

Discover (or Rediscover) French Employment Law: Your Questions, Our Answers

2015–2016 Edition

About Dechert

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Dechert is a global specialist law firm. Focused on sectors with the greatest complexities, legal intricacies and highest regulatory demands, we excel in delivering practical commercial judgment and deep legal expertise for high-stakes matters.

In an increasingly challenging environment, clients look to us to serve them in ways that are faster, sharper and leaner without compromising excellence.

We are relentless in serving our clients – delivering the best of the firm to them with entrepreneurial energy and seamless collaboration in a way that is distinctively Dechert.

Dechert's labor and employment team has the ability to provide rapid, integrated solutions to any employment, benefits or labor matter. We work closely with companies of all sizes in virtually every industry to assure that their interests are protected.

Our lawyers navigate clients through the ever-changing landscape of federal, state and local laws and regulations governing the workplace, assisting them with structuring and implementing effective workplace policies and procedures, preserving their intellectual property, addressing the full range of labor and employment law issues, and guiding them through the challenges of litigation.

In France, our growing labor and employment practice handles urgent, complex or sensitive employment law issues. We provide assistance in a collaborative and pragmatic way, frequently in an international or multi-disciplinary context.

Our clients, including boards of directors, legal departments and human resources departments, seek our expertise on transitions, group reorganizations, high-profile litigation, and compensation and benefits issues. We also handle sensitive and crisis cases such as plant closures, reorganizations, social plans, executive departures, health and safety issues at work, and strikes.

Introduction

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Are you right to consider that French employment law contains strange rules?

Most likely.

Are you right to believe that French employment law is always protective of employees?

Not so much the case.

Indeed, the recent evolution in France goes in the same direction as in some other countries in Europe, i.e. more flexibility for employers. Despite these changes France continues to have complex legal rules because our world is complex. As in the field of business no one likes surprises, anticipating legal issues and identifying risks is of primary importance. International groups therefore need to understand the rules to lead their business in compliance with these rules.

This guide, put together by Dechert's dedicated labor and employment lawyers in France, aims to explain in a pedagogical way the main rules an employer needs to know to manage staff effectively in France. We prepared it for you because we know that it can be of great help.

We wish you a terrific learning experience!



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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources that govern the employment relationship, in order of importance, are: the French Constitution; EU law; the French Labor Code; case law; industry sector wide and/or company-wide collective bargaining agreements; the employment contract; internal rules and regulations; and company practices.

1.2 What types of workers are protected by employment law? How are different types of workers distinguished?

There are two main types of workers under French employment law:

- employees, and
- self-employed.

The employment relationship derives from the performance of duties for an employer under a subordinating link and for which the employee is paid. Employees are more protected and benefit, for instance, from provisions regarding remuneration, work duration, paid leaves or termination of their employment contract. They are also entitled to unemployment allowances in case of dismissal.

Self-employed persons are not subject to an employer's control and instructions but tend to be less protected since they do not benefit from the provisions of the French Labor Code.

1.3 Do employment contracts have to be in writing? If not, do employees have to be provided with specific information in writing?

While it is generally advised to have all contracts in writing, it is not a legal requirement to have written employment contracts, except:

- when an applicable collective bargaining agreement requires it, or
- when the contract is a fixed-term contract, part-time contract, or an apprenticeship.

However, oral fixed-term contracts are categorically deemed to be indefinite-term contracts. Similarly, oral part-time contracts are re-qualified as full-time contracts.

Moreover, EU law compels employer to provide an employee with a written statement of the employment relationship, i.e. of the main conditions of workplace, position, starting date, applicable collective bargaining agreements, holidays, applicable collective bargaining agreements, salary, and working time.

1.4 Are any terms implied into employment contracts?

Employers and employees are bound by a duty of good faith towards one another. This duty must be maintained and respected throughout the employment relationship.

Employees must respect the employer's interests. They, such, cannot perform any activity that is detrimental to the company's interests, should provide the employer with information communicated to them in the course of their employment to protect the company's interests and are expected to carry out their duties with diligence and are asked to do so. Employers must provide a safe working environment.

1.5 To what extent are employment agreements subject to collective bargaining? Does bargaining usually occur at the industry level?

Under French employment law, collective bargaining agreements ("CBAs") are used to regulate employment relationships. There are three types of CBA:

- national and sector-wide
- industry sector-wide
- company-wide

Most companies have a company-wide CBA. In some industry sectors, there is a national and sector-wide CBA.

On top of that, many companies have a company-wide CBA since the company is a member of the company's industry sector.

The new French Labor Code in force since 1 January 2017

Do not hesitate to contact us to request the full version of our guide *Discover (or Rediscover) French Employment Law 2015*

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