

**By : Laurent VERDES,  
Partner**

**e-mail : lverdes@23bosquet.com  
Tel : + 33 1 40 62 63 26  
Mobile : + 33 6 08 24 37 90**

## **‘Ending an employing contract in France’**

---

There are two kinds of dismissal: dismissal for a personal reason (*licenciement pour motif personnel*) (I) and dismissal for economic reason (*licenciement pour motif économique*) (II).

A procedure must be strictly respected for each case of dismissal.

When the employee and the employer agree to terminate the employment contract, they can sign a contract under the Agreed termination of contract (“*Rupture conventionnelle*”) (III).

### **I – DISMISSAL FOR PERSONAL REASON (LE LICENCIEMENT POUR MOTIF PERSONNEL):**

This requires a genuine and proper cause for the dismissal

A dismissal for a personal reason occurs because of the employee’s conduct, and must be a genuine and proper reason for the dismissal, otherwise the employee will be able to claim damages as well as the indemnities stipulated by law or the collective-bargaining agreement which is applicable to the company.

The reason for the dismissal can be misconduct (insults, fraud, theft, threat, etc...) or may not be connected to the employee’s conduct. For instance, the employee’s physical inaptitude to do the job as established by the occupational health doctor, if it is impossible to redeploy the employee in another role inside the company.

The employee's health condition cannot be the reason for dismissing the employee in itself, and, in order to justify dismissing the employee, the company must show that the employee’s repeated

absences disrupted the company and that the employee has to be replaced by a new recruitment on an indefinite term contract.

The company can also dismiss the employee for professional inaptitude for example if the employee commits multiple errors.

The employee’s inadequate results can be justification for dismissal if the company establishes that the employee has performed his or her functions inadequately (e.g.: inadequate, superficial or incomplete customer call reports) however the targets given to the employee must be genuine and achievable targets.

If the employment contract does not contain a targets clause, the employee’s results can justify dismissal if they are mediocre in comparison to the results of his or her predecessors, colleagues or the employee's own previous results.

If the employment contract includes a targets clause the company can justify a dismissal if the employee fails to achieve realizable targets.

### **1 – Procedure:**

The procedure to dismiss an employee for a personal reason begins by sending the employee a recorded delivery letter with acknowledgement of receipt convening the employee to a preliminary interview.

The convening letter must state that a dismissal is being considered but the company is not obliged to specify the complaints against the employee at this stage.

The convening letter must state that the employee can be assisted at the interview by any person he

or she chooses who can be an employee in the company (e.g. a staff representative) or a person from outside the company.

A period of 5 working days must be respected between the employee receiving the letter and the actual interview.

The interview is normally held at the place of work or at the company's registered office.

The purpose of the company is a discussion between the company and the employee to find a solution to a problem. The employee must therefore be given the opportunity to explain him or herself. If they do not succeed in finding a solution the company can dismiss the employee by sending the employee a letter of dismissal. This letter of dismissal must be sent at least two working days after the preliminary interview, by recorded delivery letter with acknowledgement of receipt.

The letter of dismissal must give the reasons for the dismissal and also inform the employee of his or her rights with respect to the individual training right.

The company can then make payments of outstanding salary and economical dismissal payments. The employee must return all the company's documents and property (company car, mobile phone, computer etc)

The company must also send the employee the following documents:

- A work certificate,
- A receipt for the employee's terminated account,
- A certificate for the job centre service (Pôle Emploi) to enable the employee to receive unemployment benefit.

Finally the company will send the Social Security organization (URSSAF) a declaration indicating the number of dismissals of employees aged over 55, irrespective of the reason for dismissal, the age of the employee on leaving the company and the amount of indemnities paid to the employee for the termination of the contract.

## **2 – Indemnities:**

If the company dismisses an employee before the end of the trial period, the employer will not be entitled to an indemnity. In this case, the parties must only give a period of notice.

In principle, the employee is entitled to an indemnity in lieu of notice if the employee does not work his or her notice on the company's request, as well as an indemnity in lieu of paid holidays, a economical dismissal payment, and if appropriate, financial compensation for respecting a non-competition clause.

The economical dismissal payment can either be the payment stipulated by law (statutory economical dismissal payment) (*indemnité légale de licenciement*), for the payment stipulated in a collective-bargaining agreement (*indemnité conventionnelle de licenciement*).

The statutory economical dismissal payment is reserved for employees who have been employed by the company for at least a year and who have not committed any serious or willful misconduct.

