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**NEW EMPLOYER OBLIGATION AS OF JULY 1st 2009:
Guarantee the non forfeiture of health insurance and staff
providence to employees after the termination of their
work contract**

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As of July 1st 2009 following the January 11th 2008 National Intertrade Agreement, employers must guarantee the non forfeiture of health insurance and staff providence schemes to their former employees that have been laid off. This applies only to employees whose work contract termination entitles the employee to unemployment benefits, with the exception of a lay off for gross negligence.

➤ **WHO ARE THE BENEFICIARIES**

It concerns all employees, full or part time, manager or non manager with a work contract of a least one month and that comply with both following conditions:

■ The work contract termination is not due to gross negligence and entitles the employee to unemployment benefits (the employee will have to prove his entitlement):

- lay off
- agreement
- resignation
- end of contract
- early termination of contract
- termination of trial period

...

■ Entitlement to benefits with the previous employer. For example, if these are subject to seniority conditions that have not been fulfilled, the employee can not ask for the non forfeiture.

➤ **LENGTH OF THE NON FORFEITURE**

Health insurance and staff providence are guaranteed for a period equal to that of the last work contract, within the limit of 9 months, in full months.

The former employee must inform his former employer if the unemployment benefits end before the non forfeiture period.

Finally, if the former employee does not pay his share of the premiums by the due date the former employer will be freed from his obligation and forfeits any guarantee for the period left.

➤ FUNDING OF THE NON FORFEITURE

■ Option #1: risk pooling

Companies may fund the non forfeiture via risk pooling through a collective agreement and by default by referendum or management decision notified to employees. Risk pooling consists in funding the non forfeiture by employees.

■ Option #2: sharing the non forfeiture between employees and employers.

The non forfeiture can be funded by the employer and the employee during the length of the period, one the employee has left.

The totality of the contribution can be paid at the work contract termination. However this presumes that the former employee may be reimbursed if he starts a new job before the end of the period.

➤ HOW TO IMPLEMENT THIS ?

The process is the following:

- Detail the organisation of the non forfeiture, especially its funding (risk pooling or sharing).
 - If your company opts for the 1st solution (risk pooling), this decision must be formalized through a collective agreement, a referendum or a management decision and in that case inform the employee representatives if they exist.
 - If your company opts for the 2nd solution – (sharing) it is necessary to determine how the payment will be carried out (monthly, in totality at the work contract termination, reimbursement...)
- Additionally you must liaise with your insurance company to sign an amendment to that effect.
- Prepare a document for the employees that will benefit from the non forfeiture to:
 - Explain the non forfeiture system and its funding system,
 - Gather any refusal.

Please note that :

The employee can renounce to this non forfeiture, however this decision is final and total (health insurance and staff providence).

The employee must write down his decision to his former employer within 10 days after the end of the work contract.

Without this written notification, the employee will be reputed having accepted the dispositions of the ANI article 14.

➤ WHAT ARE THE RISKS

Employers that will not have planned for the non forfeiture of health insurance and staff providence will be held accountable of any prejudice and liable to compensate any prejudice arising from the lack of non forfeiture.

For example:

An employee with 10 years seniority signed a work contract termination agreement on Oct. 10 2009. He has 9 months non forfeiture.

If he dies in Dec. 2009 and that the employer has not implemented this system, his heirs can claim staff providence benefits from the employer. If the employee was paid 35K€, the employer will have to pay 105 K€.

Employers that have implemented this system may also be held accountable if they have not properly notified every employee concerned.