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REFORM REGARDING THE MODERNIZATION OF THE LABOR MARKET

EMPLOYMENT CONTRACTS AND TERMINATIONS

TRIAL PERIOD (ARTICLES L 1221-19 TO L 1221-25 OF THE LABOR CODE)

Legal duration of the trial period

The duration of the trial period shall be:

- two months maximum for laborers and employees,
- three months maximum for supervisors and technicians
- four months maximum for executive staff.

The trial period may be renewed once if provided for in the applicable collective bargaining agreement.

The possibility of renewal must be expressly stipulated in the employment contract.

The duration of the trial period, including the renewal, may not exceed 4 months for laborers and employees, 6 for supervisors and technicians and 8 for executive staff.

Notice: These are maximum durations. An employment contract, a collective bargaining agreement or a company agreement may provide for a shorter trial period.

These terms should be applied in conjunction with those of the applicable collective bargaining agreement.

Collective bargaining agreements established before the passing of the act providing for a maximum duration of the trial period shorter than the statutory duration will remain applicable to companies until June 30, 2009.

As of July 1, 2009, the maximum duration provided for by law shall be applicable.

The terms of collective agreements established before the passing of the act providing for a maximum duration of the trial period longer than the statutory duration will remain applicable.

Some collective bargaining agreements such as that for the pharmaceutical industry or the so-called "Syntec" do not use the classifications of "laborers, employees / supervisors, technicians / executive staff".

Therefore, it will be necessary to classify employees

based on their degree of autonomy, responsibility etc. into one of these categories, and when in doubt, apply the trial period duration favorable to employees (i.e. the shortest).

Notice period during the trial period

For employers, the notice period during the trial period shall be 24 hours during the first 7 days of presence, 48 hours for presence between 8 days and 1 month, 2 weeks after one month of presence and 1 month after 3 months of presence.

Notice: These periods will be mandatory from the time the act becomes effective if the collective bargaining agreement does not provide for regulations more favorable to employees, e.g. longer periods.

Contrary to current jurisprudence, the trial period may not be prolonged due to the duration of the notice period.

Therefore, for an executive with a notice period set at 4 months, the termination must be notified at the end of the third month of the trial period at the latest.

For employees, the notice period during the trial period shall be 24 hours during the first 7 days of presence and 48 hours after 8 days of presence.

INDEMNITIES FOR BREACH OF A CONTRACT FOR AN INDEFINITE PERIOD (ARTICLE L. 1234-9 OF THE LABOR CODE)

A dismissal indemnity shall be paid to any employee with one year's seniority (as opposed to two years at present).

It will equal 1/5th of the monthly compensation per year of seniority in the company regardless of whether the dismissal occurred for personal or economic reasons.

RECEIPT OF FINAL SETTLEMENT (ARTICLE L. 1234-20 OF THE LABOR CODE)

The receipt of final settlement which is currently optional will be compulsory.

It will be possible to contest the receipt of final settle-

ment in writing within 6 months after its signature. After this period, it will release the employer of any liability.

Notice: The period of 6 months applies to elements of the final settlement and not to the reasons for the dismissal.

NEW PROCEDURE FOR TERMINATING AN INDEFINITE TERM CONTRACT (ARTICLE L. 1237-11 TO L. 1237-16 OF THE LABOR CODE)

The act sets out a new procedure for terminating an employment contract by mutual agreement, referred to as a "contractual termination" that enables employees to receive unemployment benefits.

Employer and employee will reach an agreement on the basis of a contractual termination during one or more meetings in which both of them may choose to be assisted by counsel.

Persons who may assist an employer include:

- an employee of the company,
- or, in companies with fewer than 50 employees, a person belonging to the same employer organization as the company, or another employer in the same branch of activity.

The parties will then sign an agreement to terminate the employment contract, establishing the following:

- the date of the termination of the contract, which cannot be previous to the expiry of both time limits for withdrawal and confirmation as mentioned below;
- the conditions of termination and specifically the amount of compensation paid to the employee (which must not be lower than the amount of the dismissal indemnity). Fiscal and labor laws applicable to this compensation shall be those applicable to the settlement indemnity.

Notice: Given that the contractual termination will rely on the "guarantee that the parties' consents are freely expressed", it will be necessary to point out every element stating these freely expressed consents (number of meetings, counseling of the parties, meeting with the employment authorities to consider the employee's career, etc.).

From the date of signature, both parties shall have a period of 15 days during which they may nullify the termination of the contract.

Notice: We recommend, on the day of the signature of the contract, sending the employee a registered letter with acknowledge of receipt reminding him/her of the date of expiration of the 15-day period.

At the end of the retraction period, the most diligent party will send the DDTEFP (Regional direction of work, employment and training) a form as well as a copy of the contract in order to obtain legal ratification.

The DDTEFP will conduct an investigation within 15 days. Failure on the part of the DDTEFP to make an explicit decision within this period will be considered as legal ratification.

Notice: "Protected employees" (employee representatives whose dismissal requires authorization by labor authorities) will be able to benefit from the provisions relative to the contractual termination of the employment contract. Nevertheless, the authorization of the labor authorities must still be requested.

THE NEW EMPLOYMENT CONTRACT: THE "CONTRACT FOR PROJECT"

A new fixed-term contract, called "contract with defined object" will be tested over a period of 5 years.

This contract concerns engineers and executives performing specific tasks as a result of a temporary increase in business. It can be established for a definite period from 18 months (minimum) to 36 months (maximum).

Its signature is subordinate to the existence of a branch or company agreement governing its application.

This contract will end:

- at the conclusion of the object for which the contract was established, after a notice period of a minimum two months
- at the end of the 18th month, and then at the anniversary of its signature by either party for "serious cause".

In both cases, employees will be entitled to receive an indemnity equal to 10% of the total of their gross compensation as well as unemployment benefits.