

THE EMPLOYEE'S RIGHT TO LEAVE FOR BUSINESS CREATION : BETWEEN ENTREPRENEURSHIP SUPPORT AND EMPLOYMENT STABILITY ASSURANCE



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Abstract:

Algeria has adopted numerous mechanisms and measures to encourage entrepreneurship and support individual initiatives, encompassing all areas open to investment and driving the economic engine, and extending to various active groups in society. This was supported by amending the Public Service Law in 2022 with Law No. 22-22, which established a new functional right for employees and even contracted agents in public administrations and bodies, namely the right to leave to establish an enterprise.

This right is an important mechanism for integrating this vulnerable group into the economic cycle and promoting entrepreneurship. However, the recognition of such a right in the public service sector, which guarantees and provides job stability, raises the issue of providing guarantees for this stability and opening new horizons for these employees to engage in the world of entrepreneurship and contribute to economic development.

Key Words: Entrepreneurship; Public Employment; Leave; Stability; Guarantees.

حق الموظف في عطلة إنشاء مؤسسة: بين دعم المقاولاتية وضمان الاستقرار الوظيفي

ملخص:

تعددت الآليات والتدابير التي اتخذتها الدولة لتشجيع المقاولاتية ودعم المبادرات الفردية لتشمل كل المجالات المفتوحة للاستثمار والمحركة للعجلة الاقتصادية، ولتمتد مختلف الفئات الناشطة في المجتمع، فتدعم ذلك بتعديل قانون الوظيفة العمومية سنة 2022 بالقانون رقم 22-22، الذي أنشأ حقا وظيفيا جديدا للموظفين وحتى الأعوان المتعاقدين في الإدارات والهيئات العمومية، وهو الحق في عطلة إنشاء مؤسسة.

يعد هذا الحق آلية هامة لادماج هذه الفئة الحساسة في الدورة الاقتصادية وتعزيز المقاولاتية، على أن إقرار مثل هذا الحق في قطاع الوظيفة العمومية الذي يضمن ويوفر الاستقرار الوظيفي يطرح إشكالية توفير ضمانات هذا الاستقرار وفتح آفاق جديدة لهؤلاء الموظفين للانخراط في عالم المقاولاتية والمساهمة في التنمية الاقتصادية.

الكلمات المفتاحية: المقاولاتية؛ الوظيفة؛ العطل؛ الاستقرار؛ الضمانات.

Le droit de l'employé au congé pour création d'établissement : entre soutien à l'entrepreneuriat et garantie de la stabilité de l'emploi

Résumé:

Les mécanismes et mesures adoptés par l'État pour encourager l'entrepreneuriat et soutenir les initiatives individuelles se sont multipliés afin de couvrir tous les secteurs ouverts à l'investissement et moteurs de l'économie, tout en s'adressant aux différentes catégories actives de la société. Cette orientation a été renforcée par la modification de la loi relative à la fonction publique en 2022, par la loi n° 22-22, qui a institué un nouveau droit statutaire au profit des fonctionnaires ainsi que des agents contractuels des administrations et organismes publics, à savoir le congé pour création d'entreprise.

Ce droit constitue un mécanisme important permettant l'intégration de cette catégorie dans le cycle économique et le renforcement de l'esprit entrepreneurial. Toutefois, la reconnaissance d'un tel droit dans le secteur de la fonction publique, garant de la stabilité de l'emploi, soulève la question de la conciliation entre cette stabilité professionnelle et l'ouverture de nouvelles perspectives permettant aux agents publics de contribuer efficacement au développement économique national.

Mots Clés: Entrepreneuriat; Emploi public; Congé; Stabilité; Garanties.

Introduction

Entrepreneurship is one of the principal pillars upon which modern economies are built, and is widely regarded as a key driver of both economic development and economic diversification. By encouraging the creation of new investment projects and the identification of underutilized skills and competencies, it contributes meaningfully to broadening the productive base of an economy. Beyond these economic benefits, entrepreneurship yields significant social dividends, particularly through its role in revitalizing labor markets, generating new employment opportunities, and reducing unemployment rates.

In Algeria, the government has implemented a variety of mechanisms aimed at fostering entrepreneurship across the economy, universities, and other sectors of society. These efforts are reflected in the Algerian Constitution, the Investment Law, and numerous other legislative instruments dedicated to promoting entrepreneurial activity.

Among the most recent of these developments is the creation of a new right for public service employees: the right to take entrepreneurial leave for business creation. This right was introduced through an amendment to the Civil Service Law specifically through Law No. 22-22,¹ which supplemented Order No. 06-03,¹ which established this new right for public service employees to take special unpaid leave for business creation. This amendment was introduced through Law No. 22-22,² and was subsequently operationalized through Executive Decree No. 23-93.³

The importance of examining this newly established right lies in understanding its implications for employment stability within the public sector, and in assessing how it may be reinforced through safeguards capable of encouraging employees to pursue enterprise creation while generating a positive social impact. This right also holds broader significance in that it opens new avenues for public employees including those engaged in university research to participate in start-ups and economic enterprises through the institutional framework of Algerian higher education. Against this background, the present study addresses the following central question: what guarantees exist for the public employee's right to establish an enterprise, and how can a balance be achieved between the promotion of entrepreneurship and the preservation of employment stability in the public sector?

This issue may be addressed by first examining the recognition of the employee's right to entrepreneurial leave as a fundamental mechanism for enabling participation in economic activity, facilitating integration into the economic

1- Order n° 06-03 of July, 15, 2006, containing the Basic Statute of the Civil Service, Official Journal of July 16, 2006, as amended and supplemented.

2- Law n° 22-22 of December 18, 2022, supplementing Order n° 06-03 of 15 July 2006 concerning the General Basic Statute of the Civil Service, Official Journal n° 85 December 19, 2022.