The statutory economical dismissal payment is a minimum 1/5th per month of length of service to which is added 2/15ths per month per year of service over 10 years.

The contractual economical dismissal payment varies depending on the provisions in the applicable collective-bargaining agreement.

Finally if the employment tribunal considers that the employee was dismissed without a real and genuine reason the employee can also be awarded damages for the prejudice he or she has suffered.

If the employee has at least two years length and the employee's company employs 11 employees or more, the damages which employee can receive will be at least equal to 6 months gross salary.

In addition, the company must refund to the Job Centre service (*pôle emploi*), the employment benefit which the employee receives between the date of his or her dismissal and the date of the employment tribunal judgement, capped at a maximum of six months benefit.

If the employee has less than two years of seniority in the company or if the company employs less than 11 employees, the employee is allowed to receive damages for the prejudice suffered.

## **II – ECONOMICAL DISMISSAL:**

**Reasons:** economic difficulties, technological changes, a reorganization of the company to preserve the company's competitiveness, or a closure.

An economical dismissal is justified for one or more reasons which are not related to the employee personally but result in transformation of a position or the modification to an essential element of the employment contract which is refused by the employee and which are notably consecutive of economic difficulties or technological changes.

Economical dismissal can also be justified to preserve the company's competitiveness.

Consequently an economical dismissal can be justified because of:

- Difficulties experienced by the company,
- Technological changes,
- To protect the company's competitiveness,
- The company ceasing a business activity

An economical dismissal is therefore not only reserved for companies in financial difficulties. A company in good financial health but which must reorganize to face up to technological change can make redundancies providing they are intended to protect its competitiveness.

The reason for the economical dismissal must not be related to the employee personally. Otherwise the economical dismissal will be considered not to have a real and genuine reason and entitle the dismissed employee to damages.

An employee can only be made redundant after all efforts have been made to train and adapt the employee and when the person concerned cannot be redeployed in the company or in the companies in its group.

This attempt to adapt and redeploy the employee must be made before the company considers economical dismissal.

The employer must respect the criteria for deciding the order of redundancies.

These criteria are established by the collective-bargaining agreement or any other collective agreement and take the following into account:

- The family charges in particular for a single parent,
- The length of service in the company,
- Employees who will have difficulty in finding another job,
- The employee's professional qualifications.

A redundant employee can demand to know the criteria which led to his or her designation within 10 days of leaving the company.

### **1 – Procedure:**

The economical dismissal procedure depends on the size of the company and the number of redundancies envisioned.

#### **A - Individual economical dismissal: (licenciement économique individuel)**

If the economical dismissal of a single person is envisioned, the procedure starts by the employee being convened to a preliminary interview. The employee will then be notified of his or her economical dismissal by giving the precise economic reason for it.

The company must inform the authorities but will not be obliged to inform and consult the personnel representatives.

#### **B - Economical dismissal of between 2 and 9 employees over a period 30 days:**

If an employer is considering dismissing between 2 and 9 employees over period 30 days, it must initially inform and consult the personnel representatives, fix the order of redundancies and try to redeploy the people concerned.

If redeployment is impossible or if the employer refuses the redeployment proposals, the company must convene each employee to a preliminary interview and notify the redundancies by stating the reason, inform the authorities and inform the employees who request this information, the criteria used to decide the order of redundancies.

#### **C - Economical dismissal of 10 employees and more:**

- If the company has less than 50 employees it must convene each employee to a preliminary interview during which they will be offered a personalized redeployment agreement. Nevertheless, there will be no individual interviews when the company has personnel representatives. The company must inform the government before notifying the employees concerned of their economical dismissal.
- When the company has more than 50 employees it must draw up an Employment Protection Plan (*plan de sauvegarde de l'emploi (PSE)*). This plan is intended to avoid redundancies or to limit their number and to facilitate redeployment. The Works Council ("*comité d'entreprise*") must be consulted and the employees concerned must be offered a redeployment agreement before being made redundant, as well as informing the authorities.

#### **D – Indemnities:**

Indemnities are like in the case of the dismissal for personal reasons, a redundant employee is entitled to payment in lieu of notice and paid holidays.

The employee will also receive a contractual economical dismissal payment if this is stipulated in the collective-bargaining agreement, and in default a statutory economical dismissal payment of 1/5<sup>th</sup> per month of salary per year of service, to which is added 2/15<sup>th</sup> per month over 10 years length of service.

