

Part-time employees: The distribution of working hours must be set forth in the employment contract

The employment contract of a part-time employee must fix the weekly or monthly distribution of working hours, failing which the part-time contract is to be reclassified as a full-time one.

In a decision dated November 17, 2021, the *Cour de Cassation* (French Supreme Court) strictly applied the provisions of Article L.3123-6 of the French Labor Code that lists the mandatory information to be included in a part-time employment contract^[1].

In the case at hand, an employee had been hired under a permanent part-time employment contract. The contract provided that the employee would work 86.67 hours per month according to the following schedule, at his choice: 8:30 a.m. to 12:30 p.m. **or** 2:00 p.m. to 6:00 p.m.

When he was terminated, the employee brought an action before the Labor Court and requested that his part-time employment contract be reclassified as a full-time contract because his contract did not specify the distribution of his working hours between the days of the week or the weeks of the month.

The Court of Appeals dismissed the employee's request on the ground that the employee was subject to a system of individualized working hours and that the specification in the clause of the number of hours to be worked and the choice of the work schedule made it possible to infer **(i)** on the one hand, an average working time of 20 hours per week, necessarily over a week of 5 working days, and **(ii)** on the other hand, that the employee had a great deal of freedom in the organization of his work.

However, the *Cour de Cassation* did not follow the reasoning of the Court of Appeals and quashed the decision handed down by the trial judges.

Except as otherwise provided for by law^[2], the employer's obligation to mention, in the part-time employment contract, the planned weekly or monthly working time duration **and the distribution of the working hours over the days of the week or the weeks of the month**, is a public policy provision.

Consequently, the Court of Appeals was not entitled to dismiss the employee's request for reclassification of

his part-time employment contract as a full-time one.

To avoid this reclassification, the employer should have indicated in the employment contract that the employee worked 4 hours per working day from Monday to Friday inclusive, regardless of the fact that the employee had a choice in the determination of his work schedule.

It is useful to recall that the employment contract of a part-time employee must be in writing and must mention the following information, failing which it can be reclassified as a full-time contract:

- The employee's qualification, the component of remuneration, the weekly or monthly number of working hours;
- The cases in which the distribution of the working hours may be changed and the nature of this change;
- The conditions under which the work schedule for each day worked are communicated to the employee in writing. In associations and home help companies, the work schedules are communicated to the employees in writing each month;
- The limits within which the employee may work additional hours in excess of the working time duration set forth in the employment contract.

[1] Labor Chamber of the *Cour de Cassation*, November 17, 2021, No. 20-10.734

[2] Companies where a collective agreement organizing the distribution of working hours over a period longer than a week applies may derogate from the obligation to mention the distribution of working hours between days of the week or weeks of the month.

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