France

National report

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1. What is the definition in your country of the contract of employment? What are thus the main criteria for assuming a contract of employment in your country? How are these criteria currently interpreted in regulations and in case law? What is the main source of uncertainty in this area?

The French Labour Code does not define the contract of employment. It just states that the employment contracts '*are subject to the rules of general law. They may be established in any form that the contracting parties decide to adopt'*. [1] Therefore it has been up to the Courts to fill in the gaps but no real definition has been developed. The Courts only gave the constitutive elements of the contract of employment from which theorists draw a definition. Thus the contract of employment is a contract by which an individual agrees to carry out tasks for another individual or organisation, within a relationship of subordination, in return for payment.[2]

The Courts are not bounded by the qualification of the contract given by the parties and are responsible for determining the precise classification of the disputed facts and actions, irrespective of the terminology used by them. This is public order legislation. The various chambers of the Court of Cassation hold that the existence of an employment contract depends neither on the will expressed by the parties nor on the title of the contract, but on actual conditions under which the workers carry out their tasks.

The existence of an employment contract requires the combination of the following three elements: a provision of work, payment in return and legal subordination.

1. 1. Work has to be provided

The provision of work is the basis of the contract of employment. An activity is considered to be professional when the aim is to earn an income or a compensation of normal living expenses. Neither the Labour Code nor case law define provision of work but it is generally accepted to take many forms such as occasional, manual, intellectual, artistic and even sporting activities.

The provision of work is a notion the Court of Cassation refuses to define.

For instance, in an important decision of 9 may 2001 concerning the Emmäus companies, the Court of Cassation restricted its examination to the main object of the contract: to be a contract of employment the provision of work must be the main object of the contract. In this case, the provided provision was not work but social integration.

In another famous ruling of the Court of Cassation on 3 June 2009 involving the well-known TV reality show 'Ile de la tentation' the judges had to determine if the candidates provided work when they expressed their feelings, became involved in interpersonal relationships and took part to various activities in an exotic island under the constant gaze of the cameras. The Court of Cassation did not take position on this issue. Instead of examining if there was a provision of work and then determine whether or not there was a legal subordination relationship, the Court of Cassation started to examine the existence of legal subordination to deduce the existence of a provision of work.

1. Article 1221-1 of the Labour Code
2. J. Pélissier, A. Supiot and A. Jemmaud, *Droit du travail*, Dalloz 2008

1. 2. Payment is to be provided in return

The contract of employment is an onerous contract which means remuneration must be promised and paid.

The remuneration is necessary to have a contract of employment so that it is not mixed up with voluntary work or family mutual aid, but it is not a determining criteria. Indeed, according to case law, the payment of the remuneration is insufficient in itself to establish the existence of a contract of employment. [3] Yet, terms and conditions of payment may help to establish if there is a contract of employment. For example, fixed wage and daywork plan are more serious evidences that a contract of employment exists than commission system and piece-work payment.

1. 3. There is legal subordination

The French case law has mainly focused on this criterion. Carrying out a subordinate work is the definition of salaried work. According to case law, in a legally defined subordinate relationship the employer is authorised to give orders and instructions, as well as to organise and control the conditions under which work is carried out. The employer is allowed to take disciplinary actions against the employees failing to comply with these arrangements.

Traditionally the notion of legal subordination is distinguished from economic subordination. The case law has always rejected the concept of economic dependence and focuses only on legal subordination. Nevertheless, it seems that the criterion of economic dependence has probably inspired the legal extensions of the salaried status to certain professions (home-workers, branch managers, travelling salesmen).

It has been constantly held by the Court of Cassation in labour law as well as in social security law that determining the existence of legal subordination is a matter of fact based on practical and material considerations. Thus, the fact that a person has received compensation from the industrial injury insurance is not sufficient to establish that a contract of employment exists taking into account that the person concerned had a broad delegation of powers and did not provide any evidence that he was given orders from the firm or had to give any explanation. [4]

Case law has evolved from a strict interpretation of legal subordination to a more pragmatic approach especially in order to facilitate access for certain workers to the general social security system but also to fit on the evolution of employment law.

Initially, subordination involved management and control by the employer of the way the work was carried out and the employee had no choice but to accept the employer's surveillance and decisions. Thus, managers of service stations could benefit from the general social security system even if they were otherwise considered as shopkeepers. [5]

Later, the Court of Cassation took into account that some professions (mainly doctors, advisers, teachers and trainers) have a broad technical independence in the way they carry out their work. It

3. Cass. soc. 4 décembre 1986
4. Cass. soc. 18 juin 1997
5. Cass. soc. 18 décembre 1975

means the technical skills and the freedom necessary for these professions to complete their tasks properly are incompatible with the idea of control and management peculiar to the employment relationship.

Finally the Court of Cassation restricted this movement and set out that the criterion of an organised service was just an evidence of a legal subordinate relationship and could not be self-sufficient. Indeed, the Court of Cassation in a famous ruling *Société Générale* of 13 November 1996 held that "*a subordinate relationship exists when work is carried out under the authority of an employer who has the power to give orders and instructions, control the way work is done and apply penalties if the subordinate person fails to comply; (...) work carried out in an organised service may be an indication of subordination when the employer unilaterally determines the conditions under which work will be carried out*".

