



French Labour law: 10 advices from an Avocat to negotiate its rupture conventionnelle

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The law n°2008-596 of 25 June 2008 relating to modernization of the labor market, has created a new form of termination of employment contract under French law: the mutually agreed termination/Rupture conventionnelle. It allows the employer and employee to terminate the employment contract by a mutual agreement.

However, employer and employee are not equal because employees are not prepared for the negotiation before signing the mutual agreement. That is why it is better to be advised by a French Avocat, who will help and give you advices before concluding your rupture conventionnelle.

As an employee, you should know your rights we will see below.

1) When an employer does not have any motivation to terminate the contract, company used to conclude a mutual agreement

Most of the times, companies try to conclude a mutual agreement instead of performing a dismissal. Sometimes, it happens frequently when an employee has many years of service in the company.

2) Willing consent of all parties

The mutually agreed termination supposed to be based on the willing consent of all parties (article L.1237-11 of French Labor Code).

One party (employer most of the times) cannot impose the mutually agreed termination on the other party (employees).

Indeed, it is important that the employee envisages the termination of her employment contract by mutual consent.

In other words, it should be a genuine mutual agreement between parties to terminate the employment contract.

In a recent case law, judges have decided that the consent was vitiated because employer decided to perform a dismissal procedure before retracting and imposed to the employee to sign a mutual agreement. (c. cass. 12th February 2014, n°12-29.208).

Moreover, French Supreme Court has canceled a mutual agreed termination as the employee was

in a harassment situation during the conclusion of the mutual agreement (c. cass. 30th January 2013, n°11-22.332).

However, it is legal to terminate the unemployment contract by mutual agreement even if it exists some disputes between the employee and the employer (c. cass. 23th May 2013, n°12-13.865; c. cass. 15th January 2014, n°12-23.942).

3) You should be assisted during at least one meeting

Article L.1237-12 of French Labor Code says that employees may be assisted during the several meetings. Even if the law says nothing, it is better to call on the employee to negotiate within at least one meeting.

Judges are not strict about the time of the signature between the date of the meeting and its conclusion (c. cass. 3th July 2013, n°12-19.268).

Employers should inform the employee of being assisted during these meetings by:

- Either a person of its choice who is employee in the company, in the presence of the staff representatives;
- Either an employee's adviser chosen on an authority list.

An immediate superior can assist the employee only if the choice comes from the employee (c.cass. 29th January 2014, n°12-27.594).

It is only when you decide to be assisted that employer can be also be assisted during the different meeting.

4) How much to negotiate the mutual agreed termination?

Employee must have been paid a specific allowance called « *indemnité spécifique de rupture* ».

The amount cannot be less than the dismissal indemnity applicable in the company's collective bargaining agreement or the dismissal indemnity according to the French Labor Code. This amount is a minimum can of course be negotiable.

Moreover, employer should pay the remaining bonuses and the rest of paid leave.

Within the mutually agreed termination, there is no period notice. This allowance is subject to CSG/CRDS.

For more detail, please refer to our previous article : <http://www.legavox.fr/blog/frederic-chhum-avocats/rupture-conventionnelle-english-people-much-14766.htm#.Vl66qskufhk>

5) Your unemployment benefit (assurance chômage) can be differed

Indeed, if your specific allowance is upper than the legal indemnity, you will get the unemployment insurance, after a waiting period (période de carence).

To know the number of days of deficiency, the calculation is the following one:

- difference between the specific allowance and the legal indemnity;
- this difference is divided by 90;

- the obtained figure correspond of the waiting period before obtaining the unemployment insurance.

Since the 1st July 2014, it can't be more than 180 days.

6) Can you conclude a mutually agreed termination when the contract is suspended?

For an employee who is not particularly protected, it is not forbidden for them to conclude a mutually agreed termination (parental leave, sabbatical leave, unpaid leave).

French labor law says nothing when the employee has a particular protection especially in case of work-related illness or accident.

Recently, the French Supreme Court has been decided that employer and employee can conclude a mutually agreed termination when the contract is suspended as a result of a work-related illness or accident, except in a fraud situation or vitiated consent (c. cass. 30th September 2014, n°13-16.297).

7) Your employer has to give an official form of the mutual agreement

Indeed, the French Supreme Court decided that the agreement should be established in two originals. On the contrary, the mutually agreed termination is being held null and void.

On the contrary, the mutually agreed termination has to be canceled (c. cass. 6th February 2013, n°11-27.000).

8) You have 15 days for retracting

Parties have to sign the official form to be sent to the Labor Administration.

Article L.1237-13 of the French Labor Code allows each party 15 calendar days to withdraw its wish to end the unemployment contract.

After this period, one of the parties (employer most of the times) should send to the Local employment Authorities (called "DIRECCTE") for getting a specifically authorization. The departmental Labor Director has a 15-day prefix period, at the end of which his silence will be regarded as an approval. The date of termination cannot be earlier than the day following the acceptance by the Labor Authorities.

In the event of a refusal from this administration, the employment contract is not terminated and the employment relationship would continue.

For an employee representative, the mutually agreed termination will remain subject to the authorization of the Labor Inspector.

Employers often predate the mutually agreement to prevent the employee from retracting. But, in theory, it would be null and void but it is difficult to prove the fraud.

9) You have 12 months period to sue and the possibility to sign a compromise agreement

Employees have 12 months from the date of approval or refusal by the administration to sue.

Employee can conclude a compromise agreement. It should be noted that a mutual agreed termination is different from a compromise agreement (“transaction” in French). Many people confuse these two agreements.

It is possible to conclude a compromise agreement only after the approval of the administration or the Labor Inspector if it is a “protected” employee. Moreover, the compromise agreement allows no further claim against the employer about the unemployment contract execution and no about the conclusion (c. cass. 26th March 2014, n°11-21.136).

You can go to court to obtain the money which is not in the mutually agreed termination like overtime, bonus and back pay.

10) The mutually agreed termination: the only way to terminate an employment contract by common consent

In a recent case, the French High Court deemed that the mutually agreed termination is the only way for parties to put an end to the unemployment contract by common consent (c. cass. 15th October 2014, n°22.251).

A mutually agreed termination can't be concluded within the redundancy dismissal, because employees have some other guarantees.

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