these exceptions specified, a fixed-term contract cannot be entered into.

Furthermore, irrespective of the purpose of the fixed-term contract, it cannot have the purpose or the effect of being able to obtain a permanent job relating to the normal and permanent activity of the company (Article L 1242-1 of the Code of Employment).

**Form**. The fixed-term employment contract must be in writing (Article L 1242-12 of the Code of Employment). It should be checked that the **fixed-term contract contains the followingobligatory information**:

- a precise definition of its **purpose**;

- the **name** and **professional qualification** of the person being replaced when it is for a replacement;

- the**specific term** or the **minimum duration** for which it is entered into;

- the **designation of the position**, **position occupied** or the **nature of the workload** in which the employee will participatein, ensuring applicable professional training;

- the name of the applicable **collective convention**;

- the duration of the **trial period**, if any;

- the amount of the **remuneration** (including bonuses and premiums);

- the name and address of the complementary**retirement fund** and, if applicable, those of the **pension fund.**

The fixed-term contract itself must be handed to the employee within two working days of employment (article L. 1243-13 of the Code of Employment). Failure to comply with this requirement entitles the employee, at the request and for the benefit of the employee, to a “requalification”indemnity awarded by the judge and payable by the employer; this indemnity fixed by the judge cannot be less than one month’s salary (article L 1245-2 of the Code of Employment).

The written contract of employment must be in French. If the employee is a foreigner, they can request that the contract be translated into their language. Both texts are legally valid (Article L. 1221-3of the Code of Employment).

**Details of the content of the employment contract: essential clauses and additional clauses.**

The drafting of the employment contract makes it possible to inform the employee about the essential elements of the employment contract.

- **References and essential clauses of the employment contract.**

**Parties to the employment contract.** The employment contract must contain the identity of the parties. Employer: name of the company, address of the head office or employer establishment, SIRET number, the name of the representative (president, manager or HRD). Employee: name, date and place of birth, home address, social security number. If the employee isa foreignerfromoutside of the European Union, the employment contract will reference the authorisation to workor the visa/residency permit authorising the employer to work.

**Commencement date**. The employment contract must indicate the date on which the employee begins to perform their duties. This date serves as a starting point for the calculation of time employed, for the determination of paid leave entitlements and, where applicable, for the end of the trial period.

**Collective convention**. The name of the collective convention applicable to the company must be referenced in the employment contract or on the payslips. The collective convention is the law of the profession. It determines all of the working conditions, employment of vocational training and social guarantees by professional branch, at national, regional or local level. The stipulations of the collective convention supplement the provisions provided for in the employment contract by law. The collective convention generally provides for more favourable working conditions for employees.

**Nature of the contract**. The working conditions are not the same depending on the nature of the employment contract. A clause in the employment contract determines its nature. When the employment contract is concluded for a fixed period, the employer must define precisely the reason for using the fixed-term contract from the legally permitted list (Articles L. 1242-2 and L. 1242-3 mentioned above); without any suchclauseor remedy, the contract is deemed to be concluded for an indefinite period (Article L 1242-12 of the Code of Employment).

**Working hours**. The employment contract provides for the duration during which the employee is at the employer's disposal and must comply with his instructions without being able to freely pursue his personal activities. The legal duration of working hours is fixed at 35 hours per week (L. 3121-27). The contract can be concluded for a shorter period than the legal duration. In which case, it would be a part-time contract that must be agreed in writing (L. 3123-6). The part-time work contract must expressly state the weekly or monthly duration provided for and the manner in which the working hours for each day worked are communicated in writing to the employee. The employment contract may provide that the employer will use overtime, or additional in the case of a part-time contract. For fixed-term employment contracts, the contract also provides for its termination. The employer must respect the maximum period imposed by law according to the groundsfor appeal, in the absence of agreement or collective convention of branch fixing this maximum duration (L. 1242-8 and L. 1242-8-1 new). The collective convention also determines the waiting period to be respected between two fixed-term contracts (by default: 1/3 of the duration of the contract at least equal to or greater than 14 days, and 1/2 of the duration of the contract in other cases).

