

**Since the beginning of April 2020, the Ministry of Labour has promoted, as an additional tool to deal with the crisis linked to the coronavirus disease 2019 (COVID-19), the temporary provision of employees between two companies.**

Under the scheme, if a company involved in activities essential to the state is faced with a lack of personnel, it can resort to an agreement of provision with a company whose employees are unoccupied and agree to be made available on a voluntary basis.

The ministry has slightly simplified the conditions of the provision agreement in order to make the scheme more accessible.

### Conditions for the Temporary Provision of Voluntary Employees

The temporary provision of an employee is, in principle, governed by Article L.8241-2 of the Employment Code. It requires:

- The agreement of the employee concerned and the two companies
- A signed agreement of provision between the lending company and the user company
- An amendment to the employment contract between the employee and the employer

#### The amendment to the employment contract must specify:

- The work entrusted in the user company
- The working hours
- The place for performance of the work (located in France, subject to international agreements)
- The particular characteristics of the workstation
- In some cases, a probationary period during which the provision can be terminated at the request of one of the parties (such a probationary period is compulsory if an essential element of the employment contract has been modified)

#### The agreement of provision must specify:

- The duration of the provision
- The identity and qualification of the employee concerned
- The method of determining salary
- The social security charges and professional fees that will be invoiced

In order to help companies make use of the temporary provision of employees, the Ministry of Labour offers simplified models on a dedicated website.

### Consultation of the CSE

The Economic and Social Committee (CSE) of both the lending company and the user company must be consulted before the implementation of the temporary provision. However, the Ministry of Labour allows, in the current context, consultation as soon as possible and, if necessary, at the same time as the temporary provision is made available.

This consultation can be via audio or video conference.

### The Voluntary Employee (C.trav., L.8241-2)

The temporary provision must be voluntary: an employee may not be sanctioned, dismissed or discriminated against for refusing a proposal for provision. The temporary provision may not affect the protection enjoyed by an employee by virtue of a representative mandate.

### Working Conditions

During the period of temporary provision, the employee's working conditions will be those of the user company and determined by the legal and conventional provisions applicable at the place of work with regard to working hours, night work, weekly rest, public holidays, and health and safety at work. The employee will have access to the facilities and means of public transport available to the employees of the user company.

It is the responsibility of the user company to provide the employee with the personal protective equipment necessary for the proper performance of the work.

The employee provided remains bound by its employment contract with the lending company, and therefore retains the benefit of all the contractual provisions, as if working for the original employer.



## Salary

During the temporary provision, the employee retains its employment contract and usual salary. The original employer must pay the employee 100% of its salary, and will then be reimbursed by the user company.

## Accident at Work and Occupational Illness

In the event of an accident at work or occupational illness, the entire cost will be borne by the original employer, who will have a recourse action against the user company in order to be reimbursed for the additional indemnities that will have to be paid.

## Early Termination of the Agreement of Provision

The employer may terminate the employee's temporary provision during the probationary period and in accordance with the terms and conditions of termination provided for in the agreement.

The termination of the temporary provision at the initiative of one of the parties before the end of the probationary period may not constitute grounds for sanctions or dismissal, except in the case of serious misconduct on the part of the employee.

The employee must be notified of the decision to terminate the agreement of provision by a letter delivered by hand with a receipt or by a registered letter with acknowledgment of receipt with a copy to the other party.

At the end of the temporary provision, the employee must return to its position, or to an equivalent position, in the lending company without its career development or remuneration being affected by the loan period.

## Sanctions

In the event of an illegal temporary provision, where the purpose or effect of the operation is to make a profit from the lending undertaking, the sanctions are:

- Two years' imprisonment and a fine of €30,000
- Five years' imprisonment and a fine of €75,000 when the offence is committed against more than one person

## Contact

If you would like to discuss any of the issues raised in this advice note, please contact:



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