

MAKE A *FRENCH* START

10 insights to grow
your business in France

LABOR LEGISLATION
IN FRANCE



FORWARD

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Even in a global economy, investment remains local. Investing in a foreign country for the first time is a leap into the unknown: from language to culture, business practices and regulations, nearly everything is different, and having a good product or service may not be enough to succeed. The size and buoyancy of a country's market, its infrastructure, ecosystems, human capital and business environment are all crucial factors that need to be analyzed to assess the challenges at hand, seize opportunities and make the right choices when considering all the various options.

More than 28,000 foreign companies made these choices when they established themselves in France. Many have been expanding here for some considerable time, offering proof that businesses can prosper in the French economy.

This figure also reflects France's investment attractiveness, which is founded on a powerful economy – the sixth largest in the world – and various structural advantages, as well as highly effective incentive schemes, including one of the best research tax credits available in OECD countries. It also shows the confidence investors have in France's ability to face up to the challenges of the digital revolution, knowing that it is one of the most creative and innovative nations in the world. It is worth remembering, too, that France boasted the largest delegation of startups after the United States at the Las Vegas Consumer Electronics Show in January 2018, and that Paris is now home to Station F, the world's largest startup campus.

Ever at the cutting edge of technological progress, France embarked on a path of structural transformation in 2017, starting with far-reaching reforms to employment and tax law. With companies now enjoying greater flexibility and security in managing their workforce, corporate tax being gradually reduced to 25% by 2022, and capital gains tax and labor costs both falling, France's investment attractiveness is taking a major step forward. These changes will continue over the coming months, which should encourage an ever greater number of investors to choose France.

Mazars and Business France are convinced of France's growing attractiveness and are keen to explain these latest reforms as clearly as possible. This is why they have decided to join forces and use their combined skills to create this guide. Mazars offers internationally renowned consulting, auditing, tax and accounting services in 86 countries, with 20,000 employees in 300 branches, while Business France is the national agency supporting the international development of the French economy, providing support each year to more than 1,000 foreign investment projects. What better partnership could there be to provide you with an operational response to your key preoccupations regarding tax issues, employment regulations, state aid and corporate law? What better alliance of expertise could there be to provide answers tailored to the specificities of your investment project and to help you with the various formalities involved? We hope this guide will fully satisfy your requirements and provide valuable insight.

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DISCLAIMER

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Drawing on conversations with hundreds of foreign business leaders looking to set up in France and all of their combined experience, Business France and Mazars have identified **10 key questions on this issue to which this guide seeks to provide some initial answers.**

However, by their very nature, the various schemes discussed hereafter are subject to potential regulatory changes. Should you wish to obtain the very latest information, and for any further enquiries, we would therefore recommend that you contact Mazars and Business France experts, whose details can be found at the end of this guide.

INTRODUCTION

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France is back!

The French President has kicked off a series of reforms aimed at profoundly transforming France's business model and, more broadly, the country itself.

In this context, various changes have been made to the French Labor Code with the aim of simplifying labor relations and increasing businesses' organizational flexibility.

Negotiated company-specific agreements now take precedence over industry-wide agreements in many areas, enabling businesses to adapt labor relations standards to their own needs (e.g. negotiation and adjustment of working time).

After providing investors with more information on the advantages of France's social protection model, which benefits both employers and employees, we will set out alternative forms of pay designed to attract and retain talent.

These various mechanisms help make the environment in France favorable to new business formation and highlight the country's strong support for entrepreneurs!



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WHAT HAVE BEEN THE MAJOR REFORMS IN LABOR LAW IN RECENT YEARS?

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The Labor Code reform that took full effect on January 1, 2018 forms part of a process of simplifying French labor law that began in 2013, with the aim of giving businesses more flexibility.



Simplifying labor relations at company level

2015

Three major categories of compulsory annual consultation, instead of the previous 17:

- > The company's strategic direction
- > The company's economic and strategic position
- > The company's employee policy and its working and employment conditions

2016

Asserts the precedence of company-wide agreements over industry-wide agreements, most notably in terms of working hours and holidays.

2017

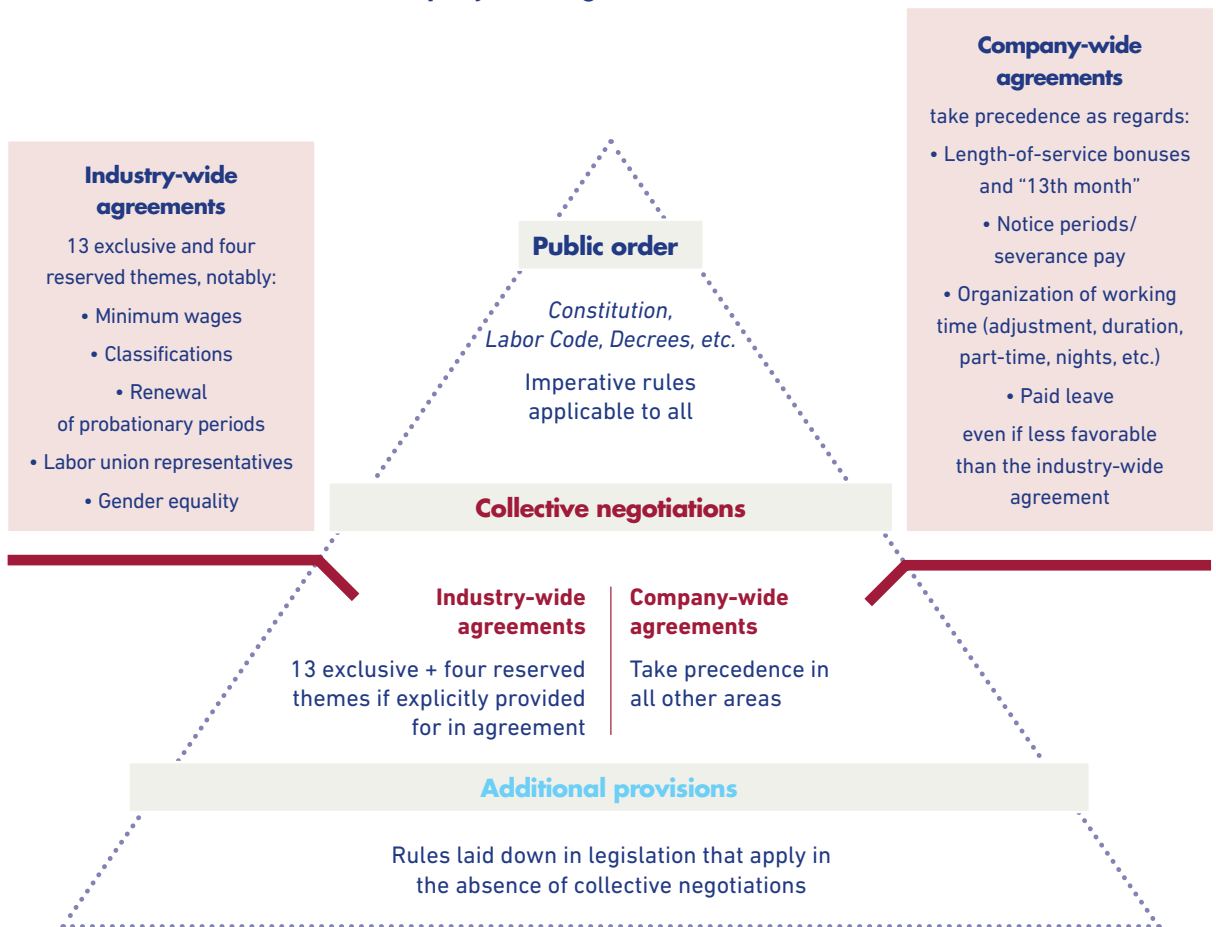
Ordinances of September 22, 2017:

— Merged employee representative bodies and formed Social and Economic Committee

< 11 employees	11-20 employees with no employee representative	≥ 11 employees
Employer can negotiate directly with employees by offering an agreement to be ratified by a two-thirds vote in a referendum of employees.		Compulsory merger of works councils + health and safety committees + employee representatives into a single Social and Economic Committee (SEC)

Option of forming a Works Council combining SEC and union representatives

Precedence of company-wide agreements





More flexibility in organizing working time

2013

- **MOBILITY AGREEMENT** allowing employers to change employees' role or place of work within the same company in the event of economic difficulty
- **SHORT-TIME WORKING** when necessary and in emergency
- **INTERMITTENT EMPLOYMENT CONTRACT** allowing a permanent contract to include alternating work and non-work periods
- **FIXED ANNUAL, MONTHLY OR WEEKLY NUMBERS OF DAYS OR HOURS** to adjust working time

2015

- **NIGHT-TIME AND SUNDAY WORKING FACILITATED**

2017

- **COLLECTIVE PERFORMANCE AGREEMENT TO DECREASE OR INCREASE WORKING TIME OR REMUNERATION FOR A FIVE-YEAR PERIOD**

2018

- **INCENTIVE FOR SETTING UP OVERTIME HOURS: TAX EXEMPTION ON OVERTIME HOURS UP TO €5000/EMPLOYEE**



More security and predictability as regards expiry of employment contracts

2013

- **SECURING DISMISSALS ON ECONOMIC GROUNDS : THE PROCEDURES HENCEFORTH RELY ON EITHER :**
 - > Signing a majority collective agreement negotiated with employee representatives.
 - > Drafting a unilateral document that must be approved by the Administration within 21 days.
- **LESS STRINGENT REDEPLOYMENT OBLIGATIONS FOR EMPLOYERS:** Employers are only required to inform employees of the option to request redeployment offers outside France and to respond to requests received. The redeployment obligation currently only applies to offers in France.

