**MINISTRY
FOR EMPLOYMENT, SOLIDARITIES
AND WOMEN'S CONDITION**

Employment Authority

GUIDE FOR EMPLOYMENT CONTRACTS (WORK CONTRACTS)

SHEET 1: NOMINATIVE DECLARATION PRIOR TO RECRUITMENT (DPAE)

WHAT IS IT?

DPAE is a **form** the employer must be that are really fill out before recruiting an employee. This declaration is nominative. It is sent to the Social Security Fund (CPS) within eight days prior to the recruitment date at the earliest. This document is the unique way to declare the recruitment. It includes details to identify the employer, the employee and the characteristics of the employment contract.

WHO IS IT FOR?

All employees except seamen from the National Navy Disabled Members (ENIM), whom are not covered by CPS.

WHAT ARE THE CONDITIONS FOR THE DECLARATION OF THE EMPLOYEE?

a) Transmission to CPS

DPAE needs to be forwarded to CPS in one of the following ways:

- **remote declaration: on the website www.cps.pf**
- **email:** dpae@cps.pf (see form)
- **fax/telecopy**;
- **dated and signed letter** by the employer, posted as registered mail, the last working day prior to recruitment at the latest, date as per postmark;
- **hand delivery** at CPS main office or in one of its subsidiaries, against a receipt.

A copy of the transmission must be kept by the employer until the acknowledgement of receipt from CPS is received.

b) Processing by CPS

Within five working days of the receipt of the DPAE, CPS sends the employer and acknowledgement of receipt specifying the recorded details.
If the employer does not contest such details within two working days after receipt, this document stands as proof of declaration.

HOW CAN THE EMPLOYEE KNOW WHETHER HE IS DECLARED OR NOT?

The acknowledgement of receipt has a tear-off portion that specifies the details contained in the declaration, which the employer must give to the employee as soon as possible. But this obligation is deemed satisfied if the employee has a written employment contract, specifying that a DPAE has been lodged with CPS, specifying the date and the transmission means for such declaration.
For contracts involving extras in the hospitality trade and mission contracts for temporary workers, the declaration may be made once in a calendar month, even though several employment contracts may have been drawn up during the same period.

WHAT TO DO IN CASE OF AN INSPECTION REGARDING THE DECLARATION?

The employer must show the acknowledgement of receipt to CPS control officers and two employment inspectors and controllers.
This acknowledgement of receipt must be kept until the employee is given his pay slip. If he still has not received the acknowledgement of receipt, the employer must provide to these officers any

information that may prove that he has actually made the declaration for the recruitment of the employee.

WHAT ARE THE PENALTIES FOR NOT DECLARING THE RECRUITMENT OF AN EMPLOYEE?

Failing to comply with the obligation to declare the recruitment of an employee may give rise to:

- Administrative **fine** up to 178,997 XPF (this fine is applied as many times as there are recruitments that were made without prior declaration),
- **Criminal proceedings** for **undeclared work**: prison sentences and fine of 5.000.000 XPF per missing declaration (fine increased up to 8.000.000 XPF in the case of undeclared work of a minor subject to compulsory school attendance).
- In the case of repetition, the fine will be 10.000.000 XPF (fine increased up to 16.000.000 XPF in the case of undeclared work of a minor subject to compulsory school attendance),
- **Denial to grant public subsidies** for work or occasional training for a maximum period of five years.

Reference texts:
Parts I and V of the Labour Code

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SHEET 2: THE RECRUITMENT OF THE EMPLOYEE

Reminder:
Within eight days before the planned date of recruitment, the employer must send a DPAE to CPS.

- Before work actually starts, the employer and the employees sign an **employment contract.**
- The employer must have the employee go through a **medical examination** before he starts work or within 30 days of his first day of work. The medical examination must obligatory be made before work starts for the following categories of people:
  - employee appointed for works involving precise requirements or risks,
  - disabled person,
  - pregnant woman,
  - mother of a child of less than two years old,
  - worker under the age of 18.
- The employer must register the employee in the **unique staff register.**
- For each employee the employer draws up a document specifying:
  - the start and stop hours for each period of work;
  - the daily and weekly durations of work for each employee.

