

The employer's social obligations

Effects of crossing thresholds

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Preamble

In companies crossing staffing thresholds requires the employer to respect certain rules. That's why it's important to keep track of your headcount calculations, so that you can comply with any new social obligations when you cross the threshold.

Since 2020, the PACTE law has modified the obligations attached to workforce thresholds by favouring the thresholds of 11, 50 and 250 employees. Crossing the threshold of 300 employees also raises obligations for the employer, including the obligation to draw up a social balance sheet or to negotiate a forward-looking management of jobs and skills (GPEC) agreement.

Please note: the method of calculating the workforce varies according to the rights and obligations of the employer. The length of time during which the threshold must be crossed depends on the bond concerned. (Immediately, over one year, 3 years, 5 years, ...)

1. The company's social obligations from the first employee

A. The collective agreement

A collective agreement contains labour law rules applicable to a sector of activity, in addition to the Labour Code. It is negotiated and concluded by the trade unions representing employees and employers.

The applicable collective agreement is the one covering the **main activity** carried out by the enterprise.

The majority of companies are required to apply a collective agreement.

B. The Single Risk Assessment Document

The single occupational risk assessment document (DUER in French) is mandatory in companies as soon as the first employee is hired.

The employer shall record in this document the result of the assessment of the health and safety risks to which employees may be exposed and the actions taken to remedy them.

Penalties: The employer is liable to the fine provided for 5th class contraventions:

- For individual, up to **1,500** euros (and up to 3,000 euros in case of recurrence)
- For a legal entity, up to **7,500** euros (and up to 15,000 euros in case of recurrence)
- Questioning the employer's liability in the event of an accident at work or occupational disease

In addition, an employer who does not make the DUERP available to the CSE commits an **offence of obstruction**. The penalty can be **up to 1 year's imprisonment and a fine of 3,750 euros**.

C. The single staff register

The employer must keep a staff register in each establishment of the enterprise.

This document allows the identification of jobs in each establishment. Thus, the identity of all employees employed by the establishment, including homeworkers, must be mentioned at the time of recruitment and in their order of recruitment. In addition, information on the functions performed (job, qualification, date of entry and exit,...) must be indicated. Finally, specific information is given only for certain situations (foreign workers subject to possession of a document authorizing the exercise of an employed activity,...)

The information contained in the register must be kept for 5 years from the date of departure of the employees concerned.

Penalty: The employer is liable to a fine of 750 euros for each employee concerned by the absence of a personnel register.

D. The DPAE

The hiring of an employee can only take place after a nominative declaration to the social protection bodies designated for this purpose (Urssaf or MSA for agricultural employees). The DPAE will make it possible to open to employees all social rights, to be covered in the event of an accident at work and to benefit from any rights to exemption.

Indeed, the employer must make a pre-employment declaration (DPAE in French) within 8 days preceding any hiring of an employee.

Penalty: In the absence of a DPAE, the employer is liable to various criminal and administrative sanctions for concealing salaried employment.

E. Verification of residence permit and work permit

For any recruitment of a foreign employee, the employer has the obligation to check, 2 working days before hiring, the validity of his residence permit and his work authorization.

Note: if the foreign employee is already registered on the list of job seekers of the National Employment Agency (Pôle Emploi), the employer is relieved of his obligation to verify the residence permit.

Penalty: the employer is liable to various criminal and administrative sanctions for illegal work.

F. Membership of a provident and supplementary healthcare scheme

The employer must provide all employees with supplementary cover to the benefits granted by the basic social security scheme. There is the **health expenses** plan (Mutual Insurance) and the **incapacity, disability and death insurance plan** (Providence).

The employer is obliged to propose a **supplementary reimbursement scheme for health costs**, as soon as only one employee is present. The mutual insurance contract must be **mandatory** for employees, except in cases of exemption, collective (CDD, CDI, part-time) and **responsible**.

The employer's financial contribution must be at least equal to 50% of the contribution (the rest to be borne by the employee).

Regarding the pension scheme (incapacity, disability and death), for **non-managerial employees**, there is no legal obligation, but the collective agreement applicable to the company may impose it. Conversely, for **managerial employees**, there is a legal obligation.

G. Affiliation to occupational medicine

Membership in an occupational medicine is compulsory from the first employee. Whatever the nature and duration of the employment contract, the employer must arrange a visit by the occupational physician within three months of recruitment.

H. The appointment of a prevention referent

Whatever the number of employees and the activity of the company, the employer must designate one or more competent employees to deal with the company's activities to protect and **prevent occupational risks**.

The prevention referent must receive training in occupational health and safety. Time is taken from working time and is remunerated as such.

In the absence of competent employees, the employer may call on an external representative.

I. Employment of disabled workers

Every company, regardless of its workforce, must declare the number of disabled workers it employs. The declaration must describe the number and status of each disabled worker recruited, regardless of their employment contract.

This declaration is made every month in the nominative social declaration (DSN).

J. Contribution to vocational training

Any company employing at least 1 employee is obliged to participate in the financing of vocational training. However, the percentage of the contribution to vocational training to be paid depends on the number of employees.

- a rate for companies with less than 11 employees: **0.55%**

K. Contribution to FNAL

The contribution to the National Housing Assistance Fund (FNAL in French) is payable by employers regardless of the number of employees. However, the rate varies according to the workforce of the company:

-**0.10%** on the share of remuneration limited to the Social Security ceiling for companies with less than 50 employees;

2. The social obligations of the company from 11 employees

A. The social package

The social lump sum is an employer's contribution allocated to Social Security.

