

Law n° 2008-1258 on Labor Income dated December 3, 2008 Social Security Finance Act 2009 n° 2008-1330 dated December 17, 2008

There are traditionally significant labor law developments at the beginning of a calendar year. The Law on Labor Income presents a real interest for companies with respect to employee savings schemes and substantially amends the rules governing mandatory profit-sharing plans by definitively authorizing the immediate release of the sums earned under such plans. The Social Security Finance Act 2009 softens the requirements for combining employment and retirement pension, creates a new contribution to be paid by employers and limit employers' possibility to force employees into retirement.

You will find below an outline of the mains provisions set forth in these two Laws.

1. Law n° 2008-1258 on Labor Income dated December 3, 2008

1.1. Mandatory profit-sharing plans:

- Suppression of the obligation to freeze the sums earned under mandatory profit-sharing plans: for all financial years ending after the promulgation of the law - including consequently all financial years closed on December 31, 2008 - employees may request the immediate payment of all or part of the sums earned under mandatory profit-sharing plans. Such request may be made during a period of time to be fixed by a forthcoming decree. The sums paid to the employees shall be exempted from social contribution but subject to CSG^[1]/CRDS^[2] and income tax.
- Heads of companies can now benefit from mandatory profit-sharing plans: in companies with less than 50 employees, the head of company can benefit from the mandatory profit-sharing plan they voluntarily decided to implement within the company. Employers who employ 1 to 250 employees may, under a derogatory agreement, benefit from the mandatory profit-sharing plan for the part of the sums exceeding the legal formula.

1.2. Optional profit-sharing plans:

- Employers having implemented an optional profit-sharing plan - or having amended an existing optional

profit-sharing plan - before June 30, 2009 will be entitled to distribute an exceptional profit-sharing premium exempted from social contribution - but subject to CSG/CRDS - up to 1,500 Euros per employee, subject however that such premium be paid before September 30, 2009 and do not replace in any way any other component of the remuneration.

- Heads of companies employing between 1 and 250 employees (as opposed to 100 employees previously) will be entitled to benefit from optional profit-sharing plans.
- Optional profit-sharing plans can be tacitly renewed if tacit renewal is provided for under the optional profit-sharing agreement, unless either party to such agreement requests a renegotiation at least three months before the contemplated date of expiration of the agreement.
- Employers who enter into optional profit-sharing agreements or make amendments to existing optional profit-sharing agreements between the promulgation of the Law and December 31, 2014 will benefit from a tax credit corresponding to 20% of the increase in the sums distributed under the optional profit-sharing plan.

1.3. Savings plans:

- Payments made by employees under a savings plan shall be considered as voluntary payments and the employer shall consequently be entitled to make a voluntary complementary contribution to such savings plan.
- Companies that have been implementing a *Plan d'Epargne Entreprise* (Company Savings Plan) for more than three years (compared to five years previously) shall be required to open negotiations for the implementation of a *Plan d'Epargne Retraite Collectif* (Collective Pension Savings Plan).
- A Collective Pension Savings Plan can be implemented unilaterally by the employer - subject to certain conditions in companies having staff representatives or a works council.

2. Social Security Finance Act 2009 n° 2008-1330 dated December 17, 2008

2.1. Creation of an additional 2% contribution called “forfait social”, effective as from January 1, 2009:

According to Article 13 of the Social Security Finance Act 2009, companies must pay a new contribution calculated on the basis of the remuneration or gains exempted from social contributions but subject to CSG, to the exception however of employers' contributions paid under supplementary welfare plan (already subject to a 8% tax), the severance indemnities paid in relation to the termination of an employment contract or corporate mandate (which are governed by a specific set of rules), employers' contribution to the *chèques-vacances* (holiday vouchers) and stock options and free allocation of shares (which may be subject to a specific contribution since October 16, 2007).

This 2% contribution shall apply notably to:

- Sums paid under mandatory and optional profit-sharing plans and exceptional premiums paid made under such plans,
- Employers' voluntary complementary contributions to the Company Savings Plan and Collective Pension Savings Plan,
- Employers' contributions to complementary pension schemes, except for contract providing for specific services which remain governed by a different set of rules.

