

**[TERMINATION OF EMPLOYMENT CONTRACT]**

***Early termination of a fixed term contract: the termination agreement is not a settlement***

*(Cass. Soc. October 6<sup>th</sup>, 2015, 14-19126)*

**The contractual agreement by which an employer and an employee mutually agree to terminate a fixed term employment contract may only deal of the termination of the contract. Thus, the agreement may not deprive the employee of any right acquired through the performance of the contract.**

An employee was hired, under a fixed term contract in November 8<sup>th</sup>, 2011. On April 7<sup>th</sup>, 2012, both parties agreed to an early termination. Their agreement also provided that the employee would not be entitled to the termination indemnity normally owed at the end of a fixed contract (10% of the gross remuneration paid during the contract – L.1243-8).

The employee challenged this provision of the agreement in order to obtain payment of termination indemnity. The Labour Court judgment denied the indemnity to the employee.

The French supreme court quashed and remanded the judgement on the grounds that the only purpose of the agreement terminating a fixed term contract is to put an end to the relationship and that, notwithstanding its' other provisions, it may not be considered as a settlement on any other claim, particularly not regarding rights that arise from the performance of the contract such as the termination indemnity.

This solution, which is particularly strict with respect to the original intent of the parties, is explained by the fact that the use of fixed term contracts is tightly framed by French law. The possibilities of early termination are limited: a serious misconduct, *force majeure*, incapacity confirmed by the occupational physician or an agreement between the parties (L.1243-1).

This solution is not new and derives from a well-established case law trend which requires the termination of a fixed term contract to derive from a clear and unambiguous agreement (e.g.: 06-10-2004 n°02-44.323).

To illustrate furthermore this strict position of the courts, in 2009 the French supreme court held that a “*cancellation agreement*” (not “*termination*”) granting an employee € 20 000 in compensation for the *cancellation* of his fixed term contract was a not a termination agreement. Thus, in the absence of an agreement, the employee could legitimately claim for the damages owed in case of wrongful early termination.

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