



French labour law: How much to negotiate its “ rupture conventionnelle ” after Macron Ordinances ?

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In 2017, nearly 421,000 conventional terminations were approved.

In practice, the conventional termination has become so widespread that, from now on, employers are almost systematically attempting to negotiate a conventional termination before triggering a dismissal procedure.

Of course, in all cases, it is strongly recommended to be assisted by a lawyer to guarantee the preservation of your rights.

1) How much can I negotiate a supra legal indemnity?

1.1) What if you are being harassed (harcelé(e)) ?

The existence of a situation of moral harassment (harcèlement moral) makes it possible to remove the indemnities granted in case of unfair dismissal / without real and serious cause before the Labour Court.

In such a case, the employee is entitled to claim compensation that cannot be less than 6 months' salary, regardless of his seniority and the size of the company (C. Art. 1235-3-1)

Thus, this may be a good argument for increasing the amount of the supra legal indemnity in the context of negotiating a conventional termination.

However, you must be careful because this strategy can also be the cause of a blocking of the negotiation.

Indeed, an employer can quickly become suspicious when the employee refers to the term harassment during the bargaining process because, in such a case, the conventional termination agreement is void. (See in particular Cass Soc., June 09, 2015: No. 14-101.92)

In practice, the conventional break is often accompanied by the signing of a transaction that ensures the employer against any risk of litigation that may arise.

1.2) General case ?

Thus, the conventional termination indemnity (indemnité de rupture conventionnelle) to be negotiated may amount to the sum of the following amounts:

- Compensation in lieu of notice: the duration of your notice period is provided for in the

collective agreement applicable in your company (generally 1 to 3 months depending on whether you are an employee or an executive) or, failing that, by article L. 1234- 1 of the French Labour code (1 to 2 months depending on your seniority);

- Subsequent paid leaves, equal to 10% of the gross amount of your compensation in lieu of notice;
- The conventional dismissal indemnity or, failing that, the legal conventional indemnity;
- A "supra-legal" indemnity calculated on the basis of the maximum indemnity provided for in the indemnity scale (see our previous brief: <https://www.village-justice.com/articles/orders-macron-changing-for-employees-with-cap-on,25765.html>)

• **If you have less than 1 year of seniority: the equivalent of 1 month's salary;**

• **If you have 1 year of seniority: the equivalent of 2 months' salary;**

• **If you have 2 years of seniority: the equivalent of 3.5 months' salary;**

• **If you have 3 years of seniority: the equivalent of 4 months' salary;**

• **If you have 4 years of seniority: the equivalent of 5 months' salary;**

• **If you have 5 years of seniority: the equivalent of 6 months' salary;**

• **If you have 6 years of seniority: the equivalent of 7 months' salary;**

• **If you have 7 to 8 years of seniority: the equivalent of 8 months' salary;**

• **If you have 9 years of seniority: the equivalent of 9 months' salary;**

• **If you have 10 years of seniority: the equivalent of 10 months' salary;**

• **If you have 11 years of seniority: the equivalent of 10.5 months' salary;**

• **If you have 12 years of seniority: the equivalent of 11 months' salary;**

• **If you have 13 years of seniority: the equivalent of 11.5 months' salary;**

• **If you have 14 years of seniority: the equivalent of 12 months' salary;**

• **If you have 15 years of seniority: the equivalent of 13 months' salary;**

• **If you have 16 years of seniority: the equivalent of 13.5 months' salary;**

• **If you have 17 years of seniority: the equivalent of 14 months' salary;**

• **If you have 18 years of seniority: the equivalent of 14.5 months' salary;**

• **If you have 19 years of seniority: the equivalent of 15 months' salary;**

• **If you have 20 years of seniority: the equivalent of 15.5 months' salary;**

• **If you have 21 years of seniority: the equivalent of 16 months' salary;**

• **If you have 22 years of seniority: the equivalent of 16.5 months' salary;**

• **If you have 23 years of seniority: the equivalent of 17 months' salary;**

- If you have 24 years of service: the equivalent of 17.5 months' salary;
- If you have 25 years of service: the equivalent of 18 months' salary;
- If you have 26 years of seniority: the equivalent of 18.5 months' salary;
- If you have 27 years of seniority: the equivalent of 19 months' salary;
- If you have 28 years of seniority: the equivalent of 19.5 months' salary;
- If you have 29 years of seniority or more: the equivalent of 20 months' salary.

To negotiate at best, it is necessary to "benchmark" according to the amount that you could obtain in the event of abusive / without real and serious cause dismissal before a Labour Court or a Court of Appeal.

2) What is the minimum amount my employer has to pay me?

At a minimum, your employer must pay you a specific termination indemnity equivalent to the legal indemnity that would be due in case of dismissal, or the conventional dismissal indemnity if it is more favourable.

NB: The conventional dismissal indemnity is however not applicable and only the legal indemnity is due 1) in the companies that do not fall within the scope of the ANI (the Inter-professional National Agreement) of 11 January 2008; 2) in companies that have concluded a collective agreement expressly providing for the payment of the sole legal indemnity in the event of a contractual Termination.

Example: For employees in the publishing sector whose employer is not a member of either Medef (Movement of French Enterprises), CGPME (Confederation of Small and Medium-sized Enterprises) or UPA (Artisanal professional Union), the minimum conventional termination indemnity is the legal indemnity and not the Conventional one (CA Nancy, Ch. Soc., August 30, 2017, n ° 16/02668).

For the conventional dismissal indemnity, reference should be made to the provisions of the collective agreement applicable in the company.

For the legal dismissal indemnity, it is due as soon as the employee has 8 months of seniority with his employer.

It amounts to 1/4 of salary per year of seniority up to 10 years and 1/3 beyond.

The salary to be taken into consideration for the calculation is, according to the most advantageous formula, one twelfth of your gross remuneration of the last twelve months preceding the dismissal, or one-third of the last three months. (C. Art R. 1234-4)

This amount is, however, only a minimum and it is therefore perfectly possible to negotiate a conventional supra-legal termination indemnity.

NB: You will also need to get the balance of your paid leaves and your RTT (working Time Reduction) if applicable.

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