Since this ruling, the subordinate relationship is the key criterion for employment contracts as well as for coverage under the general social security system which means the "employee" status is the same in both labour and social security law.

To determine whether or not a subordinate relationship exists, the Courts use a set of criteria, without any hierarchy among the several criteria applied. That will be :

- ***The behaviour of the parties :***

    - Who signed the contract of employment?
    - Who issues the pay slip?
    - Who registers the workers with the social security system?

- ***Workplace and working hours*** : who determines them?

- ***Work :***

    - Who does the work?
    - Who provides the work?
    - Who provides the equipment and raw materials?

- ***Responsibility :***

    - Who is responsible for managing and monitoring the work?
    - Who applies penalties for employee misconduct?
    - Who establishes the payment arrangements?
    - Who bears the financial and employment risks?

The main source of uncertainty is that criterion of subordination. It is linked in a certain way to the fact that the boundaries between employed and self-employed workers are becoming increasingly fuzzy. Indeed, certain people who are in a salaried relationship enjoy a broad autonomy and freedom in the way they carry out their work whereas a huge number of self-employed people give up their autonomy as they become integrated in production and distribution. In this context, legal subordination can no longer be the distinctive criterion for employment contract and application of labour law.

However, traditionally the legal criterion is that of legal subordination. But the Court of Cassation headed towards a certain flexibility regarding its own definition of salaried work by deciding that workers should benefit from the employees' regime if they were in a situation of economic and not

purely legal subordination. It was the case of the taxi drivers' vehicle rental contracts which were reclassified into employment contracts (although the rental company did not define their work place, length of workday or working hours). [6]

6. Cass. soc. 19 décembre 2000

2. What are the main different forms of employment contract in your country?

	Permanent contract	***Fixed-term contract***	***Mission's contract (temporary work)***	***Apprenticeship's contract***	***Professionalization's contract***
Legislation	Article L1221-1 of the Labour Code	Articles L1241-1 and the next of the Labour Code	Articles L1251-1 and the next of the Labour Code	Articles L6221-1 and the next of the Labour Code	Articles L6325-1 and the next of the Labour Code
Definition	Employment contract concluded with an open-ended. It's the normal and general employment relation's form.	Employment contract concluded with a fixed-term. It can be concluded only in some cases which are listed by the law.	Employment contract whereby the temping agency hire a worker in order to put him at a company disposal for a time. [7]	Employment contract concluded between an apprentice and an employer. The employer undertakes to pay salary and to assure a full employment training to the apprentice in the company and in the vocational training centre. The apprentice commits himself to work for this employer during the fixed-term employment contract and to follow this training.	Employment contract which associates general and technological education and vocational training taught by organisms or by the company and acquire expertise by the practice of occupation in relation to the sought qualifications in the company
Case of	General.	**- Replacement of absent**	Execution of a specific	This contract can be	This contract can be

[7] PELISSIER Jean, AUZERO Gilles, DOCKES Emmanuel, *Droit du travail*, Précis Dalloz, 2010.

recourse		**employees** (holiday, illness, pregnancy, temporary part time…) **- Variation in company's activity** (temporary increase, temporary work) **- Profession's custom** confirmed by decree or extended collective agreement - **Fight against unemployment and for the training** **- Project's contract** from 18 to 36 months (it concerns only executives and engineer)	and temporary task named mission and only in event of - **Replacement of absent employees** **- Variation in company's activity** **- Profession's custom**	concluded by all people from 16 to 25 years old who are French or come from EU or are foreigner with an authorization to work and by all companies private or association. While the execution of the contract, the apprentice must follow a block-release training in a vocational training centre.	concluded by all people: - from 16 to 25 years old who can complete their initial training - beneficiary of a social minimum (RSA[8]…) - who have been employed with a "contrat unique d'insertion". It can be concluded by all employers liable for tax for the vocational training.
Term of employment	Opened-term	Fixed-term : 18 months in principle	Fixed-term : 18 months in principle	Fixed-term: from 1 to 3 years.	This contract can be a permanent or a fixed-term contract but the vocational action can last only between 6 and 12

[8] RSA (« revenu de solidarité active »): allowance which ensures a minimum monthly income. (for a single person who has no income in 2011 466,99€)

					months.
Written document	Preferable but not compulsory except in case of temporary work notably	Compulsory in the 2 working days after taking up one's post. The written contract must contain some legal references.	Compulsory in the 2 working days after making available. The written contract must contain some legal references.	Compulsory. The written contract must contain some legal references.	Compulsory. The written contract must contain some legal references.
Probationary period	Must be established in the contract and the statutes limit its duration according to the employee's qualification. With the renewal, it can't last more than 8 months.	Must be established in the contract and the statutes limit its duration - *fixed-term contract of less than 6 months* : 2 weeks maximum - *fixed-term contract of more than 6 months* : 1 month maximum	Must be established in the contract and the statutes limit its duration - *mission even a month* : 2 days maximum - *mission between 1 and 2* : 3 days maximum - *mission of more than 2 months* : 5 days maximum	2 first months of the apprenticeship	Must be established in the contract and follows common law rules for the permanent or fixed-term contract according to the concerned case.
Rescission of contract	- Freely during the probationary period but the employer and the employee must respect the legal notice for probationary period.	- Freely during the probationary period but the employer and the employee must respect the legal notice for probationary period.	- Freely during the probationary period but the employer and the employee must respect the legal notice for probationary period.	- Freely during the 2 first months (probationary period) with company's and apprentice's agreement beyond 2 months but the	- Freely during the probationary period but the employer and the employee must respect the legal notice for probationary period.

