The social guide of employers

créatis

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Sheet 1

Hiring an employee

What you need to know :

An employer is required to fulfil a number of formalities when hiring an employee.

Failure to do so exposes the employer to criminal sanctions for illegal work.

Sanction

Failure to complete the DPAE is subject to a penalty of 300 times the hourly rate of the guaranteed minimum (€1,071 as at 1/1/2018). A penalty for illegal work may also be applied.

Notice of hiring (DPAE)

A very important formality for employers is the notice of hiring, called the « Déclaration préalable à l'embauche », which must be sent to the URSSAF, in principle electronically, before hiring any employees.

The first time an employee is hired, a preliminary notice must be submitted to the employment regulatory authority.

Employment of foreign employees

When the future employee is a foreign national (outside the EU, EEA and Switzerland), you must check before hiring the person concerned that he/she has a valid work permit.

Information

Make sure during the interview with your future employee that you have all the information required to fulfil the pre-emploment formalities.

Advice

Ask us, before hiring, what is the best contract to use.

Drafting an employment contract

The employment contract determines the key elements of the contractual relationship between the employer and the employee. Its formal terms are regulated, in some cases.

Permanent contract, short-term contract, part-time contract, work-training contract, assisted contract... the possibilities are many and varied !

Information

Ask yourself, before hiring, about possible funding (national, regions, employment agency, unions...)

Registering the employee for pension and protection plans

Check the relevant obligations applicable to the status of the employee (collective agreement, occupational sector agreement, company agreement, etc.).

Information

Check that employees are individually affiliated to collective contracts.

Employment medical examination

Since 1st January 2017, the pre-recruitment medical examination is replaced by :

- An information and prevention visit for employees not exposed to special risks. It must be carried out within 3 months from the effective start of job,
- A special pre-recruitment medical examination for employees assigned to a position in an environment where they may be exposed to special risks.

It is important to make sure an appointment with the occupational health center can be made for the new employee within the set time.

Advice

Ask us about specific cases and possible exemptions.

Official staff register

All employers are required to keep an official staff register in every establishment where employees are employed.

This register shall include compulsory information such as the identity details of employees, the start and end dates of their employment and the type of employment contract, in particular.

It must be updated whenever there is a change in the details to be mentioned.

Sanction

Failure to keep the official staff register is subject to a category 4 penalty of €750 per employee concerned.

Documents to be given to employees

Document including the information provided in the notice of hiring.

Guide on the collective agreements applicable.

Comprehensive guide on the coverage provided by the employee protection policy and the conditions under which it applies.

Booklet on the employee savings plans available within the company.

The employee must also be informed about his right to a professional interview every 2 years.

Sanction

Failure to provide this information as required may be financially detrimental to the employee and the employer may be liable accordingly.

Sheet 2

The collective agreement

What you need to know :

A collective agreement is an agreement established between the representative organisations of employees and employers of a specific occupational sector. It details the employment and working conditions and professional training of employees as well as their employment benefits. Employers must establish and examine the collective agreement applicable to their company. The employment contract and payslip must be established with reference to the collective agreement.

Advice

Ask us which collective agreement is applicable in case of multiple activities.

Information

Notice : if there is a change in activity (merger, sale, etc.), check whether this affects the determination of the collective agreement applicable.

Application of a collective agreement

All employers are required to apply the collective agreement corresponding to the company's main business, if this agreement has been « extended ».

If the collective agreement has not been extended (published in the official legal bulletin), it is only applicable if the employer is affiliated to one of the signatory employer organisations.

The NAF code of the company is a simple presumption for determining the collective agreement applicable.

The applicable collective agreement also depends on the location of the company ; its scope can be national, regional or local.

The beneficiaries

The collective agreement applies to all employees of the company.

Application is immediate, automatic and mandatory once the agreement comes into effect.

Certain occupations such as sales representatives or journalists do not benefit from the collective agreement applicable to their employer but are subject to « profession agreements ».

Advice

Ask us about the possibility of voluntarily applying a collective agreement.

The content

The collective agreement adapts the provisions of the French employment code to the specific circumstances of the business sector concerned. In principle, it includes more favourable provisions than the law.

Terms of the employment contract that are less favourable than the collective agreement are not applicable.

The collective agreement generally includes provisions relating to :

- Job classifications, trial periods and notice,
- Working hours : organisation, overtime, fixed hours agreements, part-time...,
- Pay : minimum salaries, seniority pay, 13th month salary, holiday bonus...,
- Absences : paid holiday, sick leave, maternity leave, workplace accident, family events...,
- Pensions and employee protection, Severance pay, ...

In certain sectors, a company agreement can now deviate from a sector agreement, even if this is less favourable for employees.

Advice

Ask us, you must always compare the provisions of the collective agreement with those of the employment code to check which ones are applicable.

Sanction

If a clause of the collective agreement is not applied, the employee can claim compensation.

Employee information

When hiring an employee, the employer is required to give him/her a guide informing him/her of the collective agreements applicable in the company.

The payslip must indicate the collective agreement applied.

The employer must keep an up-to-date copy of the collective agreement at the employee's place of work for his/her perusal.

A notice specifying the following points must be communicated to the employees, by any means: applicable collective agreement, place of availability, consultation procedures by the employees during working hours.

Companies with an intranet system must put an up-to-date copy of the collective agreement on this system.

A copy of the collective agreement applicable must be provided to the works council, the employee representatives and union representatives or to the social and economic committee (CSE).

Sanction

In the event of failure to inform employees of the collective agreement applicable, the company is liable for a category 4 fine (€750) and the employer cannot enforce the agreement against the employees.

Sheet 3

Fixed-term contract

What you need to know :

The fixed-term contract is an exceptional form of employment contract subject to strict regulations. If a fixed-term contract does not comply with the rules laid down by applicable legislation, it may be reclassified as a permanent contract. Note that the last labour law reform of 2017, permits an extended collective agreement to relax the rules governing fixed-term contracts.

