

## Context:

In April 2013, the French “Court de Cassation” had decided that the measures in Syntec collective bargaining agreement related to the executives’ contracts with an annual fixed number of worked days (in French: “forfait-jours”) were not likely “to insure the protection of the employees’ security and health at work”. In April 2014, an amendment of Syntec CBA was concluded in order to rewrite entirely the measures stipulated in relation to the “forfait-jours”.

This amendment was extended by a decree on the 26 of June 2014, published in July 2014, and it is henceforth coming into effect for all the companies falling under Syntec CBA.

The new measures mentioned below are **imperative:**

- The conditions of the forfait-jours implementation;
- The respect of the weekly and the daily rest time;
- And the monitoring of the rest time, of the workload and of the amplitude of the working time.

The concerned companies have to ensure that they are compliant with these measures no later than in January 2015.

Please see below the list of the main obligations that the companies under Syntec CBA have to observe in order to ensure that their “forfait-jours” agreements are compliant:

## Be careful:

If the conditions mentioned below are not met, the “forfait-jours” agreements can be cancelled in case of a dispute with an employee. The nullity of the forfait-jours clause gives the right to all the concerned employees to claim the difference between the remuneration which is due considering the accomplished overtime and the fixed remuneration paid.

Please note that the prescription period on this matter is 3 years.

When the forfait-jours clause is not valid, the absence of payment of overtime may result not only in the back payment of these additional hours to the employees as mentioned above, but also it may be considered as a concealed employment which is a penal offence.

## ➤ Employees who can be subject to a forfait-jours agreement:

The concerned employees have to:

- Be entitled to the largest initiative autonomy and to accept the full entire responsibility for the time dedicated to the achievement of their mission which characterizes the real measure of their contribution to the company. Therefore they have to be granted with a large latitude in their work and in their time management organization.
- Belong - at least - to the position 3 of the executives’ classification, or to receive an annual remuneration higher than twice the annual Social Security’s ceiling (i.e. higher than € 76,080 in 2015).

## ➤ Conditions of the implementation:

In accordance with the French Law, the forfait-jour agreement has to be put in writing and signed by the parties.

This agreement has to include the following mentions:

- The nature of the missions which have to justify the reasons of the use of the forfait-jours agreement;
- The number of worked days during the year;
- The corresponding remuneration;
- The number of individual evaluation meetings.

## ➤ Annual worked days ceiling:

The number of worked days, on the basis of which the forfait-jours is established, is fixed to a maximum of 218 days per calendar year (solidarity day included) for an employee who has been present during a full year and who has acquired the totality of his/her paid vacation rights, but without considering conventional seniority leave, additional leave provided by a company agreement or by practice, and family-related leave.



### ➤ Rest days

The number of rest days (called “RTT days” in common language) for the employee can vary from one year to another, depending notably of the number of days which are not worked (public holidays which don’t fall on a weekend...). The dates of the employee’s rest days are chosen by the employee, after the consultation of his/her employer and provided that the effective operation of the service operation is ensured. The rest days have to be taken by full days (they cannot be taken by half days or by hours).

### ➤ Waiving of rest days:

When agreed with the employer, and in accordance with the French Law, the employees can waive some of their rest days.

In return, they benefit from a higher remuneration for those days, set by an additional clause of the employment contract and which is at least equal to:

- 20% from 219 to 222 worked days;
- 35% from 222 to 230 worked days.

The renunciation of rest days cannot bring the number of worked days beyond 230 days per year.

### ➤ Weekly and daily rest times:

In accordance with the French law, the employees under a forfait-jours agreement are not subject to the maximum weekly and daily work duration. However, they have to benefit from a daily consecutive rest of 11 hours and from a weekly consecutive rest of 35 hours. Syntec CBA stipulates that the purpose of these measures is not to fix a daily work duration of 13 hours but to define the maximum exceptional amplitude of the work day.

**Your Chartered Accountant  
is your best consultant.**

### ➤ Remuneration:

The employees under a forfait-jours agreement (forfait-jours of 218 days or forfait-jours defined within the company) have to benefit from an annual remuneration at least equal to 120% of the conventional minimum wages of their category. The monthly remuneration is spread out over the annual reference period and does not depend on the number of days worked during the month.

### ➤ Monitoring of rest time, workload and amplitude of work days:

Syntec amendment includes various measures intended to insure the protection of the security and health of the employees under a forfait-jours agreement:

- The employer has to devise a tool for monitoring the breakdown of worked and non-worked days;
- The employer has to take the necessary measures to ensure that the employee can disconnect from the distance communication tools at his/her disposal;
- In case of unusual difficulties in relation to his/her organization, to his/her workload or to his/her professional isolation, the employee can alert his/her employer in writing. The latter will have to receive the employee within the next 8 days and list the measures taken to remedy the situation;
- The employer has to convoke the employee for a specific individual evaluation meeting **at least twice a year**, as well as in case of unusual difficulties.
- The employees under a forfait-jours agreement have to undergo a distinct medical examination by the work health service in order to prevent potential risks on their physical or psychological health.