



“Forfaits jours” (days worked contracts): at last a case law in favour of the employer

3 February 2021

Obligation of the employer to control the working hours of an employee on a fixed number of days contract “forfait jours”.

Since the ruling of Law n°2000-37 of 19 January 2000, if a collective agreement provides for such, the employer may conclude with certain employees a fixed-rate agreement in days over the complete year. The employer consequently has the obligation to control the employee's workload in number of fixed days worked.

The methods of control validated by case law
(Cass. Soc. 22 juin 2017 16-11.762):

- **Regular reporting of the consolidated number of days or half-days worked and days off in order to control working hours;**
- **Annual appraisal meetings during which the employee and their manager assess the number of working days to be worked, the methods of organization, the workload and the length of working days;**
- **Assessment of the frequency of weeks where the workload seems atypical;**
- **Specific measures to correct this situation decided upon by mutual agreement;**
- **If the employee concerned is unable to exercise their right to time off, measures to correct the situation must be taken through discussions between the employee and the manager.**

What are the sanctions in the event of non-compliance with the obligation to control the workload and working time of an employee on a “forfait jours” contract?

The employer's failure to comply with the conventional provisions relating to the application terms of the “forfait jours” contract has the effect of temporarily depriving the agreement of effect (Cass. Soc. 19 February 2014, 12-22.174). It therefore becomes unenforceable on the employees concerned until the company complies with the requirements of the collective agreement (Cass. Soc., 22 June 2016 14-15.171).

A judgment of 6 January 2021 (Cass. Soc. 17-28.234) draws the consequences of the forfeiture of effect of the “forfait jours” agreement on the employee's rights: if the “forfait jours” agreement is deprived of effect, then the employee cannot claim any compensation payment for the “forfait jours”. **If the employee has received compensation for any RTT days granted, this shall be rendered undue and should be reimbursed.** This decision is based on the former Article 1376 of the Civil Code, now Article 1302-1 of the Civil Code, which requires that incorrectly paid compensation be reimbursed by the employee. It should be noted that the judge has considered this matter to the advantage of the employer.

As such, it is noted that the sanction for the employer's non-compliance with its obligation to control the employee's workload under a “forfait jours” employment contract does not result in the nullity of the latter which remains severe: **the employee shall not be entitled to any compensation received in the application of an agreement deprived of effect, and where this is the case the said compensation must be repaid.**

Grant Thornton Société d'Avocats remains at your disposal for any additional information required.

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