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Law Sharing of value within companies:
New obligations and opportunities to be seized from 2025

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The recent legislative reform on value sharing marks a turning point for companies, aimed at reconciling work with capital, a sensitive subject in the context of the current social crisis and labour market recession. Law No. 2023-1107 of 29 November 2023, specified by the decrees of 29 June and 5 July 2024, introduces unprecedented obligations on an experimental basis for five years, while leaving companies some flexibility in the choice of schemes.

While no sanctions are yet in place, the desirability of adopting a flexible and appropriate framework will not last indefinitely. Anticipating and adapting one's remuneration policy now is strategic before a more rigid and less advantageous generalisation, but can also serve as a social shock absorber at a time of unprecedented social tensions.

In any case, companies, regardless of their workforce, are called upon to review their remuneration policy by integrating value sharing, a real lever for employee loyalty and attractiveness.

This article deciphers the implications of this reform for companies according to their size, insisting on the objectives to be achieved according to the goal pursued by the company manager.

1. The implementation of a value-sharing mechanism for companies with between 11 and 49 employees (VSEs and small businesses)

As of 1 January 2025, the law makes it mandatory for more than 170,000 companies[1] to set up one of the following four schemes: voluntary profit-sharing scheme, mandatory profit-sharing scheme, employee savings plan (PEE or PERCO) or value-sharing bonus (PPV), by 2025.

This new obligation is subject to two conditions.

A staffing condition set at 11 employees

To check whether the company is eligible, it will be necessary to determine the annual workforce by calculating the average of the number of employees during each month of the previous calendar year. It is sufficient that the company has reached a workforce of 11 employees over the calendar year in 2024 to be concerned.

The company must not be subject to the obligation to set up legal participation, i.e. to have reached a workforce of 50 employees over five calendar years or to belong to an economic and social unit reaching 50 employees under the same conditions.

1 INSEE and CCI statistics (2016)*

A condition linked to results

Companies that make a **net tax profit of at least 1% of their turnover** for 3 consecutive financial years will be subject to the obligation to set up a value-sharing mechanism.

To check whether the company is eligible in 2025, it will be necessary to take into account the net tax profit for the **financial years 2022 to 2024.**

If both conditions are met, companies will nevertheless be able to **derogate** from this obligation if they have set up an employee savings scheme (voluntary profit-sharing or mandatory profit-sharing) for the financial year in question.

It is an obligation of result and not of means, unlike companies with more than 50 employees. On the other hand, the company has a great deal of flexibility in the choice of the scheme, its amount and the method of implementation from the moment it is introduced during the financial year in question.

The companies concerned will therefore be able to choose one of the four schemes that meet different objectives in terms of wage policy and/or according to the economic and social context of the company. Employee savings tools will be designed to retain employees in the medium and long term and to encourage them to actively contribute to the company's performance.

Voluntary Profit-sharing is the most popular tool for SMEs

Among employee savings tools, voluntary profit-sharing is by far the most popular scheme for SMEs because of its flexibility. However, for small companies with fewer than 50 employees, only 11.2% of them have a voluntary profit-sharing agreement[2].

By nature optional, lasting **from 1 to 5 years,** it aims to collectively involve employees in the company's results through the payment of voluntary profit-sharing bonuses in the event of the achievement of predefined collective objectives, linked to the company's results or performance and necessarily based on **financial, extra-financial, CSR or environmental criteria.**

This scheme is particularly advantageous for companies with fewer than 250 employees, which are exempt from the social contribution (forfait social). Employees are not to be outdone, as they benefit from a preferential regime if the bonus is paid into a savings plan (income tax exemptions (PEE/PER/PERCO), exemptions from employee contributions (excluding CSG CRDS).

It should be noted that the Law of 29 November 2023 abolished the old mechanism consisting of granting companies reaching the threshold of liability to profit-sharing the possibility of deferring the implementation of this obligation for 3 years when they had a voluntary profit-sharing agreement.

Voluntary mandatory profit-sharing

Mandatory for companies with more than 50 employees, profit-sharing aims to collectively involve employees in the company's results by redistributing part of the profits made by the company during the financial year.

