

Employee savings plans – Be careful! Termination of an employment contract does not enable premature withdrawal from a PERCO retirement savings plan

When employees leave their company, they often request to withdraw their savings from their employee savings account or accounts. However, as noted in this month's article below, although the termination of their employment contract does enable premature withdrawal from a PEE employee savings plan, this is not a case for a PERCO collective retirement savings plan.

The facts

Mr. I., who was employed under a fixed-term contract from 2012 to August 2014, had made contributions into a PERCO retirement savings plan set up by his employer.

In April 2014, he received a letter from his employee savings account administrator asking him to indicate, before May 2014, his decision regarding his investments in his account.

On 3 April 2014, Mr. I. telephoned the account administrator to obtain more information about his options. During this conversation, he informed the person he was talking to that his employment contract would end on 31 August 2014. According to Mr. I, this person then informed him that he could request the premature withdrawal of all of the money he had invested, including in his PERCO plan.

After this conversation, Mr. I. decided not to request immediate payment of his contribution and preferred to invest it in his PERCO plan.

In August 2014, Mr. I. contacted the account administrator for information on how to get his savings released due to "termination of the employment contract". However, contrary to what was said in the telephone conversation of 3 April 2014, he was informed that the money he had invested in his PERCO plan could not be withdrawn for this reason.

Mr. I. was surprised at this response, which according to him was contrary to what he had been told during the telephone conversation of 3 April 2014.

He then asked me to obtain the release of all of the assets in his PERCO account in 2014.

The analysis

After reviewing the information provided by Mr. I, I questioned the account administrator and asked him to send me the recording of the telephone conversation of 3 April 2014.

After listening to this conversation, I noticed that Mr. I. had been provided with incorrect information that led him to invest his contribution in the PERCO plan, rather than ask to receive it immediately. However, unlike a PEE employee savings plan, a PERCO plan is intended for long-term retirement savings and therefore does not enable withdrawal until retirement, and not just until five years have elapsed.

The recommendation

On the basis of the information obtained during the mediation investigation, and in particular the telephone conversation of 3 April 2014, I recommended that the account administrator release all of the assets in Mr. I's PERCO plan, which he agreed to do on an exceptional basis.

The lesson to be learned

As already stated in an article last month,¹ savings in an employee savings plan may be withdrawn prematurely only in exceptional cases specified by law.

Furthermore, the requirements for premature withdrawal differ depending on the savings plan. PERCO plans are subject to stricter requirements than PEE plans, with only five premature withdrawal situations compared to nine.² Indeed, termination of an employment contract does not legally entitle an employee to withdraw savings prematurely from a PERCO plan, as the above situation demonstrates.

Mr. I's situation also highlights the importance of obtaining evidence during the investigation phase of a mediation procedure. A recorded telephone conversation may justify and support the claim of a party to a dispute and thus help the mediator form an opinion. In this particular case, the telephone conversation showed that the advisor failed to provide clear information. It could however, to the contrary, show that the claimant failed to correctly note or remember the information provided.

However, to obtain a recorded telephone conversation, the claimant must be able to determine the exact date of his or her call. In the absence of specific information it is extremely difficult for the account administrator to locate the telephone conversation, as call center platforms are very busy and receive numerous calls daily.

Situations that enable premature withdrawal from PEE and PERCO SAVINGS PLANS

		PEE	PERCO
	Termination of the employment contract (or of a term of office)	✓	✗
	Marriage / Domestic partnership agreement	✓	✗
	Birth or Adoption of a 3rd child	✓	✗
	Divorce or dissolution of a domestic partnership agreement	✓	✗
	Death of the investor or of his/her spouse	✓	✓
	Disability of the investor or of his/her spouse or children	✓	✓
	Creation or purchase of a business	✓	✗
Main residence	Purchase	✓	✓
	Extension	✗	✗
	Repair of damage caused by a natural catastrophe	✓	✓
	Expiration of rights to unemployment benefits	✗	✓
	Excess debt	✓	✓

¹ "Employee savings plans — It's good to know when you can withdraw your money prematurely when you purchase a main residence" (published on 2 June 2015 and available in French only).

² The other four cases in which funds may be withdrawn prematurely from a PERCO plan are specified in Article R. 3334-4 of the French Labour Code. Article R. 3324-22 of the Labour Code deals with premature withdrawal from a PEE savings plan.