



Bird & Bird

France

Employee Invention Laws

*October 2025*

# France – Employee Invention Laws

## Does your country have specific laws governing employee inventions?

Yes, governed by statutory law with contractual flexibility.

**Primary Legislation/Law:** Article L. 611-7 of the French Intellectual Property Code (IPC).

**Application:** Default statutory provisions apply unless employment contracts provide more favourable employee terms.

**Compensation Framework** - Determined through:

- Collective agreements
- Company agreements
- Individual employment contracts

## What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

Article L. 611-7 of the French Intellectual Property Code applies to all inventions created during employment.

**Coverage/Scope:**

- New technical solution
- Involving an inventive step
- Capable of industrial application

**Extended Scope:**

- Utility Models: Provision applies as it pertains to intellectual property rights.
- Trade Secrets: Patentable inventions that don't lead to patent grants are treated as trade secrets, with inventor entitled to framework protections.

## Which categories of employees are covered by your national employee invention laws?

French Intellectual Property Code applies to individuals with employee status.

**Employee Definition:** Person bound by an employment contract who works for compensation on behalf of employer under employer's management and control.

**Included Categories:**

- Private sector employees
- Civil servants (state, public authorities, public entities) unless employment agreement provides more favourable terms
- Interns (similar regime under Article L. 611-7-1 IPC)

**Exclusions:**

- Service providers

- Suppliers
- Business partners

**Special Provisions:** Civil servants have similar general rules but more detailed compensation calculation methods

## What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

**Temporal Scope:** Invention must be developed during employment contract. Inventions developed before employment belong to employee.

**Flexible Application** - Inventions are considered developed during employment if:

- Idea existed pre-employment but developed during employment.
- Work began during employment and completed after termination.

**Territorial Scope:**

- French Law Application: If contract governed by French law, Article L. 611-7 IPC applies regardless of employee nationality.
- Default Rule: Where applicable law not stated, law of country where employee ordinarily performs work applies.
- Case Authority: Paris Judicial Court, 18 Dec 2015, No. 14/00569.

## Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes. French law classifies inventions as:

- **“In mission” Inventions:** Inventions created as part of assigned duties. Owned by the employer.
- **“Off mission” Inventions:** Inventions developed through job-related work, tools, or knowledge. Owned by the employee, but the employer can request assignment.
- **Non-attributable Inventions:** No job or business connection. Fully employee owned.

## What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

Employees must submit an invention disclosure to their employer, proposing a classification into one of three categories.

For **“in mission”** inventions, ownership transfers automatically to the employer.

For **“off mission”** inventions, the employer has four months to exercise its claim to ownership. During this time, both parties must maintain confidentiality (Article R. 611-10 IPC).

If classification is disputed, employment contracts and job descriptions can help determine the correct category.

## How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Under the French IP Code, either the employee or employer may submit a dispute by letter over classification or ownership of an employee invention to the Commission Nationale des Inventions de Salariés (CNIS). This is optional but initiates a fast-track adversarial procedure.

The CNIS must issue a decision within six months.

- If the parties agree, the CNIS drafts a settlement report.
- If not, it proposes a conciliation solution that is binding unless one party refers the matter to the Paris Court of First Instance, which has exclusive jurisdiction (not the labour courts).

## Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

In France, companies often implement policies for employee inventions, and while these policies may differ from one organisation to another, they must comply with the principles set out in Article L. 611-7 of the French Intellectual Property Code and corresponding regulation.

As a rule, these legal provisions cannot be overridden by contractual agreements - such as internal remuneration policies - unless those agreements offer more favourable terms for the employee. In other words, any deviation from the statutory framework must benefit the inventor, not diminish their rights.

## Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

Yes. Article L. 611-7 of the French IPC provides that employee inventors are entitled to additional remuneration for "in mission" inventions and to compensation known as the 'fair price' for non-mission inventions.

This compensation is therefore due when the invention within the scope of the employee's duties ("in mission") or an invention made outside the scope of these duties, but which is attributable to the employer ("off mission"), regardless of whether the employer chooses to file a patent to protect it.

## What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Article L. 611-7 of the French Intellectual Property Code does not specify how additional remuneration for employee inventions should be calculated. Instead, the criteria have been shaped by case law.

**In mission inventions:** In this case, the employee has the right to an additional remuneration ("rémunération supplémentaire"). It cannot be considered as a part of the employee's salary. Article L.611-7 does not specify the criteria for assessing the additional remuneration. It simply imposes its payment by indicating that the conditions are determined by applicable collective agreements ("conventions collectives"), company agreements and individual employment contracts. In the absence of specific provisions in the employment contract, collective agreement, or company agreements, it falls to the courts to determine the amount of additional remuneration.

This is done on a case-by-case basis, considering the evidence presented and several key factors, including:

- the overall research context in which the invention was developed,
- the economic value of the invention,
- the inventor's personal contribution, and
- the complexity and challenges involved in creating the invention.

**Off mission inventions:** In this case, the employee is entitled to a fair price ("juste prix"). Unlike the additional remuneration, Article L. 611-7 does not refer to collective agreements or to employment agreements to set out the elements to be considered for the determination of the fair price. Article L.611-7 provides that the relevant criteria to assess a fair price include the initial contributions of the employer and the employee and the commercial and industrial utility of the invention. The fair price must be set by an agreement between the employer and the employee. The parties are free to set a lump sum or a sum that is proportional to the commercial use of the invention.

### Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

No, there is no single standard for financial compensation. It can take the form of a lump sum, or a combination of a lump sum and variable remuneration tied to the commercial use of the invention. The latter arrangement often results in more substantial compensation.

In practice, compensation systems frequently involve staggered payments, such as:

- An initial payment when the employer is notified of the invention,
- A second payment upon filing the patent application,
- Additional payments when the patent is extended internationally,
- And a final payment upon the patent being granted.

This tiered approach aligns compensation with the invention's progression and potential value

### What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

The determination of the amount of additional remuneration or fair compensation is not strictly defined by law and often depends on collective agreements, company agreements or individual employment contracts. In practice, the amount of additional remuneration can vary considerably.

For instance, a 2016 study by the French National Institute of Industrial Property (INPI) found that salaried inventors typically receive an average lump sum additional remuneration of €2,200 per invention. However, depending on the calculation method used, this amount can rise to €11,000 or more.

These amounts can vary significantly depending on the situation. If the employee disputes the amount, and in cases where setting this amount gives rise to a legal dispute, the amounts awarded by the CNIS and/or the courts may be significantly higher.





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