

How do I assert the rights I have acquired by working?



MINISTRY OF THE INTERIOR,
OVERSEAS TERRITORIES,
TERRITORIAL COMMUNITIES
AND IMMIGRATION

MINISTRY OF LABOUR,
EMPLOYMENT AND HEALTH

GENERAL SECRETARIAT
FOR IMMIGRATION
AND INTEGRATION

3 ■ If you are placed in an Administrative Detention Centre ("CRA": *Centre de Rétention Administrative*)

- You must tell the agent of the French Office for Immigration and Integration (OFII) if you have not received your salary and your benefits. **The OFII will obtain these for you.**
 - If your employer refuses to pay your back pay, overtime, bonuses or benefits, you can contact a person authorised to enter a CRA. This person can contact the trade union organisation of your choice to summon your employer or the responsible party to appear before the Labour Relations Board (*Conseil des Prud'hommes*).
- or
- You can ask to contact a lawyer of your choice.
 - If you are expelled from France after your detention in a CRA, the OFII will transfer any money due to you to your destination country.

* Who can enter a CRA?

- ☞ OFII agents
- ☞ Representatives of any authorised organisation
- ☞ Lawyers

Useful contacts

French Office of Immigration and Integration (OFII)

Organisations authorised to enter CRAs:

- Cimade,
- Ordre de Malte,
- France Terre d'Asile,
- Forum réfugiés,
- Migrant families social service association.

Trade unions:

- Confédération Générale du Travail (CGT),
- Confédération Française Démocratique du Travail (CFDT),
- Confédération générale du travail Force Ouvrière (FO),
- Confédération Française des Travailleurs Chrétiens (CFTC),
- Confédération Générale des Cadres (CGC).

If a company or individual employed you even though you did not hold a residence or work permit, French law protects the rights you acquired by working.

What rights do you acquire by working?

Even if your work contract with your employer is terminated because the law forbids him from employing you, you still have the right to:

● If you are a declared worker:

(French Labour Law Article L. 8252-2)

- Your full salary and associated benefits (bonuses, benefits in kind, paid holidays, etc.);
- A lump-sum compensation for termination of your work contract equal to **3 months wages**.

● If you are an undeclared worker:

- Your full salary and associated benefits;
- A lump-sum compensation for termination of your work contract equal to **6 months wages** *(French Labour Law Article L. 8223-1)*, if your employer has intentionally dissimulated your employment;

or

3 months wages plus a lump-sum compensation equal to **3 months wages** for termination of your work contract, if your employer is unable to prove your real hiring date.

You can apply for additional payments if you consider that you have suffered uncompensated loss or harm

(as defined by French Labour Law Article L. 8252-2)

Undeclared employment is employment that has not been first declared to the URSSAF or the MSA by means of a "DPAE" (*Déclaration Préalable A l'Embauche*). Additionally, the employee has not received statements of earnings, or these statements show false or inaccurate information.

Who pays for the rights you acquired by working?

Your employer must pay your salary and your compensation within 30 days of the date on which your work contract was terminated.

He is also obliged to give you documents relating to your period of employment (statements of earnings and employment certificate).

In certain situations, the law enables you make a claim not from the employer, but from the **responsible party or the customer** *(French Labour Law Article L. 8254-2)*.

If you have been subjected to abusive working conditions or have suffered degrading or inhuman treatment, you can lodge a complaint and start criminal proceedings.

In the event of such criminal offences by your employer, you can apply for a temporary residence permit to cover the period of the legal proceedings *(Article L. 316-1 of the "CESEDA" laws governing entry and residence of foreigners and asylum rights)*.

How do I assert the rights I have acquired by working?*

1 ■ If you are not deprived of your liberty or freedom of movement when your work contract is terminated,

and if your employer or the responsible party does not pay the sums due to you within 30 days, you can refer your complaint to the Labour Relations Board through:

- a lawyer
- or
- a trade union organisation

2 ■ If you are held in detention

The procedure is identical to that when you are not deprived of your liberty or freedom of movement.

* *even in cases of voluntary departure or expulsion*