2.2. Severance indemnities in excess of 1,000,000 Euros paid to corporate executive officers shall be fully subject to taxation:

Severance indemnities paid to corporate executive officers that exceed by 30 times the annual social security ceiling, i.e. 1,029,240 Euros in 2009, shall be fully subject to social contributions, CSG and CRDS. Both the indemnities paid to in relation to the termination of the employment contract and those paid in relation to the termination of the corporate mandate shall be taken into account.

Indemnities below the ceiling indicated above shall remain subject to standard rules governing severance indemnities paid outside employment preservation plans. In other words, such indemnities shall be exempted from social contributions, CSG and CRDS up to the amount of the dismissal indemnity set forth by law or by the applicable collective bargaining agreement.

The fraction of the severance indemnities in excess of the amount of the dismissal indemnity set forth by law or by the applicable collective bargaining agreement shall be exempted from social contribution but subject to CSG/CRDS within the limit of six times the amount of the social security ceiling (i.e. 205.848 Euros en 2009), up to the highest of (i) 50% of the total amount of indemnities paid or (ii) twice the annual gross salary paid during the calendar year preceding termination. If these thresholds and ceilings are crossed, only the amount in excess shall be subject to taxation.

2.3. Reimbursement of part of the public transport expenses incurred by employees for travels between the place of residence and the place of work:

The Social Security Finance Act extends the employers' obligation to pay to employees an allowance covering 50% of the costs paid by employees to take public transport between their place of residence and place of work. This obligation used to apply only within the *région parisienne* (Paris area). It now applies nationally and the subscription fees to urban "bike hire" system are considered as public transport expenses.

The sums paid by the employer in this respect shall be fully exempted from social contribution and income tax even if the allowance covers more than the mandatory 50%.

For employees who do not take public transport means, companies may - either by a unilateral decision or pursuant to an agreement with the employees' representative bodies, if any - pay an allowance for gas expenses up to 200 Euros per employee and per year.

2.4. Forced retirement of employees:

Until now, any company was entitled to force any employee 65 years of age or older into retirement. Employees 65 years of age or older but under 70 may now refuse to go into forced retirement. The company remains however entitled to force employees over 70 into retirement.

The procedure to be applied to try to force an employee into retirement is as follows: the employers wishing to force into retirement an employee 65 years of age or older but under and 70 must send to this employee at least three months before his/her 65th birthday a notification requesting him/her to indicate whether he/she intends to retire voluntarily. The employee has one month to respond this request. If the employee responds that he/she does not intend to retire voluntarily or if the employer does not comply with this new notification formality, the company will not be entitled to force said employee into retirement and must repeat this notification formality each year. Exceptionally in 2009, the following procedure will be applied: the company must send the above notification at least three months before the projected forced retirement date. The employee has one month to respond, failing which the company shall be entitled to force him/her into retirement.

2.5. "Senior" agreement or step plan:

Effective on January 1, 2010, companies with at least 50 employees or companies belonging to a group with at least 50 employees shall be subject to a penalty equal to 1% of their wage and salary bill if they have not entered into a collective agreement or establish a step plan in relation to the employment of older employees.

For companies with 50 to 300 employees (or belonging to a group with 50 to 300 employees), these measures, which should notably help maintain senior employment, can be set forth in a branch-wide collective agreement.

2.6. Changes in the requirements governing combination of employment and retirement pensions:

All restrictions to the combination of employment and retirement pensions are lifted since the promulgation of the Law, insofar as the beneficiary has converted all retirement entitlements accrued under mandatory basic and complementary pension schemes into pensions.

As such, the restriction with respect to the accumulation of resources and the obligation to wait a minimum of 6 months before resuming employment at the last employer are no longer effective.

2.7. Obligation to declare to the URSSAF^{F31} before January 31, 2009 all pre-retirement, early retirement, dismissal or contractually negotiated termination of an employee 55



years of age or over.

Do not hesitate to contact our Labor and Employment Department should you wish additional information on the above.

[1] *Contribution Sociale Généralisée*, i.e. General Social Contribution

[2] *Contribution au Remboursement de la Dette Sociale*, i.e. a contribution for the repayment of the French social security deficit

[3] French social security contribution collection agency

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