

The so-called “Generation Contract”: what is it and how to use it?

Heralded and described as an essential tool to solve employment difficulties faced by both young people and seniors, the so-called “*Generation Contract*” scheme was introduced by the inter-professional agreement of October 19, 2012 and transposed in Law n° 2013-185 of March 1, 2013.

Decree n° 2013-222 of March 15, 2013 has specified the content of this new scheme as well as the associated penalties and incentives. This article provides a summary of these new provisions.

PREAMBLE

The Generation Contract scheme, that became effective on March 17, 2013, is a device aimed at facilitating the sustainable integration of the youth into the labor market and favoring the continued employment of “old employees”, the legislator having preferred to use that term rather than “seniors”... The implementation of this new scheme depends on the size of the company or of the corporate group to which such company belongs. As such, a brief reminder of the concept of corporate group under French law might be useful.

The notion of group is defined in Article L.2331-1 of the French Labor Code (“FLC”) that deals with group works councils: *“group formed by a dominant company having its registered office located on the French territory, and by the entities controlled by such company in the conditions set forth in Article L.233-1, Article L.233-3 I, Article L.233-3 II and Article L.233-16 of the French Commercial Code.”*

This relates to several notions, i.e. majority shareholding interests (Article L.233-1 of the FCC), direct or indirect ownership of voting rights and power to appoint the majority of the members of corporate management bodies (Article L.233-3 of the FCC) and dominant influence (Article L.233-16 of the FCC).

Article L.2331-1 of the FLC also specifies that a company shall be considered as dominant if it exercises a dominant influence over a company in which it holds at least 10% of the capital, where the permanence and importance of their relations establish the belonging of the one and the other to a same economic whole.

1. Concerned companies

1.1 Companies that are obliged to implement the scheme and that may be liable to financial penalties

Company with 300 employees or more, as well as companies, regardless of their size, that belong to a group with at least 300 employees, must enter into a company-wide or group-wide collective agreement (the “collective agreement”) or adopt an action plan on the Generation Contract scheme, failing which they will be liable to financial sanctions.

The threshold of 300 employees for groups tends to make the new scheme mandatory in small entities affiliated to a group.

1.2 Companies that are financially encouraged to open negotiations in order to implement the scheme

Companies with 50 to less than 300 employees as well as companies, regardless of their size, that belong to a group with 50 to less than 300 employees, do not have any obligation but are encouraged to implement the new scheme, in return for a financial aid.

1.3 Companies that are neither subject to an obligation to implement the scheme nor financially encouraged to open negotiations

Companies with less than 50 employees that do not belong to a group with at least 50 employees are neither subject to an obligation to implement the scheme nor financially encouraged to open negotiations.

They can, however, benefit from a financial support if they meet the legal and regulatory conditions for the hiring of a youth and the retention of an “old employee”.

For the sake of clarity, only the term “company”, as opposed to the full mention “company or company that belongs to a group” will be used hereinafter.

2. Mandatory provisions applicable to companies or groups with at least 300 employees

2.1 Obligation to perform a preliminary assessment

Prior to entering into negotiations, the company must perform a preliminary assessment that must include the following information:

- the age structure;
- the characteristics of the youth and “old employees” employees and the evolution of their position within the company over the past three years;

- the retirement projections;
- the recruitment perspectives;
- the key competences of the company;
- the working conditions of the “old employees” and physical strain situations.

2.2 Negotiation of a collective agreement

Given the purpose of the Generation Contract scheme, the Hygiene, Safety and Working Conditions Committee and the Works council, by virtue of their respective duties, must be consulted when the negotiations are engaged and, in any event, before the signature of the collective agreement.

The agreement can be negotiated at the level of the company or at the level of the group.

Companies with less than 200 employees that do not have trade-union representative can, if they so wish, negotiate with the staff representatives who have been elected in the conditions set forth in Article L.2232-21 of the French Labor Code.

If the company has no trade-union representative (and does not wish to negotiate with elected staff representatives) or if the initiated negotiations fall through, the company is authorized to unilaterally prepare an action plan.

