



Point de repère France 2018

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 ENGHEN 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€

SEDI UK LTD

281 Vauxhall Bridge Road, SW1V 1AD, UK
Tel: +44 207 953 4025
Company registered in England & Wales,
N°3494781

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: after having filled in the form, 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 period.
- 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 period of 15 calendar days (from Monday to Sunday). After this period, 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:

- 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 period (from Monday to Saturday excluding bank holidays and Sundays) to study your application. This period 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 period, 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, 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.

The amicable breach gives rights to unemployment allowances.

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-Website: www.sedigroup.com - Email: info@sedigroup.com-