	- At any time of the contract's execution in accordance with conditions given by statutes	- Rescission by rights at the term	- In principle, rescission at the term	employer and the employee must respect the legal notice for probationary period. - Rescission by rights at the term	- Rescission by rights at the term of the vocational period
Employee's rights at the term of the contract in event of regular breach of contract	-**Legal dismissal's compensation** : for the employee justifying of one year of continuous service with the same employer or conventional dismissal's compensation if it's more favourable for the employee. This compensation is not due in case of gross misconduct or gross negligence. - **Unemployment's compensation** by Pole employ except wrongful resignation	**- Compensation for the termination of the contract** (10% of the total gross income) except if a permanent contract is concluded or if the employee breaches the contract before the term - **Unemployment's compensation** by "Pole emploi" provided that specific conditions are fulfilled	- **Compensation for the termination of the contract** (10% of the total gross income) allowing for exceptions - **Unemployment's compensation** by "Pole emploi" provided that specific conditions are fulfilled	**Unemployment's compensation** by "Pole emploi"[9] provided that specific conditions are fulfilled	- **If permanent contract**: no rights at the term of professionalization's contract. **- if fixed-term contract** : same rights than at the term ofa fixed-term contract

[9] Pole emploi : operator of public service of employment

Renewal		Once in the limit of 18 months in principle	Once in the limit of 18 months in principle	Yes if we are in a case of recourse	In case of a fixed-term contract, it may be renewed once if the beneficiary could not get the proposed qualification
Amendment into permanent contract		Yes	Yes	Yes	Yes

This information must be moderated because there are special rules for some categories of contracts because of special circumstances in order to work like times… For example, we have the homeworker who must find his employer obliged to give a certificate which must contain notably the nature and the quantity of work, the identity of the parties…

3. Which categories can be distinguished of workers who perform work personally, but who do not have a contract of employment in your country? Which legal criteria are used to distinguish these groups? Which numbers on the respective groups are currently available?

3. 1. Different types of workers who perform work personally

There are different types of workers who perform work personally but who don't have a contract of employment in France. The first and the most important difference between the employees and the self-employed is the absence of subordination but sometimes, the distinction is not as simple as this.
Firstly, we have to describe all the groups of workers who don't have a contract of employment. There are :

- ***Craftsmen***: The definition of the decree of 1962 is the following : It is a person who sells products or services essentially stemming from his work. His business must not include more than 10 employees. Most of the time, it concerns independent worker who perform an art or a work alone or with his family or with few employees (for example: bakers; bricklayers…). The craftsman has to be registered at the Chamber of Trade.

- ***Self employed farmers***.

- ***Merchants***: It is a person who usually does commercial act, in return of payment, and who is listed in the Register of Commerce and Societies. Merchants are identified regarding acts they are doing and not regarding a legal status defined by law. This means that even if the self employed of this category normally have to declare themselves to the Register of Commerce and Societies, they can be considered as merchants even if they don't fulfil this obligation.

- ***Professionals***: It is an independent worker who performs activity in which the most important performances are intellectual, scientific, technical or artistic. There is no legal definition in the labour Code

- ***Artists and writers***: but it doesn't seem interesting to treat of this question in our presentation.

To distinguish the self-employed from the subordinate employees, the URSSAF[10] use different criteria. First, to be considered as a free-lance, people have to work under a contract of enterprise and not under a contract of employment. There is a contract of enterprise when a person A undertakes to do some performance, in return of a payment, for a person B independently and without representation. To be simpler, the self-employed has clients and the employee has an employer.

10. URSSAF: administrative body responsible for collecting social security payments

3.2. Distinction between these different types of workers :

Afterwards, we need to question ourselves about the difficulties to distinguish these workers between themselves.
One of the most complicated questions is the difference between craftsmen and merchants especially when the craftsman sells also products he didn't make by himself. In this case, the craftsman will be a merchant too. Since decades, it is very difficult to the beginner entrepreneur (contractor) to know where they have to register and to which category they belong.
The second point is about the professionals. As we said before, there is no legal definition in the Labour Code of this category but the Code of social security and the General Code of taxes give some answer to define this group. The Code of social security lists the professions considered as professionals. For example, in this list, we find doctors, dental surgeons, solicitors, and ushers. Some professionals are not listed in this article but are considered as professionals too. Besides, in the General Code of taxes, there is no definition either but only the fiscal rules to apply to the benefits of this category. Sometimes, it is very hard to define whether an activity is a liberal one or not. Some activities may correspond to two or even three categories. Most of the time, the rules of the social security system enable to settle the problem.

