

## FOCUS ON...

## Social



March 2024

## Employment of disabled workers

**Any company with at least 20 employees must employ at least 6% disabled workers. To meet this target, employers have several ways of employing disabled workers : direct employment, temporary workers, trainees, etc. If the company does not fully meet its obligation, it will have to pay a contribution to AGEFIPH.**

### Numbers of employees

Since the 2020 employment obligation, the number of employees subject to the obligation is measured at company level, rather than at establishment level.

As a result, companies that were not previously concerned may now find themselves subject to this obligation (for example, a company with 3 establishments with 10 employees is concerned).

Under the PACTE Act, the number of employees subject to the obligation is calculated in accordance with the "social security" rules. However, by way of derogation, the reference year to be used is the year in which the employment obligation applies.

As a result, the 2023 employment obligation will be assessed based on the 2023 "social security" headcount, with an annual declaration to be submitted in 2024.

Companies with more than 20 employees have 5 years to comply with the obligation to employ disabled workers.

Similarly, companies with at least 20 employees when they are set up have 5 years to comply. URSSAF calculates the number of employees in the company and the number of people benefiting from the employment of disabled workers based on the DSNs submitted by the company.

## Employment obligation

Employers with at least 20 employees must employ disabled workers at a rate of 6% of their workforce (rounded down to the nearest whole number):

- Direct employment of beneficiaries, including apprenticeship contracts, work-study contracts, trainees, and beneficiaries on work experience placements,
- Beneficiaries made available by temporary employment agencies and employer groups.

All beneficiaries of the employment obligation are considered, "whatever the duration and nature of their contract".

To count the various beneficiaries, the employer will have to apply the rules for calculating the "social security" headcount: pro rata in the case of part-time work or of recruitment or departure during the month, exclusion of employees on fixed-term contracts when they are replacing an absent employee, etc.

In temporary employment agencies, groups of employers and wage portage companies, employees who are ported or made available are not included in the number of beneficiaries of the employment obligation; they are considered in the host company.

It should be noted that beneficiaries of the employment obligation aged 50 or over (and those reaching 50 during the calendar year) count as 1.5.

Companies can also meet their employment obligation by implementing a collective agreement providing for the implementation of a multi-year program for disabled workers.

This agreement may be concluded at branch, group or company level. It must be approved by the public authorities and be for a fixed term (maximum of 3 years, renewable once).

## AGEFIPH contribution

Employers who fail to meet their employment obligation must pay a contribution to AGEFIPH.

This contribution is collected by URSSAF.

The amount of the contribution is obtained by multiplying the number of missing beneficiaries by :

- 400 times the gross hourly SMIC for companies with between 20 and 250 employees,
- 500 times the gross hourly SMIC for companies with between 250 and 750 employees,
- 600 times the SMIC hourly wage for companies with 750 or more employees. The number of missing beneficiaries corresponds to the difference between the number of beneficiaries to be employed (6% of the workforce) and the number of beneficiaries employed.

Several expenses can be deducted from the contribution due:

- 30% of the price (excluding tax) of supply, subcontracting or service provision contracts entered with adapted companies, establishments or services providing assistance through work, or with disabled self-employed workers or wage portage companies when the ported employee is a disabled worker. This deduction is capped at 50% or 75% of the amount of the contribution, depending on whether the beneficiaries of the employment obligation represent less than 3% of the total workforce or at least 3% of this workforce.
- Excluding VAT, expenditure incurred directly by the company to promote the recruitment, integration, or continued employment of disabled workers, up to a limit of 10% of the amount of the contribution (these expenses are listed in article D5212-23 of the French Labour Code).
- Deduction for jobs requiring special skills (ECAP). This corresponds to the ECAP headcount calculated according to the "social security" headcount rules multiplied by 17 times the gross hourly SMIC.

Employers who, for a period of more than 3 years, have not taken any specific measures in favor of the disabled and are content to pay their contribution to AGEFIPH, are liable to pay an increased contribution.

The contribution is then calculated by multiplying the missing number of disabled worker beneficiaries by 1,500 times the hourly SMIC, regardless of the number of employees in the company.

To avoid this increased contribution, the company can, for example, enter contracts with the sheltered sector. The minimum amount of these contracts must be greater than 600 times the gross hourly SMIC over 4 years, whatever the size of the company.

Transitional measures To compensate for the fact that, from 2020, the obligation to employ disabled workers will no longer apply to establishments with at least 20 employees, but for companies with at least 20 employees, there is a system for reducing the contribution.

In 2020, the increase in the contribution compared with the previous year has been reduced by :

- 30% up to €10,000,
- 50% over €10,000 and up to €100,000,
- 70% over €100,000.

From 2021 to 2024, the increase in the contribution compared with the previous year is reduced by : 80% in 2021, 75% in 2022, 66% in 2023, 50% in 2024.

### *Example of the application of transitional measures :*

Contribution 2022	2023 contribution before reduction	Increase in contribution (N/N+1)	Reduction (66% X €1,068)	2023 contribution payable (5 080€ - 704,88€)
4 012€	5 080€	1 068€	704,88€	4 375,12€

## Reporting procedures

The declarations relating to the obligation to employ disabled workers and the payment of any contributions are made to URSSAF via the DSN.

- All employers, including those with fewer than 20 employees, must declare each month in the DSN the disabled workers they employ directly. Note that disabled workers are not obliged to report themselves to their employer.
- Employers with at least 20 employees must declare each year, via the DSN of April N+1 (to be submitted on 5 or 15 May), the elements required for the obligation to employ disabled workers for year N. To help employers prepare their annual declarations, a certain amount of information is provided:
- URSSAF send information on the number of employees (by 15 March N+1 at the latest): number of employees subject to the scheme, number of beneficiaries to be employed, number of beneficiaries actually employed, number of employees in jobs requiring special skills.
- By 15 March N+1 at the latest, temporary employment agencies and groups of employers must submit an annual certificate showing the number of people covered by the employment obligation who have been made available.
- Adapted companies, ESATs, disabled self-employed workers and wage portage companies must submit the information needed to calculate the amount to be deducted from the AGEFIPH contribution by 15 March N+1 at the latest.

The declaration of employment of disabled workers must be communicated to the Social and Economic Committee (CSE), with the exception of the nominative list of beneficiaries of the employment obligation.

## Penalties

Failure to declare the employment of disabled workers is treated as a breach of the employer's employment obligation. The employer is liable for a provisional increased flatrate contribution.

This corresponds to the amount of the AGEFIPH contribution calculated on the basis of the number of disabled workers missing, plus 25%.

The contribution is notified before 31 December of the year in which the declaration should have been submitted (e.g. before 31 December 2024 for the 2023 declaration of employment of disabled workers to be submitted in 2024).

When the employer submits the DOETH after the administration has been notified, the amount of the contribution due is adjusted accordingly. In this case, the employer is liable for a late payment surcharge of 8% on this amount.



Social

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