3- Executive Decree n° 23-93 of March 05, 2023, determining the conditions and procedures for granting employees leave to establish an enterprise, Official Journal n° 18 of March 12, 2023.

development process, and reinforcing state efforts aimed at promoting enterprise creation and enhancing investment initiatives (Section One). Subsequently, the study will analyze the safeguards governing this right in order to assess the extent to which a balance has been achieved between fostering entrepreneurial spirit and ensuring employment stability (Section Two).

THE FIRST TOPIC

Recognizing Employees' Right to Entrepreneurial Leave as a Mechanism for Economic Integration

In support of state efforts to encourage enterprise creation, promote wealth-generating investments, create employment opportunities, and cultivate an entrepreneurial culture, public authorities have extended their economic strategy to encompass the civil service sector. This extension has been achieved by enabling a category of public employees to contribute to economic development and to apply their creative intellectual skills and capacities beyond the traditional scope of public service. The culmination of this approach was the formal recognition of a new right for public employees, namely the right to entrepreneurial leave, which was incorporated among the fundamental rights guaranteed under the Civil Service Basic Law and subsequently regulated by executive decree specifying its legal provisions, eligibility requirements, and procedural framework.

First requirement: Extension of the Right to Entrepreneurial Leave to the Civil Service Sector: A Step Toward Strengthening Entrepreneurship

Algeria is currently undergoing a phase of sustained economic transformation, driven by a series of structural reforms aimed at achieving sustainable development. This period has been marked by a significant opening toward entrepreneurship and the enterprise economy across all sectors of society, including higher education, where considerable momentum has built around the development and promotion of innovative capacities. That momentum has now reached a sector that had traditionally remained outside such economic dynamics: the civil service. Its integration into the broader entrepreneurial landscape has been formalized through the recognition of the right to entrepreneurial leave within the statutory framework governing public employees, and given practical effect through Executive Decree No. 23-93.

First section: Incorporation of the Right to Entrepreneurial Leave into the Civil Service Statute

The legislature introduced the right to establish an enterprise through Law No. 22-22, which amended Order No. 06-03 concerning the General Civil Service Statute. This was effected through Article 2 of the amending law, which inserted Article 206 bis into Order No. 06-03, thereby enshrining the civil servant's right to take leave for the purpose of establishing an enterprise. The subsequent provisions further regulated certain aspects of this leave.

The Algerian legislature integrated the right to entrepreneurial leave within the broader framework of the employee's principal professional and constitutional rights,⁴ namely the right to leave, as regulated under Articles 194 to 206 of Order No. 06-03 mentioned above.

By way of exception to the general rules governing the civil service, which prohibit public employees from engaging in any profit-making activity on the basis of the incompatibility between public office and remunerated private activities, the legislature recognized this right in view of the public interest. This policy choice is justified by the need to involve civil servants in the construction and development of the national economy and to promote economic growth.

The Algerian legislature classified entrepreneurial leave as a form of unpaid leave, although it did not expressly define the concept. Some scholars have described it as a period during which an employee is authorized to suspend work without remuneration, subject to the employer's approval, for the purpose of establishing an enterprise.⁵ In other words, it constitutes a temporary suspension of the employment relationship between the civil servant and the competent administrative authority for the purpose of creating an enterprise. As a consequence of this suspension, the employee loses entitlement to remuneration, since salary is, in principle, the counterpart of work performed. Accordingly, no remuneration is payable in the absence of work.⁶ Nevertheless, the employee retains all rights and legal status existing on the date on which the leave commenced, since entrepreneurial leave constitutes a legal right rather than a disciplinary measure.

This leave is granted on the basis of a single ground exclusively defined by Law No. 22-22, namely the establishment of an enterprise. However, the legislator did not specify the nature of the enterprise or its legal form, thereby leaving room for interpretation. Nevertheless, the circumstances surrounding the enactment of this provision and its preliminary draft strongly suggest that the intended meaning refers to an economic enterprise, whether a medium-sized enterprise, a small enterprise, a start-up, or a self-employed venture.⁷

4- See Article 66 of the 2020 Constitutional Amendment issued by Presidential Decree n° 20-442 of December 30, 2020, concerning the promulgation of the Constitutional Amendment approved in the referendum of 1 November 2020, Official Journal n° 82 of December 30, 2020, as amended and supplemented.

5- DEBBIH Adel, "The Legal Framework of the Employee's Right to Establish an Enterprise under Law n° 22-22 and Its Implementing Regulation," *Al Ustadh Al Bahith Journal for Legal and Political Studies*, Faculty of Law and Political Science, University of M'Sila, vol. 9, n° 2, December 2024, p. 301.

6- See Article 32 of Order n° 06-03.

7- CHAKIB BOUKLI Hacène, *The Right to Establish an Enterprise for Algerian Employees and Civil Servants*, *Comparative Labour Law and Social Security Review*, n° 3, Comprase, University of Bordeaux, 2024, p. 243.

Entrepreneurial leave does not fall within the scope of secondment to unpaid leave status, as the latter constitutes one of the legal employment statuses applicable to civil servants. Although it shares certain effects with entrepreneurial leave, such as the suspension of salary entitlement and the exclusion of its duration from calculations relating to seniority, promotion, and retirement benefits, it differs from entrepreneurial leave in several other legal effects and governing provisions.

Depending on its category, namely leave granted *ex lege* or for personal reasons, secondment to unpaid leave is based on grounds that differ from those underlying entrepreneurial leave. In cases of unpaid leave granted by operation of law, the measure constitutes a right vested in the civil servant and is justified exclusively by one of the legal grounds exhaustively listed under Article 146 of Ordinance No. 06-03 previously referred to, among which entrepreneurial leave is not included. Likewise, entrepreneurial leave cannot be classified as one of the forms of unpaid leave granted for personal reasons,⁸ since its legal basis is specifically defined: the creation of an enterprise and contribution to economic development.

The Algerian legislature has also subjected this form of leave to specific rules distinct from those governing availability leave, the maximum duration of which may extend to seven years,⁹ during which the employee is prohibited from engaging in any profit-making activity,¹⁰ including applying for entrepreneurial leave.