2016

- **ECONOMIC DIFFICULTIES, I.E. A SIGNIFICANT CHANGE IN ONE OR MORE ECONOMIC INDICATORS, SUCH AS A DECLINE IN ORDERS OR SALES, OPERATING LOSSES, A DETERIORATION IN THE COMPANY'S CASH POSITION, OR GROSS OPERATING PROFIT.**

2017

SEPTEMBER 2017 ORDINANCES

- **TWO SEVERANCE PAY SCALES** for cases brought before an employment tribunal, with which judges must comply. These scales differ according by company size and employees' length of service.
- **SECURITY OF THE DISMISSAL PROCESS:**
 - > Employees have 12 months (previously 24) to challenge their dismissal
 - > A standard dismissal letter template is provided to avoid irregularities
 - > Procedural errors are no longer a reason to overturn a dismissal
- When an employee is dismissed on economic grounds, economic difficulties are now assessed at the national level and within the same industry sector.



TO WHAT EXTENT IS
SOCIAL PROTECTION
A GENUINE SAFETY
NET FOR EMPLOYEES
AND EMPLOYERS?

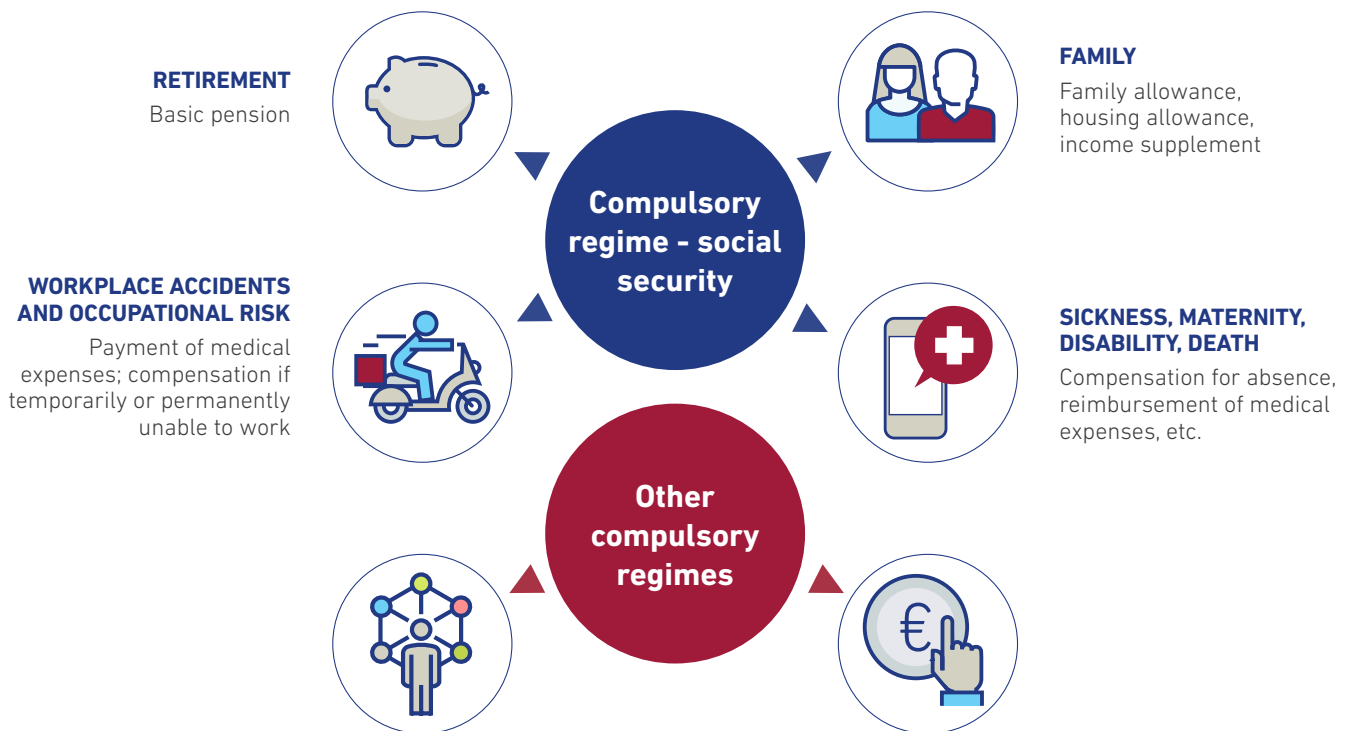
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Companies operating in France help fund the French social protection system: what exactly does this consist of? What are employees covered for? What are the benefits to the employer?

The concept of social protection includes basic cover managed by dedicated public bodies and “supplementary” social protection put in place by individual companies.

1. Basic social security cover: pooling risks for the benefit of both employees and employers

All private sector employees are compulsory members of the relevant basic protection regime.



SUPPLEMENTARY PENSION PLANS

Employees must be members of a supplementary pension plan (which supplements the basic pension paid out by the general regime) depending on their status (management/non-management).

Supplementary pension plans are managed by ARRCO (*Association pour le régime de retraite complémentaire des salariés* – Association for Employee Supplementary Pensions) and AGIRC (*Association générale des institutions de retraite des cadres* – General Association for Management Pension Institutions). These two regimes are to merge on January 1, 2019; with effect from that date, all management and non-management employees will be covered by a single, unified supplementary pension regime.

UNEMPLOYMENT INSURANCE AND GUARANTEED INCOME

Unemployment insurance is compulsory, and all private sector employees and employers pay contributions. Thanks to these contributions, employees who involuntarily lose their jobs can be eligible for income in the form of allowances.

The APEC contribution (managers) serves to finance the *Association pour l'emploi des cadres* (Managers' Employment Association), tasked with redeploying unemployed managers.

The AGS contribution funds the wage guarantee system, which ensures wages are paid if a company goes into court-ordered administration or liquidation.



Contributions to fund basic social security cover account for the majority of fixed social security contributions deducted from salaries.



A FEW EXAMPLES:

- > **When an employee is absent due to sickness.** Social security covers 50% of the employee's reference salary from the fourth day, provided the employee meets the required criteria. Unless more favorable industry- or company-wide arrangements have been agreed, the company only pays the employee the difference to make their pay up to 90% or 66.7% of the reference salary (provided the employee has been with the company at least a year).
- > **When an employee is going on maternity leave.** The employee is paid by the social security system. The employer has no legal obligation to pay the employee during maternity leave. However, under some collective agreements, the employer pays an additional amount.

2. Supplementary social protection

To top up benefits paid out by the general social security regime, companies may or must put in place supplementary plans. The purpose of such plans is notably to cover employees in the event of death, inability to work, maternity or sickness.

Provision of such plans may be compulsory or optional.

COMPULSORY PLANS

Health cover

With effect from January 1, 2016, all employees must be covered by supplementary health cover to top up sickness, maternity and accident benefits paid out under the general social security regime.

Protection for managers

Employers are required to provide managers with cover for inability to work, disability and death. This obligation is funded by a minimum contribution of 1.5% of tranche "A" of managers' salaries (in 2018, that portion of salary between zero and €3,377).

Industry-specific plans

The collective agreement to which a company is subject may require it to put in place a compulsory supplementary protection or pension plan. Employers must at the very least provide the cover stipulated in the agreement.

OPTIONAL PLANS

Supplementary protection

Employers can choose to put in place supplementary protection plans to cover their employees in the event of death, inability to work and disability.

Additional pension

Additional pensions are in addition to the basic and supplementary pensions. They may be defined contribution plans whereby the employer commits to pay regular contributions to an administrating body, and those contributions, together with income from investing them, are paid to retired employees in the form of annuities. They may equally be defined benefit plans whereby the employer commits to pay employees a certain level of benefits once they retire.



Such plans represent a substantial management benefit. They form a measurable component of compensation, and thus promote recruitment and foster employee motivation and retention.

In addition, such plans offer both employers and employees attractive tax and social security benefits.



HOW DO I NEGOTIATE WITHIN MY COMPANY?

