



Rupture conventionnelle (for english people):how much to negotiate its mutually agreed termination?

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The "rupture conventionnelle" was originally intended to be marginal. But nobody anticipated such a success: it became one of Nicolas Sarkozy's quinquennium's flagship projects (more than 1,2 million of mutually agreed terminations have been signed since 2008).

1) Definition and Interest of concluding a mutual agreed termination (rupture conventionnelle)

The mutually agreed termination (rupture conventionnelle) allows the employer and the employee to terminate the employment contract by a mutual agreement.

Each party has its advantage. For example, the employer is exempt from the labor law requirements (deadlines, procedures, notice ...) inherent to dismissal and the employee sees benefits compared to the resignation procedure. He/she will receive an indemnity when he/she will conclude a mutual agreed termination and especially will be eligible for French unemployment benefit (allocations chômage).

However, this measure has been largely misused. Actually, companies often convene employees and tell them: "You can choose between mutually agreed termination (rupture conventionnelle) and a dismissal!"

So, how much to negotiate its mutually agreed termination (rupture conventionnelle)?

2) How much my company has to pay me if I conclude a mutually agreed termination?

Your employer has to pay you at least a specific allowance (indemnité spécifique de rupture), and the amount can't be less than the dismissal indemnity applicable in the company's collective bargaining agreement, or failing that, to the dismissal indemnity according to the French labor code (Article R.1234-2 of the French labor code).

However, this amount is a minimum, and it is negotiable.

3) How much to negotiate its mutual agreed termination?

To negotiate at best, you need to assess the indemnity you could get before the labor law tribunal in case of unfair dismissal.

Thus, the mutually agreed termination's indemnity to negotiate shall be the sum of the following

four amounts:

3.1) The amount of compensation in lieu of notice: the duration of your notice period is provided by the collective agreement applicable in your company (1 to 3 months depending on whether you are an employee or a managerial employee (cadre));

3.2) The amount of the holiday pay on notice, equal to 10% of the gross amount of your compensation payment notice;

3.3) The amount of the contractual dismissal indemnity (under the collective agreement applicable in your company) or, alternatively, the statutory dismissal indemnity (Article R.1234-2 of the French labor law);

4) "Supra-legal" compensation:

*** If you have more than 2 years of service within your company and working in a company employing more than 10 employees:**

o If you have between 2 and 5 years of service within your company: the supra legal compensation should be equivalent to six months' salary;

o If you are between 5 and 10 years of service within your company: the supra legal compensation should be equivalent to 12 months' salary;

o If you are between 10 and 20 years of service within your company : the supra legal compensation should be equivalent to 15 months' salary;

o If you are over 20 years of service: the equivalent of 20 months' salary;

*** If you have less than 2 years of service and working in a company with fewer than 11 employees: between 1 and 6 months of salary.**

You must also obtain the balance of the unused holiday paid remaining.

The salary to be taken into account for the calculation of the above amounts, according to the most advantageous formula for you:

o Either one-twelfth of your annual gross salary of the twelve months preceeding the dismissal;

o Or the average of the latest three months.

5) Net or gross amount of the indemnity?

Finally, it should be noted that the negotiation must be done on a net amount (not gross) the indemnity paid under a mutually agreed termination is subject to CSG / CRDS.

Of course, in all cases, it is recommended for employees to be assisted by a lawyer/avocat.

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