3. 3. Different types of enterprise available :

For the craftsman, the merchants and the professionals, there are different types of enterprises available.

- ***The individual enterprise*** (auto-entrepreneur, micro-enterprise): this first form concerns persons who work alone. There is no capital inflow and the creation formalities are very simple. The entrepreneur just needs to ask for his inscription as a physical person. However, this form of activity is very risky because in case of insolvency, the assets of the self-employed can be taken.

- ***The EURL***: it concerns also persons who work alone but the difference with the individual enterprise is that there is a capital inflow. Besides, the formalities are more complicated because there must be a declaration and the entrepreneur must redact statutes. The advantage is that the responsibility is limited to the capital of the society.

- ***The SARL***: in this case, there is more than one person in the business. There must be two or more persons engaged in the society. The rules are the same as for the EURL.

As before, we have to admit that in France, the biggest problem is to distinguish the contract of employment and the contract of enterprise considering the question of subordination. The self-employed must not be considered as being employees but in some cases, the difference is hard to make. For example, if a self-employed works only with one client, can we consider that he is still independent or shall we consider him as the employee of this client ? There is no response from the Courts : in each case, the situation must be analysed to determinate if there is a subordinate relationship. The law of 4 august 2008 doesn't fix the question of persons in the situation between self-employed and subordinate employed.

en milliers

	2007	**2008 (p)**
Total of Subordinate employment	**24 008,8**	**23 854,2**
Self-employment		
Agriculture	460,2	445,4
Industry	128,5	129,1
Construction	276,8	287,0
Tertiary sector	1 489,0	1 509,8
Total of self employment	**2 355,2**	**2 371,3**
Total of employment	**26 363,9**	**26 225,5**

(p) : Estimations provisoires pour les années 2008 et 2009.

4. Do labour law Acts and/or courts assist workers who have difficulties in proving that they (actually) have a contract of employment in asserting their claim? For instance, does the Act provide for legal presumptions that there is a contract of employment? In which situations? Do courts reclassify a civil law contract into a contract of employment? Under what conditions and by using which criteria?

4.1. The existence of legal presumptions

Concerning legal presumptions, the French labour code lays down two different categories: on the one hand, salaried-presumptions, and on the other hand, non-salaried presumptions.

4.1.1 First, the French Labour Code lays down presumptions concerning the existence of a contract of employment: Therefore, it is not required from the worker intended by these following articles to prove the existence of the subordination link. Here, the French legislator takes into account the economical subordination of these specific workers because there is a lack of an actual and sufficient subordination link. These categories of workers are the following:

- ***Travelling sales representatives*** : *article L7313-3 French Labour code*.

- ***Show business artists***: *L7121-3 Labour code*.

- ***Fashion model workers***: *article L7123-3 of the French labour code* – legal presumption. This legal presumption remains without taking into account the form and amount of remuneration and without taking into account the qualification given to the contract.

- ***Professional journalists***: *L 7111-3 French Labour code* definition of journalist and *L7112-1* provides for a legal presumption concerning the contract concluded between a firm and a journalist worker, stating that it is a contract of employment.
  For this legal presumption to be established, **neither the form / amount of remuneration nor the qualification given to the contract are relevant**.

- It is easy for the worker to bring the proof because the Court does not require from the claimant to establish the subordination link[11]. The burden of proof shifts upon the employer/ the Firm who has to demonstrate that there is no contract of employment.
  Concerning journalists, *article R7111-1 of the French Labour code* provides for a presumption with the Identity Professional Card a worker possesses.

- ***The branch manager*****:** We must distinguish between two categories of branch manager :

- As far as ***freed manager, manager representative/delegate and self-employed managers of retail food outlets*** **are concerned,** they are workers without contract of employment.

11. Cass. Soc 5 November 1987 n°85-40273.

- As far as ***salaried manager of branch of firm*** is concerned, the French Labour code sets out a legal presumption *article L7321-3*. The manager falls therefore within the application of the Labour code without proving the existence of a subordination link.

- ***Home workers*** : *article L7412-1 of the French labour code* lays down a presumption that is subject to a restriction specified at *article L8221-6* (a worker registered in the corporate and commercial register is excluded from the salaried presumption).

- ***School assistant*** : *L423-2 Code de l'action sociale et des familles*.

- ***Domestic employees and services***: according to *article L7221-2 of the Labour Code*, only a part of the French labour code is applicable. (e.g.: rules on sexual and moral harassment and on paid leave).

- ***Caretakers and employees in a block of flats - French Collective*** *Agreement of 11 December 1979 extended 15 April 1981*. According to *articles L. 1121-1, L. 7211-2 and L. 7215-1 French labour code*, the French labour code is applicable to this category of workers.[12]

4.1.2. Then, the French labour code enshrines a presumption of no employment contract. According to *article L8221-6-I of the Labour Code*, the following "are presumed not to be bound to the client by an employment contract for the business activity covered by the registration :

- Individuals registered in the corporate and commercial register, the trade register;
- Individuals registered in the transport company registry for good haulage, passenger transport, or operating school buses;
- Managers of corporations registered in the corporate and commercial register and their employees".