It should be noted that it would have been preferable for the legislator to incorporate this special leave as a distinct legal status within the framework of civil service employment positions, given its unique nature in several legal aspects, particularly with regard to its legal effects and implications.

Second section: Establishing Specific Provisions Governing Entrepreneurial Leave through Regulatory Instrument

Article 206 bis 7 of Order No. 06-03, as supplemented by Law No. 22-22, delegates to regulatory instruments the task of specifying the conditions and procedures governing leave for enterprise creation under Articles 206 bis through 206 bis 6. Executive Decree No. 23-93 (2023) was adopted in response, setting out the conditions under which employees may take unpaid leave to establish an enterprise referred to throughout as "leave."

The Decree addresses both the substantive eligibility requirements and the procedural steps for exercising this right. Its main provisions are as follows:

8- Pursuant to Article 148 of Order n° 06-03, cited above, availability leave granted for personal reasons justified by circumstances specific to the employee, and not expressly defined by law, includes, inter alia, the pursuit of further studies or the care of dependent ascendants. In other words, such circumstances are personal or family-related, and entitlement to this form of leave is subject to the approval of the Joint Administrative Committee.

9- See Article 47 (final paragraph) of Executive Decree n° 20-373 of 12 December 2020 concerning the legal statuses of civil servants, Official Journal n° 77 of December 20, 2020.

10- Ibid., Art. 48.

- Emphasized that an employee's entitlement to unpaid leave for the establishment of an enterprise constitutes one of the fundamental rights granted to civil servants. Accordingly, the administration may not deprive the employee of this right except where justified by overriding institutional interests.
- It was also emphasized that this leave may be granted only once throughout the employee's professional career, for a period of one year renewable once and, exceptionally, for an additional period not exceeding six (06) months pursuant to the provisions of Article 206 bis 1. This provision has been the subject of considerable debate, as the prescribed duration is considered insufficient for launching the project, securing its position in the market, or at least assessing its viability and potential for sustainability in a manner that would justify assuming the risk of relinquishing a stable and permanent position together with the employment security it provides.
- The Decree also specifies which categories of employees are eligible, excluding certain groups from its scope. This departs from the general rule under the Civil Service Basic Statute, which extends the right to all public employees as defined by Article 4 of Order No. 06-03. Under that provision, an administrative agent acquires public employee status only upon meeting specific legal conditions, the most important being formal confirmation in post.¹¹ That appointment is what brings the employee within the full body of civil service regulations, including those governing fundamental rights.

Conversely, Executive Decree No. 23-93 excludes certain members of special corps from benefiting from this leave,¹² namely:

- National Security personnel;
- Civil Protection personnel;
- Prison Administration personnel;
- Customs Administration personnel;
- Forestry Administration personnel;
- Wired and Wireless Communications Security personnel;
- National Wired and Wireless Communications personnel;
- Diplomatic agents.

This exclusion is justified by considerations relating to the specific nature of these functions, the duties performed by the persons concerned, and the operational

11- This thereby excludes probationary employees and certain personnel subject to other employment regimes set forth in the aforementioned Order n° 06-03 from benefiting from the right to leave for the establishment of an enterprise.

12- See Article 4 of Executive Decree n° 23-93.

conditions surrounding their service, in addition to the need to ensure the continuity of public service operations.¹³ Accordingly, the exclusion of these categories does not constitute an infringement of the principle of equal opportunity or the principle of equality within the civil service.

Although this Executive Decree identified the categories excluded from benefiting from this right, it does not encompass all categories excluded from the scope of the Civil Service Law.

The benefit of this right was also extended to contractual employees holding open-ended contracts, whether on a full-time or part-time basis, pursuant to Presidential Decree No. 23-102 of 7 March 2023 amending Presidential Decree No. 07-308.¹⁴ However, employees engaged under fixed-term contracts were excluded from its scope, despite the absence of any explicit justification for such exclusion.

The legislature also defined the conditions and procedures governing access to this right. Business creation leave therefore constitutes a regulated entitlement subject to legal requirements, particularly those set out in Article 2 of Executive Decree No. 23-93, as well as Articles 5 to 7 thereof, which will be examined in detail in the second section. These conditions and regulatory safeguards appear intended to address the need to balance the employee's right to benefit from business creation leave with the protection of the interests of the employing administration.

Second requirement: Establishing Regulatory Frameworks for the Right to Business Creation Leave

The recognition of the right to entrepreneurial leave forms part of the State's broader efforts to place citizens, particularly civil servants, at the center of development policies by encouraging their contribution to national economic growth as key actors in wealth creation. It also reflects an attempt to enable public administration to move beyond the traditional closed model of the civil service system.

However, an employee's entitlement to entrepreneurial leave and participation in this process remains subject to the fulfillment of a set of legal conditions relating to the applicant seeking to benefit from such leave, in addition to compliance with a number of procedural requirements governing access to this right while ensuring due consideration of the interests of the employing administration.

13- BAGHDADI Linda, "Analytical Study of the Employee's Right to Leave for Establishing an Enterprise under the General Basic Statute of the Algerian Civil Service," *Academic Journal of Legal Research, Faculty of Law and Political Science, Abderrahmane Mira University of Bejaia*, vol. 16, n° 2, 2025, p. 464.

14- Presidential Decree No. 23-102 of 7 March 2023, supplementing Presidential Decree n° 07-308 of 29 September 2007, which determines the procedures for recruiting contractual agents, their rights and obligations, the components of their remuneration, the rules relating to their management, and the disciplinary system applicable to them, *Official Journal* n° 15 of March 12, 2023.

