

Duration of the trial period

Article L 121-5 of the Labour Code provides for a trial period clause to be inserted in a fixed-term or open-ended contract, thereby making the definitive conclusion of the contract contingent upon the trial period.

The purpose of this trial period is to verify the employee's performance and to enable the latter to decide whether the job is suitable.

The trial clause must be stipulated without fail **in writing** at the latest at the time that the employee takes up his duties.

Duration of the trial period

In principle, the trial period may not be **less than 2 weeks nor more than 6 months**. These minimum and maximum periods are applied in the case of both an open-ended and a fixed-term contract. In the case of the latter, the entire contract is conceivably covered by a trial period. Whereas that facilitates the termination of the contract on the part of the employer, it should be borne in mind that the same applies to the employee.

There are two exceptions nonetheless:

- The trial period will be **3 months** maximum if the employee does not have training at the level of a technical and vocational aptitude certificate or vocational aptitude diploma (known by the French acronyms "CATP" and "DAP" respectively).
- The trial period could be **12 months** maximum if the employee's gross monthly salary is greater than or equal to **€4,258.73** (at index 794.54).

When the trial period provided under the contract exceeds the maximum limits provided by law, it is not null and void as a whole, but will be so only for the excessive period.

Extension of the trial period

A trial period may be applied only once for the same employment relationship. It may therefore not be renewed or extended, even by mutual agreement between the parties. Nevertheless, there is an exception: the trial period will be extended automatically **in case of illness or leave for family reasons** for the employee which occurred during the trial period. The duration of this extension may not exceed **one month**, however. It is important to note that contrary to periods of incapacity for work, the days of leave taken during the trial period do not result in the extension thereof.

Suspension of the trial period

If an employee under an open-ended contract becomes pregnant, the trial period will be suspended as of the day when she hands her employer her medical certificate attesting to her pregnancy until the start of maternity leave. The fraction of the remaining trial period shall resume upon the expiry of a 12-week period after childbirth. In spite of the suspension of the trial period, the employee shall continue to work until the start of her maternity leave, without this period being considered as a trial period, however.

What about the renewal of the trial period?

When an employee has been hired under a fixed-term contract and his contract is renewed or the employment relationship is continued under an open-ended contract, it is prohibited to insert a new trial clause in the contract; for if the employment relationship is continued, it is deemed to have been positive.

Similarly, when an employee is hired under an open-ended contract following a temporary employment assignment, the duration of that assignment will be decisive. In fact, the duration of temporary stints during the year prior to hiring will be deducted from any eventual trial period. Thus, if the duration of tasks performed at the employer during the year before the employee was hired under an open-ended contract exceeds the maximum length of the trial period authorised by law, no trial period can be considered under the open-ended contract.

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