



NEWSLETTER

1. “FINANCEMENT DE LA SECURITE SOCIALE” BILL - FOCUS ON MAJOR CHANGES

▣ Law n 2018-1203 adopted on 22 December 2018

The 2019 Social Security Financial Act makes several changes to social security contributions.

- **No payment of social security contributions on overtime and complementary hours and on rest days:**
 - Employees' part of the old-age insurance contribution is reduced for hours/days worked since January 1, 2019 (no reduction for employers' part contributions).
- **Removal of the “forfait social” on employee savings in SMEs:**
 - Exemption from the “forfait social” for gain-sharing and incentive payments;
 - Reduction of the legal rate (20%) to 10% for the company's contribution to an PEE under certain conditions.
- **Removal of the “forfait social” on collective bargaining benefits:**
 - Confirmation of Acoess' decision of 20 April 2018: benefits resulting from a collective bargaining agreement termination and mobility leave, paid as from 1 January 2019, are not subject to the “forfait social” and are exempt from income tax.
- **Supplementary pension contributions and unemployment insurance contributions:**
 - General reduction in employer contributions for supplementary pension contributions (from 1 January 2019) and unemployment insurance contributions (from 1 October 2019).

2. ECONOMIC AND SOCIAL EMERGENCY BILL

▣ *Law n 2018-1213 December 24, 2018 « portant mesures d'urgence économiques et sociales »*

The law on economic and social emergency measures executes several of the measures announced on 10 December 2018 by the President of the Republic in response to the demands of the "yellow jackets".

The law provides for the possibility for companies to pay, between 11 December 2018 and 31 March 2019, an exceptional bonus; exempted from tax and social security contributions.

The bonus, for a maximum amount of €1,000, is for workers employed at 31 December 2018 whose remuneration is less than three times the annual value of the minimum wage on the basis of the legal working time for the year 2018 (i.e. €53,945).

This bonus may be set up by unilateral decision of the employer or by collective agreement set up before 31 January 2019 and must appear on the pay slip.

The law establishes the principle of non-substitution. The bonus must be an additional remuneration and therefore cannot substitute for the usual elements of remuneration (salary increase, usual bonuses, etc.).

3. "SOCIAL RULING PROCEDURE": EXTENSION OF THE CASES

▣ *Ordinance n 2018-1227 December 24, 2018, JO December 26, 2018*

▣ *Law n 2018-727 August 10, 2018 « pour un Etat au service d'une société de confiance »*

An ordinance applying the "trust" law extends the procedure to the following 4 themes:

- Compliance with the internal regulations;
- Calculation of the quota of interns;
- Application of the construction workers' card system;
- Subjecting corporate officers to unemployment insurance

4. CHANGES ON THE PAY SLIP AS OF JANUARY 1

Since January 1, 2019, the pay slip must include the following elements:

- The net amount to be paid before income tax;
- The income tax charged according to the chosen withholding tax rate;
- The net amount to be paid after withholding tax and contributions;
- The merger of supplementary pension plans (AGIRC-ARRCO unified plan);
- The reduction of employee contributions on overtime and complementary hours and overtime days of work as part of the fixed price days;
- The reduced rate of employer's health insurance contribution;
- The extension of the general reduction (ex-Fillon reduction);

5. THE NEW FIGURES FOR 2019

SOCIAL SECURITY CEILING	AMOUNT	MINIMUM WAGE	AMOUNT (GROSS)
Annual	€40,524	Hourly	€10.03
Quarterly	€10,131	Monthly 35 hours	€1,521.22
Monthly	€3,377	Monthly 39 hours (10% minimum increase in case of a collective agreement)	€1,712.46
Weekly	€779	Monthly 39 hours (25% legal minimum increase in the absence of a collective agreement)	€1,738.54€
Daily	€186		
Hourly	€25		

6. THE SLINGSHOT OF THE TRIAL JUDGES: QUESTIONING OF THE MACRON SCALES

- 📖 *Employment tribunal, Troyes, December 13, 2018 n°18/00036*
- 📖 *Employment tribunal, Amiens, December 19, 2018, n°18/00040*
- 📖 *Employment tribunal, Lyon, December 21, 2018, n°18/01238*

Since the Macron ordinances of 22 September 2017, the scale of damages in the event of dismissal without real and serious cause has been imposed on the judge; the minimum and maximum amounts depend on the company's workforce and employee's seniority.

This reform was positively received by employers and foreign investors as it made it possible to anticipate the financial risk of litigation, and the scale also served as a basis for negotiating employee departures.

However, some labour courts (Troyes, Amiens, Lyon) have rejected the scale in favour of applying the old regulations on compensation for dismissal without real and serious cause.

This refusal was motivated by the incompatibility of the scale with the terms of international conventions, those of Article 10 of ILO Convention No. 158, which provide for compensation that is adequate or appropriate to the employee's situation.

For the time being, this refusal concerns only a few courts of first instance, since the Courts of Appeal have not yet been seized of any such disputes.

To be continued...

7. DIGITAL PLATFORM: REQUALIFICATION OF INDEPENDENT WORKERS

- 📖 *French Supreme Court, Employment Chamber, November 28, 2018, n 17-20.079*

For the first time, the French Supreme Court stated that the self-employed worker of a digital platform (Take it easy) should be considered as an employee due to the effective subordination of the employee within the Company.

Whereas the Court of Appeal considered the digital platform's role limited to a connected platform.

To identify the existence of effective subordination of the employee within the Company, conferring a power of direction, monitoring and sanction on the Company, the French Supreme Court relied on the following elements:

- a geolocation system for real-time tracking of the carrier's position;

- an accounting for the total number of miles travelled by the courier;
- Setting up a system of penalties.

The French Supreme Court adopts a position identical to the European Court of Justice (ECJ 20 December 2017, Case 434/115). The same position was recently confirmed by the Paris Court of Appeal in a dispute against Uber (C.A. Paris, Pôle 6, ch. 2, 10 January 2019, n°18/08357).

8. OPA ON A PARENT COMPANY: INFORMATION FOR THE ELECTED REPRESENTATIVES OF THE SUBSIDIARY COMPANY

French Supreme Court, Employment Chamber, December 19, 2018, n 18-14.520

The French Supreme Court has considered that, in the absence of a European works council, the employee representative bodies of a subsidiary company controlled by a parent company based in another Member State must be informed and consulted on measures likely to affect the volume or structure of its workforce, including in the event of a public tender offer for the parent company's shares.

The French Supreme Court based on the terms of Directive 2002/14/EC of 11 March 2002 on information-consultation of workers and Directive 2009/38/EC of 6 May 2009 on information-consultation in Community-scale groups of undertakings (Articles L. 2312-8, L. 2323-1, L. 2323-33 and L. 2341-9 of the Labour Code).



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