First section: Substantive Conditions for Eligibility for Business Creation Leave

Although the right to entrepreneurial leave constitutes a legally recognized entitlement granted to civil servants, and they may not, as a general rule, be deprived of it or have their request rejected, the Algerian legislator has subjected its exercise to specific conditions governing its implementation in accordance with the provisions of Executive Decree No. 23-93 previously referred to. In this regard, a distinction may be drawn between, first, the conditions inherently related to the employee seeking to benefit from the leave (First), and second, the requirement relating to the fulfillment of obligations established in the interest of the employing administration, reflected in a formal condition prescribed for the benefit of the administration (Second)

1. The Requirement to Fulfill Employee-Specific Conditions

The conditions relating personally to the employee, which determine eligibility for entrepreneurial leave, may be summarized into two principal requirements:¹⁵

A. Age Requirement

Article 2 of Executive Decree No. 23-93 establishes the maximum age limit for eligibility for entrepreneurial leave. It requires that the employee be under fifty-five (55) years of age on the date of submission of the application, without distinction between men and women.

It should be noted that this age limit is not aligned with the statutory retirement age, which is set at sixty (60) years for men.¹⁶ This indicates that the maximum age threshold is not linked to the legal retirement age. Such alignment would have been preferable, as it would better protect employees' interests by enabling them to enter the economic sector prior to retirement and thereby continue investing their skills and capacities during the post-retirement stage. The same age requirement also applies to contractual employees.¹⁷

B. Professional Seniority Requirement

Article 2 of Executive Decree No. 23-93 introduces a specific seniority requirement, whereby any employee seeking to benefit from entrepreneurial leave must demonstrate five (5) years of service within the relevant administration in the capacity of a public employee. Accordingly, mere confirmation of tenure and acquisition of employee status are insufficient to trigger this entitlement; rather, five years must have elapsed since the acquisition of such status. This differs from the

15- See Article 2 of Executive Decree n° 23-93.

16- Law No. 16-15 of 31 December 2016, amending and supplementing Law n° 83-12 of 2 July 1983 concerning retirement, Official Journal n° 78 of December 31, 2016

17- See Article 58 bis 1 of Presidential Decree n° 23-102.

seniority requirement applicable to workers, which is set at three (3) years under Article 3 of Executive Decree No. 22-352.¹⁸

Article 2 of Executive Decree No. 23-93 does not specify whether the required years of service must be consecutive. This contrasts with the regime applicable to workers, where Article 3 of Executive Decree No. 22-352 expressly provides that such years may be either consecutive or non-consecutive. Consequently, interruptions resulting from legally recognized suspension periods may be taken into account, an approach that should likewise be expressly recognized in the context of public employment.

It should further be emphasized that, notwithstanding the absence of an explicit active-service requirement, the substance of these executive decrees implicitly points to such a condition. An employee placed in one of the statutory situations involving suspension of service, including unpaid leave, national service outside the institutional framework, or comparable statuses, cannot invoke this entitlement until reinstatement to his or her position. It is therefore incompatible with the nature of this right for it to be exercised during a period in which the employment relationship is suspended.

C. The Condition of No Prior Benefit from Entrepreneurial Leave

This condition requires that the employee must not have previously benefited from entrepreneurial leave. A civil servant may avail themselves of this right only once throughout their professional career.¹⁹ The same rule applies to contractual agents. Accordingly, where the initial project fails and the beneficiary is unable to establish the intended enterprise, a second application for the same leave is not permitted. In practice, however, it would have been more appropriate to allow a renewed opportunity where the employee is capable of overcoming the causes of the initial failure, particularly given the relatively short duration of this leave, which may prove insufficient to secure a viable and sustainable foundation for the project.

2. Formal Requirement Established in the Interest of the Employing Administration

In order to balance the promotion of entrepreneurship against the protection of the employing administration's interests, and to ensure the continuity of public services while preventing disruption arising from the exercise of the right to entrepreneurial leave, Executive Decree No. 23-93²⁰ introduced a formal requirement imposing essential obligations on the employee. This requirement consists of submitting a written undertaking to comply with the rules of fair competition and to refrain from causing harm to the administration concerned. Such undertaking gives

18- Executive Decree n° 22-352 of 19 October 2022, determining the conditions and procedures for granting workers the right to leave or to resort to part-time work for the purpose of establishing an enterprise, Official Journal n° 69 of October 19, 2022.

19- See Article 3 of Executive Decree n° 23-93.

20- Ibid., Art. 2, para. 9.

rise to two principal obligations: the duty of non-competition and the duty not to prejudice the employing administration.

A. Undertaking Complying with the Duty of Non-Competition

Law No. 22-22, which established the right to entrepreneurial leave, imposed a fundamental obligation on both civil servants and contractual agents by requiring them to undertake compliance with competition rules and to refrain from harming their employing administration.²¹ Since the law does not define the substance of these obligations, reference must be made to the general principles of competition law.

Civil servants and contractual agents must therefore observe fair competition principles, refraining from any practice that distorts, restricts, or undermines competition. A comparable obligation applies to private-sector employees under labour law: they may not engage in activities that compete with their employer, whether through the use of the same production methods or professional techniques, and must keep all work-related information confidential and refrain from exploiting it for personal gain.²²

It follows that, during the leave period, the employee must not carry out any activity that competes with the employing institution. This is why the employee is required to specify the nature of the intended enterprise at the time of application.²³

B. Undertaking Not Causing Harm to the Employing Administration

A further obligation imposed on the employee is the undertaking not to engage in any conduct likely to prejudice the interests of the employing administration. In labour law, this obligation finds its expression in the duties of loyalty and good faith toward the employer.

The duty not to cause harm constitutes a fundamental obligation derived from the ethical principles governing the civil service. It entails the performance of official duties with integrity, responsibility, and professional discipline in the protection of the public interest. This explains why some scholars have proposed excluding from this entitlement employees who have been subject to disciplinary sanctions relating to integrity and professional ethics.²⁴

Conduct harmful to the administration, which the employee is required to avoid, includes the disclosure of professional secrets, damage to the reputation of the

21- See Article 2 of Executive Decree No. 23-93; and Article 58 bis 1 of Presidential Decree n° 23-102.

22- RAHOUI Fouad, "The Worker's Obligation Not to Compete with the Employer and the Sanction for Breach Thereof in Algerian Legislation," A Look at Social Law Journal, Faculty of Law and Political Science, University of Oran 2, vol. 6, n° 1, 2015, p. 246.