The same article provides for an exception to this presumption and states that "the existence of an employment contract may, however, be established when the persons specified provide services to a client, directly or via an intermediary, under conditions that put them in a situation of constant legal subordination."[13]

4.2. The courts helping workers in proving their contract of employment:

The Courts can assist workers in proving that they are bound by a contract of employment and can facilitate the burden of proof with the application of the principle of the freedom of proofs:
The burden of proof is upon the person (the employee/the worker) who pretends that he is bound by a contract of employment; therefore he has to prove the existence of this contract of employment.

12. Cass. Soc. 30 June 1994 o 89-41.654, Bull. civ. V, no 224.
13. Cass. Soc. 10 December 2002, RJS 2/03 n°144.

However, where there is an application of the rules dealing with the proof of an employment contract, the French court is lenient (flexible) and applies the principle of "freedom of proof" to establish the existence of the contract of employment (Cass.soc 16.01.1985 n° 83-40296). Therefore, any proof can be used such as testimony, presumptions, even more pay slip, labour certificate, pointing card, exchange of mails during performance of work.
The court also accepts any email sent on internet account (*article 1369-7 French Civil Code*).

4. 3. Courts reclassifying a civil contract into a contract of employment:

According to *article 12(2) of the New Civil Procedure Code*, the courts are responsible for "determining the precise classification of the disputed facts and actions, irrespective of the terminology used by the parties".
Therefore, the existence of an employment contract depends on the **actual conditions under which the workers carry out their tasks**, irrespective of the consent expressed by the parties and the title given to the contract.

Courts would reclassify the contract into a contract of employment by using the three elements required to constitute an employment contract: the most important one being **the legal subordination.**

There are many law cases dealing with the reclassification of factious or apparent employment contracts, or contract initially and incorrectly classified by the parties in the following situations:

- ***Taxi driver***: the Court can reclassify a civil law contract into a contract of employment in this case (Cass. soc., 19 déc. 2000, no 98-40.572 P+B+R+I). In this case, the Court rules that the taxi driver should benefit from the status of employee because he was in a situation of economic subordination relation (Usually, the court provide for benefits of employee status to a worker when the worker is in a legal subordination situation).

- However, another case of 2008[14] dealing with taxi rental contracts, reclassifies the taxi rental contract into an employment contract after seeking the existence of a subordination link between the taxi driver as the taxi's tenant and the owner's taxi.

- ***Registered Heavy Goods Vehicle rental company contracts***[15]***:*** the court of Cassation rules that the existence of an employment contract depends on the actual conditions under which the worker carries out his tasks. In this case, the HGV driver actually performs his work under the authority of the HGV rental company which defines the place, hours and price of loading and unloading and which compels the HGV driver to buy a specific HG vehicle.

14. Cass. Soc. 17 September 2008.

15. Cass. Civ 2nd 20 March 2008.

- ***Franchise contracts***[16]***/non salaried-manager***[17]: in this case the Court reclassify the civil contract into a contract of employment stressing that the manager representative was under the control of the principal; therefore a legal subordination link was established.

- ***Contract for appearing on television programmes***: the court of Cassation's ruling on 3 June 2009, in case of involving a French TV reality show "Ile de la tentation", provided an opportunity to analyse the existence of a provision of work and the concept of work itself (see above).

- ***Agricultural integration contracts*** (Cass. Soc 13 November 2008).

- ***Business referral contracts*** (Cass. Civ 2nd 4 December 2008).

- ***Voluntary work contracts*** (Cass. Civ 2nd 7 February 2008).

- ***Computerised data capture contracts*** (Cass. Civ 2nd 20 March 2008).

- ***Independent consulting contracts*** (Cass. Soc. 14 May 2009).

16. Cass. Soc. 25 March 2009.
17. Cass. Soc. 21 January 2009, n°07-18276.

5. Are aspects of labour law extended to categories of workers who do not have a contract of employment? If so, which parts and under which conditions? Is such protection also available for self-employed persons without staff (you need to give brief information on the position of the self-employed only)?

5.1. The 'portage salarial' or umbrella companies

Umbrella companies first appeared in France about twenty years ago. Such companies became a significant phenomenon in the 1990s. They provide self-employed workers with the support granted by a large organisation while retaining their full autonomy as far as their work is concerned. They were legalised very recently by the Act of 25 June 2008 modernising the labour market which introduced Article L. 1251-64 in the Labour Code. The contract with the umbrella company is defined by the following terms: "*it covers a set of contractual relations involving an umbrella company, a person providing a service, and a client enterprise, where the person is subject to the employed persons' regime and his/her services to the clients are paid by the umbrella company, in the form of salary. The contract guarantees the person's rights to his/her own clientele*".

It is a system which allows a self-employed person to obtain the welfare advantages of the employee status. This system allows a person (P) working as a freelance or service provider for a client (C) to be relieved of any administrative burden, in particular as regards invoicing and recovery of due payments, by using a third-party company as an intermediary (I). In this system:

- P is a (temporary) employee of I
- C is considered as a client of I
- I is paid for the services rendered to P by deducting a commission, usually between 8% and 12%, from the amount invoiced to C for the work done by P.

