



**Focus On France
2014**

**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, only if the employee is assisted. He can ask for the assistance of:

- 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.

Be careful, neither the employee, nor the employer can be assisted by a lawyer.

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).

SEDI France SARL

18 rue Gambetta, 95 880 ENGHIEEN LES BAINS, France
Tel : +33 (0)1 34 05 07 71 Fax: +33 (0)1 34 05 01 69
RCS Pontoise B 410 485 981 APE 7022Z
SARL au capital de 14 000 €
Website : www.sedigroup.com
Email : info@sedigroup.com

SEDI UK LTD

Argentum, 2 Queen Caroline Street, LONDON W6 9DX, UK
Tel : +44 (0)203 427 525 Fax : +44 (0)203 427 5252
Company registered in England & Wales, n° 3494781
Website : www.sedigroup.com
Email : info@sedigroup.com

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 job title, level and seniority of the employee (you determine the seniority at the date envisaged for the breach and not at the date of the signature of the breach).
- The Collective Bargaining Agreement applicable within the Company
- the last 12 gross wages.
- the date of 1st formal meeting and others if there are any
- 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 advice 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.

Details:

- Training rights: the employer must inform the employee, within the framework of an amicable breach, the number of training hours. So it's better to write this number of hours on the agreement.
- The notice period noted in the employment contract is not applicable to the amicable breach as this notice period is applicable for traditional ruptures (dismissal or resignation).

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 and income tax in the limit of 2 times the annual social security's limit (i.e. 74064€ in 2013).

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Since 1st of January 2014, the part not submitted to social charges is submitted to a new employer contribution called "forfait social" equal to 20% of the indemnity under 75 096€.

Example 1: the amicable rupture's indemnity is 40 000€

This sum will be free of social charges but will be submitted to "forfait social" (40000 x 20% =8000€)

Example 2: the amicable rupture's indemnity is 100 000 €

The 1st 75096€ are not submitted to social charges but are submitted to "forfait social" (75096 x 20% =15019.20€)

The balance (100 000 – 75096 = 24904€) will be submitted to employee and employer's charges but not to "forfait social".

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).

Updated 1st of January 2014.

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