The main cases in which a fixed-term contract is used

A fixed-term contract can only be signed in the cases stipulated by applicable legislation and for the execution of a precise and temporary task :

- Substitution of an employee,
- Temporary increase in company's business,
- Seasonal jobs or jobs for which a fixed-term contract is usually used,
- Substitution of company manager,
- Recruitment under the applicable employment policy (professional training and apprenticeship contracts, seniors contract and so on),
- Defined-objective fixed-term contract for engineers and executives.

Advice

Ask us to make sure you avoid signing a fixed-term contract in a case not permitted by law.

The form of the fixed-term contract

The fixed-term contract must be elaborated in writing, otherwise it is deemed to be a permanent contract. Non-signature by the employee is considered as a lack of written agreement.

It must be given to the employee within 2 days of being hired.

It must include certain compulsory details including: reason for contract, contract end date, post held, length of trial period...

Information

It is always preferable for the contract to be signed prior to hiring.

Trial period

The statutory maximum duration is 1 day per week up to a limit of 2 weeks for a fixed-term contract of 6 months or less.

It is 1 month maximum for a fixed-term contract of more than 6 months.

If the employer terminates the contract during the trial period, a notice period must be respected.

Information

When the contract does not have a precise term, the trial period is calculated based on the minimum duration of the contract.

The duration of the fixed-term contract

The fixed-term contract can be signed :

- Date to date : in this case, it has a maximum duration of 18 months, including renewal, and can only be renewed twice,
- With no precise term : in this case, the term of the contract will be linked to the achievement of the object of the contract. This type of fixed-term contract must stipulate a minimum duration.

Advice

Ask us for details : the maximum duration of the contract and the terms of its renewal vary according to the cases where fixed-term contracts are used. Your collective agreement can also include specific provisions.

Advice

Ask us about the employer's unemployment insurance contribution which is increased for standard fixed-term contracts.

The rights of the employee under a fixed-term contract

During his/her contract, an employee under a fixed-term contract has the same rights as the other employees of the company in terms of working hours, salary, sickness cover, election of employee representatives, employment benefits and so on.

The end of the fixed-term contract

The fixed-term contract ends automatically at the end of the term mentioned in the contract.

At the end of the contract, the employee receives :

- A short-term contract allowance of 10 % of the total gross salary paid during the fixed-term contract (aside from exceptional cases),
- A compensatory allowance of paid leave, irrespective of the length of the contract.

Sanction

If the contract continues after the set term, it becomes a permanent contract.

Termination of fixed-term contract

Information

Before signing a fixed-term contract, assess your personal needs and whether it is beneficial for you to choose this type of contract.

The fixed-term contract cannot be terminated before its term except in the event of agreement between the parties, serious misconduct or force majeure or if the employee can provide proof that he or she was hired under a permanent contract.

Aside from these cases, early termination of the contract results in the following :

- The employer is required to pay damages to the employee which shall be at least equal to the amounts of remuneration that the employee would have received until the end of the contract,
- The employee may be ordered to pay damages to the employer for the loss sustained by the company.

Successive fixed-term contracts

A succession of fixed-term contracts can only be entered into for the same job if there is a gap between the contracts, as indicated below :

- A third of the elapsed contract term for contracts that have a duration of more than 14 days,
- Half of the elapsed contract term for contracts that have a duration of less than 14 days.

Special arrangements may be stipulated by an extended collective agreement.

Information

N.B. A fixed-term contract must not be used to fill a post related to the company's normal, ongoing business.

Sheet 4

Probation period

What you need to know :

The probation period is an opportunity for the employer to assess the employee's performance, given his/her experience in particular, and for the employee to assess whether he/she is suited to the role. During this period, the employer or the employee can terminate the employment contract, with no justification being required and no compensation payable.

Existence of trial period

Probation periods are not a compulsory element of an employment contract. They are not presumed to exist and, as such, the principle and duration of such a period must be expressly stipulated by the employment contract. N.B.: if the employee has not signed his/her employment contract, he/she cannot be subject to a probation period.

Advice

Ask us : make sure you don't confuse the probation period with the pre-employment aptitude test.

Length of probation period

Full or part-time permanent contracts can include a probation period subject to the statutory maximum lengths indicated below :

- 2 months for manual workers and office employees,
- 3 months for supervisors and technicians,
- 4 months for executives.

Shorter periods than the statutory periods can apply if they are stipulated by :

- The employment contract,
- A collective agreement signed after 26 June 2008.

Longer periods than the statutory periods can apply if they are stipulated by :

- A collective agreement signed before 26 June 2008.

The probation period is calculated in calendar days. It begins on the start date of the employment contract.

The length of the probation period can be reduced in certain circumstances (employees hired after a short-term contract or temporary contract, after an internship and so on).

Advice

Ask us: specific rules are applicable to certain categories of employees. You can also refer to the fact sheets included in this handbook relating to fixed term or apprenticeship contracts.

Extension of probation period

The probation period can be extended once provided that this option is stipulated by both of the following :

- An extended branch agreement setting the terms and lengths of such extensions,
- The employment contract.

Information

The length of the probation period must be reasonable given the nature of the role concerned.

Extension of probation period (cont)

The length of the probation period, including extension, cannot exceed :

- 4 months for manual workers and office employees,
- 6 months for supervisors and technicians,
- 8 months for executives.

The employee's agreement to the extended probation period must be obtained. Such agreement must be provided in writing during the initial period, clearly and unequivocally expressing the employee's intentions.

Information

N.B.: *an extension must not be decided when signing the employment contract..*

Continuation

The probation period must cover a period of time during which the employee is effectively working. If the employment contract is suspended (illness, paid holiday, family leave and so on), the probation period shall be continued for an equivalent period of time. .

End of probation period

When the employee continues working after the end of the probation period without the employer indicating its intention to terminate, the employment becomes final.

Termination

The employee and the employer are free to terminate the employment contract during the probation period, without the need to justify such termination and with no compensation being payable other than paid holidays (unless stated otherwise by a collective agreement). However, a notice period must be observed.

