

**AN INTRODUCTION TO**  
**TERMINATION OF EMPLOYMENT**  
**IN FRANCE**

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## DISMISSING EMPLOYEES IN FRANCE

In France an employer may not dismiss an employee without a legally valid cause which must be notified to the employee in writing.

Dismissals are subject to strict procedural rules which vary in line with the size of the company and the number of dismissals planned.

### EMPLOYMENT CONTRACTS MAY BE TERMINATED AS FOLLOWS:

- Dismissal on "personal grounds" - related to acts of the employee (gross misconduct/ serious misconduct).
- Dismissal on "economic grounds" (redundancy). E.G. - adverse business developments; technological changes; reorganisation to render activity more competitive or modification of employment refused by the employee.
- Resignation - provided it is a real resignation (employee may contest an act of resignation claiming the employer "forced" him to resign).
- Agreement (see below)

### DISMISSAL ON ECONOMIC GROUNDS - REDUNDANCY

Prior to a dismissal on economic grounds the employer must:

- Provide employee with information on priorities (method applied for choice of employees subject to redundancy plan) and
- Put in place an individual redeployment program for each employee subject to the redundancy plan. The program concerns both the French company and the group (if the employer forms part of a group of companies).

Failure to comply with these procedures may render a dismissal for redundancy unfair.

The dismissal letter must explicitly set out the reasons for dismissal. Only the reasons specified in this letter may be used to justify the dismissal in the event of a claim for unfair dismissal.

The burden is on the employer to prove the reality of the reason used to justify a dismissal.

Case law has decided a dismissal to permit a company to "save costs" is not a valid reason for dismissal for redundancy.

## DISMISSAL BY AGREEMENT

Recent law permits termination by agreement between employer and employee.

Strict procedural rules apply requiring careful compliance.

The termination agreement must be in writing and be approved by the employment authorities (who also vet compliance with the strict procedures).

The Employer must pay the equivalent of the dismissal indemnity (either the statutory minimum severance pay (see below) or the amount fixed by the employment contract or in the termination agreement).

The parties have the right to withdraw from the termination agreement within 15 days of signature. Once the 15 days have expired the parties must submit the agreement to the French employment authorities for approval.

If the agreement is approved the contract of employment is terminated. A party wishing to contest the agreement has 12 months, from the date of the said approval, to issue proceedings before the labour court.

These provisions do not apply to fixed term contracts.

## NOTICE PERIODS

Except in instances of gross misconduct (which may permit an immediate dismissal) the employer must comply with applicable notice periods.

### PERIOD OF CONTINUOUS EMPLOYMENT = STATUTORY MINIMUM NOTICE

- Between 6 months and 2 years = 1 months notice
- More than 2 years = 2 months notice

Any applicable collective bargaining agreement or the employment contract may increase the statutory minimum.

During the notice period the employee continues to work. The employer may waive this obligation but must pay the employee's salary and holiday pay on the notice period up to the end of the notice period.

## CALCULATING SEVERANCE PAY UPON DISMISSAL

Severance pay is determined by the status of the employee and the grounds for dismissal.

**French laws sets down a minimum statutory severance pay:**

- Employees dismissed for personal reasons (non economic) or on termination by agreement having a continuous period of employment of at least 2 years but less than 10 years, the statutory severance pay is 1/10th of net monthly salary for each year of employment. The indemnity is increased by 1/5 of the net monthly salary for each year of employment over and above 10 years.
- Employees dismissed for economic reasons having a continuous period of employment of at least 2 years but less than 10 years, the statutory severance pay is 2/10th of the net monthly salary for each year of employment. This indemnity is increased by 2/15 of net monthly salary for each year of employment over and above 10 years.

The contract of employment may provide for a higher dismissal indemnity.

The dismissal indemnity is in addition to indemnities due for notice and holiday pay due to the employee up until the date of termination.

The indemnities are payable on expiry of the notice period (on termination of the contract).

On termination the employer must also deliver to employee statutory documents.

## REMEDIES FOR DISMISSAL

Dismissed employees may challenge a dismissal before the Labour Court (*Conseil de Prud' Hommes*). Employees must issue unfair dismissal proceedings within a period of 5 years of the dismissal, unless the dismissal was for economic reasons (redundancy) in which case the proceedings must be commenced within 12 months of the dismissal.

If a dismissal is held to be unfair, an award for damages for unfair dismissal may be made and is fixed at the discretion the Court based upon the age, the length of service, salary, the ground of the dismissal and the prejudice caused. The burden is on the employee to prove his/her prejudice.

The dismissed employee may seek an order for reinstatement. The law contains a safeguard against orders for reinstatement which may not be ordered if "reinstatement has become impossible, particularly as a result of the closure of the site or the establishment, or the absence of an available position that would allow the reinstatement of the employee".

## WRITTEN CONTRACT

A written contract is compulsory. In the absence of a written contract the employment is deemed to be open ended.

Employment for a fixed term is only possible in limited circumstances defined by law.

A contract for part time staff must be in writing and clearly set down the hours of work failing which the employment may be considered as full time.

## TRANSFER OF A BUSINESS (PART OF A BUSINESS)

Generally an employment contract is transferred to the new entity (the EC directives on Transfer of Undertakings are implemented in France). If an employee is dismissed as part of the transfer of a business he may challenge the dismissal before the Labour Court.

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*N.B. This paper presents a general global view on French Employment law on termination. It should be used as a guide to give your client a first idea of what can be expected when a question arises and French employment law is applicable.*