Using an umbrella company is a very practical solution for freelance consultants who want to avoid the hassle of running a company and getting paid for their assignments. In practice the worker has a great professional qualification. He is independent in prospecting customers as well as in carrying out his mission but he benefits from the employee status.

Case law intervened and subjected the contracts between the worker and the umbrella company to public order and labour provisions. In two rulings of 17 February 2010 the Court of Cassation requires the umbrella companies to provide work for the worker as well as to respect the legal provisions relating to part-time contracts (in this case, the contract has to mention the working time and its distribution between the days of the week or the weeks of the month).

It should be noted that these decisions have been pronounced about facts prior to the Act of 25 June 2008 who placed the worker under the protection of Labour law. It's debatable whether this system is still appropriate taking into account that the workers are no more independent.

5.2. Work carried out in an establishment by a foreign enterprise

There is a beginning of an extension in this area by virtue of a fundamental right which is health and safety of each worker in the company. Nothing can protect the independent worker from himself: it is hardly possible to prevent him from working 15 hours a day for example. But as soon as the independent steps in the company to carry out his work, he is subjected to health and safety rules. It is the idea of community which is involved and justifies such obligations.

The coactivity of firms may be dangerous because of the presence in the same place and at the same moment of several firms with a culture and a high potential danger which are different due to the specificity of their activity. Coactivity is an aggravating factor often noticed in accident reports, especially in major ones. In order to avoid them, each business manager has to estimate the risks to which his employees are subjected by the presence of another firm realizing work in its establishment. Regulation aims to prevent these risks related to the interferences in a same place of work. The reference text is a decree of 20 February 1992 which introduced in Article R. 4511 and following of the Labour Code specific provisions on hygiene and safety matters applicable to "work carried out in an establishment by a foreign enterprise". This part of the Labour Code set the responsibilities of each intervening and the conditions of their intervention. It defines an exchange information obligation, a risk assessment obligation and the implementation of means of prevention. These means are summarized in a document called "Prevention plan".

5. 3. Independent road hauliers

The driving time and the rest time of lorry drivers is regulated by the European Regulation of 15 march 2006. It has been transposed in French law in 2004 and clarified in 2007. The provisions set by these rules apply to salaried drivers as well as to independent drivers. Therefore independent road hauliers are subjected to the same rules as the salaried ones concerning maximum weekly and daily driving time, rest days and rest periods. Safety of others is in question here.

5.4. The branch managers

The notion of branch managers has a purely economic signification and refers to all the situations where a person exploits an establishment with certain latitude but under a certain economic dependence of the manager towards the enterprise.

So defined, by economic links between the parties, the management of a business can rest on various legal categories of contracts: rental agreement, bailment, concession contract, franchising, etc. The manager keeps his quality of trader and the right to exploit a business in its own name at his own risks.

The Act of 21 March 1941 extends the protection of labour law to the branch managers irrespective of the legal nature of the contract binding him with the enterprise. Article L. 7321-3 of the Labour Code states that the provisions of the Code are applicable to "*persons whose profession consists mainly either in selling goods or commodities of all kinds, securities, volumes,*

publication, tickets provided exclusively or almost exclusively by a single enterprise, or in collecting orders or receiving objects to process, handling or carrying on behalf of a single enterprise, when these persons carry out their work in premises provided or authorized by that enterprise under the conditions and prices imposed by it".

The lawmaker has taken into account a certain degree of dependence to extend the scope of labour law to the branch managers without intervening on the qualification of the contract. The Act of 1941, completed by social security law provisions, is the basis of the general status of the branch managers which is subjected to labour law provisions.
However it appeared that this purely and simply extension of labour law was not compatible with the situation of some managers- branch managers of food retail businesses or co-op- who often have great liberties in the economic management as well as in determining their own conditions of work. That is why an Act of 3 July 1944 created a particular status half social half commercial to non salaried manager of food retail businesses.

5.5. Self employed persons without staff

In France, the self-employment category includes entrepreneurs regardless of the presence of employees. It includes self-employed workers without employees, employers, agricultural workers, as well as people working in the family business. The latter refers to those who, without being employees, help a self-employed member of their family.

These persons are not protected by labour law, but by social security law.

6. Are aspects of social security law extended to categories of workers who do not have a contract of employment? If so, which parts and under which conditions?

For a start, it is advisable to introduce quickly the running of the French welfare system. This system is divided into four branches which cover the risks :

- Illness, disability, death, maternity
- Occupational disease and accident
- Old age, widowhood
- Family

The unemployment is not a risk which is covered by the French Social Security system contrary to the EU law. The unemployment's compensation caters for the employee and public officers who just lost their job in our country. Thus the workers without contract of employment cannot benefit from it.

