

# Hiring of employees in France

Arbeitsrecht

## Overview

### Practical tips

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### **Practical tips**

- It is possible to hire employees in France without having a branch in the country.
- Choose the right industry collective agreement and apply French labor law.
- All contractual documents must be in French.
- You can contractually adjust the statutory working hours to exceed the 35-hour week threshold.
- Note that the employer pays social security contributions amounting to approx. 42 %, without contribution threshold.
- If possible, agree on a low fixed salary and a high commission for salespeople.

### **<sup>1</sup> Is it necessary to set up a company in France to be able to hire employees?**

A foreign company can easily hire an employee in France without having to set up a company or any other structure in the country. The employee can also tackle the French market from his/her home office, so that no office space needs to be rented. It should only be ensured that no taxable permanent establishment is set up in France.

### **<sup>2</sup> Is it possible to use templates from other countries for French employment contracts?**

The use of a foreign employment contract template and the application of foreign labor law is not recommended: French labor law contains numerous mandatory provisions that cannot be waived (e. g. provisions on working hours, public holidays, annual leave, minimum wage and compensation for overtime).

Furthermore, the French Language Protection Act (Loi Toubon) requires the contract to be drafted in a French version at least.

With that in mind, it is advisable to adapt the foreign employment contract template to French law – this includes, above all, choosing the right collective agreement, because under French law almost all employment relationships are subject to a collective agreement.

### **3 Is it possible to enter fixed-term employment contracts?**

French labor law only allows fixed-term contracts if there is an objective reason provided for by law. Permanent and regular activities within the company may not be performed under fixed-term employment contracts.

In France, hiring an employee by entering a fixed-term employment contract is possible, but the factual reason for this kind of contract instead of a permanent employment contract should be checked from the outset. Thus, a foreign company hiring its first employee in France will rarely meet the legal requirements for entering a fixed-term employment contract.

A special fixed-term contract for a period of between 18 and 36 months can be concluded with engineers or executive employees in the case of the fulfillment of special assignments. However, the use of this special contract is subject to some restrictive conditions:

- The fixed-term employment contract must imperatively be concluded in writing and the reason for the time limit must be explicitly mentioned. Otherwise, the employment contract is automatically classified as a permanent employment contract with indefinite duration.
- At the end of the fixed-term employment contract, the employee is generally owed severance pay amounting to 10 % of the total remuneration paid during the duration of the contract.

### **4 What is the maximum duration of the probationary period?**

#### **4.1 Within a permanent employment contract**

If the employer wishes to agree on a probationary period with the employee, this agreement must be included in the employment contract. The maximum probationary period permitted by law varies depending on the professional group:

- for workers and office staff: 2 months,
- for skilled workers and technicians: 3 months,
- for executive employees: 4 months.

The industry collective agreement may also provide for shorter, rarely longer, durations. A one-time extension of this probationary period is possible if the applicable collective agreement provides for it.

In this case, however, the total duration of the probationary period may not exceed:

- for workers and employees: 4 months,
- for skilled workers and technical supervisors: 6 months,
- for executive employees: 8 months.

The possibility of extension must also be explicitly stated in the employment contract.

Termination of the employment relationship during the probationary period is not subject to protection against dismissal. In principle, both parties can terminate the employment relationship during this period without naming reasons. However, the employer must observe a minimum notice period when terminating the employment relationship. The length of this period is determined by the duration of the employment relationship (according to the law, between 24 hours and one month).

#### 4.2 Within a fixed-term employment contract

The maximum probationary period provided for by law is relatively short for fixed-term employment relationships: one day per worked week.

- Employment contracts running for up to six months: probationary period of maximum two weeks.
- Employment contracts running for more than six months: probationary period of maximum one month.

Furthermore, in the context of a fixed-term employment contract, the employer must also observe a minimum period when giving notice of termination.

#### 5 How are working hours regulated?

Article L.3121-27 of the French Labour Code provides that the working time of employees is 35 hours per week, with the week running from Monday 0:00 to Sunday 24:00. The 35-hour week applies to all employees in France, with exception of senior executives with managerial functions (so-called cadres dirigeants) and sales representatives with special status (so-called VRP).