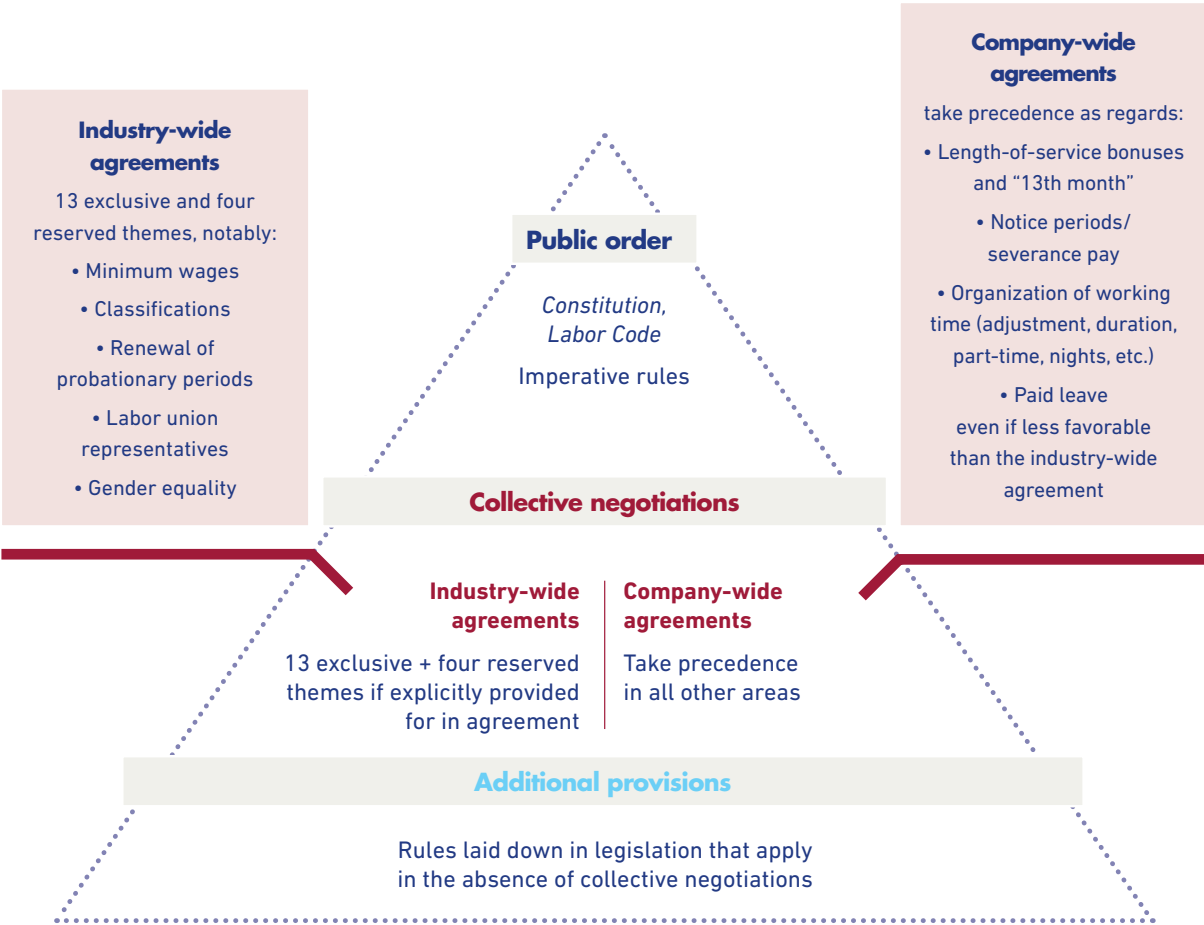
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Arrangements for negotiating within a company vary by company size and the employee and employer representative organizations involved.

Fewer than 11 employees	No employee representatives
11-50 employees	Social and Economic Committee (SEC) or Works Council, whose role is mainly to put forward individual or collective claims to the employer.
More than 50 employees	Trade union representatives and Social and Economic Committee (SEC) or Works Council, whose role is also to put forward individual or collective claims to the employer, as well as to be notified of and consulted about matters concerning the general running of the company, and to negotiate where applicable.

WHAT ISSUES ARE DIRECTLY OPEN FOR NEGOTIATION WITHIN MY COMPANY?

To understand the scope of collective negotiations, it is important to bear in mind how social security standards are organized.



With effect from January 1, 2018, **company-wide agreements in principle take precedence over industry-wide agreements**, except in areas specifically identified in law where the industry-wide agreement takes precedence either on a compulsory basis or by virtue of lock-in clauses.

The relationship between industry-wide agreements and company-wide agreements **is organized around three blocks:**

- **Block 1:** 13 compulsory areas (including minimum wages, classifications, workplace equality, etc.) where the industry-wide agreement takes precedence over any company-wide agreement.
- **Block 2:** Four optional areas (recruitment and continued employment for people with disabilities, bonuses for hazardous and unhealthy work, etc.) where an industry-wide agreement would take precedence over any company-wide agreement if the industry decided to include a lock-in clause.
- **Block 3:** In all other areas (e.g. working time), company-wide agreements take precedence over industry-wide agreements (even where the latter are more favorable).

WHAT MANDATORY AND OPTIONAL WORDING SHOULD BE INCLUDED IN AN EMPLOYMENT CONTRACT?

An employment contract constitutes the core set of rules directly applicable to an employee. Except for full-time permanent contracts, all employment contracts must be in writing and must include a number of mandatory particulars.

Employment contracts must be drafted with care, since they determine most of the parameters of the contractual relationship between a company and its employees: in particular, they define critical elements such as pay, duties, status, and sometimes even how working time is accounted for. An employment contract may also include clauses designed to meet more specific company needs:

- > Objectives clause
- > Non-compete clause
- > Geographical mobility clause
- > Training cost liability clause in the event the employee leaves the company after receiving training

CAN A COMPANY-WIDE AGREEMENT OVERRIDE PROVISIONS IN AN EMPLOYMENT CONTRACT?

In certain matters, company-wide agreements can automatically override contrary and incompatible clauses in employees' employment contracts. In such cases, an employee may reject any amendment to their employment contract resulting from such an agreement, but the employer may then proceed to dismiss them for cause.

Such agreements must be entered into to meet the company's operating needs or to protect and develop employment by adjusting working time or pay, or determining the conditions applicable to internal transfers.

HOW DO I NEGOTIATE IF THERE IS NO UNION REPRESENTATIVE WITHIN MY COMPANY?

In companies with fewer than 50 employees, which do not have a union representative, the employer may negotiate:

- > Directly with employees (if certain criteria are met).
- > With appointed employees (i.e. appointed by a representative labor union to conduct negotiations within the company) or with employee representative members of the SEC, with no predetermined order of priority.

In companies with more than 50 employees that have no labor union representative, the employer may negotiate with one or more members of the SEC (whether or not appointed for such purpose) or, failing that, with employees appointed for such purpose.

COMPANIES WITH FEWER THAN 20 EMPLOYEES

— ONLY ONE OPTION:

- > Negotiate with employees on a draft agreement covering issues open for negotiation at company level. To be adopted, the draft agreement must be ratified by a two-thirds majority of employees.

COMPANIES WITH 11-49 EMPLOYEES

— CHOICE OF OPTIONS:

- > Negotiate with appointed elected representatives
- > Negotiate with non-appointed elected representatives
- > Negotiate with employees appointed for such purpose

COMPANIES WITH 50 OR MORE EMPLOYEES

— IN PRIORITY ORDER:

- > Negotiate with appointed elected representatives
- > Negotiate with non-appointed elected representatives
- > Negotiate with employees appointed for such purpose



**WHAT SOLUTIONS
ARE AVAILABLE
TO SUPPORT
MY COMPANY'S
BUSINESS?**

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What solutions are available to companies when they want to grow their business, face a temporary increase in requirements or need to find a replacement for an absent employee? How can they cover one-off or temporary duties without necessarily having to recruit a permanent employee?

A range of contractual relationships are available to companies to meet their various needs.

1. Direct relationships: permanent contract, fixed-term contract, full-time or part-time contract, subsidized contract

In this type of contractual relationship, the employer is responsible for the costs incurred in recruiting the employee and completing the administrative formalities, along with formalities associated with terminating the employment contract.

THE PERMANENT CONTRACT: A LONG-TERM COMMITMENT

The permanent contract (known as a *contrat de travail à durée indéterminée* or CDI) is the standard form of working relationship most commonly encountered in France.

If the company wants to fill, on a long-term basis, a vacancy linked to its usual, ongoing business, it should enter into a permanent contract.

By definition, such contracts have no specified expiry date and can be terminated at the initiative of the employer or the employee or by joint decision. (For more information, see the sheet on terminating an employment contract.)

A full-time permanent contract need not be in writing, unless company- or industry-wide agreements require that a written contract be drawn up. Where a full-time employment contract is to be verbal, the employer is required to provide the employee with a written document setting out the information included in the pre-employment declaration sent to URSSAF.



A project-specific permanent contract enables an employer to hire an employee for a role whose duration is uncertain. The end of the project in question constitutes specific grounds for terminating the working relationship. This gives the company greater flexibility and security in its working relationships.

Unlike an ordinary permanent contract, a project-specific permanent contract cannot be used in just any circumstances. Its use must have been agreed in advance by way of an extended industry-wide agreement. The following industries have already made such provision: building and civil engineering, property development, landscaping and rail transportation.

In the absence of such an agreement, this type of contract may only be entered into in sectors “where its use is usual in line with normal practice in the industry in question as of January 1, 2017” (ship repair, aerospace and mechanical construction).

THE FIXED-TERM CONTRACT: RESPONDING TO OCCASIONAL NEEDS

A fixed-term employment contract (*contrat de travail à durée déterminée* or CDD) is an effective response to a temporary need.

It enables a company to hire an employee for a limited period. The contract must be in writing and include a precise definition of its purpose.

Fixed-term contracts generally span a specific period, with fixed start and end dates. In some cases, the end date may not be specified, in which case a minimum period of employment must be stated.

There are various reasons for using fixed-term contracts, which are an effective way for companies to meet their business constraints.