2* https://dares.travail-emploi.gouv.fr/donnees/participation-interessement-et-epargne-salariale

After the end of the financial year, the company must calculate the share of the profits to be distributed to employees, which is called the "special mandatory profit-sharing reserve" ("RSP").

The company must use the legal calculation formula or another formula that is as favourable to employees as the legal formula. It takes into account **the company's net profit, equity, salaries and added value.**

Due to its lack of flexibility, particularly for the smallest companies, the Law of 29 November 2023 provides for the possibility of using a formula for calculating the RSP resulting in a **lower premium** than that which would have resulted from the legal formula.

It should be remembered that the tax and social security regime is favourable for both the company and the beneficiary: income tax exemptions (PEE/PER/PERCO), exemptions from employee contributions (excluding CSG CRDS) and employer contributions.

Matching an employee savings plan ("*abondement*")

Companies can supplement employees' payments into a Company Savings Plan (PEE/PEEI) or a Collective Retirement Savings Plan (PERECO), up to a limit of **16% of the PASS** (€7,418.88 in 2024 - €7,536 in 2025). However, the decree specifies that in the absence of unilateral payment, the overall ceiling remains set at 8% of the PASS.

While the system is quite flexible, since no minimum amount is required, the company must be careful not to pay a sum that could be considered derisory by the judges. At a minimum, an amount equivalent to what would have been granted under the value-sharing bonus (PPV) should be allocated, if the company paid one the previous year.

The matching contribution benefits from the same preferential regime, both for the company and for the beneficiary, as the previous schemes.

The Value Sharing Bonus (PPV)

The value-sharing bonus (PPV) is a scheme that allows the employer to pay the employee a bonus. It is now a permanent tool that companies can set up each year, which can be paid **twice per calendar year** (compared to one previously).

The bonus may be one-time and the amount is at the discretion of the employer. Be careful, however, not to pay an amount that could be considered derisory. It can represent **3,000 euros** per employee or **6,000 euros** in the case of a voluntary profit-sharing agreement.

Unlike employee savings schemes, the PPV is very flexible in terms of allocation terms. It is indeed possible to **individualize** according to remuneration, classification, seniority, the duration of actual presence during the year or the duration of work.

It is therefore possible to pay a PPV only to the lowest salaries in the company.

This scheme is particularly advantageous for small companies (less than 50 employees) and for employees with salaries below 3 times the minimum wage (SMIC).

From now on, employees can allocate their PPV to an employee savings plan or a retirement savings plan (PER), with specific conditions for this allocation. The application must be made within 15 days of receipt of the document indicating the amount awarded.

It should be noted that from now on, each amount paid under the PPV must be accompanied by a separate slip from the pay slip, mentioning the gross amount of the bonus, the deductions, and the terms of allocation.

2. Negotiation on the sharing of exceptional profits for companies with more than 50 employees

In companies with at least 50 employees that have a union delegate, mandatory profit-sharing and voluntary profit-sharing agreements must take into account exceptional results (achieved in France).

To be subject to this obligation, companies must therefore meet two conditions:

- have a workforce **of at least 50 employees** and be subject to the obligation to set up a mandatory profit-sharing agreement, which presupposes that this workforce is maintained for at least 5 consecutive years;
- have one or more **union delegates.**

From now on, eligible companies must therefore integrate, in their negotiations relating to mandatory profit-sharing and voluntary profit-sharing (including the renewal of agreements), a section relating both to the definition of the exceptional increase in their net tax profit and to the terms and conditions leading to the sharing of value with employees.

A company that does not generate a sufficient net tax profit to calculate an RSP will still have to negotiate on the sharing of value in the event of an exceptional profit, as the obligation applies to companies subject to mandatory profit-sharing, and not to companies that are required to actually set up a special mandatory profit-sharing reserve due to a sufficient net tax profit.

Only companies that have set up a mandatory profit-sharing agreement with a formula for calculating the RSP that is more favourable to the legal formula will be exempt.

Negotiation may be conducted at the level of the company, the UES ("economic and social unit") or the group or at the intra-group level.