WHAT ARE THE DOCUMENTS THE EMPLOYER HAS TO KEEP UPDATED?

- the unique staff register,
- the payroll book in chronological order, without blank, deletion or overwriting,
- the safety register containing the observations and formal notices made by control officers and the director of the employment authority or CPS officers from the vocational risk prevention department,
- the document for the assessment of occupational risks,
- the document stating hours worked for each employee.

WHAT INFORMATION THE EMPLOYER HAS TO DISPLAY IN THE COMPANY?

As a minimum, the employer displays in the work premises and in the premises where employees are recruited:

- the business name of the company,
- its Social Security registration numbers,
- working times for employees,
- details concerning the employment authority, CPS vocational risk prevention department, emergency services, occupational health Department and the relevant occupational doctor.

WHAT ARE THE PENALTIES FOR NOT COMPLYING WITH SUCH REQUIREMENTS?

Failing to comply with such requirements may give rise to administrative and criminal penalties:

- unique staff register not kept updated: fine of 89.498 F CFP and in the case of the repetition within one year, fine off 178.997 F CFP. In both cases, the fine is applied as many times as there are employees in the company concerned by the ascertained breaches,
- failure to draw up the vocational risk assessment document: administrative fine up to 178.997 F CFP,

- failure to comply with the obligation of nominative declaration prior to recruitment: as a reminder, administrative fine, criminal proceedings for undeclared work and denial to grant public subsidies,
- failure to provide the document stating hours worked for each employee to an inspector or Labour controller (obstruction offence): fine of 447.487 F CFP and prison sentence of one year.

CAUTION:

No one may be discriminated against in any recruitment procedure on account of origin, sex, customs, sexual orientation or gender identity, age, family situation or pregnancy, genetic characteristics, belonging or no-belonging, actual or assumed, to any ethnics, nation or race, political opinions, trade union activities, religious convictions, physical appearance, family name, health condition or disabilities.

Reference texts:
Parts I, III, IV, V and VIII of the Labour Code
Order n° 126 CM of 8 February 2010 regarding works subject to particular reinforced monitoring by the occupational doctor.

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SHEET 3: EMPLOYMENT CONTRACT

The employment contract exists when a person, the employee, commits to make his activity available for another person, the employer, who, in compensation, pays a salary to the employee and has authority upon him.

WHAT ARE THE OBLIGATIONS ARISING OUT OF THE EMPLOYMENT CONTRACT?

The employer must:

- provide the work to be done,
- pay the salary according to the work accomplished,
- respect the employment contract and labour legislation.

The employee must:

- do the work as requested;
- follow the instructions of his employer;
- avoid unfair competition towards his employer.

WHEN MUST THE CONTRACT BE IN WRITING?

A written contract is needed in the following cases:

- fixed-term contract (CDD),
- part-time contract,
- apprenticeship contract,
- intermittent work contract,
- contract signed within the framework of employment support policies,
- temporary work contract,
- contract of an employee whose usual residence is located outside French Polynesia.

The contract shall include the following details:

- surname, names of the employer or business name of the company, postal address and geographical address of the head office of the company, TAHITI Number, number in the CPS directory of employers, NAF identification of the company;
- surname, names, birth date, postal address and geographical address of the employee;
- position, professional classification and salary of the employee;
- the date of recruitment;
- the nature and duration of the contract;
- duration of the period of notice;
- the declaration stating that the year worker is free from any previous commitment;
- contract signature date;
- a note mentioning which labour collective agreement is applicable within the company;
- the existence or not of benefits in cash or in kind with the indication of their value in cash, the payment or not for the employees accommodation by the employer or any allowances that might be paid for such accommodation;
- if necessary, the length of the trial period and the non-competition clause.

IS IT ALLOWED TO INCLUDE A TRIAL PERIOD IN A CONTRACT?