Because the working hoursare indicated in the contract of employment, both the employee and employer are bound by the agreed duration and this cannot be modified under any circumstances without the agreement of the other party.

**Qualification and classification**. The job title and its description make it possible to determine the classification of the employee provided for in the applicable collective convention. The collective convention provides for the amount of minimum remuneration corresponding to this classification. It should be checked that these elements correspond to your skills, your qualifications and what was discussed in the interview.

**Remuneration**. The remuneration is, in principle, freely negotiable by the parties. However, the salary can not be lower than the minimum wage, (“SMIC”, as of 1 January 2017, minimum hourly wage: 9.76 €, minimum monthly wage: € 1,480.27), or the minimum wage imposed by the applicable collective convention which takes precedence over the SMIC. In the case of a part-time contract, the salary is calculated in proportion to the hours worked, respecting the minimum hourly rate.

**Paid holiday**. The employee benefits from paid leave calculated according to the legal and contractual provisions applicable to the company. Article L. 3141-3 of the Code of Employment provides for two and a half working days per month of work with the same employer, not exceeding 30 working days. The collective convention may allow for more favorable conditions.

**Social advantages**. The employee must be affiliated to the supplementary pension fund as well as to the company’s retirement plan. The names of the relevant retirement/pension organisations concerned are stated in the employment contract.

**- Additional clauses of the employment contract (most common).**

**Place of work and mobility clause**. Although set by the employment contract, the workplace is a simple indication when the employer has not specified that the employee will perform his duties exclusively at this location. The employment contract may include a mobility clause.

This is the clause by which the employee agrees in advance to be willing to change theplace of work atthe employer’s discretion. The mobility clause must define precisely its geographical area of ​​application, otherwise it is null.

**Trial period.** (Articles L. 1221-19 to L. 1221-26 and L.1242-10). In the absence of written agreement to the contrary, the contract is deemed to be concluded without a trial period. In order to be able to impose a trial period on the employee, the collective convention or related agreement must provide for the possibility of having a trial period. During the trial period, the employment contract can be ended without justification by either party; no compensation is payable to the employee when the employment contract is broken during the trial period. The parties must, however, respect the notice period provided by law, the duration of which depends on the employee's time at the company (Article L. 1221-26). The absence of the employee during the trial period has the effect of extending this period by the same amount. In the context of a permanent contract, the trial period is 2 months for employees, 3 months for supervisors and technicians and 4 months for managers. In the context of the fixed-term contract, the trial period is calculated at the rate of one day per week amaximum duration of 2 weeks for a contract which has a duration of less than or equal to 6 months and one month in other cases. Unlike the CDI, the trial period contained in a fixed-term contract cannot be renewed.

**Non-competition clause.** The non-competition clause prohibits the employee, at the end of their employment contract, from exercising certain professional activities likely to harm their former employer. The clause must be indispensable to the protection of the legitimate interests of the company, limited in time and space, take into account the specific scope of the employee's employment and include an obligation for the employer to pay the employee a financial compensation even if the applicablecollective convention does not provide for such.

**Clause of objectives**. The employee's remuneration may include a variable. In order to be valid, such a clause must set reasonable objectives that are compatible with the market in the sense that they must be realistic and achievable, taking into account the economic situation of the professional sector in which the employee is involved.

**Breach of contract**. The early termination of the fixed-term employment contract can only occur in the circumstances expressly provided for by law (Articles L. 1243-1 and L. 1243-2: namely, gross negligence, force majeure, incapacity established by the occupational physician, common agreement of the parties, the signing of a permanent contract). In the context of a permanent contract, the contract may be terminated at the end of the trial period by either of the parties subject to compliance with a fixed notice period either set by the collective convention of the company or by law, except in cases of gross negligence, serious misconduct or force majeure.

The employment contract cannot contain clauses that restrict the rights of individuals and individual and collective freedoms that are not justifiable in relation to the nature of the task to be performed and in proportion to the purpose (Article L 1121-1 of the Code of Employment).

Because it is easier to negotiate the contractual terms prior to being employed than during the employment contract, it is important to check each clause it contains prior to signing.