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Continuing coverage under company-sponsored supplemental death and disability insurance plans For the unemployed: new obligations for companies as of July 1, 2009

Article 14 of the National Multi-Industry Agreement (NMA) dated January 11, 2008 reasserts the principle of continuing coverage under company-sponsored supplemental health, death and disability insurance plans for former employees of a company, thereby reiterating certain provisions of the *Evin* Law of December 31, 1989. An amendment no. 3 dated May 18, 2009 modified and specified certain procedures for implementing this continued coverage that takes effect on July 1, 2009. This will require companies and their insurance companies to act quickly in order to be ready by this date in spite of the probable difficulties they will face in the implementation process.

1. Reminder of the applicable laws and principles

Article 4 of the Law no. 89-1009 of December 31, 1989 sets forth the following principle on the obligation of continued coverage:

- “When employees have collective insurance coverage, in the conditions set out in Article 2 of this Law, to obtain reimbursement or indemnification of costs resulting from sickness, maternity or an accident, the policy must provide, without a probationary period, requirement of a medical exam or completion of medical questionnaires, for the conditions and rates of the new policies through which the insurer will maintain coverage:

1° For former employees receiving disability or incapacity benefits or retirement benefits, or if they cannot work, receiving income substitution benefits, with no conditions on duration, provided that they request continued coverage within six months following the termination of their employment contracts;

2° For beneficiaries already covered by the policy of the deceased employee, for a minimum of twelve months as from the date of death, provided they request continued coverage within six months following the death.

The new policy must set forth that coverage shall take effect at the latest on the day following the request. The rates applicable to the persons concerned by this Article may be higher than the global rates applied to current employees under conditions determined by decree.”

The *Evin* Law therefore applies only to coverage of “medical expenses” for former employees, including those who are unemployed, retired and receiving disability or incapacity benefits. To date, this Law is still in force.

Article 5 of this Law states that company-sponsored supplemental death and disability insurance policies providing collective coverage against the risks of death, maternity, incapacity or disability must set forth the conditions and rates applicable so that the insurer **will be able** to maintain coverage for former employees, provided that they request continued coverage before the end of the notice period.

Case law has defined the scope of obligations of companies and insurers in this matter. In a decision rendered on February 7, 2008, the French Supreme Court held that **the provisions of Article 4 of the *Evin* Law are** mandatory and consequently, no policy can deviate therefrom (Cass. 2nd civ., February 7, 2008, no. 06-15.006).

Article 14 of the National Multi-Industry Agreement (NMA) dated January 11, 2008 reasserts this general principle by setting forth continued company-sponsored supplemental death and disability coverage for former employees receiving unemployment benefits. After numerous difficulties in implementing the provisions of the NMA, an amendment was entered into on May 18, 2009. This amendment becomes effective as of July 1, 2009.

2. Extending coverage to former employees

- **Beneficiaries:** Former employees receiving unemployment benefits may continue to receive collective coverage for life insurance, disability and medical expenses at the end of their employment contract. This clearly includes employees who are dismissed (except in the case of *faute lourde* or gross misconduct), as well as employees who have fixed-term employment contracts and those who may benefit from unemployment benefits in another capacity, specifically following a contractually negotiated termination or certain types of resignations (i.e. a resignation to follow a spouse who has

been transferred by his/her employer).

- **Duration of continued coverage:** it is equal to the duration of the most recent employment contract, assessed in terms of full months, and capped at nine months. As such, any employee with nine full months of seniority may benefit from maximum continued coverage.
- **Financing:** if the company has not implemented a pooling system, continued coverage is financed jointly by the former employer and the former employee in the proportion and conditions applicable to current employees. The failure by the former employee to pay his share will result in the loss of coverage for the remaining period and will release the former employer from any obligation. Having the employer collect payment of the entire share owed by the employee at the time the employment contract is terminated is an option.
- **Waiver:** the employee may waive the right to continued coverage provided that he does so in writing to the former employer within ten days following the end date of the employment contract.
- **Obligations of the former employee:** as continued coverage is linked to the receipt of unemployment benefits, the former employee must provide proof thereof to his employer. The former employee must also inform his employer when unemployment benefits are no longer paid-out, should this occur during the period of continued coverage.
- **Obligations of the company:** please be reminded that the employer must provide each employee with an information form prepared by the insurer that defines the coverage, the conditions for receiving coverage and the manner in which to file a claim for coverage. **Otherwise, the employer may be ordered to pay damages to the employee for the harm suffered and to provide coverage in the place and stead of the insurer.** The amendment dated May 18, 2009 requires that the aforementioned information form mentions under which conditions continued coverage can be provided.

3. Our recommendations: immediate implementation

On July 1, 2009, companies must be ready to implement the provisions of the NMI dated January 11, 2008, as amended on May 18, 2009.

Otherwise, each employee who cannot benefit therefrom may request damages for the harm suffered.

Consequently, we can only strongly recommend to companies to:

1. Ensure, as soon as possible, that their insurers will adapt the concerned policies as of July 1, 2009 and proceed with the necessary amendments;
2. Inform and consult the employee representatives on the modifications to the policies, and perhaps begin negotiations on possibly pooling the financing and/or other specific provisions;
3. Hand out, as soon as possible, the information form duly completed with the wording on continued coverage to **all** employees (including those under fixed term or short term employment contracts), and keep written proof that this has been done;
4. Inform employees who have been dismissed or arriving at the end of their fixed term contracts – even if

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this formality is not mandatory and at least until the completed information form is provided - that they benefit from continued coverage unless they expressly waive their right thereto within ten days following the end of their contract. If the company wishes to do so, which, in our opinion, seems the best way to legally protect itself, it could also inform the employees that, in the event they do not waive this right, their employee share corresponding to the period of continued coverage will be deducted from the balance of amounts owed to them by virtue of the performance and termination of their employment contract. This should therefore better motivate employees to notify their former employer when their unemployment benefits stop so that they can then be reimbursed for the excess premiums they paid for continued coverage.

Our Labor and Employment Department is at your disposal to provide you with more detailed information and any developments on this issue.

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