

ARTICLE

« WHEN THE FRENCH CLOCK OFF AT 6PM, THEY REALLY MEAN IT » - 1

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A few days ago, The Guardian was entitled: "When the French clock off at 6pm, they really mean it" and it is not the only newspaper across the Channel and on the other side of the Atlantic which described the flabbergasting signing of a new amendment to the industry-wide collective bargaining agreement dated June 22, 1999 on the reduced working time (35 hours a week) within the branch Bureaux d'Etudes Techniques, Cabinets d'ingénieurs-Conseils, sociétés de conseils, usually referred to as « Syntec ».

Indeed, a branch agreement on working hours was signed on April 1, 2014 between the employer's unions representing the Syntec Cinov industry and the labor unions CFE / CGC / FIECI and CFDT/F3C. However, this amendment applies only to employees within the branch that performs their duties in the context of an annual working time in days agreement and non-covered by a company/division -wide collective bargaining agreement.

This amendment was negotiated and signed to meet the growing existing legal uncertainty that arose from the decision of the French Supreme Court dated June 29, 2011 (Cass. Soc. Jun. 29, 2011, No. 09-71107). The final decision regarding the Syntec industry was included in a ruling from the French Supreme Court dated April 24, 2013 (Cass. Soc. Apr. 24, 2013, No. 11-28398), which decided that the annual working time in days agreement when concluded solely on the basis of the Syntec collective bargaining agreement dated June 22, 1999, was no longer valid and unenforceable.

The amendment dated April 1, 2014 was negotiated and signed in this context.

This amendment duplicates various aspects from the agreement dated 1999 regarding annual working time in days agreements: same scope, same application criteria (position 3 of the classification table or annual salary exceeding 2 times the annual social security cap or corporate officers) and same salary criteria (salary at least equal to 120% of the minimum of its category in the Syntec industry).

The amendment dated April 1, 2014 states that its provisions are directly applicable to companies that are not covered by a company-wide agreement.

This amendment also holds the possibility of using reduced annual working time in days agreements.

To secure annual working time in days agreements, and to meet current case law requirements, the amendment dated April 1, 2014 states that:

- Individual annual working time in days agreements shall explain the reasons for which the employee is independent and the number of interviews that will be held with the employee.

- The choice of rest days (entire days only) is made at the employee's choice.

- The waiver of rest days shall be made through the payment of a minimum increase salary of 20% up to 222 days, and 35% beyond, without being able to increase the number of working days beyond 230 days.

- The employer must implement a document showing the number and date of working days and the position and qualification of non-working days as weekly rest days, paid holidays, rest days pursuant to the collective bargaining agreement or rest days in application of the maximum of 218 rest days. This monitoring is prepared by the employee under the supervision of the employer.

- The employer shall display in the company the beginning and the end of a daily period and a weekly period during which the minimum periods of rest shall be complied with.

- To ensure the effective observance of these rest periods implies, for the employee, an obligation of disconnecting remote communication devices (such as laptop, smartphones, tablets...).

- The employer needs to organize a monitoring tool in order to ensure the compliance with of these minimum rest periods.

- Provisions regarding rest periods and disconnecting from remote communication devices, shall be incorporated into the company internal governance rules.

- In case of unusual difficulties as regards the organization aspects, the workload or professional isolation, the employee has the right to warn the employer through a letter that the employer will meet with the employee within 8 days, and will implement, as the case may be, and describe in writing, remedies. Once a year, the employer shall submit to the Health, Safety and Working Conditions Committee or to the staff representatives, the number of warnings sent and the remedies implemented.

- The employer will convene the employee to two interviews per year concerning the individual workload, working organization in the firm, reconciling work and private life, and finally remuneration.



Pursuant to article L. 2253-2 of the French Labor Code, companies and establishments already covered by an agreement on annual working time in days will have no obligation to adapt their provisions according to the provisions of the amendment dated April 1, 2014.

Therefore, it is likely that the amendment dated April 1, 2014, which provides that some of its provisions are mandatory for companies within the branch (Chapter 2, "consequences of the agreement"), thus preventing any derogation by company-wide agreement and establishment-wide agreement, will be in whole or in part excluded from the mandatory implementation of such amendment by the French Labor Minister.

The amendment dated April 1, 2014 shall come into force on the first day of the month following the publication of the extension decree on the journal officiel.

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