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EMPLOYMENT LAW UPDATE SEPTEMBER 2017

MACRON'S LABOR LAW REFORM: A WIND OF CHANGE?

France means business

The simplification and reform of France's notoriously complex labor law was a hallmark of French President Emmanuel Macron's presidential campaign. This September, President Macron fulfilled this promise, thus signaling to the international market that **France is fully open for business.**

In order to simplify and speed up the law making process, the President bypassed the Parliament by using "ordonnances", a kind of government decree. These decrees were approved on September 22nd, 2017 and will have to be ratified by the Parliament in the coming months. The reform should globally be effective by January 1st, 2018. **The President hopes that his reforms, by providing more freedom to employers, will boost France's economy.**

The following is a brief summary of the key reforms. The employment team is available to clarify or further develop these topics with you.

Staff Representative Bodies

The three current staff representative bodies, namely: personnel delegates; work councils and health and safety committees, will be replaced **with a single body that will be called the Social and Economic Committee (SEC).**

Additionally, companies with more than 300 employees (or where the risks so necessitate), will have to set up a specific health and safety and working condition commission.

This reform will enable discussions of work issues between employers and staff representatives to take place more efficiently and effectively.

Facilitating collective bargaining within small companies

A new feature is that in companies **with 20 or fewer employees** and without elected staff, the employer **will be able to negotiate directly with employees on a significant number of topics.**

In order to be valid, the resulting agreement will have to be approved by referendum by at least two thirds of the staff, within a minimum period of 15 days following notice of the terms of the agreement to each employee.

In companies with between **20 and 49** employees, without unions or works councils, **priority is given to mandated members to negotiate.**

In companies with at least **50 employees** who do not have union or staff representatives, the rules governing **negotiations remain unchanged**, i.e. with a mandated staff representative or, failing that, a representative without a union mandate, or, failing that, an elected employee.

In addition, **a watchdog body will be set up to analyze and support industrial relations and negotiations.**

Established the department level, this body will foster the development of industrial relations and collective bargaining in companies with fewer than 50 employees. The body will also assist companies with all labor issues.

Employee Dismissals

Softening of the formal dismissal procedures

Employers will be able to add grounds for dismissal after notification of the dismissal itself either on their own initiative or upon request by the employee.

To safeguard the employer, **a standard form will be published for use by the employer in cases of dismissal.**

Capped Damages

Under this reform, **in order to give employers greater visibility of the financial stakes** in cases of litigation involving unfair dismissal**, damages awarded by the court will now be capped according to a scale.**

The scale fixes both a minimum award of between half and three months' salary depending on length of service, and a maximum award of between one month's salary for less than one year's service and twenty months' salary for more than twenty-nine years of service.

Nevertheless the scale will not apply to cases based on discrimination, harassment or infringement of basic human rights.

Legal severance indemnity

The legal severance indemnity will now be set to one-fourth of the monthly salary per year of service (currently fixed at one-fifth of the monthly salary) for the first 10 years of service and will remain at one-third of the monthly salary after 10 years of service**.**

Limitation period to challenge a dismissal

The current time limit of one to two years to challenge a dismissal before the Labor Court **will be harmonized to one year** for all types of employment contract termination**.**

Economic Dismissals

One of the most interesting points of the reforms concerns economic dismissals.

Scope of assessment of economic grounds

Economic grounds (financial difficulties, technological changes, preserving competitiveness) **for dismissal will no longer be assessed on an international basis except in cases of fraud.**

Before the reform, the economic grounds to justify redundancy were taken into account at the level of the group to which the company belongs. The economic grounds were not assessed at the company level**, but at the level of the group's business sector across all relevant countries.** Therefore, if the sector was profitable at the group level the dismissal was deemed unfair **even if the company in France was facing economic difficulties.**

Under the reforms, redundancy grounds will be assessed only at the French level.

Criteria order of dismissals

The scope of application of the redundancy criteria can be delimited in the context of collective redundancies for fewer than ten employees in the same 30-day period. This option was previously only permitted in the context of PSE (safeguard plan) established by agreement or unilateral document. **This makes it possible to target establishments, or even departments, within which the redundancy criteria are implemented.**

Reassessment obligation

The reassessment duty has also been simplified. Employers will still have to ensure that employees receive available Reassessment offers, but will no longer be required to send them the relevant offers in writing.

Employees will be given access to internal offers via a list of employment offers accessible on the company's Intranet.

Collective mutual termination by consent

A new procedure known as **"Collective mutual consent termination"** has been put in place in order **to secure voluntary departure plans.**

The acceptance by the employer of the employee's request for voluntary departure will lead to the termination of the employment contract **by mutual agreement.**

Facilitating business takeovers

The reform has broadened the exception to the transfer of employment contracts in the event of transfer of business for companies with less than 1,000 employees. **The goal is to facilitate takeovers when part of a company can be saved.**

This exemption will no longer be reserved for companies with at least 1,000 employees but **for all companies with at least 50 employees required to establish a PSE** (safeguard plan).

Thus, under certain conditions, dismissals could occur before the transfer. **The transferee is then only obligated to maintain the employees whose contracts are not terminated on the day of the transfer.**

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