When the probation period is terminated by the employer, the notice period cannot be less than (Except in the case of more favourable provisions to the employee) :

- 24 hours for less than 8 days service,
- 48 hours for between 8 days and 1 month's service,
- 2 weeks for over 1 month's service,
- 1 month for over 3 months' service.

Information

The employee must be informed of the termination of the probation period sufficiently in advance so the notice period can be observed. Failing this, the employee shall be entitled to payment in lieu.

Sanction

In the event of unfair termination of the probation period, damages may be paid. If the termination is deemed invalid, the employee is reintegrated.

The probation period, including extension, cannot be extended by the length of the notice period. If the employee terminates the probation period, he/she must provide 48 hours' notice. This period is reduced to 24 hours if the employee has been with the company for less than 8 days. For evidence reasons, the termination of the probation period must be notified by registered letter with return receipt or letter delivered by hand with receipt. Since the probation period is intended to allow the employer to assess the employee's performance, termination based on considerations not inherent in the employee him/herself is deemed unfair termination.

Termination of the probation period based on discriminatory grounds is invalid (illness, maternity).

Sheet 5

Working Hours

What you need to know :

Working hours are governed by precise and complex regulations. The French Employment Code makes a distinction between : the public policy provisions, the provisions to be subject to the collective bargaining and the supplementary provisions applying only in the absence of collective agreement. Thus it is possible to derogate from legal requirements by a collective agreement, except in cases of public policy provisions. In many sectors, the company agreement will take precedence over the branch agreement, even if it is less favourable to employees.

Statutory working hours

These are 35 hours a week for employees paid per month, i.e. 151.67 hours per month.

In certain sectors, longer working hours (for example 39 hours) are considered equivalent to the statutory 35 hours.

There are a number of mechanisms by which companies can better adjust working hours to variations in work load : distribution of working hours over the year, fixed hours agreements, banking of working hours ...

Advice *Ask us about the best systems for your company.*

Overtime

Working hours in excess of 35 hours a week (or the equivalent) are classed as overtime hours.

They are calculated per week. A week (seven consecutive days) can been defined by a company agreement or, failing that, by a branch agreement. In the absence of an agreement, the week is defined from Monday 0:00 a.m to Sunday 24:00 p.m.

An increased salary is paid and/or time-off in lieu is awarded.

Sanction *Failure to record all or part of overtime hours worked on the payslip constitutes an offence in respect of illegal work and is subject to a penalty of €45,000 and 3 years' imprisonment.*

Advice *Make sure that the overtime has been carried out at your request.*

Payment of overtime

The increased rate for overtime is determined by company agreement or branch agreement and cannot be less than 10 %. Unless agreed otherwise, it is :

- 25 % for the first 8 hours of overtime, 50 % from the 44th hour,
- In companies with less than 20 employees, each hour of overtime worked is eligible for a fixed deduction of employer contributions of €1.50.

The employers who rearch or exceed 20 employees for 2016, 2017 or 2018 continue to benefit from the fixed deduction during 3 years.

Information *The increased rates determined by a company agreement can be below the rates determined by a branch agreement.*

Substitute time-off in lieu

All or part of the payment for overtime and the associated increased rates of pay can be substituted by an equivalent time-off in lieu.

Advice *Ask us about the procedure for applying time-off in lieu.*

Annual quota

The annual overtime quota is determined by company agreement or, failing this, by the branch agreement.

If there is no collective agreement, the annual overtime quota is 220 hours per employee.

Employee representatives must be informed before working any overtime hours within the annual quota.

To be able to work more overtime than the quota established, the employee representatives must be consulted.

Overtime hours worked over the annual quota are eligible for compulsory time-off in lieu in addition to increased pay.

Advice *Ask us, some overtime is not allocated to the quota. Check with us.*

Weekly working hours

Weekly working hours cannot exceed 48 hours.

Average weekly working hours cannot exceed 44 hours over a period of 12 consecutive weeks.

Since 1st January 2017, a company agreement or, failing this, a branch agreement may provide for an overrun of the 44 hours per week up to a limit of 46 hours per week.

Sanction *Failure to observe maximum daily and weekly working hours is penalised, per employee concerned, by a maximum administrative fine of €2000 or a category 4 penalty of €750.*

Daily working hours

The maximum working hours per day is 10 hours. This can be increased by a company agreement or, otherwise, a sector agreement in certain circumstances.

No more than 6 hours can be worked in a day without a minimum break of twenty minutes.

The minimum daily time-off is 11 consecutive hours.

Information *Maximum working hours must also be observed for employees with more than one job.*

Weekly time-off

It is not permitted to employ someone for more than 6 days a week.

Weekly time-off must be 35 consecutive hours including Sunday as a general rule.

Permanent automatic exemptions and individual exemptions subject to authorisation can be made.

Advice *Ask us about the various exemptions possible.*

Sheet 6

Fixed working time agreement

What you need to know :

A fixed working time agreement (« convention de forfait ») is a specific system of working time arrangement applicable to certain employees.

It allows the employer and employee to agree on a lump-sum remuneration including the usual salary applicable and overtime. This arrangement can be based on hours or days. Not all employees can benefit from such an arrangement.

Conditions applicable

Information

A fixed working time agreement can only be amended by agreement between the employee and the employer.

For all such arrangements, an individual written agreement, signed by the employee and the employer, is an essential requirement.

Furthermore, to use this system based on an annual number of hours or days, there must be a relevant **company agreement or, if not, a sector agreement** specifying the terms thereof.

The applicable legislation and collective agreements determine the categories of employees who can enter into the different fixed working time agreements.

Fixed working time agreement based on hours

With these agreements, a certain amount of foreseeable overtime can be included in the employee's working hours, over the set period. The arrangement can be on a weekly, monthly or annual basis.

The employee's pay includes the usual salary applicable and pre-established overtime, paid at the higher rates applicable. If the employee works more hours than the set amount, these hours are counted and paid at the higher rates. Conversely, if the number of hours worked is less than the set amount, the lump-sum salary must be paid.

Information

The amount of overtime included in the salary must be precisely indicated in the fixed working time agreement.