IN PARTICULAR, A COMPANY MAY USE A FIXED-TERM CONTRACT TO:

- > **Replace an employee who is absent**
- > **Temporarily replace a part-time employee**
- > **Cover the period before a new permanent employee takes up their role**
- > **Cover the period before the position occupied by an employee who has left the company is permanently cut**
- > **Meet a temporary increase in business**
- > **Meet seasonal demand (e.g. in the tourism and agriculture sectors)**

PART-TIME AND INTERMITTENT EMPLOYMENT CONTRACTS: ADJUSTED WORKING HOURS

What do you do if the vacancy to be filled does not require a full-time position? Companies can opt for a part-time contract if they need to hire someone to work fewer hours than the norm within their business, or for an intermittent contract defining alternating work and non-work periods (provided this is allowed for by an extended industry- or company-wide agreement).



Part-time contract

- Stipulates working hours below the statutory minimum, or below the agreed minimum where this is lower than the statutory minimum
- Must be in writing and include mandatory particulars



Intermittent contract

- For sectors subject to significant fluctuations in activity
- No fixed end date
- Mandatory particulars
- **Advantages:** Employee flexibility and retention; a permanent contract that takes into account busy and quiet periods

ALTERNATING CONTRACTS: DEVELOPING TALENT

Professional training contracts and apprenticeship contracts enable companies to take on employees who alternate between working within the company and undertaking theoretical learning. Such employees are paid an adjusted salary that is usually below the statutory national minimum wage.



Professional training contract

- A fixed-term contract of 6-12 months (maximum 24 months in certain cases)
- Or a permanent contract with a 6-12 month professional training period (exceptionally up to 24 months)
- **Advantages:** exemption from certain employer's contributions in some cases (jobseekers aged over 45); recruitment subsidies paid by Pôle Emploi under certain conditions.



Apprenticeship contract

- A fixed-term contract of 1-3 years (6 months to one year in some cases, and up to four years for workers with disabilities)
- Or a permanent contract beginning with a period of apprenticeship of a duration equal to that of the training cycle leading to the qualification in question
- **Advantages:** exemption from certain employer's contributions; compensatory allowance fixed by the regional council; tax credit; apprenticeship tax is tax-deductible under certain conditions.

2. Indirect relationships: temporary employment, umbrella companies, microbusinesses and commercial agents

In this type of contractual relationship, a company opts for a simplified working relationship by transferring administrative responsibility to another organization or working directly with independent professionals.

TEMPORARY EMPLOYMENT IS ANOTHER WAY OF RESPONDING TO OCCASIONAL NEEDS.

With this form of employment, the company does not enter into an employment contract with the employee; rather, it signs a provision agreement with a temporary employment agency. The temporary member of staff is then made available to the company for the duration of the assignment, but remains an employee of the temporary employment agency, which is responsible for administrative management (declaration of recruitment, pay, etc.).

Generally speaking, a temporary employment assignment may not exceed 18 months including any renewals.

UMBRELLA COMPANIES

The use of an umbrella company entails a three-way contractual relationship whereby an employee tied to an umbrella company by an employment contract performs duties for client companies. In this type of relationship, the employee is employed by the umbrella company but has a high degree of autonomy, for example in offering their services to companies or negotiating prices.



Working with an umbrella company allows an employer to negotiate directly with qualified workers and maintain full control over the duties performed within the company.

MICROBUSINESSES

To meet occasional needs, a company may call on the services of an external provider (e.g. a microbusiness or freelancer). In such cases, the company need not enter into a contractual relationship governed by the French Labor Code. It should, however, check that there is no economic dependence or employer-employee relationship with the chosen provider.

Microbusinesses are restricted to individuals wishing to carry on an independent business, whether as their main activity or a supplementary activity, provided that their annual business income does not exceed a given threshold. Microbusinesses are subject to simplified rules governing the calculation and payment of social security contributions, and are exempt from VAT.

COMMERCIAL AGENTS

A commercial agent is an independent professional not bound by any employment contract who acts as a representative tasked with negotiating and potentially concluding sales, purchases, leases or service provision agreements for and on behalf of producers, manufacturers, traders or other commercial agents.

In this type of relationship, the company tasks an independent agent with finding new customers for its business; the agent is compensated under a commission system.



5

**HOW DO I ORGANIZE
EMPLOYEES' WORK
SCHEDULES WITHIN
MY COMPANY?**

There are various tools available for adapting working time to suit a company's needs.

HOW LONG IS THE WORKING WEEK?

In France, the statutory working week is 35 hours, equating to 1,607 hours a year.

This is not a limit, but rather a baseline beyond which overtime is calculated. This statutory working week applies to all companies, irrespective of size or industry sector, and covers all employees apart from senior executives and employees who perform their duties autonomously (who may be covered by a flat-rate pay agreement).

Employers have a great deal of latitude to make use of overtime or calculate working hours over periods longer than one week, up to a maximum of three years. By agreement, they may also operate to working hours that differ from the statutory working week based on a fixed number of hours (per week, month or year) or days (per year).



- **19.3%** of employees worked part-time in 2016.¹
- **13.3%** of employees of non-agricultural private sector companies with 10 or more employees were contracted to work a fixed number of days per year in 2014.²
- **63%** of employees work beyond 35 hours.

HOW DOES OVERTIME WORK?

— **What is overtime?**

Overtime is any time worked, at the employer's request, over and above the statutory 35-hour working week.

— **Who can work overtime?**

All employees apart from those contracted to work a fixed number of days per year and those classed as senior executives.

— **How does overtime work, and what limits apply?**

Overtime is worked at the employer's written or verbal request, up to the maximum allowed number of working hours. Overtime hours are counted on a weekly basis.

1: Source: DARES citing INSEE, continuous employment surveys, 2014-2016

2: Source: DARES Analyses n°048, July 2015.

The amount of overtime is laid down in an **annual quota** defined in a company-wide collective agreement or, failing that, an industry-wide agreement. **Where no such agreement** is in place, the quota is fixed at **220 hours per employee per year**.

What is the impact on pay?

- Overtime pay is calculated by applying an overtime premium laid down in a company- or industry-wide agreement, which may not be less than 10%.
- Where there is no company- or industry-wide agreement, the statutory premium is 25% for the first eight hours and 50% for any additional hours.

Overtime pay may be partly or fully replaced by an equivalent amount of compensatory time off.

How else are employees compensated for overtime?

Overtime hours worked over and above the fixed quota (by default 220 hours per employee per year) automatically entitle the employee to **compensation in the form of time off in addition to overtime pay**: 50% of overtime hours worked over and above the quota and 100% for companies with more than 20 employees. A higher rate of compensatory time off may be allowed for by a company- or industry-wide agreement.

WHAT ARE THE REGULATIONS ON PAID LEAVE?

All employees, regardless of contract duration, working hours or length of service, are entitled to paid leave. **Practical arrangements for taking leave are subject to the employer's agreement.**

How many days' leave can an employee take?

The amount of leave varies depending on the rights acquired: both part-time and full-time employees are entitled to 2.5 working days per month of actual work, equating to 30 working days (five weeks) for a full year's work.

When must employees take leave?

The period during which paid leave must be taken is laid down in a company- or industry-wide agreement or, failing that, by the employer after consulting any Works Council or employee representatives.

In any event, it must include the statutory period from May 1 to October 31.

Who defines the order of precedence for taking leave?

The order of precedence for taking leave is laid down in a company- or industry-wide agreement or, failing that, by the employer after consulting any Works Council or, failing that,

employee representatives.

WHAT IS THE MAXIMUM NUMBER OF WORKING HOURS?

Maximum weekly working hours laid down in European Union law

Public order	48 hours in any given week (44 hours over 12 consecutive weeks)
Company- or establishment-wide agreement (or, failing that, industry-wide agreement)	Option of raising the limit from 44 to 46 hours over 12 weeks
Where there is no negotiation within the company	Up to a maximum of 46 hours, authorized by the Labor Inspectorate

Maximum daily working hours

Public order	10 hours Except: In emergency; where agreed by the Labor Inspectorate; where provided for in a company-wide agreement
Company-wide agreement	The 10-hour maximum may be exceeded in two cases: <ul style="list-style-type: none">- Increased activity- For reasons to do with the company's organization Limit: 12 hours

HOW CAN WORKING TIME BE ORGANIZED TO SUIT THE COMPANY'S NEEDS?

Working hours can be organized to best meet the company's needs:

Over several weeks or years

Where a company is subject to alternating periods of high and low levels of activity, it may adjust its working hours over periods longer than a week for some or all of the year. Over the period in question, employees may be required to work more or less than 35 hours a week depending on activity levels. Employees are not due overtime pay if the number of working hours smoothed over the year does not exceed the equivalent of 35 hours a week.

The employer may also organize working time **in the form of cycles**, the duration of which is fixed over several weeks, thus catering for regular fluctuations in activity. Working patterns are the same within each cycle. Within a cycle, the average working week is 35 hours. Hours worked over and above this limit are considered overtime.

Personalized work schedules

Employees with personalized work schedules work a 35-hour working week. However, they are free to **carry forward or make up hours** from one week to another to better balance their work and personal constraints.

Flat-rate pay agreements (in days or hours)

These apply to employees with sufficient real autonomy to organize their work schedules without being subject to collective work schedules. An **employee with a flat-rate pay agreement in days** is required to work a certain number of days per year equivalent to a maximum of 218 days, except where more favorable terms are laid down in a company- or industry-wide agreement. An **employee with a flat-rate pay agreement in hours** is covered by an agreement that lays down in advance the number of hours worked before overtime is triggered.

