

## **Adaptation of the legislation concerning the resignation of an employee for serious offence on the part of the employer**

- **Right to compensation in lieu of notice and severance pay**

In Articles L. 124-6 and 7, the Labour Code provides that an employee who is dismissed by his employer effective immediately will be entitled to compensation in lieu of notice and severance pay if his dismissal is ruled to be wrongful by the courts.

Conversely, when the resignation by the employee for serious offence on the part of the employer was declared justified by the labour court, the same equivalence did not apply, so the employee could not claim such compensation.

In two decisions handed down on 8 July 2016, the Constitutional Court ruled that the provisions of the aforementioned articles were not compliant with the principle of equal treatment before the law enshrined in Article 10 bis of the Constitution. In fact, these articles did not provide the same solution, depending on whether the serious offence was at the initiative of the employer or the employee.

The Act of 8 April 2018 amends Articles L. 124-6 and 7 of the Labour Code and puts an end to this difference in treatment: an employee who resigns effective immediately due to a serious offence on the part of the employer is entitled to the same compensation in lieu of notice as that payable to the employee whose dismissal effective immediately was declared to be wrongful.

The employer may henceforth be ordered to pay compensation in lieu of notice and severance pay to an employee whose resignation on account of serious offence by the employer is ruled justified and founded by the labour court.

- **Provisional unemployment benefits and obligation of the convicted employer to reimburse**

In the event of resignation or of dismissal for serious offence, the employee is not entitled to unemployment benefit. Nevertheless, when he contests the dismissal through the courts (action against unfair dismissal), the employee may ask the labour court to award provisional unemployment benefits, i.e. while waiting for the final decision of the court on the substance of the case. Up to now, this was possible only in case of dismissal for gross misconduct and in case of resignation in case of resignation as a result of sexual harassment.

Henceforth, the Act of 8 April 2018 enables also an employee who resigns due to serious offence on the part of the employer (e.g. non-payment of wages or mental harassment) to claim provisional unemployment benefits. If the resignation as a result of serious offence is upheld by the labour court, the employer will have to reimburse the Employment Fund for the unemployment benefits paid, as in the case of wrongful dismissal.

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