The system of fixed working time based on hours, per week or month, is applicable to all employees, both executives and non-executives.

Employees under this system of fixed working hours are governed by the rules relating to maximum daily and weekly working hours, and daily and weekly time off.

Specific features of annual fixed working time agreements based on hours

Information

Even when a fixed working time agreement based on hours has been signed, the employer is nonetheless required to provide proof of the number of hours worked.

The collective agreement allowing this type of agreement must include certain details including categories of employees concerned, reference period, number of hours included, conditions regarding absences and so on.

These agreements only apply to :

- Executives whose roles do not allow them to comply with the standard working hours applicable within the company,
- Executives or non-executives who have total independence in how they arrange their use of time.

Fixed working time agreement based on days

The system of fixed working time in days allows employees to be paid on the basis of an annual number of days worked, without calculating work time. The annual number of working days is 218 days maximum.

A fixed working time agreement can be signed by :

- Executives who independently organise their use of time and whose duties do not allow them to comply with standard working hours,
- Employees whose working hours cannot be predetermined and who have complete independence in how they organise their use of time to perform the responsibilities assigned to them.

Advice

Ask us what minimum clauses must be included in the collective agreement setting up the fixed working days system.

Sanction

If an annual fixed working time system based on hours or days is applied without a collective or individual agreement, it is deemed invalid and the overtime system is applied.

Information

The working time of employees under the fixed working days system are calculated every year by adding up the number of days or half-days worked.

Advice

Ask us : if the provisions of the collective agreement on monitoring workload are inadequate, the employer can implement additional measures and thus legitimately sign an individual fixed working time agreement.

Fixed working days system and hours of work

Employees under the fixed working days system are not required to comply with the requirements relating to maximum daily and weekly working hours. But they benefit from the legal guarantees related to daily and weekly time off, paid leave and public holidays in the company.

The employer must regularly check that the employees' workload is reasonable and allows a good balance in their work time.

The collective agreement authorising the fixed working days system determines the conditions under which :

- The employer assesses and regularly monitors the employees' workload,
- The employer and employees periodically discuss the employees' workload, their work/life balance, their pay and the organisation of work in the company,
- Employees can exercise their right to disconnect.

Fixed working days system and salary

The employee's salary must take into account the workload imposed on the employee under this system. It is freely determined by the parties and the amount is not to be compared with the application of increased rates for overtime.

Fixed working days system and days off

Employees under this system can, if they wish, in agreement with the employer, waive some of their days off.

In this case, the number of days worked over the year cannot exceed 235 days. This work overtime is paid at an increased rate of 10 % minimum.

An addendum to the individual agreement must be signed.

Sheet 7

Supplemental employee protection

What you need to know :

Supplemental employee protection is defined as all the cover implemented by companies for all or some of their employees to supplement the social security benefits paid to cover sickness, disability and death. Implementing such protection can be optional for the company or imposed by the applicable legislation or collective/branch agreements. In all cases, the employer assumes certain obligations in implementing such protection.

Obligation to implement such a scheme

Implementing an employee protection scheme is compulsory for managerial employees and employees in a similar role. The employer pays a minimum contribution of 1.5% of the salary paid subject to the social security ceiling. This contribution is intended to create a fund for supplementary death benefits in addition to the social security benefits.

However, collective agreements often impose the implementation of supplemental protection. These obligations may apply to all employees or just some of them (according to professional categories). The risks covered and the contributions rates are variable.

Furthermore, in accordance with the law, all companies are required to provide compulsory minimum health cover for all employees since 1 January 2016 (mutual fund), funded at least 50% by the employer.

Employers can voluntarily set up employee protection or mutual benefits schemes within the company which exceed their obligations in accordance with the applicable legislation or collective agreements.

Sanction

If the employer fails to fulfil its obligations, it shall be liability for the uninsured risks.

Information

Make sure that the policy arranged with your insurer complies with the applicable legislation or your collective agreement.

The procedures for implementing such schemes

A supplemental employee protection scheme must be implemented on the basis of a legal document:

- Collective agreement,
- Ratification by the majority of parties concerned of a draft agreement proposed by the company manager,
- Unilateral decision by the employer recorded in a written document given to each party concerned.

The content of this legal document is governed by law; it defines in particular the cover provided, the way such cover is financed (employee and the employer's parts) and the cases of exemption.

Advice

Ask us about the schemes best suited to your companies and the procedures to be followed.

Employee information

The employer must give the employee a comprehensive guide about the cover provided by the policies arranged within the company and their terms of application.

When changes are made to the policy, a new notice has to be given to the employee.

Information

Make sure that you are able to prove that all your employees have been given the guide detailing employee protection cover available in the company.

Employee registration

Advice

Ask us, in some cases, the employee can ask to be exempted from registration.

The employer must register each beneficiary under the company's protection schemes.

Similarly, when an employee leaves the company, the employer must remove said employee from such schemes.

Transferability of employee protection

If the employment contract is terminated and the employee is eligible for unemployment benefits (redundancy, termination by agreement, end of short-term contract, resignation for legitimate reasons, and so on), the employee is entitled to the maintenance of the « health » and « employee protection » cover he/she benefited from in his/her previous company. Cover is also maintained during the period of unemployment, for a maximum period equivalent to the duration of the last contract, limited to 12 months.

There is no additional cost to the employee, benefits are funded by mutualisation.

The employer indicates the employee's right to transferability on the employment certificate provided. It also informs the insurance company.

Sanction

The employer is responsible for ensuring the transferability of employee protection. The company may be held liable for failure to do so. For example, claims may be made to the company to fund a death benefit or a disability pension.

Funding supplemental employee protection

Advice

Ask us to make sure you are eligible to benefit from exemption from social security contributions, in case you have a URSSAF audit : documents to be produced, collective and compulsory schemes, dispensations, agreements and so on.

Such benefits are funded in principle by the employee's and the employer's contributions paid.

The payment by the employer is not submitted to social security contributions if the policies meet certain conditions and if the sums funded are within certain limits.