IS SUNDAY AND/OR NIGHT-TIME WORKING POSSIBLE?

Sunday working

An employee may work no more than six days a week: he/she must have at least one day off (24 hours, plus a minimum of 11 hours' rest each day) each week and, in theory, Sundays (repos dominical or Sunday rest). However, there are a number of exemptions to the "Sunday rest" requirement, notably in establishments that must continue to operate or remain open due to production or activity constraints or public needs (statutory exemption).

Some collective agreements provide for permanent exemption from Sunday rest. As a rule, such exemptions are provided for when work is organized continuously for economic reasons. In the absence of any collective agreement, exemption from Sunday rest may be granted by the Labor Inspectorate after consulting union representatives and the SEC.

In 2014, **21%** of the working population worked on Sundays.³

Night-time working

Night-time working must be exceptional and justified by a need to ensure continuity of economic activity or socially beneficial services. Night-time working may be provided for in a company- or industry-wide agreement. Such agreements must specify various items, including in particular the justification for night-time working and the corresponding amount of compensatory rest or pay.

In 2014, **9%** of the working population worked at night.⁴

3: Source: INSEE employment survey; DARES calculations (2014) (<https://www.insee.fr/fr/statistiques/1906674?sommaire=1906743>)

4: Source: <https://www.insee.fr/fr/statistiques/1906674?sommaire=1906743>



WHAT DOES IT COST TO EMPLOY SOMEONE IN FRANCE?

MAKE A FRENCH START
10 insights to grow your business in France

How does an employer determine their employees' gross salaries? What compulsory social security contributions must an employer pay on salaries? Are exemptions from or reductions in social security contributions available in France?

1. Gross salary

An employee's gross salary consists of basic salary plus any variable items (bonuses, paid leave allowances, etc.) before calculating and deducting social security contributions.

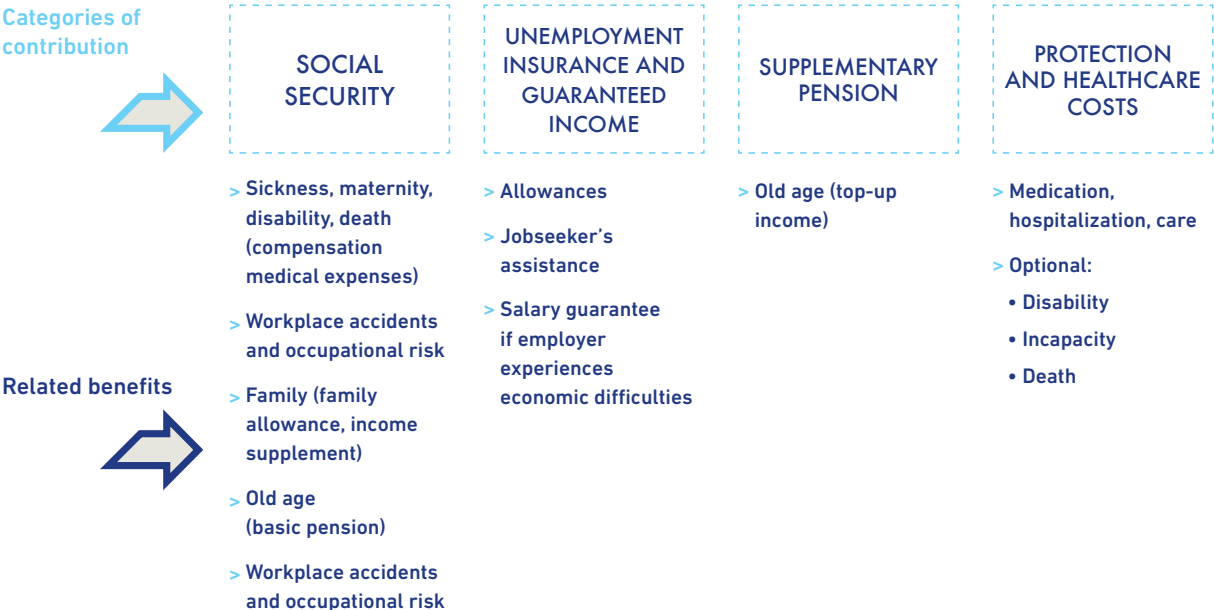
WHAT DETERMINES GROSS SALARY?

Basic salary is laid down in an employee's employment contract; the amount is negotiated between employee and employer. Its amount may not be less than either the minimum wage laid down in any collective agreement applicable to the company or the statutory national minimum wage.

Variable items may result from the French Labor Code, a collective agreement or a company-wide agreement, or they may be determined by agreement between employee and employer.

2. Social security contributions

There are two types of social security contributions: **employer's contributions**, 17% to 40% of gross salary payable by the employer on gross salaries paid, and **employees' contributions**, 20% of gross salary payable by employees and deducted directly from their gross salary. These contributions help fund various types of insurance.



3. Exemptions

Employers may be eligible for exemption from social security contributions, thus reducing the cost per employee. Various exemptions are available, the most common of which are as follows:

ACROSS-THE-BOARD REDUCTION IN EMPLOYER'S CONTRIBUTIONS ON LOW SALARIES (KNOWN AS THE *RÉDUCTION FILLON*)

This mechanism reduces employers' social security contributions on salaries of less than 1.6 times the statutory national minimum wage which is about €2.435 a month. The amount of the reduction reduces on a sliding scale.

This "zero URSSAF contribution" mechanism allows employers with employees receiving the statutory national minimum wage (€1,522 a month at January 1, 2019) to not pay any social security contributions, excluding unemployment insurance, which totals 4.05% in 2019:

- For an employee earning a gross monthly salary of €1,522 (the statutory national minimum wage), the amount of employer's social security contributions after exemption is around €132, or 9% of gross salary (instead of €559 or approximately 40% of gross salary with no exemption).
- For an employee earning a gross monthly salary of €2,000, the amount of employer's social security contributions after exemption is around €523, or 26% of gross salary (instead of €726 or approximately 40% of gross salary with no exemption).

On January 1, 2019, the CICE will be replaced by an enhanced exemption from social security contributions consisting of two components:

- A uniform reduction in health insurance contributions on salaries of less than 2.5 times the statutory national minimum wage which is about €3805 a month
- An increase in across-the-board reductions in social security contributions payable on the statutory national minimum wage.

4. Net pay/taxable net pay

Net pay is the amount an employee actually takes home. In principle, it corresponds to the following:

GROSS SALARY

- **Less employee's social security contributions payable (non-tax-deductible)**
- + Plus any allowances not subject to contributions**

Income tax deducted at source since January 1, 2019

Taxable net pay is the amount an employee must declare to the tax authorities. In principle, it corresponds to the following:

GROSS SALARY

- **Less tax-deductible social security contributions**
- + Plus amount paid by the employer towards medical insurance**



HOW DO WE ATTRACT AND RETAIN TALENT?

MAKE A FRENCH START
10 insights to grow your business in France

What means are available to attract and retain talent? Is there a way to optimize the cost of a compensation policy?

One way to attract and retain talent while optimizing employers' costs is to top up the base salary with alternative forms of pay.

1. Employee share ownership: aligning the interests of the company and its human capital

Employee share ownership is a key driver of performance, enabling companies to ensure their employees' interests are aligned with their own by giving employees an ownership stake in the business. Employee share ownership is an alternative form of pay that can optimize the cost of a company's existing compensation policy.

FOUNDERS' SHARE SUBSCRIPTION WARRANTS (*BONS DE SOUSCRIPTION EN PARTS DE CRÉATEUR D'ENTREPRISE – BSPCES*) AND SHARE SUBSCRIPTION WARRANTS (BSAS)

BSPCEs and BSAs offer their holders the right to buy shares in their companies at a price determined in advance on the day the warrants are allotted.

Gains on such warrants are eligible for preferential tax and social security treatment. BSPCEs are seen as a bonus paid by a company to an employee.

As such, the right to allot BSPCEs is restricted to a specific category of companies, based on criteria defined by law (form of company, market capitalization, formation date, etc.), and to company employees and executives subject to the tax regime for employees – and not the tax regime for independent workers (chief executive, chairman of a simplified limited company, members of the management board, etc.).

BSAs are more speculative securities. As such, they may also be allotted to corporate officers, employees or third parties. They can be sold at a profit.



Social security regime

- The allotment of BSPCEs and/or BSAs does not result in either the employer or the employee having to pay any additional social security contributions.



Tax regime

- Capital gains (selling price less purchase price) realized on the sale of shares acquired on exercising BSPCEs are subject only to a tax charge that depends on the employee's length of service at the time of sale. This tax charge also equates to around 30% (tax plus social security deductions).
- Gains realized on selling shares acquired on exercising BSAs are subject to two different types of deduction, resulting in a specific tax charge based on the employee's length of service at the time of the sale, and equating to around 30%, paid by the employee in the form of income tax and social security deductions.

BONUS SHARE ISSUES

Bonus share issues allow listed and unlisted limited companies to allot shares free of charge to their employees, subject to certain conditions and limitations. The in-principle decision to allot bonus shares to employees falls to the shareholders voting at an extraordinary general meeting (EGM). The shareholders may determine that such allotments should be contingent on criteria of their choosing (performance, length of service, etc.), thus selecting those categories of employees they see fit.

In principle, bonus share allotments are subject to an employer contribution of 20%, though some companies may be eligible for exemption under certain conditions.

