**LABOUR RIGHTS OF UNDOCUMENTED FOREIGN EMPLOYEES IN FRANCE**

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French labour law is deemed very strict and just having all the contents to provide optimum protection to French employees regardless the category of their employment. Provides strong sense of security to a French employee as well as measures to prevent the establishments from hiring without applying due course of law. A French company of any kind large medium or small size is legally bound to hire an employee by declaring him for tax purposes with a job contract for a determined or indefinite time. The duration of the job contract is mutually decided between the company and the future employee but it must not be in violation of French Labour Code in any case whatsoever, otherwise the employer have to face the legal consequences upon disclosure by the employee before the competent authority or during an inspection raid conducted by the concerned authority the "*inspection du travail*"

The French, European or any foreigner having authorization of work have no threat if the employer dose not abide by the provisions of labour code while employing an employee. A documented employee can invoke several remedies against his employer even to approach the police in case of any emergency or serious threat from the employer, whereas an undocumented foreigner employee perhaps facing a vulnerable scenario in case of possible exploitation by the French company. France is one of the major country of western world hosting millions of foreigners including worker, migrants, students, visitors and asylum seekers about a total of 12 million and 20% of the total population. This reveals the French labour market has large chunk of foreign workers and how many out of them are in irregular status is difficult to calculate because irregular work force does not come under government statistics in any way.

**Responsibility of Employer:**

Mostly medium and small scale companies hires irregular foreigners to take advantage of their illegal status and exploit them severally just to get undue monetary gains by hiring on very low wages and paying nothing to the government for such employees being non declared workers. These companies are just not exploiting the foreign workers only but also betray the state by tax evasion, such establishments normally don't observes workers rights indeed none of the French company is allowed to hire a foreign employee without having authorisation to work if the company do so deliberately the same is liable to punish under Article L. 8251-1 of the Labor Code.

It is prohibited to keep in service or employ for any length of time a foreigner without the title authorizing him to carry on a salaried activity in France. The employer is duty bound to verify, when hiring a foreigner, that he holds a valid work permit and an intentional omission is sheer violation of labour law. Since July 1, 2007, and in application of the law of July 24, 2006, the obligations of the employer have been strengthened since it must check with the prefecture that the foreigner he intends to hire has a Work Authorization. At least two working days before hiring, he sends the prefect a dated, signed and recommended letter with acknowledgment of receipt or an e-mail, with a copy of the document provided by the foreigner. The prefect sends his response to the employer by mail, fax or e-mail within two working days of receipt of the request. Failing response within this time limit, the employer's obligation is deemed fulfilled. This new obligation has been presented as one more instrument in the fight against the work of untitled foreigners..[[1]](#footnote-2) However, an irregular overseas worker is considered a weaker party having no option except to surrender himself before the employer for exploitation by agreeing all the harsh and inhumane terms of work just to get his survival.

**Remedies under French Labour Code:**

The question arises does this illegal employment creates any right under the law for the foreign workers without legal status? Yes; according to the Article L. 8252-1 a foreign worker hired without having a valid work permit he is deemed to hired a regular worker from the day one of his hiring which constitute that all the French labour regulations will be applicable to an employee with irregular status. The Article L. 8252-2 further entitles the rights created for the period of unlawful employment: The English version of French labour code is reproduced here:

*The foreign employee is entitled to the period of unlawful employment:*

*1 To the payment of the salary and the accessories thereof, in accordance with the legal provisions and the contractual stipulations applicable to his employment, after deduction of sums previously collected for the period in question;*

*2 In the event of termination of the employment relationship, a lump sum compensation equal to one month's salary, unless the application of the rules contained in Articles L. 1234-5, L. 1234-9, L. 1243- 4 and L. 1243-8 or the corresponding contractual provisions does not lead to a more favorable solution.*

*The labor court may order provisionally the payment of the lump sum indemnity provided for in 2 .*

*These provisions do not preclude the right of the employee to seek additional compensation in court if he is able to establish the existence of unrepaired loss under these provisions.[[2]](#footnote-3)*

Under Article L. 8252-2, the employee is entitled to a lump sum compensation equal to one month's salary, or the legal compensation provided in case of termination of the employment contract. However, the employee may seek additional reliefs from the labour court such as unpaid salaries, unavailed paid leaves, indemnity for termination without notice with unjustified reason and almost all those rights can be invoked under this article which are available to any regular employee in France. The court is entitled to give any relief permissible under Article L 8252-2 by provoking its discretion and where the aggrieved employee can establish an unrepaired loss.

**Problems to get Justice:**

Majority of these undocumented foreigners are asylum seekers or refugees belong to third world developing or least developing countries with no educational background and knowledge of French legal or administrative system. They are hardly known to French language, administration and law indeed they are uneducated even in their home countries so on their arrival in France they applied asylum and search work in black market where they are not required to show authorization to work but just to agreed with the exploited terms of employer. Normally, they succeeded to get undeclared work soon, however, this is not a bed of roses to get bread and butter with no legal status and right to work, consequently the employer by design employs such foreigners for illegal monetary gains. On one hand such employers pays very low salaries to illegal workers and take double work and on the other they save money liable to pay to the accountant (*comptable*) for drafting job contract and other paper work as well as they escaped from paying tax to the French Government for hiring an employee.

In many cases they don't pay off salary mutually decided between illegal worker and employer or kick off them when they demand their right and ultimately this becomes the bone of contention between these two. Normally, a large number of undocumented workers does not know anything to take any remedy provided under the French labour law against the employer so they keep silent patiently or maximum inform the Labour Inspection Department "*inspection du travail"* nevertheless they don't get paid however, the company may face trouble by this control. Ignorance of law and poor language skills are basic barriers to claim the legal rights provided by French labour code and an employer takes the undue advantage of this weakness hence they keep hammering and hunting illegal workers.

And, if an aggrieved unpaid undocumented worker who knows his rights established under French labour code tries to adjudicate his matter before the labour court he has two choices either to have sufficient French language skills and plead his case himself before the court or hire the services of a lawyer to plead his case. France relatively is one of the expensive country of Europe and it is nearly impossible for an unemployed illegal immigrant to pay the fees of French lawyer and in several cases these overseas illegal workers also get failed to avail free legal aid "*aide juridique gratuite*" while having no resident permit. The last option with such an undocumented aggrieved foreign worker is to request the court for a translator and it is again sole jurisdiction of the judge to give this relief or not, however, normally court carefully considers such prayer to meet the both end of justice. The court may not provide a language translator on the expense of the state which has not been paid any tax from the employee's pocket due to his undeclared work.

1. http://www.gisti.org/spip.php?article1412 [↑](#footnote-ref-2)
2. Legifrance. 2018. Labor Code - Article L8252-2. [ONLINE] Available at: <https://www.legifrance.gouv.fr/>. [Accessed 16 February 2018]. [↑](#footnote-ref-3)