### **III – The Agreed termination of contract ("*rupture conventionnelle*"):**

#### **1 - Conditions:**

The agreed termination of contract is, alongside the dismissal and resignation, a new way to break the contract by mutual agreement.

The agreed termination of contract can not be imposed by either party. It is the result of an agreement signed by the employer and the employee, indicating their mutual consent.

It shall contain:

- A dismissal indemnity equal to at least the legal or contractual indemnity,

- A procedure to ensure the freedom of consent.

The agreed termination of contract allows, moreover, employees to the benefit of State unemployment compensation.

#### **2 - Procedure:**

##### **A - Interviews:**

The agreed termination of contract is freely negotiated during several preliminary interviews during which the parties may have the assistance of a counsel.

It is advisable to organize three meetings:

- An interview to verify that the employee is willing to enter into such contractual termination,
- A meeting to present to the employee the legal and financial conditions of departure and the documents to sign,
- A meeting to sign documents.

The first interview is requested either by the employer or by the employee. The invitation to an interview may be made orally, but it is advisable to establish it in writing, at least for the second interview, since the employer must prove he has informed the employee that he may be assisted.

It is strongly recommended to space the date of receipt of the letter and the date of the second interview of at least five days like for a dismissal.

The employee may be assisted in two ways:

- In the presence of representative institutions in the company, by a person of his choice on the staff of the company, whether an employee holding a union office or employee of a member institution Representative of staff or other employee;
- In the absence of representative institutions in the company, by a person of his choice belonging to the company or by an adviser of the employee from a list compiled by the administrative authority (and available in every labor inspection and in each municipality).

The employee and the company can not be assisted by a lawyer. The employee must notify his employer if he decides to be assisted.

If the employee is not assisted, the employer can not be assisted.

If the employee informs the employer that he will be assisted, the employer may also be assisted by a person of his choice on the staff of the company or in companies with fewer than 50 employees, by a person belonging to the trade union of employers or by another employer within the same branch.

#### **B - The form of contractual termination:**

The approval of the contractual termination is subject to the signing by the parties of the application form for approval established according to an administrative formal model.

Once completed, the form should be downloaded and signed by hand by the employer and the employee.

It is established in three copies.

The establishment of this form is sufficient under the law. Nevertheless, it is strongly recommended to sign an agreement of termination of employment to summarize all aspects of the procedure.

This termination agreement will be attached to the official form and sent to the Administration.

#### **C - The withdrawal period:**

From the date of signing the agreed termination of contract, both parties have a period of 15 calendar days (daily counts) to exercise his right of withdrawal.

The right of withdrawal is exercised in the form of a registered letter or remitted hand to hand, against discharge.

The period of 15 calendar days starts the day after the date of signature and ends on the fifteenth day.

If one party retracts, the conventional process is broken out. Legally, the employment relationship continues as before.

#### **D - Approval of rupture:**

At the end of the withdrawal period, the form must be sent either by the employee or by the employer, to an Administration called "Direccte" (Regional Directorate of companies, competition, consumption, labor and employment) of the place where the employer is established.

It is strongly advised to send the form by registered mail to prove that the letter was sent after the end of the withdrawal period.

Upon receipt by the Direccte, the application will be dated and a receipt will be sent to both parties.

Direccte has a period of instruction 15 working days (all days of the week except Sundays and holidays recognized by law) from the date of receipt, to ensure compliance with the legal conditions and the free consent of the parties.

Failure to notify the Direccte within 15 working days, the approval shall be deemed attained. In case of refusal of approval, there is no end of contract. The employment contract should continue.

#### **E - End of contract:**

The contract may be terminated the day following the notification of acceptance of the application by the Direccte or, in case of silence from the Direccte, after the instruction period has elapsed.

In case of implicit decision, the day of registration is the date of the expiry of the deadline for the administrative authority to decide. The parties are free to provide a date of termination of employment contract that suits each, subject to the time left to the Direccte to decide on the application before it is submitted.

At the end of the contract, the employer must provide:

- A certificate of employment,

- A copy of the certificate Pôle Emploi and
- A receipt for final settlement.

**F - Compensation:**

The employee must receive a specific allowance which can not be less than the statutory dismissal indemnity of the indemnity forecasted in the collective agreement.

The statutory dismissal indemnity represents at least  $1/5^{\text{th}}$  of salary per year of service plus two fifteenths months per year beyond 10 years of seniority in the company.