Yes it is, but it is not obligatory. If this has been planned, it must be mentioned in the employment contract, and also any possible renewal thereof.
For the employer, the trial period makes it possible to assess the professional skills and the adaptability of the employee.
For the employee, the trial period makes it possible to assess whether the work conditions are agreeable to him. During the trial period, the contract may be terminated at any moment by either party.

IN WHICH LANGUAGE MUST THE CONTRACT BE WRITTEN?

The contract is signed in the French language. It may be written in one of the Polynesian languages if the employee requests so. When the employee is a foreigner, a copy of the contract may be written, at the employee's request, in his own language.
Only the French version of the contract prevails in any judicial proceedings.

CAUTION:
Under the law, there is no obligation to have a written contract, except for specific contracts. Any non-written employment contract is always an open-ended employment contract (CDI).

Reference texts:
Articles Lp 1211-1 to Lp 1211-14 of the Labour Code

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SHEET 4: TRIAL PERIOD

WHAT IS IT?

It is a period at the beginning of the employment contract, which makes it possible for the employer to test the abilities of the employee for the job and for the employee to assess whether the working conditions are agreeable to him. During that period, the employer and the employee may terminate the employment contract at any time, without notice or compensation. Nevertheless the contract termination must not be abusive.
The trial period is not obligatory. It occurs only if it has been provided for in the employment contract signed by the employer and the employee.

HOW LONG DOES IT LAST?

For open-ended employment contracts:
The length of the trial period is set by the Labour collective agreements. Failing this, it may not be longer than:
- 1 months for workers and employees;
- 2 months for supervisors, technicians and the like;
- 3 months for managers and the like.

It is not permitted to have a trial period for an open-ended employment contract succeeding a fixed-term employment contract for the same employee and the same job.

For fixed-term employment contracts:

If there is no provisions from collective agreements providing for lower durations, the length of the trial period is calculated by taking into account one day per week, within the limit of two weeks when the length initially provided for in the contract is equal to or higher than six months. If the term of the contract is higher than six months, the trial period will be one month, as a maximum

MAY IT BE RENEWED?

Yes, it may. It may be renewed **once** provided this is provided for in the collective agreement if it exists and in the employment contract the employee has signed, and provided the agreement between the parties is signed before the end of the initial trial period.
It may not be longer than the duration provided for by the relevant collective agreement or Labour legislation.

MAY IT BE SUSPENDED AND EXTENDED BY THE LENGTH OF THE SUSPENSION?

Yes, it may. If the employment contract is suspended during the trial period (sickness, company company shut down or annual leave), this period may be extended by the same length as the suspension. In order to calculate the length of the extension of the trial period, you have to take into account all calendar days included in the suspension period, namely, working days, Sundays and public holidays.

HOW DO YOU CALCULATE THE DURATION OF THE TRIAL PERIOD?

In order to calculate the duration of the trial period when the CDD includes an incomplete number of weeks, you need to take into account only complete calendar weeks. For example: an employee is recruited from 01 April 2012 to 03 May 2012. The length of his trial period will be four days because there are four complete weeks between01 April 2012 and 03 May 2012.

The trial period is calculated taking into account full calendar days (and not working days or worked days. Half days of work are each counted as one unit).
Any trial period that ends on a Saturday, Sunday or a public holiday or a non-working day does not need to be extended until the next working day.
If the trial period is expressed in weeks or in months, it is counted in calendar weeks (from Monday to Sunday) or in calendar months without taking into account any non-working days, such as public holidays.

CAUTION:

The trial period of a part-time employee may not be longer than that of any full-time employee.
The termination of the trial period during a work stoppage of the employee for a work accident is void.
When any abusive termination is caused by the employer, it may entitle the employee to damages.
In order to terminate the trial period, it is advised to do it writing, sent to either party by registered mail or by hand delivery before the trial period expires.