Employers' contributions funding supplemental employee protection schemes are subject to CSG and CRDS contributions. They are also subject to the forfait social except for companies with less than 11 employees. When the workforce of the company exceed 11 employees for the first time, exemptions are provided for.

Employer's contributions funding « health expenses » cover (mutual funds) are subject to income tax.

Sheet 8

Benefits in kind

What you need to know :

When an employee uses a benefit provided by the employer for personal purposes, this is considered to be a benefit in kind. There are various types of benefits in kind which have to be subject to social security contributions. The value of such benefits is based on the saving made by the beneficiary, but there may be set values in certain cases.

The principle of benefits of kind

Benefits in kind include goods or services provided by the employer to employees, for free (or for a contribution lower than their actual value) for their personal use. They are part of the salary added to cash payments.

Benefits in kind, on which contributions are due, must be seen as distinct from goods or services provided to employees for their business purposes which are in this case seen as business expenses paid by the employer for which no contributions are due.

Information

Benefits in kind must be shown on the pay slip.

Working out the value of a benefit in kind

In principle, benefits in kind are included in the base for social security contributions based on their actual value, which corresponds to the value of the saving for the beneficiary.

As an exception, some benefits in kind may have a set value, such as the following: food, accommodation, vehicles and computing and communication equipment.

The set amounts are determined by the URSSAF [social security agency] and represent a minimum value. Benefits in kind estimated on an actual basis can be lower than the set value subject to the production of evidence.

Advice

Ask us about how benefits in kind affect the minimum cash salary to be paid to employees.

Information

For company representatives, set values can only be used for vehicles and computing and communication equipment.

Food benefits in kind

Except in the case of business trips, when an employer pays for its employee's meals, this is a benefit in kind, whether the employer provides the meals for free or at a modest price (in a company restaurant for example).

Food benefits in kind are valued by the URSSAF at €4.80 per meal (value as of 1/1/2018).

Information

In Hotels-Cafes-Restaurants, the value of food benefits in kind is worked out in a specific way.

Vehicle benefits in kind

The personal use of a vehicle provided to the employee on a permanent basis is a benefit in kind. When the employee returns the vehicle during his/her weekly time off and during holidays, this is not considered to be a benefit in kind.

The assessment of the actual value takes into the account the purchase price of the vehicle, servicing costs, insurance and, where applicable, fuel costs paid by the employer. It is calculated on a pro rata basis given the number of kilometres travelled annually for the employee's personal use.

The set value is a percentage of the purchase price of the vehicle or its annual cost in the case of leasing.

Advice

Ask us if you want an estimated value for a vehicle benefit in kind.

Information

Special arrangements apply when the employer produces or provides this type of service.

Computing and communication equipment benefits in kind

When an employer permanently provides employees with computing and communication equipment (computer, mobile telephone, internet access, etc) for business purposes, the personal use of such equipment is a benefit in kind. However, the reasonable use of such equipment for the employee's everyday life is not considered to be a benefit in kind.

The set value of the benefit in kind is calculated annually on the basis of 10 % of the purchase price including VAT of such equipment or, where applicable, the annual contract cost including VAT.

When the employer opts for a value based on actual expenses incurred, he must provide evidence of the time the employee spent using the equipment for personal use.

Advice

Ask us : when an employee is given written-off computer equipment for free, this is exempt from social security contributions under certain conditions.

Accommodation benefits in kind

When the employer provides accommodation to an employee, for free or for a small contribution, this is considered to be an accommodation benefit in kind for the part used for personal purposes.

The actual value is calculated using the rental value used as the basis for local residence tax.

The set value is based on a schedule according to the employee's monthly salary and the number of main rooms the accommodation comprises.

Where the employer directly pays the employee's rent (lease in employee's name), social security contributions are payable on all the sums paid.

Information

In general, when the company pays the employee's personal costs, a benefit in kind is established (clothing costs, company products, trips offered by the employer...).

Sheet 9

Business expenses

What you need to know :

Business expenses are specific costs, inherent in the employee's role or job, which are incurred by the employee in performing his/her duties. Business expenses are not included in the base for social security contributions if they are justified.

Information

The employer determines the conditions under which business expenses are justified and reimbursed.

The principle of business expenses

When an employee justifies that certain expenses have been incurred for the purposes of his professional activities and in the interests of the company, such expenses have to be reimbursed. They are exempt from social security contributions if they meet the required conditions, such as type of business expenses and receipts in support of expenditure.

Evaluation of business expenses

Business expenses are covered :

- by reimbursement of the expenses actually incurred by the employee, subject to the provisions of supporting documents, or
- by the payment of fixed allowances.

The tax authority determines the amount of fixed allowances for different categories of business expenses.

If the allocation paid by the employer is lower than the amount determined by the authority, it is deemed to have been used in accordance with its purposes and is excluded from social security contributions.

If the allocation paid by the employer is higher than the amount determined by the authority, the allocation paid can only be exempt from social security contributions in its entirety if the employer provides supporting documents. Otherwise, the difference must be reintegrated into the base for contributions if the business expenses statement is established but the employer does not provide supporting documents.

Sanction

For company officers, the business expenses allowance can only be based on the expenses actually incurred.

The specific fixed deduction for business expenses

Certain occupations benefit from a specific fixed deduction for business expenses which reduces the base for social security contributions (10 % for construction workers, 30 % for sales representatives, 30 % for journalists and the like).

The employer can decide whether or not to apply the specific fixed deduction. The employee must agree to this in writing (unless there is an applicable collective agreement).

In this case, the business expenses must be reintegrated into the base for social security contributions before applying the specific fixed deduction.

Advice

Ask us about certain expenses that may be exempt from social security contributions despite the application of a specific fixed deduction.

Sanction

The URSSAF (social security collection office) may challenge the application of the specific fixed deduction if the employer cannot provide evidence of the employee's annual agreement.

Food expenses

When the employee is travelling for business, and is therefore unable to return to his/her home or his/her usual place of work and has to eat in a restaurant, his/her meal costs are exempt from contributions for up to €18.60 per meal (for 2018) without the employer needing to provide supporting documents. The employer may still prefer to offer a reimbursement based on the expenses actually incurred on the basis of a receipt.