Then, these risks are managed by different organization according to the category the worker belongs to. We can distinguish three Social Security systems :

- ***The "régime général des salariés"*** (employed person's Social Security system)

- ***The "régime social des travailleurs indépendants"*** (independent workers' Social Security systems)

- ***The "mutualité sociale agricole"*** (Farmers' Social Security system)

Each of them offers different guarantees. The employees are affiliated to the employed person's Social Security system. Are affiliated to the independent workers' Social Security system three categories of workers which are defined by the Social Security code. These categories are :

- ***The craftsman*** (article L622-3 of the Social Security code)

- ***The merchant and the industrialist*** (article L622-4 of the Social Security code)

- ***The member of the liberal professions*** (article L622-5 of the Social Security code) regroups two professionals' categories: persons who exercise one of the controlled occupations (doctor, lawyer, pharmacist, architect...) and the workers who have a non-controlled activity and exercise as professional people because they do not belong to another system.

These 3 workers' categories are affiliated to the independent workers' Social Security system except if they satisfy the conditions of the article L311-3 of the Social Security code. All people who are enumerated by this article are subject to the employed person's Social Security system according to the social insurances and occupational disease and accident even if they are not occupied in the establishment of the employer, even if they have wholly or partly the tools which are necessary for their work and even if they are paid with tip. This article affiliates to the

independent worker's Social Security system the home worker, travelling salesmen and child minder at his home… So these workers have the same welfare system than the employees.

Concerning independent workers who don't satisfy the conditions of the article L311-3 of the Social Security code, they don't enjoy extension of the employees' social security law strictly speaking. However they are affiliated to a particular system: the independent workers' Social Security system. The social security benefits offered by this system differ from these offered by the employed person's Social Security system. So we should compare it risk by risk in order to determine the guaranties the independent and employees are entitled to pretend and in which conditions.

6.1. Illness

6.1.1. Payment in kind

The payment in kind repays the care expenditure of the insured person by the Social Security system. The access conditions and the reimbursement rates are more or less the same. There is a difference in order to have the cares' repayment for a year because employees must carry out some conditions and independent workers have no conditions along

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	Independent workers' Social Security system	**Employed person's Social Security system**
Conditions	Systematic reimbursement as from the registration on the independent workers' Social Security system	Systematic reimbursement as from the registration on the employed person's Social Security system. But, in order to have the cares' repayment for 1 year, the assured must prove he has: - worked more than 60 hours or paid his contribution to the Social Security system on more than 60 hours of minimum wages during 1 calendar month or 30 days. - worked more than 120 hours or paid his contribution to the Social Security system on more than 120 hours of minimum wages during 3

		calendar month or a quarter. - worked more than 1200 hours or paid his contribution to the Social Security system on more than 2030 hours of minimum wages during 12 months.
Reimbursement rate, example of general practitioner	70% of the agreement rate[18]	70% of the agreement rate

6.1.2. Payment in money

The payments in money are substitution incomes. The members of the liberal professions have not these incomes. Except the access conditions, the craftsman, the merchant, the industrialist and the employee enjoy more or less same protection for this risk.

	Independent workers' Social Security system	**Employed person's Social Security system**
Condition	- Member of the liberal professions : no daily allowance - Craft worker, tradesman, industrialist, two conditions : • To be affiliated mainly or exclusively to independent workers' Social Security system in right by the illness insurance since a year. • To be up-to-date with the payment of the due contributions	- Sick leave of less than 6 months: to have worked 200 hours during 3 months before the sick leave or have paid his contribution to the Social Security system on 1015 hours of minimum wages during the 6 months before the sick leave. - Sick leave of more than 6 months: • To be affiliated since at least 12 months as social assured to the illness insurance • To have work less than 800 hours during the

[18] Agreement rate (« tarif de convention ») determines the amount for each act which will apply the reimbursement of Social Security.

		last 12 months including 200 hours during the 3 first months or have paid his contribution to the Social Security system on 2030 hours of minimum wages during the 12 last month including 1015 during the 6 first months.
Case of payment	The worker is temporary unable to work because of an illness or an accident notably and this is observed by the general practitioner	The worker is temporary unable to work because of an illness or an accident notably and this is observed by the general practitioner.
Amount of the daily allowance	50% of 1/365 of annual average income calculated on 3 years within the limits of 40% of the upper limit on salary deductions for social security contributions	50% of the daily basis wages calculated on the average of the 3 last month within the limits of the upper limit on salary deductions for social security contributions
Waiting period	- 3 days in case of hospitalization - 8 days in case of illness or accident - 0 days in case of childbirth	3 days
Duration of payments	360 compensation's days on 3 years in principle	360 compensation's days on 3 years in principle

6.2. Disability

6.2.1. In event of occupational disease and accident:

The employees have a special indemnification system for the occupational disease and accident more attractive than we have seen. The independent workers have a system less attractive because they don't enjoy a special system for the occupational disease and accident.

6.2.2. In the absence of occupational disease and accident:

The merchant, industrialist, craftsman and employees can all enjoy a disablement pension provided that some conditions are fulfilled. According to the liberal professions, it depends on the profession concerned. Indeed contrary to the employees, the merchant and the industrialists, the craftsman cannot have a disablement pension if they can exercise their paid professional activities. For the 3 others categories, the partial unfitness for work is compensated.

6.3. Old age

The liberal professions are subjected to 13 pension schemes which function differently; I will ignore it in my study. The craftsmen, the merchants, the industrialists and the employees enjoy all to a basis pension scheme quite similar according to retirement age and the calculation of the basic pension.