23- See Article L122-32-14, para. 2 of the French Labour Code, Consulted on April 14, 2026, available at: www.legifrance.gouv.fr.

24- GUIROUD Sihem and GHECHAM Khalil, "The Philosophy of Exceptional Leave for the Civil Servant to Establish an Enterprise within Quality Standards in Law-Making," Journal of Social and Human Sciences, University of Batna 1, vol. 24, n° 1, June 2023, p. 420.

relevant administration, use of administrative property for personal purposes, abuse of official position, and other comparable acts as may be inferred from Articles 48 to 51 of Order No. 06-03. This obligation continues to apply during the leave period, given that such leave merely suspends the employment relationship rather than terminating it.

Second section: Procedural Requirements for Benefiting from Entrepreneurial Leave

A public employee's right to benefit from leave for the creation of an enterprise is subject to procedural requirements, primarily reflected in the obligation to submit an application and in the subsequent examination of that application by the employing administration, which must decide either to approve or reject it.

1. Submission of the Application for Entrepreneurial Leave

To benefit from entrepreneurial leave, the employee must submit a written and reasoned application to the employing administration,²⁵ in accordance with the procedures and modalities established by Executive Decree No. 23-93, as follows:

A. Submission of a Written Application Within the Prescribed Time Limit

The request for such leave must be submitted in writing to the employing administration no later than three (3) months before the proposed commencement date of the leave.²⁶ This time limit is intended to protect the interests of the administration by preventing unexpected absences and allowing a reasonable period in which to make the necessary arrangements, such as appointing a replacement, particularly where the employee occupies a sensitive position.

In return, the employing administration is required to issue an acknowledgment of receipt, the importance of which lies in establishing the starting point for calculating the time limit within which the application must be examined and decided upon. The application must further expressly specify the precise nature of the activity of the proposed enterprise and the intended commencement date of the leave.

B. Supporting Documentation and Formal Undertaking

The employee concerned must attach to the application all supporting documents demonstrating that concrete steps have been initiated toward the establishment of the proposed enterprise. Such documents may include an application for registration in the commercial register, a request for support from specialized institutions for the purpose of conducting the project's economic feasibility study, and similar materials.

25- See Article 206 bis of Law n° 22-22.

26- See Article 5 of Executive Decree n° 23-93.

The applicant must also provide a formal undertaking²⁷ committing to compliance with the rules of fair competition and to refraining from causing any prejudice to the employing administration.

2. Examination of the Application and Decision Thereon

Once the employing administration receives the application for entrepreneurial leave, it is required to examine and decide upon it within a maximum period of one month calculated from the date of submission. Following review of the request and scrutiny of the supporting documents, the administration must adopt an appropriate decision, which may fall into one of the following categories pursuant to Article 206 bis 2 of Law No. 22-22 and Article 6 of Executive Decree No. 23-93:

- Approval of the Leave Request: Approval must be granted through a written administrative decision communicated to the employee concerned, once the employing administration has verified that the legal conditions are satisfied, that the leave does not conflict with institutional interests, and that it does not undermine the principles governing the continuity and proper functioning of public services.
- Postponement of Approval: The employing administration may decide to postpone approval of the employee's request without being required to justify the postponement or to consult any body, such as the joint parity committee. The only legal restriction imposed on such postponement concerns its maximum duration, which may not exceed three (3) months under Article 6 of the same Executive Decree. This differs from the postponement mechanism applicable in labour relations involving ordinary workers, where the employer may resort to postponement only after consulting the participation committee and only where the employee's absence would seriously prejudice the undertaking.²⁸
- Rejection of the Request: Although entrepreneurial leave constitutes a legal right enjoyed by the employee by operation of law, the employing administration may nevertheless refuse to grant it where justified by considerations of institutional interest. In such cases, the administration must comply with a number of procedural safeguards, including:
 - Requirement to state reasons for the refusal decision: Although the Executive Decree does not specify the grounds that may justify refusal, Article 206 bis 2 of Law No. 22-22 provides a general basis founded on the notion of overriding institutional necessity. The administration retains discretionary power to determine the content and circumstances

27- See Article 206 bis 2 of Law n° 22-22; and Article 6 of Executive Decree n° 23-93.

28- BOUSSAIDA Dalila, "A Critical Study on the Right to Leave and Part-Time Work for Establishing an Enterprise under Law No. 22-16," Journal of Labour and Employment Law, Faculty of Law and Political Science, Ibn Badis University of Mostaganem, vol. 8, n° 2, June 2023, p. 92.

constituting such necessity in the absence of a precise and exhaustive legal framework. This broad discretionary authority raises concerns regarding the potential abuse of power by the administration, thereby weakening the safeguards afforded to employees seeking to benefit from this leave and, more importantly, from a right whose exercise the administration is not, in principle, entitled to deny. Such a situation calls for legislative intervention aimed at defining, in an explicit and exhaustive manner, the circumstances that may legitimately justify refusal, thereby ensuring effective protection of this right while simultaneously safeguarding the interests of the administration, particularly through the establishment of a maximum quota of employees eligible to benefit from entrepreneurial leave.²⁹

- Consultation of the Joint Administrative Committee: In seeking to balance the interests of employees against those of the employing administration, the law restricts the administration's discretionary power to refuse requests by requiring prior consultation with the Joint Administrative Committee, whose composition is intended to ensure such equilibrium. However, the purely advisory nature of the committee's opinion may diminish the effectiveness of this safeguard. In addition, the limited expertise of employee representatives, together with the influence exerted over them by representatives of the administration, particularly the chairperson of the committee, further weakens the effectiveness of these safeguards.
- Possibility of Challenging the Refusal Decision: Article 7 of Executive Decree No. 23-93 grants an employee whose request for business creation leave has been refused the right to lodge an administrative appeal before the hierarchical authority, which is legally required to decide on the matter within fifteen (15) days from the date of submission of the appeal. The employee also retains the right, under the general rules of administrative litigation, to bring the matter before the competent administrative court in the event that the appeal is rejected.

