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## Employee savings: the list of justifications for early release of funds is not exhaustive

The AMF Ombudsman's Office is frequently consulted by employee savers whose applications for early release of their funds have been rejected by their account manager on the grounds that the document they have produced is not strictly in compliance with that indicated in the table of the Guide to Employee Savings.<sup>[1]</sup> However, the Guide does specify that these justifications, which are the most customary documents, are not exhaustive, meaning that the parties concerned may produce any other document capable of testifying to the situation for which they are requesting the release, in support of their application.

This is illustrated by a recent case in which the employee was able to obtain the release of her assets.

### The facts

Mrs R., had left company X and wanted to release her employee savings scheme for this reason. Her account manager therefore asked her to provide a copy of her work certificate in support of her request, indicating her departure from the firm. However, as she had entered



into proceedings against her employer before an industrial relations tribunal, Mrs R. said that she had not been able to go and collect her work certificate that her employer had not sent to her.

Her account manager therefore refused to release her employee savings and refused to reconsider their position on the grounds that only this document could allow an early release of funds.

Mrs R. therefore referred the matter to the AMF Ombudsman's Office.

## Investigation

I questioned Mrs R.'s account manager, who informed me of their observations. The account manager had assumed that she was unable to provide a copy of her work certificate because her employment contract was not terminated at that time, due to her legal action before the industrial relations tribunal.

I then analysed the case and questioned Mrs R., who provided me with additional explanations and documents substantiating her assertions.

First, regarding the proceedings before the industrial relations tribunal, it was found that this dispute, now cancelled, did not concern the premature termination of the employment contract, which had been agreed on (especially since Mrs R. had found another full-time job), but rather the imputability of this termination.

It also seemed to me that the account manager must have been informed by the employer that Mrs R. had left the workforce, because the document entitled "summary statement of your savings" had been sent to her. This document informed Mrs R. that from now on the account management fees were payable by her, and the account manager had indeed debited an amount for this purpose.

Under the rules of the French Labour Code, it is only after termination of the employment contract that custody charges are debited from the former employee's account, whereas, throughout the term of said contract, they are payable exclusively by the employer.

Finally, I reminded the account manager that the justifications mentioned in the Guide to Employee Savings were merely provided as an indication, and that employees could therefore produce other documents to justify their situation.



## Recommendation

In the case at hand, I felt that the documents sent by Mrs R. (summary statement of savings, new employment contract, etc.) were sufficient to justify a release of funds on the grounds of "termination of the employment contract".

I therefore considered that Mrs R. should be able to release the assets from her employee savings plan and that the account management fees which had been debited from her account since her request for the release of funds should be repaid to her.

I therefore informed the account manager of my position and, after re-examining the case, they accepted my proposal.

## Lessons to be learned

For professionals: the supporting documents listed in the Guide to Employee Savings (see SHEET 3 of the Guide to Employee Savings: "Conditions of application of early release of funds", p. 269) are provided only as an indication and simply correspond to the most customary documents. In any case, as the Guide specifies, this list is not exhaustive, meaning that in support of their application, employee savers may produce any other document capable of testifying to the situation for which they are requesting the early release of funds.


For employee savers: it is important that they explain their situation in a reasoned and exhaustive manner when they make their claim to their account manager, providing all the evidence capable of justifying the situation which entitles them to an early release of funds.

[1] The Guide to Employee Savings is an interministerial circular, a policy document of the National Directorate of Labour, the first version of which is dated 2005.

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