2.3 The content of the collective agreement (or action plan)

The collective agreement or action plan must include:

- the age groups of the youth and “old employees” concerned by the scheme;
- the company’s commitments for the training and integration of the youth, for the employment of “old employees” and for the transfer of knowledge and skills;
- the provisional time-table;
- the filing obligations applicable with respect to the collective agreement or action plan;
- the objectives of professional gender equality and diversity in the workplace;
- the objectives concerning the fight against discriminations.

All commitments concerning employment (recruitments of youth or retention of “old employees”) must be quantified.

2.4 Review of the collective agreement or action plan

The Regional Company, Competition, Consumption, Labor and Employment Departments (i.e. local labor authorities known under the acronym DIRECCTE) shall check the compliance of the collective agreements and action plans. Compliance of the collective agreements must be checked within 3 weeks, as opposed to 6 weeks for action plans.

2.5 Obligation to perform an annual review of the collective agreement or action plan

Companies also have the obligation to perform an annual review of the implementation of their collective agreement or action plan. The review report must be sent to the DIRECCTE and must include a number of mandatory information.

If the company does not fulfill this obligation, it shall be liable to a 1,500 Euros fine.

2.6 Sanctions for lack of collective agreement or action plan

Companies with at least 300 employees that have neither entered into a collective agreement nor adopted an action plan by **September 30, 2013** shall be liable to a financial penalty if they do not remedy the situation following an official notification from the DIRECCTE. The same will apply to non-compliant collective agreements and action plans.

The DIRECCTE shall fix the amount of the penalty, capped at (i) 1% of the gross remunerations paid during the period during the company has not implemented the collective agreement or action plan, or (ii) 10% of the so-called Fillon reduction applied to salaries paid during the aforementioned period, whichever is higher.

On the other hand, the penalty for lack of collective agreement or action plan on senior employment is abolished.

3. FINANCIAL INCENTIVES

State incentives are available to companies with 50 to less than 300 employees that have implemented a collective agreement or action plan as well as to companies with less than 50 employees, even if they have not implemented such an agreement or plan.

These companies can implement a collective agreement, an action plan or an extended branch agreement.

3.1 Conditions governing the grant of the incentive

The incentive is granted for each two-person team comprising (i) a youth under 26 years (30 years if disabled) hired under an full-time open-ended employment contract (or upon derogation under an part-time (at least 80%) opened-ended employment contract), and (ii) a “old employees” maintained within the company for the period of the incentive or until his/her retirement.

Shall be considered as an “old employees” any employee aged 57, any employee aged 55 or older at the time he/she was recruited, or any disabled employee aged 55 or older.

The incentive shall not be granted if the company has implemented:

- dismissals on economic grounds within the 6 months preceding the hiring of the youth;
- a contractually negotiated termination, validated by the labor authorities, in relation to the employment

position for which a youth is hired;

- a dismissal for any reason other than serious misconduct, gross misconduct or unfitness for work, in relation to the employment position for which a youth is hired.

The company must also have duly complied with its reporting obligations and duly paid its contributions.

3.2 Amount of the incentive

The company will receive an incentive of 4,000 Euros per year for each two-person team, i.e. 2,000 Euros for the hiring of the youth and 2,000 Euros for the retention of the “old employee”.

The company may benefit from the incentive for a period of three years as from the first day of performance of the youth’s employment contract. The incentive shall be paid on a quarterly basis, at the end of each calendar quarter.

The incentive application must be filed with *Pôle Emploi* within three months following the hiring of the youth. The incentive application file is downloadable at www.contrat-generation.gouv.fr/

The payment of the incentive will be suspended (i) if the employment contract of the youth or of the “old employee” is terminated within six months as from the hiring of the youth, or (ii) if the employment contract of the “old employee” is terminated after this six-month period for a reason other than gross misconduct, serious misconduct, unfitness for work or through a contractually negotiated termination.

SoulieR Avocats is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services.

We advise and defend our French and foreign clients on any and all legal and tax issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions.

Our clients, whatever their size, nationality and business sector, benefit from customized services that are tailored to their specific needs.

For more information, please visit us at www.soulieR-avocats.com.

This material has been prepared for informational purposes only and is not intended to be, and should not be construed as, legal advice. The addressee is solely liable for any use of the information contained herein.