Unlike cases of refusal, an employee whose request for entrepreneurial leave has been approved benefits from all the guarantees attached thereto. Such approval also gives rise to the legal consequences stemming from the undertaking assumed by the employee, which will be examined in the second chapter.

29- Ibid., p. 92.

THE SECOND TOPIC

Linking the Right to Entrepreneurial Leave to Legal Guarantees

To reinforce the right to benefit from entrepreneurial leave as a mechanism for supporting entrepreneurship, the legislator has surrounded it with legal guarantees designed to ensure a degree of employment protection for the employee. These guarantees apply both during the period of leave and upon its expiry, at which point the employee may either succeed in integrating into economic activity as an operator contributing to the implementation of the state's development strategy, or fail to do so without forfeiting his or her position, which remains protected through the mechanism of reinstatement.

First requirement: Guarantees Applicable During the Period of Business Creation Leave

Within the framework of encouraging employee participation in economic development while safeguarding employment stability, the right to entrepreneurial leave is accompanied by several essential guarantees applicable during its duration. The first consists in the suspension of the employment relationship without its termination; the second lies in the preservation of certain rights and benefits, including entitlement to in-kind social security benefits; and the third concerns the possibility of benefiting from incentives provided under public schemes for the creation and expansion of economic activities.

First section: Suspension of the Employment Relationship

The placement of an employee on entrepreneurial leave results in the suspension of the statutory employment relationship linking the employee to the administration, as is similarly the case in ordinary employment relationships. Suspension of the employment relationship may be defined as the temporary interruption, by either the employee or the employer, of the normal performance of the principal contractual obligations — essentially the payment of wages and the performance of work — without contractual liability arising for either party and without permitting termination of the employment or service relationship.³⁰

In essence, suspension of the employment relationship constitutes a temporary freezing of that relationship, following which its normal operation resumes. Regardless of the duration of the suspension, the employee remains affiliated with the employing administration. More importantly, suspension is a legal right recognised in response to exceptional social or professional circumstances that justify and legitimise the temporary interruption, thereby precluding any termination of the relationship during the suspension period or on account of it. This also explains why

30- HADFI Bachir, *Functional and Economic Protection of the Worker in Algerian Labour Law*, Doctoral Thesis in Law, Faculty of Law, Badji Mokhtar University of Annaba, 2008, p. 73.

certain rights and obligations continue to apply during the suspension period, whereas others do not, a principle equally applicable to entrepreneurial leave.

Entrepreneurial leave therefore constitutes one of the legally recognised grounds for suspending the employment relationship, producing a temporary cessation of the principal reciprocal obligations between the parties. This is primarily reflected in the employee's cessation of work duties and, correspondingly, in the suspension of salary payments by the employing administration, given the reciprocal nature of these obligations.

This principle is expressly confirmed by Article 206 bis 3 of Law No. 22-22, which provides that the placement of an employee on business creation leave entails the temporary suspension of the employment relationship, together with the suspension of salary and of rights relating to seniority, advancement in grades and ranks, and retirement benefits.

Accordingly, exercising the right to such leave results in the temporary suspension of the employment relationship without terminating it, and consequently in the suspension of the employee's salary, seniority rights, and promotion opportunities, whether in grade or rank. The leave period is likewise not counted for retirement purposes.³¹ These effects are, in reality, inherent consequences of suspending the employment relationship and serve to guarantee the employee's job protection against loss of position, thereby functioning as a mechanism for ensuring employment stability.

Second section: Entitlement to Social Protection Coverage

Law No. 83-11 relating to social insurance³² grants both civil servants and contractual employees the right to benefit from social protection and the benefits provided within the framework of the social security system, as these constitute rights arising from the existence of the employment relationship.

Benefiting from entrepreneurial leave does not deprive the employee of access to social protection coverage. Rather, the employee continues to enjoy such coverage pursuant to Article 206 bis 3(2) of previously cited Law No. 22-22.³³

31- This effect also extends to the contractual employee benefiting from leave for the establishment of an enterprise, pursuant to the provisions of Article 58 bis 9 of the aforementioned Executive Decree n° 23-102, which confirms that placement on leave results in the temporary suspension of the employment relationship and the cessation of the remuneration of the person concerned. Likewise, the period of such leave is not taken into account in the calculation of seniority and retirement.

32- Law n° 83-11 of 2 July 1983 concerning social insurance, Official Journal n° 28 of July 05, 1983, as amended and supplemented.

33- Likewise, Article 58 bis 10 of Presidential Decree n° 23-102 provides that the contractual employee shall benefit from social security coverage in a specific manner, stating as follows: "The contractual employee benefiting therefrom retains entitlement to in-kind benefits relating to health insurance under the salaried employees' scheme, within the limit of one (1) calendar year ...".

As a general rule, entitlement to social security confers the right to benefit from both cash benefits and benefits in kind, pursuant to Article 08 of the aforementioned Law No. 83-11. However, the Algerian legislator has limited the social protection available to civil servants and contractual employees benefiting from entrepreneurial leave exclusively to benefits in kind relating to health insurance, in accordance with Article 11 of Executive Decree No. 23-93 previously referred to.

Benefits in kind refer to reimbursements or coverage for medical examinations, surgical expenses, pharmaceutical products, eyeglasses, spa and therapeutic mineral-water treatment, medical transport, dental treatment and prosthetic replacement, among others. They exclude cash benefits, which consist of compensation granted to an employee who has ceased working due to illness and are calculated on the basis of the salary previously received.³⁴

The period of entitlement to this category of social protection has been set at one year. However, Article 11(2) of Executive Decree No. 23-93 provides that, in the event of an exceptional extension of entrepreneurial leave, the employee may continue to benefit from these benefits in kind subject to the payment of monthly contributions calculated on the basis of 13% of the national guaranteed minimum wage.³⁵ This entitlement ceases upon the success of the project, as the employee then becomes subject to the social security scheme applicable to self-employed persons.