Unlike companies with 11 to 49 employees, the definition of the operative event, i.e. the exceptional increase, is deliberately vague and it is an **obligation of means** and not of result, subject to the fair nature of collective bargaining. The legislator thus favours the path of collective bargaining rather than that of imposing an overly restrictive framework.

In the absence of an agreement, it is more than certain that the union delegates will come back to the charge within the framework of the NAO ("mandatory annual negotiation"). It will be better for the business manager to seize this opportunity to defuse a potential social conflict.

Thus, the Act leaves companies a great deal of freedom in the application of this new obligation, both in the definition of the increase and in the terms and conditions of application of value sharing.

The definition of the exceptional increase

The Act only requires that the profit withheld be the **net tax benefit,** for the sake of consistency with the statutory formula of the PSR.

On the other hand, the social partners are free to define the conditions for qualifying the exceptional nature of the profit.

As the negotiation of the definition of the exceptional increase in net tax profit is part of the negotiation of the voluntary profit-sharing or mandatory profit-sharing scheme, it is done at the same level. Thus, if the mandatory profit-sharing or voluntary profit-sharing scheme is negotiated at the group level, the exceptional increase in profit will be defined at the group level.

The Law specifies, by way of example and not exhaustively, that the definition of exceptional increase in net tax profit may take into account:

- The size of the company;
- The sector of activity;
- The occurrence of a share buyback operation followed by a cancellation;
- Profits from previous years;
- Exceptional events external to the company before the profit is realized.

Therefore, other similar criteria may be negotiated with the social partners, in addition to or as a replacement.

The detailed rules for the application of value sharing

Therefore, the achievement of these results would give rise either to the payment of a mandatory profit-sharing or voluntary profit-sharing supplement, or to a discussion on the payment of a value-sharing mechanism.

As a reminder, the sums allocated under the voluntary profit-sharing or mandatory profit-sharing supplement must be in addition to what is awarded under the voluntary profit-sharing or mandatory profit-sharing agreement. Therefore, if the formula for calculating the voluntary profit-sharing or mandatory profit-sharing agreement gives a zero result, no "supplement" can be allocated.

The company must be covered by a voluntary profit-sharing or mandatory profit-sharing agreement under which sums have been paid in order to be able to pay a supplement, within the limits of the applicable legal ceilings.

The obligation relates to the principle of a supplement, not to its amount. The amount of the supplement is determined, in principle, at the appropriate time by the unilateral decision of either the board of directors, the management board or the head of the company in the event that there is no board of directors or management board in the company. This decision may be supplemented by a specific agreement on the arrangements for the distribution of the supplement.

It should be noted that the amount of the payment of the profit-sharing or voluntary profit-sharing supplement cannot be set in advance given the uncertain nature of these two schemes.

Rather than opting for the principle of paying a voluntary profit-sharing or mandatory profit-sharing supplement, it is possible to provide for the opening of a new negotiation, the purpose of which should be to:

- set up a voluntary profit-sharing scheme if none exists;
- pay a voluntary profit-sharing or mandatory profit-sharing supplement (if the basic agreement has given rise to a payment for the financial year in question);
- contribute to a savings plan (PEE/PEEI, PERCO, PERE-CO);
- or pay a value-sharing bonus.

In this case, it is not mandatory to identify the mechanism that will be the subject of the negotiation triggered by the realization of the exceptional profit.

This second option will probably be the most appropriate for companies by allowing them to postpone the decision on the choice of the scheme until the day of the exceptional result. Conversely, it will be more than likely that the social partners will seek to set in stone a more binding commitment for the company. Everything will be in the search for a fair balance between the concern to preserve the economic interests of the company for the company manager and his new obligations in terms of value sharing.

To conclude, the value-sharing reform, although experimental, requires companies (VSEs and SMEs) to immediately reflect on their remuneration policy in the broad sense. To wait is to risk no longer having the freedom of choice in the most appropriate system for the company and to suffer the generalization of an imposed system. By setting up an appropriate value-sharing system now, you are not only meeting your obligations, but you are transforming value sharing into a lever of attractiveness and social peace with a view to sustainable performance.

Need support?

Our employment lawyers are at your disposal to assist you at every stage. Contact us today to anticipate these new obligations and turn this challenge into an opportunity.

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