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Entry into force of the presumption of resignation in case of job abandonment

Whereas previously the abandonment of a job by an employee could constitute a misconduct that justified a dismissal, the so-called Labor Market Law has introduced a presumption of resignation when an employee voluntarily abandons his/her job, in order to limit the use of this practice by employees.

Pursuant to Article L. 1237-1-1 of the French Labor Code introduced by the Labor Market Law^[1], an employee who voluntarily abandons his/her job and does not return to work after having been given formal notice to justify his/her absence and to return to his/her job, either by registered letter, return receipt requested, or by hand-delivered letter against a receipt, within a period of time set by the employer, will be presumed to have resigned at the end of this period.

A Decree issued on April 17, 2023^[2] specifies the procedure that must be followed by the employer and the employee in case of job abandonment.

As such, the employer may require, within a minimum period of 15 days from the presentation of the formal notice to the employee, that the latter justify the reasons for his/her absence or return to his/her job.

At the end of this minimum 15-day period, the employee may be presumed to have resigned if he/she has not provided any justification and has still not reported to work.

From the moment the employee is considered to have resigned, the ordinary rules of law governing notice period in case of resignation must be applied, effective as from the end of the period set by the employer. However, whenever the notice period is not worked at the employee's initiative, the compensation in lieu of notice will not be due by the employer.

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The Decree of April 17, 2023 also specifies that the employee may, to prevent the application of the resumption of resignation, invoke a legitimate ground, such as a medical reason, the exercise of the right of withdrawal or the right to strike, or the existence of a wrongful conduct by the employer.

But what about the employer's assessment of the legitimate ground invoked by the employee? In case of doubt, it seems wise for the employer to waive the procedure of presumption of resignation as there may be a risk that the resignation be reclassified as an unjustified dismissal by a court of law.

Also, what about the possibility for the employer not to implement the procedure of presumption of resignation but to initiate a dismissal procedure for misconduct?

The Decree of April 17, 2023 does not answer these questions and it will, therefore, be up to the judges to decide on such matters.

[1] Law of December 21, 2022: <https://www.legifrance.gouv.fr/loda/id/LEGIARTI000046773040/2022-12-23/> (in French only)

[2] Decree of April 17, 2023: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047455109> (in French only)

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