Employees cannot combine a reimbursement of meal expenses with the allocation of a meal voucher for the same meal.

Advice

Ask us about the specific allowances when meals are eaten at the place of work (shift work, night work and so on) or for employees on assignment but whose circumstances prevent them from eating in a restaurant (e.g.: employee working on a site).

Vehicle expenses

When the employee has to use his personal car for business purposes, the kilometre allowance is exempt from social security contributions as per the schedule determined by the tax office.

These provisions are also applicable for company officers.

Proof of kilometres travelled must be provided.

Long-distance travel expenses

Long-distance travel is characterised by the fact that it is impossible for an employee to return home every day due to his/her working conditions, in other words when 2 conditions are simultaneously met :

- the distance from home to place of work is 50 km or more (one way),
- the public transport available does not allow this distance to be covered in less than 1 hr 30 min (one way).

A schedule is determined for meal and accommodation expenses (with breakfast). This schedule is differentiated for assignments up to 3 months, assignments of 4 to 24 months and 25 to 72 months. For accommodation, a distinction is made between assignments within Paris and inner area and assignments in other départements.

Advice

Ask us about the provisions regarding other categories business expenses : professional mobility expenses and expenses related to working from home and the use of new information and communication technologies.

Sheet 10

Paid vacation

What you need to know :

Every employer is required to grant annual paid vacation and the employee is required to accept it. Vacation cannot be replaced by compensation, except in the event of termination of the employment contract.

Paid vacation rights

Sanction

Violations of laws and regulations concerning paid vacations are punishable by a 5th class fine of €1500 per employee concerned.

Paid vacation rights are assessed relatively to the reference year. The beginning of the reference period can been defined by a company agreement or, failing that, by a branch agreement (for example 1st January). Otherwise the reference period is set by the law: it shall run from June 1 of the current year to May 31 of the following year (except for employers affiliated to a paid vacation fund system).

All employees are entitled to paid vacation, regardless of seniority.

Acquisition of vacation days

All employees, regardless of working time, earn 2.5 normal business days (or 2.08 days on which the company is open) per month of effective work.

Certain absences are considered equivalent to effective work for calculation of vacation rights (e.g. maternity leave, compensatory rest periods, paid vacation from the previous year).

Information

Check the provisions of your collective agreement regarding absences that might be classed as periods worked.

The paid vacation period

Advice

Ask us : whether there are provisions in the event of annualization of work time or a paid vacation fund system.

Paid vacation period is set by the company agreement or, failing that, by the branch agreement or otherwise by the employer after consultation with staff representatives (social and economic committee).

In any case it covers the period 1st May / 31st October.

A main vacation of at least two consecutive weeks and up to four consecutive weeks must be taken during this period.

Employees are informed of the vacation period, at least two months before it starts.

Taking paid vacation

Vacation must be taken each year. Neither the employer nor the employee may ask that vacation be postponed to the following year.

Vacation may be taken upon starting work.

It is up to the employer to ensure that the employees take their vacation.

Advice

Ask us : in some cases the law may allow you to carry forward your vacation.

Who goes on vacation when

Information

The deadline for the employer to modify the order and the date of departure to paid vacation can be defined by a collective agreement. Otherwise, the deadline is of one month.

The order in which employees take their vacation is determined by the company agreement or, failing that, by the branch agreement. Otherwise it is determined by the employer after consultation with staff representatives (social and economic committee).

The order must take family situations into account.

Each employee is to be informed of his vacation dates at least one month in advance.

Splitting up vacation time

Vacation days (other than the 5th week) taken outside of the main vacation period may entitle the employee to additional vacation days. A company agreement can determine the procedure of the splitting up vacation time. It will take precedence over the branch agreement.

Counting vacation days

Advice

Ask us : certain events (e.g. sick leave, notice period) may have an impact on paid vacation.

The first business day of vacation is the first day when the employee would have worked.

The last business day included in the vacation period counts as a vacation day, even if it is not a day the employee would normally have worked.

Vacation remuneration

Paid vacation remuneration is equal to one tenth of the total remuneration due to the employee for the reference period.

This remuneration cannot be less than the employee would have received had she or he worked during the vacation period.

Information

Make sure that your pay slips show your vacation dates and corresponding remuneration.

Sheet 11

Public holidays

What you need to know :

The French Employment Code provides for 11 public holidays. With some exceptions, only 1 May is a compulsory day off, the other public holidays can be worked. Pay on public holidays will differ according to the specific situation. Public holidays will also have an impact on other events related to the execution of the employment contract.

Statutory public holidays

The French Employment Code provides for 11 statutory public holidays :

- 1 January, Easter Monday, 1 May, 8 May, Ascension Thursday, Whit Monday, 14 July, 15 August, 1 November, 11 November and 25 December.

In the Haut-Rhin, Bas-Rhin and Moselle departments, there's also 26 December and Good Friday in areas with a protestant temple or mixed church.

Note that 1 May is a special public holiday (see next page).

Information

There may be other public holidays in a specific region or locality or in certain business sectors.

Time off on public holidays

A company agreement or otherwise a sector agreement may determine non-worked public holidays (a company agreement may be less favourable than a sector agreement in this area). If there is no collective agreement, the employer determines this list.

Public holidays are only taken as compulsory time off for people under the age of 18 (with some exceptions) and in the Haut-Rhin, Bas-Rhin and Moselle departments.

It is not permitted to recover hours lost owing to a non-worked public holiday.

When a public holiday falls on a Sunday or the weekly day off or a non-worked week day, the employer is not required to give its staff a day off the following or previous day, unless there are more favourable provisions in the collective agreement.

A « bridge » day preceding or following a public holiday may be allowed by the company. This practice is not governed by any regulations. Bridge days can be recovered.

Advice

Ask us about the sectors and conditions under which young people under the age of 18 can work on a public holiday.