Each additional hour (i. e. from the 36<sup>th</sup> hour per week) is considered overtime. This can either be compensated with the basic remuneration plus a surcharge of 25 % up to the 43<sup>rd</sup> hour and 50 % from the 44<sup>th</sup> hour onwards, or by compensatory time off (at 125 % per overtime hour up to the 43<sup>rd</sup> hour and 150 % per overtime hour from the 44<sup>th</sup> hour onwards).

Regarding working hours, the following should also be noted:

- Maximum weekly working time: 48 hours per week and 44 hours per week on average over 12 consecutive weeks
- Maximum daily working time: 10 hours

- Daily rest period: 11 consecutive hours

In addition, an annual quota of overtime must be observed, which is primarily determined by the company agreement or by the industry collective agreement (e. g. 130 or 240 overtime hours per year). If no such collective agreement is applicable, the statutory quota of 220 overtime hours must be considered. If an employee exceeds this quota, in addition to the above-mentioned increased compensation in cash or compensatory time off, each additional hour of overtime must be compensated by 50 % (or 100 % in companies with more than 20 employees) compensatory time off.

## **6 What alternatives are there to the 35-hour week?**

Although the 35-hour week applies nationwide in France, the legislator has provided for more flexible working time arrangements, including the following:

### **6.1 Extension of weekly working time through compensatory days (RTT)**

If the industry collective agreement provides for it, it is possible to agree at the time of conclusion of the employment contract to a working week of up to 39 hours (e. g. a 37-hour week). The compensation with a 35-hour week can be achieved by giving the employee additional days of leave (so-called RTT days - "days to reduce the duration of work").

This way, only the hours worked after the 37<sup>th</sup> hour per week are then considered to be overtime hours.

Collective agreement provisions that either permit or prohibit a different arrangement of working time must always be observed.

### **6.2 Fallback to a weekly, monthly or annual hourly flat rate**

Furthermore, it is possible - even without a collective agreement - to agree on longer working hours (e. g. 39-hour week) in the employment contract by paying a so-called hourly flat rate, by means of which the overtime (i. e. every hour worked after the 35<sup>th</sup> hour) and its remuneration are already determined when the contract is entered into. The duration of the working time including overtime can be specified for the week or the month (or the year if a company agreement or the collective agreement provides for the annual hourly flat rate). These flat rates result in no additional days of leave. However, it must be recognizable in the employment contract that overtime is additionally remunerated.

Here, too, it is compulsory to observe the provisions of the collective agreement.

### **6.3 Fallback on a so-called annual daily flat rate**

Another possibility is to increase the working time via so-called daily flat rates. When applying daily

flat rates, the settlement is no longer made according to hours, but according to working days (maximum 218 per year). This avoids the compensation of overtime in the context of the 35-hour week.

This flat rate is mainly intended for sales representatives and executive employees whose tasks cannot be reconciled with company working hours and for employees who plan their working hours autonomously.

The effectiveness of the daily flat rate depends on the fulfillment of both of the following conditions:

- The daily flat rate must have been individually and explicitly agreed upon between the parties (individual basis) in a contract.
- The possibility of this individual contractual agreement must have been provided for by a company agreement or a collective agreement which determines, on the one hand, the categories of employees concerned by this, and on the other hand, the annual working time duration and the essential characteristics of this flat rate (collective basis).

This system offers the advantage of calculating working time in half or full days worked without having to keep track of the exact number of hours in a day. In return for this flexibility, the employee must be granted rest days and sufficient remuneration.

The daily and weekly rest periods (11 and 35 or 48 hours) must be strictly observed as well.

It should be noted, however, that the annual daily allowance is only effective if certain conditions are complied with in practice so that this system does not endanger the health and safety of employees (in particular: control of days worked, compliance with minimum rest periods and workload by the employer, annual reviews with the person concerned, employee's right to disconnect regarding means of remote communication).

## **7 What costs should an employer expect?**

### **7.1 Is there a minimum wage in France?**

Experience has shown that the French minimum wage is not a practical problem for foreign companies doing business in France, as salaries within such groups / companies are usually far above the legal minimum. Nevertheless, here are a few aspects about that matter:

- The statutory minimum wage (SMIC: Salaire Minimum Interprofessionnel de Croissance) is currently (as of January 2024) 11.65 euro gross per hour, which (for a 35-hour week) is equal to a monthly gross income of 1,766.92 euro.
- However, the minimum wage stipulated in the collective agreement must not be undercut.