Subject to meeting the conditions laid down in the Commercial Code, gains derived from bonus shares are exempt from employer's and employee's social security contributions, regardless of how long they are held. For personal taxation, capital gains on acquisition are subject to income tax (with or without tax relief, depending on amount) and social security deductions on income from assets. Capital gains on disposal are taxable in the form of a one-off flat tax and social security deductions on income from assets.

STOCK-OPTIONS

Stock options work in a similar way to BSPCEs. They consist of an option for an employee to purchase a number of shares in their company at a future date and a predetermined price. When the employee decides to exercise this option, i.e. to buy the shares, they buy them not at their actual price, but rather at the price determined when they were allotted.

Gains derived from exercising options are exempt from social security contributions, regardless of how long they are held. The employer must pay an employer's contribution of 30%.

For the recipient, capital gains on acquisition are subject to income tax, social security deductions on in-work income and a special social security contribution (*contribution salariale spécifique*). Capital gains on disposal are taxable in the form of a one-off flat tax and social security deductions on income from assets.

EMPLOYEE SAVINGS: A GENUINE DRIVER OF PERFORMANCE

Compulsory and voluntary employee profit-sharing plans enable companies to link a percentage of pay to performance.

Voluntary employee profit-sharing

Voluntary employee profit-sharing (*intéressement*) gives all employees a stake in the company's results and performance. It is calculated based on criteria laid down in a collective agreement. Under this approach, the variable portion of pay is linked to strategic business indicators (customer satisfaction rate, ratio of defect-free parts produced, safety targets, etc.).

Compulsory profit sharing

Under compulsory profit sharing, a portion of the company's profits is redistributed among its employees based on a formula defined by law. It is compulsory in companies with more than 50 employees. It can also be put in place voluntarily using a formula other than that laid down in law.

Employee savings plans

An employee savings plan (*plan d'épargne entreprise* or PEE) is a group savings plan enabling employees to build up a securities portfolio with the company's help. Employee payments may be topped up or matched by the company. Amounts are locked in for at least five years, apart from in exceptional cases where they may be unlocked early. An employee savings plan may be put in place for a number of companies not belonging to the same group (known as a *plan d'épargne interentreprises* or PEI).

Group retirement savings plans

A group retirement savings plan (*plan d'épargne pour la retraite collectif* or PERCO) helps employees build up savings. Amounts are locked in until retirement, apart from in exceptional cases where they may be unlocked early. Employee payments may be matched by the company. On retirement, amounts are paid out in the form of annuities or, if provided for by the relevant collective agreement, capital.



Amounts paid out under these types of plans are exempt from social security contributions and are subject only to a flat-rate contribution known as the *forfait social* (employer's flat-rate contribution), the general social security contribution (CSG) and the contribution to the repayment of social security debt (CRDS), the latter two of which are payable by the employee.

The employer's flat rate contribution is about 16% for payments made to a collective savings plan for retirement and 10% to the employer's contribution for a savings plan in companies with at least 50 employees

As regards taxation, profit-sharing payments paid into a PEE or PEI employee savings plan or a PERCO group retirement savings plan are exempt from income tax. These amounts are locked in for a minimum of five years for PEEs and PEIs and until retirement for PERCOs.

2. Supplementary and additional social protection plans: security for employees

Companies can put in place supplementary and additional social protection plans to reward and retain their employees by offering disability, incapacity, healthcare and additional retirement cover. (For more information, see the sheet 3.2 on social protection for employees.)

Amounts paid by employers to fund additional protection plans are not subject to social security contributions or income tax.



WHAT ARE THE ESSENTIAL HUMAN RESOURCES RULES?

MAKE A FRENCH START
10 insights to grow your business in France

Taking on employees means complying with certain requirements. What are the essential human resources rules? Which companies are affected?

1. Rules applicable to all companies

OFFICIAL EMPLOYEE REGISTER

French regulations require all **establishments** with employees to maintain a **register of personnel**.

This must record the forenames and surnames of all persons employed by the company on any basis whatsoever. This information is recorded in the register when an employee is recruited.

The register must also show the nationality, date of birth, gender, job, qualifications, and start and end dates for each employee.

OFFICIAL RISK ASSESSMENT DOCUMENT

The official risk assessment document (*document unique d'évaluation des risques* or DUER) is a key component of measures to prevent risks and protect employees' health and safety. It contains an inventory of risks identified at each of the company's work units and sets out measures put in place to eliminate or reduce risks as far as possible.



GENERALLY SPEAKING, EMPLOYERS ARE REQUIRED TO TAKE THE NECESSARY STEPS TO ENSURE THEIR WORKERS' SAFETY AND PROTECT THEIR PHYSICAL AND MENTAL HEALTH. THEY MUST:

- > **Take preventive steps**
- > **Put in place information and training systems**
- > **Adapt their physical resources and organize their work appropriately**

WORKING ENVIRONMENT

The French Labor Code stipulates that establishments and places of work must be fitted out in such a way as to ensure employee safety. Companies must keep them clean at all times to ensure optimal health and safety conditions.

All companies, regardless of size, must safeguard against arduous working conditions. Where an employee is exposed to arduous working conditions beyond a certain threshold, the employer must make a declaration. Companies with more than 50 employees must also negotiate a collective agreement on arduous working conditions whenever a certain number of employees are exposed to one or more such conditions.

IMPLEMENTING TRAINING POLICY

Employers are required to maintain the employability of their employees. As such, they must define and implement a training policy. **They must then draw up a training plan** to put this policy into practice, in line with any industry-wide agreement applicable to the company.

One of the first steps in defining a training policy is to **identify training needs**. This can be done through career interviews, which companies must hold every two years.

2. Rules applicable to companies with more than 11 employees

If a company has more than 11 employees, it must set up a body to represent its employees – the Social and Economic Committee (SEC) – and:

- Hold employee elections
- Hold meetings (usual monthly or bimonthly) with the elected members of the SEC
- Negotiate collective agreements

In such companies, the SEC's role is to put forward employees' individual or collective claims to the employer, and to alert the employer if employees' rights, health or freedom are unduly infringed.

3. Rules applicable to companies with more than 20 employees

French regulations require companies with 20 or more employees to have in place internal rules of procedure. Their purpose is to set out **disciplinary, health and safety rules** that must be observed within the company, together with **applicable penalties** (warning, suspension, dismissal). They also set out the **procedural guarantees** to which employees are entitled (limitation period; right to be accompanied by an employee representative) as well as legal provisions on **sexual and psychological harassment**.



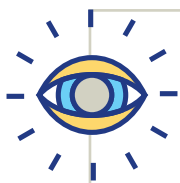
The internal rules of procedure form a compulsory component of a company's exercise of executive power. Where a company with more than 20 employees has no such rules, it cannot apply any disciplinary sanctions other than dismissal.

4. Rules applicable to companies with 50 or more employees

EXPANDED REMIT OF THE SOCIAL AND ECONOMIC COMMITTEE

When a company has more than 50 employees, the remit of its Social and Economic Committee is expanded as follows:

- It ensures that **employees' collective views are expressed** and that their interests are considered in decisions affecting the life of the company. On certain matters, it must be informed and consulted, and have the opportunity to express an opinion. It looks after, oversees and helps manage all social and cultural activities aimed at employees (gift vouchers, Christmas trees, sports activities, etc.).
- It helps **protect employee health and safety** and improve working conditions. It has access to certain resources (information, ability to call on experts, etc.) to help it perform its duties.



A Works Council can be put in place incorporating the powers of the Social and Economic Committee and union representatives. This means the employer has a single point of contact for all actions pertaining to representation and negotiation.

APPOINTMENT OF UNION REPRESENTATIVES

When a company has more than 50 employees, **labor union representatives** may be appointed from among the candidates standing in employee elections. Union representatives represent their labor union in dealings with the employer and defend employees' interests in negotiations.

Having a union representative on staff **is not a requirement**; labor unions are **simply given the option of appointing** representatives.

EMPLOYEE PROFIT-SHARING AGREEMENTS

Employee profit-sharing is an arrangement under which a portion of the company's profits is redistributed among its employees based on a formula defined by law. It is compulsory in companies with more than 50 employees.

Profit-sharing is put in place by way of an agreement between a company and its employees or their representatives. The agreement states, in particular, the rules for calculating, awarding and managing profit-sharing, as well as specifying how long the profit-sharing plan will run. (For more information, see the sheet 3.7 on attracting and retaining talent.)

COMPULSORY ANNUAL NEGOTIATIONS

In companies with at least one appointed union representative, the employer must take the initiative of holding annual negotiations on the following topics:

- Remuneration, working hours and the sharing of value added
- Gender equality and quality of life in the workplace

Employers may enter into a collective agreement to adjust the frequency of these negotiations, provided they are held at least once every four years.



CONFRONTING ECONOMIC DIFFICULTIES

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France offers various tools for preventing economic difficulties and adapting to strategic developments. For example, jobs and skills management (*Gestion prévisionnelle des emplois et des compétences* or GPEC) enables a company to adapt its workforce to requirements resulting from its strategy and changes in its economic, social and legal environment. In companies with 300 or more employees, arrangements must be negotiated annually with employer and employee representative organizations.

However, a company may run into such severe economic difficulties that it needs to rationalize its operations for a predetermined period, while retaining its employees and their expertise within the company.