Reference texts:
Articles A 1211-9, Lp 1211-13 and Lp 1231-10 of the Labour Code

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SHEET 5: FIXED-TERM EMPLOYMENT CONTRACT (CDD): GENERAL RULES

WHAT ARE THE CONDITIONS REGARDING THE FORM OF A FIXED-TERM EMPLOYMENT CONTRACT (CDD)?

A fixed-term employment contract (CDD) must be in writing and mention, as soon as it is signed, the reason for the contract and its term.

WHAT COMPULSORY INFORMATION MUST BE INCLUDED?

This type of contract must include the following mandatory particulars:

1. the reason for recruitment (see table on next page)
2. in the event of the replacement of an employee who is temporarily absent, the name and professional qualification of the person replaced;
3. the term of the fixed-term employment contract;
4. the minimum duration when the contract does not have any precise term;
5. the date and signatures of the parties;
6. the nature of the job;
7. the amount of the remuneration;
8. the duration of the trial period, if any.

CAUTION

The CDD is deemed to be signed as an open-ended contract in the following cases:

- if it has not been signed by both parties at the end of the first day of work of the employee at the latest,
- if there is no written contract,
- if the mandatory particulars n° 1 to 5 are missing.

The remuneration received by an employee under a CDD may not be lower than the one that would be earned, in the same company, by an employee under open-ended employment contract (CDI), with the same qualification and position.

WHAT CONDITIONS APPLY TO A FIXED-TERM EMPLOYMENT CONTRACT?

WHAT IS ITS DURATION?

Its initial duration may not be higher than 1 year. It may be renewed twice. The duration of the renewal may be different from that of the initial contract. Its total duration may not exceed 24 months, except in very specific cases (see table on next page).

MAY IT BE SUSPENDED?

The CDD may be suspended for the same reasons as the open-ended employment contract (CDI). The suspension of a fixed-term employment contract does not constitute an obstacle to the end of the term.

MAY IT BE TERMINATED BEFORE ITS END?

The contract may be terminated before its end if the employer and the employee agree thereto. If there is no such agreement, the fixed-term employment contract may be terminated only for serious misconduct or force majeure.

WHAT HAPPENS IF THE CONTRACT IS TERMINATED BEFORE ITS END WITHOUT THE AGREEMENT OF THE PARTIES?

If the early unjustified termination comes from the employer, the employee is entitled to:

- damages in an amount at least equal to the gross remuneration the employee would have earned until the end of the contract;
- dismissal compensation;
- compensation for paid leave.

If the early unjustified termination comes from the employee, the employer is entitled to damages corresponding to the harm suffered.

WHAT HAPPENS IF THE CONTRACT STILL GOES ON AFTER ITS END?

If the fixed-term contract still goes on after its end without any new contract being signed, the contract becomes an open-ended contract (CDI).
When the contract is signed for a term longer than 6 months, the employer must indicate in writing to the employee, at least 1 month before the end of the contract, if he intends to renew the contract or not, or provide the employee with an open-ended contract (CDI).

CAUTION

An employee under a CDD has the same rights and the same obligations as an employee under a CDI.

IS THE EMPLOYEE ENTITLED TO A DISMISSAL COMPENSATION?

YES.
This compensation is paid at the end of the contract at the same time as the last salary and is indicated on the payslip. This compensation is set at 6% minimum of all gross remunerations earned during the term of the completed contract, including the compensation for paid leave.
The salary of reference is the gross salary including all benefits in cash or in kind, but excluding any random or temporary bonuses and premiums or allowances paid to reimburse costs and expenses.
If the CDD is renewed, the compensation is owed only at the end of the renewal period.
They compensation is not owed:

- when the contract is signed under employment support policies or in order to provide additional vocational training;
- when the contract is terminated by the employee or for serious misconduct or in case of force majeure;
- When the employee is recruited immediately by the same employer under open-ended contract (CDI).

Reference texts:
Articles Lp 1231-1 and following of the Labour Code

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SHEET 6: FIXED-TERM CONTRACT (CDD): WHEN CAN IT BE USED?

CDD may be used only in cases expressly provided for by legislation.