It may therefore be inferred that, during the initial period of entrepreneurial leave, the employee is exempt from paying such contributions, with the employing public administration remaining solely responsible for their payment. This contrasts with the extension period, during which the employee becomes responsible for paying contributions and is subject to the self-employed scheme despite the employment relationship remaining suspended, without any apparent justification for this distinction or the resulting dual treatment.

Furthermore, entitlement to social protection has been restricted exclusively to benefits in kind relating to health insurance.

Third section: Entitlement to Benefits and Social Assistance

Upon being placed on entrepreneurial leave, the employee is entitled to the benefits and forms of assistance granted by public bodies to support the creation and expansion of business activities, in accordance with the applicable legislative and regulatory framework. This entitlement is expressly affirmed by Article 206 bis 4 of Law No. 22-22.

34- BEN SAADA Karima, "The Reality of Social Security in Algeria," Journal of Economics and Development, Laboratory of Sustainable Local Development, Faculty of Economic Sciences, Commercial Sciences and Management Sciences, University of Medea, vol 3, n° 2, June 2015, pp. 15-19; see also Article 8 of Law n° 83-11.

35- This right to extension has also been granted to contractual employees; see Article 58 bis 10 of the aforementioned Presidential Decree n° 23-102.

These benefits and forms of assistance include the incentives and guarantees provided under investment legislation, such as tax and customs exemptions and other financial guarantees, as well as support mechanisms administered by legally competent institutions, including the Algerian Investment Promotion Agency, the National Agency for the Management of Microcredit, the Agency for the Development and Support of Entrepreneurship, and the Credit Guarantee Fund for Small and Medium Enterprises, among others.

Second requirement: Guarantees Applicable After the Exercise of the Right to Entrepreneurial Leave

In parallel with the legal restrictions imposed on the right to entrepreneurial leave designed to ensure the achievement of the objectives underlying its recognition the legal texts establishing this right were equally concerned with providing significant safeguards that reinforce the principle of employment stability and affirm a fundamental human right, namely the right to work.

These guarantees are reflected, first, in enabling the employee to benefit from reinstatement mechanisms; and second, where the entrepreneurial project succeeds, in the emergence of a new legal status through integration into the entrepreneurial sphere, which may also positively affect the labor market through the creation of new employment opportunities.

First section: The Right to Reinstatement

The right to reinstatement following the expiry of entrepreneurial leave constitutes one of the principal guarantees afforded to the employee. It refers to the right of the employee to be restored to the original post or rank occupied prior to being placed on such leave upon expiration of the legally prescribed leave period. This enables the employee to recover all rights associated with the initial employment relationship, particularly the right to remuneration. The salary upon reinstatement must be at least equivalent to that previously received. While the employee may not necessarily return to the exact former post, and the assigned duties may change, the essential requirement is the preservation of equivalent remuneration.

Pursuant to Article 206 bis 6 of Law No. 22-22, where the employee fails to implement the project through the establishment of an enterprise, they may request reinstatement upon expiry of the leave. Such reinstatement occurs by operation of law, even where staffing levels have already been exceeded. The employee also retains all rights acquired as of the date of placement on leave.³⁶

36- This provision is also detailed in Article 8 of Executive Decree n° 23-93, which confirms that, where the employee fails to complete his project during the leave period, he may request, at least one (1) month before the expiry date of his leave, to be reinstated to his original rank.

The same rule applies to contractual agents under Article 58 bis 6 of Presidential Decree No. 23-102, which provides that where the agent is unable to complete the project during the leave period, they may submit a request at least one month prior to the end date of the leave.

Reinstatement to the post in cases where the project has not been completed within the prescribed period is subject to formal requirements established by the legislature in the legal texts governing entrepreneurial leave, namely:

- Submission of a written request for reinstatement to the employing authority, with acknowledgment of receipt.
- Submission of the reinstatement request at least one month before expiry of the legal duration of entrepreneurial leave.
- The employing authority must reinstate the employee to the original post or rank by operation of law, even where this results in excess staffing numbers.³⁷

The employee also retains all rights acquired in the original rank as of the date of placement on leave, particularly rights relating to seniority required for promotion in grade or rank, as well as retirement rights.³⁸ However, no additional seniority accrues during the leave period. The only seniority preserved is that accumulated prior to the leave, due to the suspension of the employment relationship during that period.

It should be noted that the effective reinstatement of the employee or contractual agent takes place on the date fixed for the end of the leave. The Algerian legislature did not expressly determine whether an employee or contractual agent may request reinstatement before the expiry of the leave period. Nevertheless, the governing principle is that reinstatement occurs only after the legal duration of the leave has ended, and therefore may not be claimed before that time. This position has been expressly confirmed by Article L3142-109 of the French Labour Code,³⁹ which treats the rule as a matter of public policy, thereby precluding any contractual derogation from it.

The Algerian legislature likewise affirmed this principle in relation to workers, while introducing an exception under Article 12 of Executive Decree No. 22-352 cited above. A worker may not demand reinstatement or resumption of full-time employment before the expiry of the leave period or the period of part-time work except with the employer's consent. In this respect, discretionary authority rests with the employer. By contrast, this rule does not apply to public employees or contractual agents, who may not claim reinstatement before the expiry of the leave period on the

37- See Article 8 of Executive Decree n° 23-93; and Article 58 bis 6, para. 3 of Presidential Decree n° 23-102.

38- This is the same seniority retained by the contractual employee; see Article 8 of Executive Decree No. 23-93; and Article 58 bis 6, para. 3 of Presidential Decree n° 23-102.

39- French Labour Code, Dalloz Codes, Lefebvre Dalloz, Paris, 2022, p. 1158.

ground that the project has not been completed, although recognizing such a possibility would strengthen guarantees of employment stability in their favor.