Payment for public holidays

If the public holiday is not worked, there is no loss of salary (basic salary and additional salary payments) for employees who have been working for the company for at least three months (including for seasonal workers).

If the public holiday is worked, employees do not benefit from any additional pay, unless there are more favourable arrangements in the collective agreement.

Hours recovered for a « bridge » day are normal working hours worked at a later date; they are paid at the normal rate without an increase.

Information

There is no maintenance of salary for non-worked public holidays for home workers and temporary workers.

The special case of 1 May

Sanction

Failure to comply with the obligations relating to 1 May is penalised by a 4th category fine (€750), multiplied by the number of employees involved.

With some exceptions, the 1 May is a compulsory day off for all employees and there is no loss of salary. The basic salary and all additional amounts must be maintained (overtime, variable part of salary, bonuses and so on).

Working on 1 May is only possible in establishments and services that have to continue operating.

- Employees working on 1 May are entitled in addition to their usual salary to an amount equivalent to this salary,
- Collective agreements may also provide for a day-off in compensation.

Public holidays and paid leave

When a public holiday falls during paid leave :

- If it is a working day that is not worked in the company, it is not taken into account as paid leave,
- If it is a working day that is worked in the company, it is taken into account as paid leave.

Advice

Ask us about the impact of a public holiday if paid leave is calculated in working days.

Solidarity day (« Journée de solidarité »)

The solidarity day was introduced to fund initiatives supporting independence for elderly or disabled persons.

It is an additional day of unpaid work for employees.

The solidarity day can be fulfilled :

- On a public holiday, previously not worked, other than 1 May, or
- According to any other method by which the 7 hours previously not worked can be worked.

Sheet 12

Prevention of hazards in the work place

What you need to know :

Employers are required to take all necessary measures to ensure the safety of employees and protect their physical and mental well-being ; failing that, they might be found criminally and/or civilly liable in the event of a work place accident or occupational illness. They must therefore implement safety, awareness and training measures and put in place an appropriate organisation and methods to prevent hazards in the work place.

Risk assessment

A risk assessment consists of identifying hazards affecting the health and safety of workers in all aspects related to the company's business : choice of manufacturing processes, work equipment, layout of work premises...

The results of the assessment must be recorded in the « risk assessment report » and may, where necessary, result in the implementation of specific safety measures.

Information

A risk assessment must consider how the impact of exposure to the hazards concerned differs according to gender.

Risk assessment report

A risk assessment report is compulsory in all companies irrespective of their size or business. It must include a list of risks identified in each work unit. It must be regularly reviewed, at least once a year and when a change is made (new risk identified, change in equipment...).

The risk assessment report must be made available to employees, employee representatives, the company doctor and the health & safety inspectorate.

If this document is not produced or reviewed as required, the fine stipulated for class 5 offences is applied (€1,500).

Sanction

Specific details must be included for the assessment of occupational health risk factors.

Information and training

The employer is required to organise and provide information to employees on health and safety risks as well as the measures taken to solve them. This information is provided when the employee is hired and whenever necessary.

The employer must also inform employees of the risks the products or manufacturing processes used may have on public health or the environment. Employees have a specific right to report such risks which are recorded in a special register.

Safety officer

All employers must appoint one or more competent employees who assume responsibility for the company's work place health and safe e activities. If the company does not have the resources internally, it can call on outside agencies (DIRECCTE, CARSAT, ANACT, OPPBTP...).

Information

The appointment of a « safety officer » does not release the employer from its liability regarding safety in the company.

« The occupationnal prevention account » (C2P)

All employers must monitor employees exposed to certain « hardship » risk factors which exceed the thresholds defined by the applicable legal clauses. The risk factors to be monitored are: night work, activities carried out in a high-pressure environment, alternating shift work, repetitive work subject to short time constraints, extreme temperatures and noise. The exposure thresholds are assessed according to intensity and duration criteria calculated over the year.

Points are added to the employee's account on the basis of the employer's declarations. This account is used by the employee to finance training, a transition to part-time or early retirement. The C2P is now integrated into the personal activity account (CPA).

The C2P is funded and managed by the work place accidents and occupational illnesses section of the Caisse nationale d'assurance maladie [national health fund]. Contributions paid by companies were scrapped on 1 January 2018.

Advice

Ask us about the methods for assessing « occupational health risk » factors.

Sanction

Companies with at least 50 employees of which at least 25 % are exposed to occupational health risk factors must sign a company agreement relating to the prevention of «hardship » risks. This obligation will be extended to 1/01/19 for companies with a certain rate of work place accidents/occupational illnesses.

First aid at work

With the advice of the company doctor, the employer must organise a system whereby emergency care can be administered to employees who are involved in an accident or become ill. This involves in particular : implementing procedures which are to be followed in an emergency until the emergency services arrive, equipping work premises with first aid equipment, the presence of an employee trained in first aid in workshops where hazardous work is carried out.

Medicals

Organising medical examinations is part of the employer's safety obligations :

- For new employees : initial medical or fitness for work exam,
- During a contract : medical examinations at a frequency set by the company doctor,
- Back-to-work medical examinations after maternity leave or an absence due to occupational illness, or for any absence of at least 30 days when this is due to an accident at work or a non-occupational illness.

Sanction

An employee can only return to work after a period of suspension after the back-to-work medical.

Penalties

Sanction

An employer has an absolute obligation in relation to safety.

Failure of an employer to fulfil its safety obligation constitutes negligence. If an employer does not adopt adequate safety measures, he may be ordered to pay compensation to the employee affected.

Any employee can claim the termination of his/her employment contract when the employer has not fulfilled his safety obligations, such claim then having the effects of unfair dismissal.

Sheet 13

Termination of permanent employment contract

What you need to know :

There are various conditions under which an employment contract can be terminated, either by the employee or by the employer, and specific rules are applicable to each situation.

Resignation

Information

The employee must express his/her wishes in writing and it is recommended to confirm receipt.

Initiated by the employee, this is not subject to any specific procedure but must be in accordance with the employee's genuine and unequivocal wishes. Otherwise, it might be requalified as dismissal.