WHAT IS THE FUNDAMENTAL PRINCIPLE WHICH THE CDD MUST COMPLY WITH?

The purpose and effect of a fixed-term employment contract may not be to do provide employment to the normal and permanent activity of the company, except if it is signed:

- for the development of some new activity requiring the creation of new jobs whose sustainability is not certain;
- in the framework of the "Agreement for employment recovery" (CRE) ;
- to promote vocational training: apprenticeship contract;
- with a foreign employee, when the position may not be filled locally;
- with a national expatriate employee.

IMPORTANT INFORMATION

An employee recruited under a fixed-term contract may replace any absent employee whatever the reason for absence is (sickness, leave, ...)

When of the fixed-term contract is signed to replace a temporarily absent employee, it can enter into force 2 worked days before the absence of the employee to be replaced and the end of that contract may be postponed up to the day after the next day when the replaced employee resumes work.

Seasonal activity consists of work which is recurring every year according to the rhythm of seasons or collective lifestyles. Such work may not result from the will of the employer but is dependent on external natural, technical or socio-economic constraints.

For a foreign employee, the CDD may not be signed for a duration which exceeds the validity of the residence permit.

When the CDD has been entered into because of the occurrence of an exceptional increase in activity or in order to carry out a specific and non-durable occasional task, no fixed-term contract or temporary work contract may be used to fill the position of the employee whose contract has ended before the expiry of the period equivalent to one third of the length of that contract, including any renewal(s).

IN WHICH CASES A CDD MAY NOT BE USED?

It is prohibited to use a CDD:

- to replace an employee whose employment contract has been suspended after a strike in the company;
- for certain jobs that are subject to special medical monitoring.

WHAT IS THE TERM OF THE CONTRACT?

The initial duration of a fixed-term contract may not be higher than 1 year. A CDD may be renewed twice. Its total duration may not exceed 2 years, including any renewal(s), subject to exceptions of *(a), (b), and (c)* of the table below.

WHEN A CDD MAY BE USED	Maximal length
Replacement of an employee temporarily absent	2 years, including any renewal(s)
Occurrence of an exceptional increase in activity	2 years, including any renewal(s)
Occasional, precise and non-durable task	2 years, including any renewal(s)
Seasonal job	Length of the season
Traditional jobs under CDD	2 years, including any renewal(s)
Development of new activity	2 years, including any renewal(s)
Contract entered into under employment support policies (a)	3 years maximum – non renewable
Contract entered into in order to have additional vocational training	2 years, including any renewal(s)
Contract entered into with a foreign employee (b)	Duration of validity of the residence permit Renewal under the same conditions
Contract entered into with a non-resident national employee (c)	3 years maximum – non renewable

Reference texts:
Articles Lp 1231-1 and following, and A 1231-1 of the Labour Code specifying the sectors of activity in which fixed-term contracts May be entered into for jobs for which it has been a constant condition not to use open-ended contracts because of the very nature of the activity carried out and of the temporary character of such jobs.

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SHEET 7: RESIGNATION

HOW TO RESIGN?

No particular formality is required: resignation may be written or oral. But certain collective agreements will require that it be notified through registered mail. This method is recommended because it enables to prove one's resignation and date it.

CAN YOU CHANGE YOUR MIND AFTER YOU HAVE RESIGNED?

No. However if it was given orally and it is clear that it was on the spur of the moment (in a heated verbal exchange for instance), and if it has not been executed yet, then yes, that becomes possible. Any unjustified absence may not be considered by the employer as a resignation, but the employee may be subject to a penalty that may result in being dismissed.

WHAT CAN THE EMPLOYEE DO?

An employer may not refuse a resignation, except in the case of a fixed-term contract. On the opposite, the employer may not oblige an employee to resign in order to avoid having to dismiss him.

IS NOTICE REQUIRED IN THE EVENT OF A RESIGNATION?

The resigning employee must give notice. Its duration depends, if it has not been provided for in the employment contract, in the collective agreements or the company policies. Notice starts on the date when the resignation letter is given.