Accordingly, the guarantee of reinstatement constitutes an important mechanism for encouraging both public employees and contractual agents to undertake the establishment of their own projects and contribute to economic development without fear of losing their positions or their source of livelihood.

Second section: Emergence of a New Legal Status

The expiry of leave granted for the creation of an enterprise, coupled with the successful completion of the project, results in the termination of the employment relationship linking the public employee to the administration. Article 216 of Order No. 06-03 enumerates the cases in which the employment relationship ends and public employee status is lost, namely:

- Loss or deprivation of Algerian nationality;
- Loss of civil rights;
- Lawfully accepted resignation;
- Dismissal;
- Discharge;
- Retirement;
- Death.⁴⁰

The Algerian legislature introduced an additional ground for termination of the employment relationship without incorporating it into the above-mentioned article, namely the expiry of entrepreneurial leave. Law No. 22-22 expressly recognized this consequence in relation to public employees, providing that the employment relationship terminates upon the expiry of such leave where the employee has completed the project, or where the employee fails to submit a request for reinstatement within the legally prescribed time limits, pursuant to Article 206 bis 4. This was likewise reaffirmed in Article 8 of Executive Decree No. 23-93, which confirms the authority of the employing body to terminate the employment relationship and remove the employee from the list of staff members⁴¹ in two cases:

40- For further details on cases of termination of the employment relationship, see GUERROUF Jamal, "Complete Termination of the Employment Relationship Without Disciplinary Measures," Journal of Legal and Political Thought, Faculty of Law and Political Science, University of Laghouat, vol. 6, no. 1, 2022, pp. 78–91.

41- Article 8 of Executive Decree n° 23-93 confirms that termination of the employment relationship is effected by the employing authority, without granting the employee the right to resign, unlike under French labour law, where Article L3142-109 provides for the employee's right to terminate the employment relationship upon the expiry of the leave period for the establishment of an enterprise.

- completion of the employee's project;
- failure of the employee to request reinstatement within one month prior to the expiry of the leave period.⁴²

These are the same situations and legal consequences established by the legislature with respect to contractual agents.

The termination of the employment relationship by the employing administration gives rise to a number of administrative consequences, most notably the loss of public employee status by the person concerned, together with all guarantees and rights inherently attached to that status, particularly financial rights and monetary benefits of whatever nature. The individual's name is also removed from the register of public administration personnel, and the same applies to contractual agents.

Although the negative outcome often feared lies in the foregoing consequence, the matter also entails a positive dimension. It creates a new legal status for the employee who has successfully completed the project, thereby conferring new rights and advantages inherent in that status, while simultaneously imposing corresponding obligations.

It should also be noted that even where the project fails and the employment relationship is terminated, the employee may re-enter the civil service anew. Under Article 185 of Order No. 06-03, only an employee who has been subjected to the disciplinary sanctions of discharge or dismissal is barred from reappointment in the civil service. Conversely, an employee who benefited from entrepreneurial leave but whose project did not succeed may apply for a public position again, while retaining the seniority previously acquired in the former post, with the corresponding right to have that period counted for retirement purposes.

Undoubtedly, the success of the project and the employee's effective integration into the economic sphere through the establishment of an enterprise constitute the primary objectives underlying the introduction of the right to entrepreneurial leave. Moreover, this mechanism contributes significantly to supporting the State's employment policy, as the success of such projects is likely to generate new job opportunities and contribute to reducing unemployment.

42- Article 58 bis 7 of Law n° 23-102 provides that: "Where the contractual employee completes his project, or where he does not request reinstatement at least one (1) month before the expiry date of the leave, his employment relationship shall terminate and his name shall be removed from the list of employees of his administration."

Conclusion

The incorporation of the right to entrepreneurial leave within the Civil Service Basic Statute, mirroring a right already enjoyed by workers in the private sector, constitutes a bold legislative step toward integrating the public sector into the State's broader economic strategy and its renewed commitment to achieving sustainable development. It equally reflects a policy of investing in human competencies across all sectors and fields, and offers public employees a new avenue for participating in economic activity and leveraging their professional skills and personal talents.

Given the inherent tension between this objective and employment stability as an acquired right within the civil service, it was essential to accompany such a reform with safeguards capable of balancing support for entrepreneurship with the preservation of occupational security. This objective was only partially addressed by the provisions of Law No. 22-22 and Executive Decree No. 23-93. Several shortcomings reveal the limited scope of these protections, most notably the following:

- The insufficiency of the legally prescribed duration of entrepreneurial leave. A period of one year, even if renewable, remains inadequate to properly assess the viability and success of a new project, particularly given that any extension is limited to half the duration of the original period.
- The risk of losing one's position in cases where the project is abandoned and no reinstatement request is submitted within the legally prescribed time limits, as the employment relationship terminates automatically by operation of law without conferring any residual rights upon the employee concerned.
- The absence of any requirement linking the termination of the employment relationship to reasonable timeframes following the actual commencement of the project.
- The absence of a right for public employees to work on a part-time basis for the purpose of establishing an enterprise, unlike their counterparts in the private sector, a gap that the legislature should move to address.
- Accordingly, it would be advisable to strengthen these guarantees by permitting reinstatement within a reasonable period following the launch of the project where the venture fails or encounters obstacles preventing its

continuation. The right to reinstatement should further be better protected by requiring the administration to notify the employee of the statutory deadlines for submitting a request to resume service.

Further reforms should include:

- Extending the statutory duration of entrepreneurial leave.
- Reinforcing the safeguards governing access to entrepreneurial leave by involving participatory bodies within public administrations in the examination of applications, such as through mandatory consultation with the joint parity committee, in order to prevent administrative arbitrariness in denying this right under the broad and flexible justification of public interest.
- Extending eligibility for entrepreneurial leave to holders of fixed-term contracts, particularly contractual agents.
- Explicitly affirming the employee's right to resign upon the expiry of the leave period.
- Recognizing the right to part-time work for the purpose of establishing an enterprise, in parity with rights already granted to private-sector workers, thereby giving effect to the principle of equality.

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