

**AMICABLE /VOLUNTARY BREACH OF CONTRACT –
COMPLIANCE & PROCEDURES**

The employer and the employee can both decide to put an end to the employment contract by mutual consent.

Only a permanent contract (CDI) can be broken through this procedure.

This breach is the result of a signed agreement (see attachment) between the two parties, during a formal meeting.

This agreement is submitted to French Labour law's rules (art 2242-15 from French Labour Law).

PROCEDURE

1) The formal meeting

There must be at least one formal meeting where the employer and the employee both decide of the amicable breach of employment contract (legal term in French: rupture conventionnelle)

During this meeting, the employee can be assisted by:

- a. – another employee of the company
- b. – a representative, whose you find the name on a list given by the Labour inspection.

If the employee chooses to be assisted, he will have to inform the employer before the formal meeting

The employer can be assisted too, by:

- a. - an employee of the company
- b. - a representative of an Employer Union Trade
- c. - by an employer of the same sector of activity

If the employer chooses to be assisted, he will have to inform the employee before the formal meeting.

During this meeting, if both parties agree to put an end to the employment contract, they fill in the amicable breach's legal form (see attached).

2) The amicable breach's legal form: contents

This application indicates:

- About the 2 parties of the agreement (Name, address, SIRET number, social security Number...)
- the date of 1st formal meeting and others if there are
- the financial indemnity: this indemnity must be at least equal to statutory redundancy indemnities (check with SEDI for calculation and see our leaflet about redundancy), but can be easily enhanced. The amount can be equal up to several months of wage. The amount must be written in letters on the application.

- The scheduled date of breach: The day after the meeting, you must count a minimum of 6 successive calendar weeks (from Monday to Sunday) to determine the end of employment's breach. We advise 7 weeks. However, you can provide a date well after the minimum legal delay.
- The date and signature of both parties with mention "read and approved" in French i.e. "lu et approuvé".
- The ending's date of waiting period: from the signature of legal application, you benefit from a reflection's delay of 15 calendar days (from Monday to Sunday). After this delay, if no party changes his/her mind about the breach, the agreement must be sent to the Labour Inspection by recorded letter with proof of receipt, by one or the other party.

3) Validation of the agreement:

The Labour Inspection has a 15 days delay (from Monday to Saturday excluding bank holidays and Sundays) to study your application. This delay begins the day after reception of your legal application. That's why it is necessary to send the application by recorded post with proof of receipt.

After this delay, if you don't obtain any letter from the Labour Inspection to invalid the agreement, your convention is considered as accepted.

If the labour inspection rejects your application within this 15 days delay, one or both parties can waive a complaint.

As long as the contract is not ended, the rules of French labour law apply. So, the employee can benefit from his/her accrued paid leave after agreement of the employer.

4) Fiscal and social issues of amicable breach's financial indemnities:

The rupture indemnity is not submitted to social charges (excluding CSG and CRDS) in the limit of six times the annual social security's limit (i.e. 207 720€ in 2010).

The indemnity is not submitted to social charges or income tax if this one is at least equal to the redundancy indemnity, which the employee would have benefit from if he/she has been redundant.

If the amicable breach's financial indemnity is over the redundancy indemnities, the difference is partially submitted to social charges (8% for CSG and CRDS charges).

For people having a pension, the full indemnities are submitted to social charges.

The amicable breach gives rights to unemployment allowances (a minimum of 57.4% of average of last 12 months of gross wage).

Sources: Ministry of Labour, updating of 27th of March 2010.