

An introduction to employment law in France – Termination of contract

1. Introduction

A contract of employment may be terminated in any of the following ways:

- Termination of the trial period
- Resignation
- Termination by the employer (dismissal for personal reasons; redundancy based on economic reasons)
- Mutual agreement (rupture conventionnelle), and
- Retirement

The procedure, formalities and costs which apply on a termination of employment are determined by:

- the collective bargaining agreement rules (CBA) or legal rules (if more favourable)
- an individual's contract, and
- the right not to be dismissed unfairly.

2. Trial periods

Distinction to be made between termination during the trial period and termination after the trial period. Much easier to terminate during the trial period.

During the trial period: no need to justify of a reason for termination (for the employer, should in principle be based on the employee's skills) and no specific payment to be made. Only requirement is to comply with a statutory termination payment.

3. Resignation

Employee does not have to justify his/her resignation, however, to be valid, it should be "clear and unequivocal".

In case of claim/grievance from the employee, risk of the resignation being considered as a constructive dismissal. In this case, the employee may be awarded damages.

4. Indefinite term contracts

4.1 Termination by the employer

(A) Grounds for fair termination

Employer must show that there is a "real and serious cause". Two categories of dismissal:

- Dismissal for personal reasons: based on reasons that relate to the employee (performance, mistakes, behaviour, misconduct, etc).
- Dismissal for economic reasons: based economic reasons (very strictly appreciated). Only fair if all of the following conditions are met:
 - Termination of or significant change to the employee's position

- Actual economic difficulties (losses, etc) or need to reorganisation the company in order to safeguard its competitiveness. If the purpose of carrying out a dismissal is strategic in that it would maximise results or save money, enhance profits or reduce costs, it will not be valid.
- Reasons appreciated at Group's level, even abroad.

(B) Procedure

(1) Dismissal for personal reasons

- Invitation of the employee to a pre-dismissal meeting
- At the earliest 5 working days after they receive the invitation: holding of the pre-dismissal meeting during which the reasons for the considered termination are explained. The employee should be able to comment. The employee can be assisted during this meeting.
- At the earliest 2 working days after the meeting, sending of a detailed dismissal letter.

(2) Dismissal for economic reasons

Procedures for economic dismissal are extremely complex and lengthy and costly.

Different procedures apply depending on the number of employees employed by the company (less than 50 or 50 and more) and on the number of employees to be made redundant:

- Individual redundancy: same procedure as for dismissal for personal reasons:
- Redundancy of less than 10 employees within 30 days,
- Redundancy of more than 10 employees within 30 days

In a nutshell, several obligations are imposed on the employer: information/consultation of the employee representatives, preparing an order for redundancy based on objective criteria, looking for alternative employment within the Group even abroad, offering a redeployment assistance to the employees, etc.

When the company employs more than 50 employees and is considering making redundant 10 or more employees, it must implement a job saving scheme ("plan de sauvegarde de l'emploi" – "PSE") which must be approved by the Administration and must contain serious measures to assist employees in finding alternative employment.

The monitoring of thresholds should therefore be carefully made, each time a redundancy will be considered and/or notified, as rules exist to stop employer from avoiding the PSE.

(C) Penalites

Penalties are provided by law for failing to comply with the applicable procedure, for failing to have a valid reason to termination an employee (damages for unfair dismissal, with no set maximum) or for violating the protected status of an employee (pregnant employees or employee representatives) (null and void termination, possibility for the employee to claim their role back with payment of all salaries since the termination or damages).

4.2 Mutual agreement

Both parties can agree to terminate the contract, through a common agreement termination ("rupture conventionnelle").

A pro forma form should be signed, and a formal process applied: signature followed by a 15-calendar day period during which each party has the right to withdraw their consent, then filing the form with the Administration, and then 15-working day period of approval.

The only financial requirement is to pay the statutory severance. Notice period is not mandatory, as long that the above process is followed (during which the employee is paid).

4.3 Settlement

If the reasons for the dismissal are uncertain and an employee threatens to bring proceedings before an employment court, a dispute can often be resolved by an agreement which provides for a payment in full and final settlement to be made to the employee against his/her undertaking not to sue the company.

This settlement agreement cannot be used to terminate the contract. This should be dealt with separately and done through dismissal, redundancy or "rupture conventionnelle".

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