The employer may exempt the employee from such notice. He then must pay him a notice compensation which is equivalent to the salary the employee would have been paid if he had worked during the period of notice.

If the employee does not actually work during such period of notice, it is him who must pay such compensation to his employer.

CAUTION

Resigning employees are entitled to one day of leave per week during their period of notice in order to seek a job. That day may be taken entirely or not. It is fully paid.

WHAT ARE THE CONSEQUENCES OF AN ABUSIVE TERMINATION FROM THE EMPLOYEE?

When an employee has abusively terminated an employment contract and engages again his services, the new employer is jointly and severally responsible for the harm caused to the previous employer when:

- it is proven that he intervened in the termination,
- he recruited an employee he knew was already bound by an employment contract, or in breach of a non-competition clause,
- he continued making an employee busy after learning that the employee was still bound to another employer under an employment contract. However in the latter case, the new employer ceases to be responsible if, at the moment when he was warned, the employment contract that had been abusively terminated by the employee, had expired.

CAN THE RESIGNING EMPLOYEE TAKE A LEAVE?

If the employee resigns before the date planned for his holiday, the notice starts from the notification but is suspended during the whole period of paid leave. The notice resumes only after the employee has returned.
In principle, no period of leave may be included in the period of notice, except if the employee request so and the employee agrees to it. In that case, In that case, the period of notice will not however be extended.
Any pregnant woman can resign without notice and does not have, because of her condition, to pay a compensation for terminating the contract.

Reference texts:
Articles Lp 1223-1, Lp 1224-1 to Lp 1224-6 and Lp 1225-3 of the Labour Code and collective agreements

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SHEET 8: NOTICE OF DISMISSAL

WHAT IS IT?

A notice is the period which the employer or the employee must respect before terminating the employment contract.

WHEN DOES IT START?

It starts from the first working day that follows the presentation or hand delivery of the letter which notifies the dismissal.

HOW LONG DOES IT LAST?

If there is no employment contract, collective agreement or company policy providing for more favourable conditions, i.e. lesser anteriority or longer period of notice, the duration of the period of notice is:

I.-for an employee with less than five years of ongoing services in the same company:

- worker and employee paid monthly: 1 month
- supervisor, technician and the like: 2 months
- manager and the like: 3 months

II.- for an employee with more than five years of ongoing services in the same company:

- worker and employee paid monthly: 2 months
- supervisor, technician and the like: 3 months
- manager and the like: 4 months

III.-for a worker or an employee who is not paid monthly, the notice may not be less than the frequency of payment of salaries, and in no circumstance may be less than 7 days.

CAN ONE BE EXEMPTED FROM EXECUTING ONES' PERIOD OF NOTICE?

Yes, the employer may decide to exempt the employee from executing his work during the period of notice provided that he pays him all the amounts (salaries and benefits) that he would have received if he had kept on working until the expiry of the period of notice. The employment contract will end at the end of the non-worked period of notice.
When the employee asks the employer to exempt him from working during the period of notice and when the employer agrees to it, the exemption of work does no longer result, in that case, in the payment of salary and benefits that complement the remuneration. The employee and employer are released from any obligations that had arisen from the employment contract and the latter immediately ends.

CAN ONE LOOK FOR A NEW JOB DURING THE PERIOD OF NOTICE?

During a period of notice, the employee may leave his work to seek a new job. Provided that he notifies the employer one day before, he is entitled to one day of leave per week, used at his discretion, entirely or not, and fully paid.
The employer is released from the obligation of giving notice at the request of the dismissed employee if the latter is recruited by another employer.

CAUTION

The period of notice there is a preset period. Therefore it may not be interrupted or suspended. Therefore any sickness of the employee does not suspend the period of notice which continues to run. This rule however has an exception regarding paid leaves. If an employee sends his letter of dismissal during his paid leave, the period of notice starts only when he returns from his holiday.

Reference texts:
Articles 1224-1 to Lp 1224-6 and A 1222-1 of the Labour Code