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Career development review meetings and personal training accounts

3Law n° 2014-288 of March 5, 2014 on occupational training, employment and social democracy includes several provisions that (i) impose new obligations on companies of all types and sizes with respect to career development review meetings, and (ii) significantly amend the current Individual Right to Training (*Droit individuel à la Formation* or "DIF") that will be replaced by the Personal Training Account (*Compte Personnel de Formation* or "CPF"), effective as from January 1, 2015.

I. Mandatory career development review meeting

When employees are hired, the employer must inform them that they will benefit from a career development review meeting every two years. This review will address the employee's career development prospects, especially in terms of professional qualifications and employment within the company.

Article L.6315-1 of the French Labor Code specifies that the purpose of this review meeting is not to assess the work and performance of the employee.

The career development review meeting, contrary to the professional progress assessment introduced by the Law of November 24, 2009, is held **at the initiative of the employer**. In addition, the findings of the review meeting must be recorded in **a written document, a copy of which must be delivered to the employee**.

According to the National Inter-professional Agreement of December 14, 2013 - on which the Law of March 5,

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2014 is based – the *Organismes Paritaires Collecteurs Agréés* (i.e. accredited social partners' bodies collecting and regulating funds for training or "OPCA") could distribute a review meeting report template. They should also make available to small businesses all the tools necessary for the conduct of the career development review meetings and provide them with information on employees' training rights and training schemes.

Every six years, the career development review meeting shall include a status report on the employee's career path within the company. This status report will help verifying whether the employee has, in the past 6 years, benefited from:

- biennial career development review meetings,
- **at least one training course**,
- certification points through training or through the validation of prior experience,
- **a salary increase or professional advancement.**

In companies with at least 50 employees, if, in the past six years, the employee has not had the relevant career development reviews and at least two of the three elements listed above, the employer must credit his/her Personal Training Account (see II below) by 100 hours, increased to 130 hours for part-time employees, and pay to the competent OPCA a fixed amount corresponding to the credited hours.

In addition to this financial sanction that only applies to companies with at least 50 employees, it goes without saying that **any employer that does not comply with these new obligations** could be **ordered by a court of law to pay damages** to the employee.

The *Cour de Cassation* (French Supreme Court) has already ruled that an employer who had failed to enable one of its employees to benefit from a training program for 16 years breached the employee agreement as it did not meet its obligations related to the adaption to employment positions and the preservation of the employees' employability provided for under Article L.6321-1 of the French Labor Code. Such a breach entitled the employee to claim compensation and, therefore, damages^[1].

Non-compliance with these formalized and periodic obligations will also have a significant impact when an employee is dismissed for poor performance. The employer will find it difficult to prove the poor performance if it has not complied with these obligations.

Lastly, a career development review meeting must be systematically proposed to any employee who returns within the company following a maternity leave, a parental child-care leave, a family support leave, an adoption leave, a sabbatical leave, a secured voluntary mobility period provided for under Article L. 1222-12 of the French Labor Code, a part-time parental leave period, an extended sick leave provided for under Article L. 324-1 of the French Social Security Code (i.e. long-term illness or sick leave exceeding 6 months) or upon the expiration of a mandate as trade union representative.

On the other hand, the obligation imposed on companies with at least 50 employee to conduct a so-called "second-part of career interview" for employees aged 45 is abolished.

II. Personal Training Account

Effective date and scope of application:

As from January 1, 2015, the Personal Training Account (*Compte Personnel de Formation* or “CPF”) will replace the current Individual Right to Training (*Droit Individuel à la Formation* or “DIF”). The CPF will be available to any person who is at least 16 years old, in employment or seeking employment, or who benefits from a professional orientation and insertion program, and, by way of an exception, to 15-year-old persons who sign an apprenticeship contract.

The CPF will also be available to salaried intermittent workers in the entertainment business, artists-writers and disabled persons housed in so-called *établissement et service d’aide par le travail* (i.e. facilities that help disabled persons to work).

The holder of a CPF will keep it throughout his/her professional life, until retirement, whatever his /her status, i.e. employee of job seeker. The account will be closed when the person is authorized to claim his/her pension entitlements.

A transitional measure will enable to keep the balance of hours accrued under the DIF and not used as of December 31, 2014, and to transfer them to the CPF, effective as from 2105. Such hours will be available for use until January 1, 2021.

Accrual of CPF hours:

Each employee will acquire training hours at each year-end, up to a maximum of 150 hours, according to the following terms and conditions:

- 24 hours per year of full-time employment, up to a maximum of 120 hours;
- then, 12 hours per year of full-time employment, until the 150 hour ceiling is reached.