Lastly, when laying off employees becomes unavoidable, reforms implemented over the past few years mean the procedure for laying off staff on economic grounds is simpler and more secure.

1. Collective performance agreements

Ordinances reforming the French Labor Code have created a single type of company-wide agreement to meet companies' operating needs, as well as protecting jobs. This replaces internal mobility agreements and competitiveness agreements (maintaining employment or protecting and developing employment).

COMPANIES COVERED BY THE AGREEMENT

The agreement applies to all companies, whether or not in difficulty, that have entered into a majority company-wide agreement.

CONTENT OF THE AGREEMENT

The collective performance agreement enables a company to:

- Adjust working hours and their organization and distribution
- Adjust employee pay, provided this remains above the minimum wage
- Determine the conditions applicable to role transfers and geographical moves within the company

Stipulations in the agreement are designed to temporarily replace clauses in the employment contracts of employees who agree to them. Those who reject them may be laid off; employees have one month to notify their employer of their decision.

2. Short-time working

PRINCIPES

Short-time working is a state-funded tool to prevent layoffs on economic grounds. It enables companies to temporarily reduce or suspend their employees' activities. Employees keep their jobs and the company is able to retain or even increase its skills when faced with short-term economic difficulties.

Employers pay remuneration to employees put onto short-time working, with the state guaranteeing to pay part of the cost of compensation for unworked hours.

WHEN IS SHORT-TIME WORKING USED?

There are a number of grounds for making use of short-time working:

- An unfavorable economic climate (e.g. leading to a decline in orders)
- Supply difficulties affecting raw materials or energy
- An incident or bad weather of an exceptional nature
- Transformation, restructuring or modernization of the company
- Any other exceptional circumstance (e.g. loss of main customer) leading to an interruption or reduction in activity

IMPLEMENTATION

Before it can put employees onto short-time working, a company must submit an **authorization request to the DIRECCTE⁵ unit in its *département***, which has **15 days** to respond and may, if it agrees, do so with conditions. If no response is received within this deadline, authorization is deemed to have been granted.⁶ Lastly, short-time working may be authorized for a maximum of six months at a time (authorization can be renewed).

CONSEQUENCES FOR EMPLOYEES AND EMPLOYERS

Employees receive hourly remuneration from their employer equal to 70% of gross hourly pay (approximately 84% of net hourly pay). They may also be eligible to receive professional training during periods when they are not working, in which case the employer receives an allowance funded jointly by the state and the agency that manages the unemployment insurance regime.

⁵: Requests can be submitted at <https://activitepartielle.emploi.gouv.fr>.

⁶: A short-time working simulator is available at <http://www.simulateurap.emploi.gouv.fr>.

3. Layoffs on economic grounds

BEFORE ANYONE IS LAID OFF

The employer must consult employee representatives over the reasons for and terms of any layoffs. It must also inform the Regional Directorate for Enterprise, Competition, Consumption and Employment (*Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi* – DIRECCTE) of any planned and announced layoffs, under conditions that vary depending on the number of planned layoffs. Measures must be put in place to support affected employees.

REASONS

The law provides for four reasons for layoffs on economic grounds:

- **If the company experiences economic difficulties characterized by significant changes in at least one economic indicator** (a decline in orders or sales, operating losses, a deterioration in the company's cash position or gross operating profit, etc.). For groups, difficulties are assessed at the national level (i.e. all group companies located in France and operating in the **same industry sector**).
- **If the company is faced with technological changes**, even where it encounters no economic difficulties or its competitiveness is not threatened.
- If the company **ceases trading**.
- **If the company needs to be reorganized to safeguard its competitiveness** assessed as a whole, at industry sector level for a group of companies.

Furthermore, the layoffs must have been made necessary by one of the economic grounds set out above: the affected employee's job must have been cut or changed significantly (such that it is not possible for the employee to adapt to the new role), or the employee must have rejected any change to their employment contract.

Layoffs on economic grounds are said to be **collective** if they affect **more than ten employees** over a **30-day period**. In companies with more than **50 employees, the employer must put in place a job preservation plan** (*Plan de sauvegarde de l'emploi* or PSE) seeking to prevent or limit the number of jobs lost.

PROCEDURE

Workforce	Number of employees affected	Procedure to be followed
+ / - 50	Less than 10	<ul style="list-style-type: none"> > Consult the Social and Economic Committee or employee representatives on the economic reasoning and the number of layoffs planned (deadline for review: one month) > Invite the employee to a preliminary interview > Interview with the employee: five working days (minimum) after invitation is received > Letter of dismissal: seven working days (minimum) after interview <ul style="list-style-type: none"> • Offer to adapt (via training, etc.) and redeploy • Priority rehiring • If the employee asks for detailed reasons: 15 days to notify him/her of reasons > Notify DIRECCTE: within eight days (maximum) of the letter
50 or more	10 or more	<ul style="list-style-type: none"> > Consult the Social and Economic Committee on the economic reasoning and the number of layoffs planned (deadline for review: 2-4 months) > Put in place a job preservation plan (PSE), through either a majority collective agreement negotiated with labor unions or a document drawn up unilaterally by the employer, after consulting the Social and Economic Committee > Procedure under the control of the authorities: the DIRECCTE is informed as soon as negotiations begin; approval of the agreement or ratification of the employer's unilateral decision within 21 days at most approval of the agreement within 15 days > Notification of layoffs to employees who have not been able to be recategorized after notification by the DIRECCTE of its approval or ratification or once 21 calendar days have passed
Less than 50	10 or more	<ul style="list-style-type: none"> > Consult the Social and Economic Committee or employee representatives on the economic reasoning and the number of layoffs planned > Notification of the project to lay off workers sent to the DIRECCTE at the same time as the consultation procedure which has 21 days to check the social measures proposed and that employee representatives have been consulted > Letters laying off employees sent: the letters cannot be addressed before a 30-day deadline has passed from when the DIRECCTE is notified

DEADLINE

Employee representatives must be consulted within **four months**.

SUPPORT MEASURES

Priority redeployment

The employer must give the employee first refusal over a job in the same category as their current job (or equivalent) at an equivalent level of pay.

In companies or establishments with 1,000 or more employees: redeployment leave

The employer must offer the employee redeployment leave enabling the latter to receive training and benefit from the services of a support unit to help find work, for a maximum of 12 months.

In companies with fewer than 1,000 employees: Re-employment support agreement (*Contrat de sécurisation professionnelle or CSP*)

A CSP gives employees access to a number of measures designed to favor a rapid return to lasting employment.

Priority rehiring

Priority rehiring means an employee who makes an application is given priority when a position becomes available within the company. Employees are eligible for such priority treatment for one year from the date on which their employment contract is terminated. The employer must refer to the right to priority rehiring and any associated conditions in the letter of dismissal.

COSTS

Calculation of the **statutory severance allowance** (for employees with at least eight months' unbroken service, except in the event of gross negligence or willful misconduct):

- One-quarter of a month's salary per year of service for the first ten years
- One-third of a month's salary per year thereafter

In the event of a dispute: Two employment tribunal compensation scales (in months' salary), applicable depending on company size and employee length of service, were put in place by the Ordinances of September 22, 2017.

KEY FIGURES

Employees have 12 months to challenge a dismissal (regardless of the grounds for such dismissal). Less than 1% of dismissals are subject to a dispute (*justice.gouv.fr*).



10

HOW IS AN
EMPLOYMENT
CONTRACT
TERMINATED?

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An employment contract may be terminated at the employee's initiative (resignation or retirement), at the employer's initiative (dismissal for personal reasons or on economic grounds) or by agreement (contractually agreed termination or settlement).

Resignation

DEFINITION

Resignation is a when an **employee decides** to leave the company. An employee may resign at any time, including when their contract is suspended (e.g. when on sick leave).

KEY STEPS IN THE PROCEDURE

Reasons need not be given for resignation, and no **specific formalities** need be completed. However, the employee must **clearly and unambiguously express their desire** to terminate the employment contract. Once an employee has notified their decision to resign, it can only be rescinded with the employer's agreement. Furthermore, employees tendering their resignation must also give **prior notice** (statutory or contractually agreed).

COST

No compensation is paid by the employer. The employee is not entitled to any unemployment allowance unless their resignation is deemed legitimate by the unemployment insurance regime or when it is justified in case of professional retraining or creating or taking over a company.

Contractually agreed termination: the only way to terminate an employment contract by mutual consent

Individual termination by agreement

DEFINITION

Individual termination by agreement (*rupture conventionnelle individuelle* or RCI) is the amicable termination of an employment contract by **mutual consent** between the employer and the employee.

KEY STEPS IN THE PROCEDURE

The employer and the employee agree to a **preliminary interview to negotiate the terms of departure** (date and amount of compensation). Once the parties have signed a document agreeing to the terms of departure, a **15-day cooling-off period (calendar days)** must be observed to allow either party to change its mind.

On expiry of this period, the agreement is **approved by DIRECCTE within 15 business days**.

COST

In the event of contractually agreed termination of a contract agreed between an employer and an employee in an approved agreement, the employee is entitled to receive specific compensation. The amount of such compensation, and the associated social security and tax exemptions, correspond to statutory severance pay. As such, compensation may not be less than:

- One-quarter of a month's salary per year of service for the first ten years.
- One-third of a month's salary per year thereafter.

