



NEWSLETTER

1. “AVENIR PROFESSIONNEL” BILL - FOCUS ON MAJOR CHANGES

- ❖ Reinforcement of the **equal pay for women and men component**, in particular through a financial penalty in the event of non-compliance with this principle.
- ❖ **Professional training**
 - The personal training account will be filled in euros and no longer in hours.
 - Removal for the employer of the obligation to pay the employee for the time spent in training outside the actual working time and to give priority to the employee to access available positions within the company in accordance with the training he will have followed.
- ❖ **Learning**
 - Opening the apprenticeship contract to young people up to 29 years of age (instead of 26 years previously).
 - Minimum apprenticeship contract duration of 6 months, compared to 1 year previously.
 - Securing the breach of the apprenticeship contract:
 - Removal of the seizing a Labor court to dismiss an apprentice for gross misconduct or incapacity
 - Recourse to a mediator when the break occurs at the apprentice's initiative
 - Single aid granted to companies which employ less than 250 employees, employing apprentices preparing a diploma or a professional qualification whose level does not exceed the bachelor's degree replacing 3 aids and a tax credit.

- Merging the apprenticeship tax with the vocational training contribution giving rise to the "unique contribution to vocational training and work-study training" (contribution unique à la formation professionnelle et à l'alternance).
- Possibility to carry out part of the professionalization contract abroad within the limit of one year.
- Experimentation of the possibility of replacing several absent employees with a single fixed-term contract.

❖ **Unemployment insurance**

- Compensation for resigning employees every 5 years under certain conditions (in particular the continuation of a professional reconversion project).
- Lump-sum compensation for self-employed persons (entrepreneurs who have been liquidated or put into receivership) under certain conditions.

2. **“PACTE” BILL PROJECT - FOCUS ON MAIN SOCIAL MEASURES**

The project of bill regarding economic growth and companies' transformation, called PACTE was finally presented before the Council of ministers on June 18,2018.

This text contains various measures (71 articles) aimed at:

- Simplifying the everyday work of companies in order to make them more competitive,
- Improving the performance of TPE and SME,
- Giving every employee the opportunity to share in the results.

The main social measures of this project are summarized below:

❖ **Measures to facilitate the creation of companies**

The PACTE bill aims to simplify the necessary steps that companies must accomplish for their incorporation:

- Creating a single electronic window (“un guichet unique électronique”) replacing various CFE networks which should be effective in 2021;
- Proceeding to the generalization of dematerialized service;
- Simplifying the companies' obligations of declarations and the procedures of control of the declared information;
- Modernizing and simplifying the procedure of legal publication.

❖ **Measures to simplify companies' growth**

The PACTE bill plans to reform the workforce size thresholds rules:

- Harmonization of the workforce calculation method between the different legislations (Social Security code, Labour Code, general tax code, etc.). Based on the Social Security Code (article R. 130-1), and from 1 January 2019, the workforce on a year will be the average of employees number over the months of the previous calendar year (Annual workforce average);

- Rationalization of workforce size thresholds maintaining only 3 thresholds levels: 11, 50 and 250 employees;
- Removal of certain intermediate thresholds: the establishment of a local common trade union or the communication to shareholders of the highest remuneration will not apply anymore to companies with more than 200 employees but to companies with at least 250 employees;
- Reduction of number of thresholds set at 20 employees;
- Modification of the threshold rules for the establishment of the rules of procedure and the obligation to contribute to the National Housing Assistance Fund (FNAL): threshold set at 50 employees instead of 20;
- Increase of the mandatory registration threshold in the Trades Registry (11 instead of 10).

Another modification: The threshold will be considered as crossed only after five consecutive calendar years (and no longer after more than 12 consecutive months during the last three years).

Objective: To allow structures to grow and protect companies whose workforce fluctuates.

❖ **Measures to develop employee savings scheme**

The text promotes the diffusion of employee saving plans in companies with less than 50 employees and to develop the conclusion of voluntary profit-sharing agreement for companies of 50 to 250 employees, which could encourage employers to focus on employee savings plan as opposed to wage increases, as these arrangements are more flexible and do not require very long-term commitments.

The project includes:

- The removal of the 20% social package on payments from voluntary profit sharing and mandatory profit-sharing premiums and on the employer's "*abondements*" in companies with less than 50 employees;
- The removal of the social package for companies from 50 to 250 employees who have or concluded voluntary profit sharing agreement.
- The simplification of the establishment of mandatory profit-sharing and voluntary profit sharing agreement (namely the continuity of voluntary profit sharing agreement in case of change in the legal situation of the company);
- Encourage the branches to negotiate a voluntary profit sharing scheme, mandatory profit-sharing scheme or employee savings plan for the companies of the branch, in particular, the smaller ones, who can opt for the direct application of the agreement negotiated;
- Remove the obligation to offer a PEE (Company Savings Plan, which causes a five-year blockage of funds) before creating a Perco (Collective pension savings plan where the savings are blocked until retirement). Companies will be able to offer a Perco without having to establish a PEE in order to encourage the creation of a long-term savings;
- To make the terms of shares offers to employees more flexible and companies will be allowed to offer a unilateral "*abondement*", while it is now conditional to a voluntary participation of the employee. The social package will be reduced by half (10% vs. 20%) for these transactions enabling employees to share in the company's capital.

❖ **Measures to improve the retirement savings scheme**

The law will also lead to profound changes in the retirement savings landscape, with the introduction of a single product, consisting of several compartments. It will be able to cover simultaneously the investor's voluntary payments, the sums previously placed in a Perco, as well as those resulting from an additional pension scheme of type "article 83" or PERE (Retirement Savings Plan Company), financed in large by companies. Thus, after leaving a company, an employee will have a single retirement product that brings together all the sums devoted to this objective, which will facilitate its management and readability.

3. IS THE INDEMNITY OF THE COLLECTIVE MUTUAL CONSENT TERMINATION (RUPTURE CONVENTIONNELLE COLLECTIVE) SUBJECT TO THE “FORFAIT SOCIAL” (AN EMPLOYER SECURITY CONTRIBUTION)?

The indemnity paid in the context of a collective mutual consent termination was initially to follow the same social and tax regime as that provided for the compensation paid in the context of a job preservation plan, which are, notably, exempt from the forfait social.

However, the Urssaf site had specified that this indemnity was subject to this contribution.

After several hesitations, the Acof has finally reconsidered its position, indicating that the indemnity of the collective mutual consent termination is not subject to the forfait social.

It remains to be hoped that a modification of the legal provisions will intervene in the finance or social security financing laws for 2019 in order to secure the contributors wishing to apply the new position of the Acof since the indications published on the Urssaf site are not opposable to the Urssaf in case of control.

4. THE SUBSTITUTION AGREEMENT MAY ENTER INTO FORCE EVEN DURING THE PERIOD OF NOTICE

French Supreme Court, Employment Chamber, June 6, 2018, n 16-22.361

Previously, case law considered that the substitution agreement could not enter into force before the end of the notice period, the previous agreement being definitively terminated at the end of the notice period.

Ending this jurisprudential position, the El Khomri Act of 8 August 2016 allowed the negotiation and conclusion of a substitute agreement before the expiry of the notice period (new article L. 2261-10 of the Labour Code).

This judgment, although rendered under the previous law, applied the new rules, thus overturned the case law. Thus, the previous collective agreement now ceases to apply on the date of entry into force of the substitution agreement even if it occurs before the expiry of the notice period.

It should be noted that this decision is part of a jurisprudential trend that allows the social partners considerable latitude in collective bargaining.



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