If the employee has not worked on a full-time basis throughout the year (part-time workers for example) the training hours will accrue in proportion to the time effectively worked.

As it is currently the case for the DIF, the periods during which the employee is absent from work as a result of an occupational disease or accident, maternity leave, paternity leave, adoption leave, parental presence leave, family support leave or child care leave will be fully taken into account for the calculation of the hours accrued under the CPF.

When the employee or job seeker wishes to benefit from a training, the duration of which exceeds the number of hours credited in his/her CPF, additional hours may be allocated to such account, at the employee’s or job’s seeker request, to finance the desired training. This additional funding can be provided by the employee or job seeker himself/herself, the employer, *Pôle emploi* (French Employment Agency), an OPCA , etc.

If the employer fails to comply with its obligations with respect to career development review meetings, a sanction mechanism will apply and a number of additional hours, up to 100 or, in certain circumstances 130, will be credited to the CPF (see I. above).

Companies, business sectors and social partners may enter into agreements providing for additional allocations of hours to the CPF.

Management of the CPF:

Training hours allocated to the CPF will remain accrued if there is a change in the account holder's professional situation or if the account holder loses his/her job. Such hours will be available for use - with no restriction in time - during an employment contract or a job search period.

As such, the employer will not be responsible for managing the CPF of its employees. The CPF will take the form of a **free dematerialized service platform managed by the Caisse des dépôts et consignations (i.e. a state-owned financial organization)**. Each CPF holder will be granted access to a personal account (i) showing the number of hours credited under the CPF, the available training programs as well as the additional hours that may be applied for, and (ii) enabling the preparation and update of a so-called "*guidance, training and skills passport*".

The consultation of this "passport" will be reserved exclusively to the holder of the CPF. It provides information on the training programs undertaken and qualifications obtained in the framework of the relevant employee's initial training or vocational training, as well as the validation of prior experience, according to terms and conditions to be defined in a forthcoming decree. This measure entails the abolition of the "*guidance and training passport*" that had been created with the 2009 training reform but that had never been put in place as no implementing decree had been adopted.

In practice, the rights accrued under the CPF shall be determined on the basis of the data declared by employers in the annual declaration of social data (*déclaration annuelle des données sociales* or "DADS") and, shortly, in the nominative social declaration (*déclaration sociale nominative* or "DSN").

Use of the CPF:

The Law has laid down principles according to which:

- the CPF is used at the holder's initiative;
- can only be used with the holder's consent; and
- the holder's refusal to use the CPF may not be considered as a misconduct.

Yet, the CPF may not be used by the employee for just any training program. The employee must follow a program that falls within the following categories:

- training programs to acquire the "base of knowledge and skills", a concept that remains to be defined in

- a forthcoming decree;
- certification or qualification training programs; and
- training programs providing support for the validation of prior work experience, in conditions to be set forth in a forthcoming decree.

When the **training program takes place, in whole or in part, during working hours**, the employee must obtain the prior approval of the employer on the training content and schedule, subject to a limited number of exceptions. The employer must provide its answer within a timeline to be set forth by decree. If the employer fails to respond, the employee can consider that he/she has been authorized to follow the desired training program.

By way of exception, the employer's approval on the content of the training program will not be required if the training, even though taking place, in whole or in part, during the employee's working hours, is financed through hours credited as a result of an "allocation-sanction" in companies with at least 50 employees, or if the training is designed to acquire the "base of knowledge and skills", or to provide support for the validation of prior experience. Branch-level, company-level or group-level agreements may provide for further situations where a training program taking place, in whole or in part, during the employees' working hours will not require the prior approval on the training content.

In such cases, we can expect that the employer could nonetheless refuse the training schedule or request a postponement thereof. The administrative authorities have not yet provided clarification or guidance in this respect.

When the training takes place **outside the working hours**, the employee may use the hours accrued under his/her CPF without the employer's prior approval.

Remuneration of the employees:

Hours dedicated to training programs taking place during working hours are considered as effective working time, which means that the employee must be paid at his/her normal pay rate during such hours.

On the other hand, and as opposed to DIF scheme, the employer will not pay any training allowance for training programs that take place outside working hours.

Payment of the training expenses:

Employers with at least 10 employees that have entered into a company-level agreement providing for the allocation of at least 0.2% of the remunerations to the financing of and contribution of hours to its employees' CPF will bear the teaching costs and ancillary expenses associated with the training, irrespective of whether the training takes place during working hours. They may not have these expenses assumed by their OPCA.

In the absence of a company-level agreement as well as in companies with less than 10 employees, the training costs and expenses shall be borne by the company's OPCA.

[1] Labor Chamber of the *Cour de Cassation*, June 5, 2013, n° 11-21255

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