NB: Mutually agreed or contractual provisions or accepted practice may provide for a formula more favorable to the employee than that used for statutory severance pay. Additional compensation (known as *supra légale*, or over and above the statutory amount) may be negotiated and added to severance pay.

Collective termination by agreement

DEFINITION

Introduced by the Ordinance of September 22, 2017, collective termination by agreement (*rupture conventionnelle collective* or RCC) is a **new method of terminating an employment contract that excludes dismissal** and is entirely **voluntary** for employees. Under this method, the employment contract is terminated by mutual consent. Termination must not be preceded by closure of an establishment or followed by dismissals. Once an employee's voluntary application is accepted, that employee may not challenge the termination of their employment contract.

KEY STEPS IN THE PROCEDURE

This method can be used when a company has been found to be **overstaffed**. There are **four key steps** that must be followed:

- Sign a majority collective agreement with employee representatives that garnered at least 50% of the vote in the last employee elections.

- Notify and obtain agreement from **DIRECCTE** within 15 days.
- **Employees applying** to leave must submit their requests in writing in accordance with the terms laid down in the agreement. **On acceptance of a request by the employer, the employment contract is deemed to have been terminated by mutual consent.** The employee receives the agreed compensation and can claim unemployment insurance. Requests must be examined objectively. If a request is rejected, reasons must be given and must be based on the terms laid down in the agreement (e.g. the employee does not meet the length of service requirements stipulated in the plan).
- **Implementation review:** the employer must draw up an implementation review and submit it to DIRECCTE within one month of the collective termination plan being put into effect.

In companies with more than 1,000 employees, or belonging to a group, if the job losses affect the equilibrium of the employment market in the region where the company is based, a revitalization agreement must be entered into with the authorities within six months of the agreement being approved.

REDEPLOYMENT OBLIGATIONS

In companies or groups not subject to the requirement to offer redeployment leave (companies or groups with fewer than 1,000 employees and companies in court-ordered administration or liquidation), the employer must offer a re-employment support agreement, together with:

- An allowance corresponding to 75% of the employee's daily reference salary, payable with effect from the day after the employment contract is terminated (without notice) and for a maximum of 12 months.
- An individual pre-review interview to identify the employee's profile and redeployment options and a re-employment plan.
- Support measures (preparation for job interviews, job-seeking techniques, etc.) and career guidance.
- Actions to validate experience gained and training measures.
- The possibility of receiving, under certain circumstances, a differential redeployment allowance.

In companies or groups with 1,000 or more employees, the employer must offer **redeployment leave.** In this context, the employer must pay an allowance equating to 65% of the gross reference salary (subject to a minimum of 85% of the statutory national minimum wage) throughout the period of leave exceeding the notice period.

Dismissal for personal reasons (for cause)

REASONS

Dismissal for personal reasons is when an employee is dismissed for reasons specific to that employee. It may be based on the following:

- **Disciplinary reasons:** Simple negligence, gross negligence or willful misconduct
- **Non-disciplinary reasons:** Incompetence, repeated or prolonged absence, etc.

To be justified, dismissal must be for cause: the allegations must be objective and serious enough to make dismissal inevitable (i.e. the employee will not be able to stay with the company).

KEY STEPS IN THE PROCEDURE

With effect from the Ordinances of September 22, 2017, procedural errors are no longer a reason to overturn dismissal. However, failure to comply with the procedure may affect the amount of compensation paid.

PROCEDURE TO BE FOLLOWED⁷

- Letter **inviting** the employee to a preliminary interview (standard letter templates available)
- Five working days (minimum) after receipt: **interview** to gather explanations from the employee
- Two working days (minimum) and one month maximum after the interview:
letter of dismissal
 - If the employee asks for detailed reasons: 15 days to notify them of reasons

COSTS

Calculation of the **statutory severance allowance** (for employees with at least eight months' unbroken service, except in the event of gross negligence or willful misconduct):

- One-quarter of a month's salary per year of service for the first ten years
- One-third of a month's salary per year thereafter.

In the event of a dispute, the Ordinances of September 22, 2017 introduced **two employment tribunal compensation scales** (in months' salary), applicable depending on company size and employee length of service.

7: N.B. Other obligations may be laid down in the internal rules of procedure, collective agreements, etc.

Dismissal on economic grounds: to confront economic difficulties and safeguard competitiveness

BEFORE ANYONE IS LAID OFF

The employer must consult employee representatives over the reasons for and terms of any layoffs. It must also inform the Regional Directorate for Enterprise, Competition, Consumption and Employment (*Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi* – DIRECCTE) of any planned and announced layoffs, under conditions that vary depending on the number of planned layoffs. Measures must be put in place to support affected employees.

REASONS

The law provides for four reasons for layoffs on economic grounds:

- **If the company experiences economic difficulties characterized by significant changes in at least one economic indicator** (a decline in orders or sales, operating losses, a deterioration in the company's cash position or gross operating profit, etc.). For groups, difficulties are assessed at the national level (i.e. all group companies located in France and operating in the same industry sector).
- **If the company is faced with technological changes**, even where it encounters no economic difficulties or its competitiveness is not threatened.
- If the company **ceases trading**.
- **If the company needs to be reorganized to safeguard its competitiveness** assessed as a whole, at industry sector level for a group of companies.

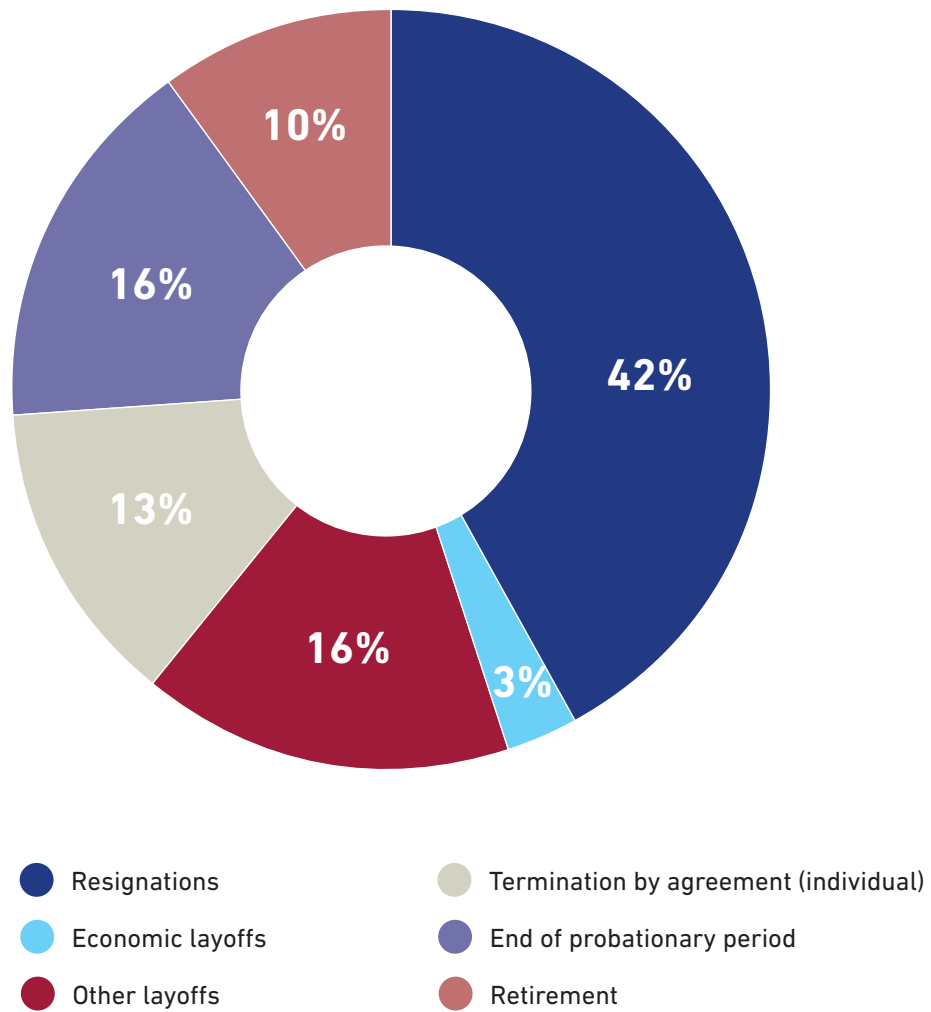
Furthermore, the layoffs must have been made necessary by one of the economic grounds set out above: The affected employee's job must have been scrapped or changed significantly (such that it is not possible for the employee to adapt to the new role), or the employee must have refused any change to their employment contract.

Layoffs on economic grounds are said to be **collective** if they affect **more than ten employees** over a **30-day period**. In companies with more than **50 employees**, the **employer must put in place a job preservation plan** (*Plan de sauvegarde de l'emploi*).

For further information, please consult the sheet on "Confronting economic difficulties".

METHODS OF TERMINATING EMPLOYMENT CONTRACTS IN FRANCE IN 2017⁸

Breakdown of reasons for terminating employment contracts



8: Source: DARES indicators, Issue 054, July 2015; does not include fixed-term contracts



OUR SERVICES

MAKE A *FRENCH* START
10 insights to grow your business in France



Business France proposes free, confidential support to help you get established in France, in whatever form: a new site, an extension to an existing site, an industrial or technology partnership, an acquisition or a financial investment.

Business France helps you reach a decision and supports you throughout the course of your project, drawing on its network of regional partners.

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