Between the statutory minimum wage and the collectively agreed minimum wage, it is always the more advantageous minimum wage that applies for the employee.

### 7.2 How much is the employer's contribution to social security?

Regardless of where employer's corporate offices are, social security contributions are generally due in France if an employee is employed in France. The employer's contribution amounts to approx. 42 % of gross salary without an assessment ceiling.

Exceptions to this are only made for lower wages up to an amount of 1.6 times the statutory annual minimum wage, i. e. approx. 33,924.86 euro per year (as of January 2024).

### 7.3 Effects of income tax on wage levels

In January 2019, the wage tax deduction procedure already applied e. g. in Germany was introduced in France. Before that date, taxpayers in France had to take care of their taxes themselves (annual declaration and payments).

The following table is intended to illustrate – without claiming to be exhaustive – how different salaries are in France compared to the UK or the US (starting point: single person, no children, 35 years old, normal employee):

	France	UK (income tax not applicable to Scotland)	USA (Example with the New York Income Tax)
Salary (gross)	€ 45,000	€ 45,000 ≈ £ 38,952	€ 45,000 ≈ \$ 47,458
Social security contributions: - Employer share	€ 18,900 (42 %)	€ 6,210 (13,8 %)	€ 2,790 (6,2 %)
<b>Total cost for employer</b>	<b>€ 63,900</b>	<b>€ 51,210</b>	<b>€ 47,790</b>
Social security contributions: - Employee share	€ 9,900 (22 %)	€ 5,400 (12 %)	€ 2,790 (6,2 %)
<b>Salary before taxes</b>	<b>€ 35,100</b>	<b>€ 39,600</b>	<b>€ 42,210</b>
<b>Income tax</b>	<b>€ 3,770</b>	<b>€ 5,012</b>	<b>€ 5,219</b>
<b>Salary after taxes</b>	<b>€ 31,330</b>	<b>€ 34,588</b> ≈ £ 29,939	<b>€ 36,967</b> ≈ \$39,048

It turns out that for the same gross salary, total costs for employers in France are considerably higher than in the UK or the USA. For this reason, it is rather advisable to set lower gross salaries in France than in the UK or the USA.

In the case of sales representatives, it is advised to opt for a lower fixed salary and a higher variable component. If the sales reps are paid too high a fixed salary, there is a risk that they will not deliver the desired results.



La Kanzlei

## 8 How important is the HR workload?

If the employee is a EU citizen, the company's obligations are limited to signing the employment contract, having the payroll to be drawn up and filing some declarations, which can usually be taken care of by specialized service providers.

If the employee is not from the EU, the employer as well as the candidate may have to ask for specific working and residential permits in order for the employee to work legally in France. The exact formalities also depend on career of the employee up until that point : he/she may for example already have a working permit in another European state, which can simplify the formal steps in France. It is important to work on this aspect before actually sending the employee to France or before hiring him/her.

[Contact us](#)

2024-01-02

Qivive  
Rechtsanwalts GmbH

qivive.com

Köln<sup>D</sup>

Konrad-Adenauer-Ufer 71  
D – 50668 Köln  
T + 49 (0) 221 139 96 96 - 0  
F + 49 (0) 221 139 96 96 - 69  
koeln@qivive.com

Paris<sup>F</sup>

50 avenue Marceau  
F – 75008 Paris  
T + 33 (0) 1 81 51 65 58  
F + 33 (0) 1 81 51 65 59  
paris@qivive.com

Lyon<sup>F</sup>

4 Pl. Amédée Bonnet  
F – 69002 Lyon  
T + 33 (0) 4 27 46 51 50  
F + 33 (0) 4 27 46 51 51  
lyon@qivive.com

Strasbourg<sup>F</sup>

10 Pl. Gutenberg  
F – 67000 Straßburg  
T + 33 (0) 3 92 12 02 20  
F + 33 (0) 3 92 12 02 21  
strasbourg@qivive.com