	Independent workers' Social Security system	**Employed person's Social Security system**
Retirement age (after reform)	62 years old (67 years old retirement with full-rate)	62 years old (67 years old retirement with full-rate)
Calculating of the basic pension	Average annual wages X rate X (number of insurance quarter / reference duration)	Average annual wages X rate X (number of insurance quarter / reference duration)

7/8. Are their recent developments in your country in view of the protection of workers without a contract of employment ? Do (legal) authors criticize the present protection of workers without a contract of employment? What is their line of arguments and do they provide for any solutions?

The only development for the moment regarding the protection of workers without a contract of employment is to assimilate them to subordinate workers. We already treated this question before that is why we chose to put question 7 and question 8 together.
The Labour Code has been reclassified in 2008. Many authors were waiting for a change of the rules related to self-employment. They wanted this Code not to be considered only as a Labour Code but as a Code of professional activity in general. The legislator didn't choose this solution and it is still hard in French law to find rules related to the protection of self-employed workers. Legal authors criticize this actual lack of protection and try to provide for any solutions.

7/8.1. Critics on protection of workers without a contract of employment

- ***Gérard Lyon Caen***[19]: criticizes the French bipolarity conception/binary legal definition of employment relationships which entails some limitations and uncertainties.

- ***Isabelle Daugareilh***[20] criticizes the fact that "on the issue of working conditions, especially those concerning health and safety at work, there is no indication that these are reserved for employed persons".

The real problematic issue for this author is the polarization in law between employed and self-employed persons.

- ***Jean-Yves Kerbourc'h*** **:** [21]There are confusion and scattering of rules. (e.i. school assistant to who the social action and family code is applicable) The new French Labour Code gives more uncertainties to the boundaries between salaried work and non salaried work.

- ***Paul-Henri Antonmattei*** and ***Jean-Christophe Sciberras***: the main issue deriving from the distinction between salaried-work and self-employed work does not remain in the difficulty of delimiting boundaries of these two categories, but remains in the difficulty of giving an adequate and satisfying answer to all the different professional activities.[22]

7/8.2. Solutions provided for by the authors

19. G. Lyon-Caen, 'Le droit du travail non-salarié', Paris, *Sirey 1990.*
20. I. Daugareilh, '*Protection of working relationship in France'* p. 18*.*
21. J.-Y. Kerbourc'h*,* Professeur at University of Nantes, 'Nouveau code du travail et frontières du salariat,' *Semaine sociale Lamy 2010* (n°1472 supplément)*.*
22. P.H. Antonmattei and J.C. Sciberras, 'le travailleur économiquement dépendant, quelle protection ?', *Droit social 2009,* p.233.

- ***G. Lyon-Caen*** proposed 20 years ago the concept of "**work-law**" which would gather employed and self-employed work.

- ***Jean Boissonnat*** advocates the project of a "**working individual status**". It consists in building "a career path that takes the non linear, diverse professional situations of the working population into account, covering alternating periods of training, work in a corporate context, self-employment, or work in associations, leave from jobs working a series of employers, and intermediate situations between unemployment and employment contracts.

The aim of these contracts would be: first, to broaden the objectives of traditional employment contract; then, that would re-establish a minimum of public social order for the benefit of self-employed people and their employees".

- Some authors such as ***Alain Supiot*** and ***Jacques Barthélémy*** advocate recognition of "**the professional status of employees accompanied by social rights**"[23] (e.g. time-off rights, training leave, time-savings, accounts, etc.) which would be transferable from one company to another, usable within or outside employment contracts and jointly funded by the State, social security, enterprises, and the joint social institutions. According to *A. Supiot* (defers from *J.Boissonnat*), these fundamental rights should not be dependent on a contract but should take form of personal right.

- ***"Parasubordination"*** : (an Italian concept) this concept supposes a third category of work (aside from/next to salaried-worker and non-salaried worker). According to *Elsa Peskine*, it "describes all the cases in which non-salaried workers may benefit from certain protective provisions, based on or even taken from labour law, due to the dependent status resulting from their work situation".[24]

Here, workers must be legally treated like employees, without reclassifying the work relationship as an employment contract, and disconnecting the work relationship from any legal subordination (i.e.: branch manager self-employed managers of retail food outlets).

- ***P.H. Antonmattei*** and ***J-C Sciberras*** recommend in a report commissioned by the Ministry of Labour a **global legal solution for economically dependent work**, not by recognizing a general law, but by setting up an intermediate category between employed workers and self-employment, economically-dependent workers.

Moreover, these authors propose criteria for identifying self-employed economically dependent workers. Self employed workers would be thus "persons who have personally defined their own working conditions or established then in a contract with their clients."

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23. A. Supiot, '*les nouveaux visages de la subordination'*, Dr. Soc. 2000, 131 ; J. Barthélémy, '*Du droit du travail au droit de l'activité professionnelle',* Les cahiers du DRH, juin 2008, p.35.
24. E. Peskine, 'Entre subordination et indépendance : en quête d'une troisième voie' *Revue de Droit du Travail* (2008) p. 371-377.