Companies with a workforce of 11 or more employees are liable for the social lump sum on supplementary pension contributions at the rate of 8%.

In the event of an upward increase in the number of employees, companies benefit **for 5 consecutive calendar years** from the neutralization of the crossing of the threshold and will not be subject to the social lump sum at the rate of 8%.

B. Establishment of the Social and Economic Committee

A Social and Economic Committee (CSE) must be set up in companies with at least 11 employees. The CSE has reduced remit (submission of claims; contribution to the promotion of health, social and economic security; referral to the labour inspectorate; right to alert).

Penalty: Offence of obstruction (1 year imprisonment and a fine of 7500 euros), loss of certain social exemptions, allowances and interest depending on the damage suffered, inability to initiate certain procedures (negotiation of collective agreements, dismissals, etc.).

C. The new social contributions

- Subject to the mobility/transport payment: change from the reduced rate of 0.55% to the full rate of 1%.
- Contribution to vocational training: change from the reduced rate of 0.55% to the full rate of 1%.

3. The social obligations of the company from 20 employees

In each company with at least 20 employees, the employer is required to hire **disabled persons up to 6% of its total workforce**. The company that does not fulfil this employment obligation must pay a financial contribution to the social security institutions concerned.

4. The social obligations of the company from 50 employees

A. Expanded CSE with an operating and social works budget

In companies where the workforce is at least 50 employees for **12 consecutive months**, the remit of the CSE is **extended**.

The CSE must be informed and consulted on matters relating to the **organization, management and general operation of the company**. Each year the CSE must be consulted **on the strategic orientations, the financial and economic situation, the social policy of the company and on working conditions**.

The CSE is also obligatorily endowed with an operating budget and a social works budget.

B. The Economic and Social Database (BDES in French)

The BDES is set up when the threshold of 50 employees is reached for **12 consecutive months**.

The BDES gathers information on the main economic and social orientations of the company that must be made available to the CSE.

C. Participation in results

Companies and economic and social units (UES in French) exceeding the threshold of 50 employees must set up a system of employee participation in the company's results. Participation makes it possible to redistribute to employees' part of the profits made by their company.

The company is obliged to set up a participation agreement if its workforce is at least 50 employees for **5 consecutive calendar years**. However, if the threshold of 50 employees decreases in a calendar year, the implementation of a participation agreement is no longer mandatory for another 5 years.

D. Rules of procedure

The establishment of internal regulations is mandatory in companies with at least 50 employees. This obligation applies after a period of **12 consecutive months** from the date on which the threshold of 50 employees was reached.

The internal regulations are a document drafted by the employer containing the following provisions:

- **Health and safety** measures.
- The conditions under which employees may be called upon to participate, at the request of the employer, in the restoration of working conditions protecting the health and safety of employees.
- Rules relating to discipline, nature and scale of sanctions (warning, duration of layoff,...) .
- Provisions relating to compliance with **disciplinary procedures** (e.g. summons to a preliminary interview).
- Provisions relating **to employees' rights of defence** .
- Provisions on **mobbing, sexual harassment and sexist behaviour**.
- The existence of the **whistleblower** protection system.

Penalties:

- Risk of **damages** depending on the damage suffered.
- Risk of difficulties in taking certain **disciplinary sanctions**.

E. The Professional Equality Index

Each year, by 1st March at the latest, companies must calculate and publish on their website the overall score of the Gender Equality Index and the score obtained for each of the indicators composing it. The company that reaches the threshold of 50 employees has a **period of 3 years** before being subject to this obligation.

Penalty: the company is exposed to **a financial penalty of up to 1% of its annual payroll.**

F. Mandatory Annual Bargaining (NAO in French)

Compulsory annual bargaining is mandatory as soon as the company reaches a threshold of 50 employees and has a shop steward.

The topics for negotiation are:

- remuneration, in particular actual wages, working time and the sharing of added value in the enterprise.
- professional equality between women and men and quality of life at work;

G. Agreements to be negotiated (in addition to participation)

- Professional equality between women and men

In the absence of an agreement on professional equality between women and men at the end of the NAO, or failing that, an action plan, the employer is liable to a penalty of 1% on remuneration subject to contributions.

- Prevention of occupational risks

Obligation to negotiate an agreement or establish an action plan if at least 25% of employees exposed to the 6 hardship factors above the thresholds, or if the loss rate exceeds 0.25.

Penalty for failure to reach an agreement or action plan: penalty of up to 1% (maximum rate) of the remuneration paid to the employees concerned during the period during which the company has not been covered (whole months are taken for the calculation).

H. The local restaurant

In establishments with at least 50 employees, the employer is obliged to provide a dining room, regardless of the number of employees who have expressed the wish to take their meal at their workplace.

The upward crossing of the threshold of 50 employees is only taken into account when it has been reached or exceeded for **5 consecutive calendar years**. Crossing this staffing threshold downwards has the effect of running a new period of 5 years.

I. The new social contributions

- Contribution to the construction effort: rate of 0.45 % of the amount of remuneration paid during the previous financial year.
- Final contribution: passage from the reduced rate of 0.1% to the full rate of 0.50% of the payroll (CSS, art. L. 834-1).

This fact sheet contains summary information. Please contact us for advice tailored to your situation. We cannot be held responsible for misinterpretation

We would like to inform you that APLITEC's social division is available to assist you in fulfilling some of your social obligations and/or calculating your workforce.

Please do not hesitate to contact us if you require further information or assistance.

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