Resignation does not have to be accepted or refused by the employer.

The date of resignation marks the starting point of the notice period.

Dismissal

This is initiated by the employer and must be based on real and justified reasons. It may include :

- Dismissal for personal reasons, based on a cause directly pertaining to the employee, whether based on misconduct or not,
- Dismissal for economic reasons not inherent in the employee him/herself but justified by the company's position. Dismissal for economic reasons may be individual or collective.

Whatever the reason for the dismissal, the employer must follow a strict procedure, which includes in particular :

- Invitation to a preliminary interview,
- Interview,
- Delivery of dismissal letter,
- Notice period,
- Determination of severance pay.

In the event of a dispute, a settlement agreement may be signed.

Sanction

Unjustified grounds for dismissal may result in the payment of significant damages. Note that the grounds can now be specified after the notice of dismissal.

Advice

Ask us before you start a dismissal ; the procedures are complex and specific to each type of dismissal.

Information

N.B.: some employees have special protection from dismissal.

Retirement

This can be initiated by the employer or the employee.

Advice

Ask us about the procedures and payments.

Information

There is now a schedule of compensation in the event of dismissal without due cause.

Constructive dismissal

The employee can use constructive dismissal as the basis of the termination of his/her employment contract due to facts attributed to his/her employer.

If the facts are serious enough, the termination is considered to take the form of unfair dismissal. Otherwise, it is a resignation.

Mutually agreed termination

Mutually agreed termination represents a joint wish for termination. It cannot be imposed by either party.

It requires a three stage procedure :

- One or more interviews between the parties,
- The signature of an agreement between the employer and the employee which defines the terms of the termination, including in particular the severance pay and date,
- The recognition of the agreement by the Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi (DIRECCTE), which allows the employee to receive unemployment benefits.

Advice

Ask us about the procedure for mutually agreed termination.

Information

Payments made for mutually agreed termination are subject to a social contribution called « Forfait social » (20 % of the allowance).

Documents to be given to the employee on termination of employment contract

Certificate of employment.

Declaration for the Pôle emploi (French employment agency). A duplicate of this declaration must be sent directly by the employer to the Pôle emploi.

A final statement which must indicate in detail all the sums paid on termination. It can be contested within 6 months after signature. After that, it represents full and final settlement by the employer for the sums mentioned.

Sanction

The loss sustained by an employee further to the late delivery of these documents, can lead to payment of damages.

Sheet 14

Internships in a business environment

What you need to know :

Various legislation has been passed to improve internships regulations and differentiate them from employment contracts. Companies wanting to take students on internships must therefore ensure they comply with the different conditions and obligations stipulated by law, in particular to avoid the risk of the internship being reclassified as an employment contract. The regulations on internships are monitored by the Labour authority.

The internships concerned

Sanction

A company with less than 20 employees cannot host more than 3 interns during the same calendar week. This maximum quota of interns is 15 % of the headcount in companies with 20 or more employees.

An internship is a temporary period of time spent in a professional environment during which the student gains professional skills which put into practice what he or she is learning through his/her studies with a view to obtaining a degree or certification.

The internship must be part of a course of study. The employer cannot take on an intern instead of hiring an employee under an employment contract, in order to: replace an employee in the event of absence, suspension of employment contract or dismissal, to perform a regular task corresponding to a permanent position, to deal with a temporary increase in activity or for a seasonal job.

Internship agreement

An internship agreement is compulsory. It must be signed between the host company, the intern and the teaching institution. It must also be signed by the student's tutor and the academic advisor.

A tutor can only supervise three interns.

The internship agreement must include a number of compulsory clauses.

Sanction

If there is no agreement or the agreement is not properly drawn up, the internship may be reclassified as an employment contract.

Duration of internship

Information

The employer must list interns in a specific part of the employee register.

An intern cannot do more than 6 months' internship in the same company or organisation, in one or more internships, per academic year. The internship period is calculated on the basis of the actual time the intern spends in the host organisation.

Companies who host a series of interns in the same post under different internship agreements must observe an interval between internships of one third of the duration of the previous internship unless it was terminated by the intern.

Remuneration of intern

A salary is paid for an internship if it is longer than 2 consecutive or even 2 non-consecutive months during the same school or university year in the same company or organisation.

The minimum salary is determined by the branch agreement or extended professional agreement; otherwise, the hourly salary is set at 15 % of the hourly maximum paid by social security, namely €3,75 for one hour of work. The host company must draw up a statement indicating how much time the intern spends in the company.

The salary is paid monthly according to hours actually worked. It is due from the 1st day of the 1st month of the internship.

For internships of up to 2 consecutive months maximum, the payment of a salary is optional and is « negotiated » between the intern and the host company.

Information

The intern benefits from meal vouchers and the payment of travel costs under the same conditions as the company's employees.

Sanction

If the intern is considered as a separate resource for the company, the URSSAF will base the contributions not on the salary paid, but on the contractual minimum that the intern would have received as an employee.

Social security contributions on salary paid

Contributions are not due on sums paid to interns up to the minimum salary.

For this to apply, an internship agreement is an essential requirement.

For salaries over the threshold determined, social security contributions are only due on the portion that exceeds the threshold.

The status of the intern

The intern is not an employee as defined by the French Labour code. Nevertheless, certain provisions of the French Labour code are applicable to the intern, particularly those regarding working hours, protection from psychological or sexual harassment, maternity or paternity leave...

The intern is in the company to learn and/or observe and therefore has no obligation to produce work as employees do.

All interns are required to comply with the company's rules and regulations : hours, discipline, health and safety rules and so on.

The company is required to deliver an internship certificate to all interns. This certificate indicates the length of the internship and, where applicable, the salary paid, as well as the procedure for validating the internship for pension purposes.

Advice

Ask us : special arrangements are applicable if an intern is hired at the end of the internship.

CRÉATIS IMPLEMENTATIONS

When you might be, there is a Créatis Office close to your homeplace. You are guaranteed to find a competent representative for the regular follow-up of your company.

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