DISCOVER (OR REDISCOVER) FRENCH EMPLOYMENT LAW

Your Questions, Our Answers

2022 Edition

Dechert LLP

Editorial

Reform of France's labor laws

The COVID-19 pandemic had a strong impact on employment relationships and led many French employers to re-think the working environment. The key trends in these changes are flexibility – with the generalization of remote work – as well as health and safety.

With the world slowly recovering from the pandemic and the economy taking off, employment relationships are increasingly in focus. Our role at Dechert is to guide you through the legal rules in the field of labor and employment law and thus help you to limit your risks and avoid surprises.

The sixth edition of this guide, put together by Dechert's dedicated labor and employment lawyers in France, aims to explain 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 condition 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, collective bargaining agreements at industry-sector/group/multiple companies/single company level, the employment contract, internal rules and regulations and company practices.

However, recent reforms tend to increase the importance of collective bargaining. As a result, legal provisions that do not constitute public policies are only applied in the absence of collective bargaining agreements.

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 in a relationship where the employee is subordinate to the employer and for which the employee is paid. Employees are more protected and benefit, for instance, from provisions regarding remuneration, work duration, paid leave or termination of their employment contract. They are also entitled to unemployment allowances in the event 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.

Oral fixed-term contracts are deemed to be indefinite-term contracts. Similarly, oral part-time contracts are reclassified as full-time contracts.

Moreover, EU law requires employers to provide every employee with a written statement of the main terms of the employment relationship, i.e., names of the parties, workplace, position, starting date, length of paid holidays, applicable collective bargaining agreement, salary, and working time.

1.4 Is it necessary to have a supplemental agreement for each and every modification?

No, but a supplemental agreement is highly recommended when the new terms impose certain obligations/constraints on the employee. For instance, without it, if the employee is promoted the employer may have great difficulties to invoke poor performance.

1.5 Are any terms implied into employment contracts?

Employers and employees are expected to behave in good faith towards one another and mutual trust should be maintained and respected.

Employees have duties of loyalty, and, as such, cannot perform any acts whatsoever against the company's interests, should not disclose confidential information communicated to them during the course of their employment to people outside of the workplace and are expected to carry out reasonable tasks when asked to do so. Employers must pay wages and provide a safe working environment.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at the company or industry level?

Under French employment law, collective bargaining agreements ("CBA") are an essential element of the employment relationship. There are different types of CBA:

- national and interprofessional CBA;
- industry sector-wide CBA;
- group CBA;
- multiple companies CBA;
- company CBA.

Most companies are subject to a CBA concluded at the industry sector level.

On top of the industry sector-wide CBA, many companies have negotiated company-wide CBAs since they may provide more flexibility and/or allow the company to adapt its organization to its specific business needs. The negotiations at company level generally take place in companies having union delegates. In the absence of union delegates, negotiations can take place under specific conditions that have been made more flexible.

1.7 Is there any obligation to have employment documents translated into French?

Any document setting rights and obligations of employees must be drafted in French. This requirement mainly applies to the employment contract, but also to other documents such as internal policies and remuneration plans. Exceptions to this principle are very limited.

1.8 Are there any specific rules regarding discipline?

In companies of 50 employees or more, provided that this threshold has been exceeded for 12 consecutive months, employers must implement internal rules and regulations that apply to all personnel. They include provisions relating to discipline (including the nature and scale of sanctions). When any Code of Conduct or any other policy includes provisions on discipline, these documents must be adopted using the same procedure as the one applicable to internal rules and regulation.

1.9 Are there any specific rules regarding Employer of Record (EOR) services?

An employer of record, also known in France as an umbrella company, serves as the employer for tax, social security and legal purposes while the employee performs work for a client company. The EOR takes care of all traditional employment tasks and liabilities (i.e., notably processing payroll, depositing and filing taxes and handling the employment relationship).

The French Labor Code provides for mandatory provisions to be included both (i) in the services contract between the EOR and the client company and (ii) in the employment contract between the employee and the EOR.

For instance the mandatory provisions that must appear in the services contract between the EOR and the client company include:

- the end date for the services or a minimal duration when the end date is uncertain;
- the responsibility of the client company regarding the working conditions of the employee, in particular in relation to health, safety, working hours, as well as the time and place of work;
- if applicable, the nature of the personal protective equipment provided by the client company;
- the identity of the financial guarantor of the EOR;
- details of the insurance subscribed by the EOR for the employee's civil liability.

2 Remuneration

2.1 Do employers have to observe minima regarding remuneration?

Employees are entitled to receive a minimum gross monthly wage (in 2022: €1,645.58 gross for a 35-hour work week), regardless of the nature of their employment contract (indefinite or fixed-term employment contract). Collective bargaining agreements also frequently determine a higher minimum monthly wage.

2.2 How can employers implement incentive plans?

Under French labor law, employees' remuneration may include several components as follows:

- a "fixed" part;
- a "variable" part based on the achievement of specific objectives, which may be collective or individual.

The terms and conditions of calculation and payment of the variable remuneration must be determined by mutual agreement between the employer and the employee. While the structure of the variable remuneration requires a common agreement between the parties, the objectives can nevertheless be fixed unilaterally by the employer, provided that this is expressly permitted by the contract.

In order to ensure that such variable remuneration remains discretionary, the employer must refrain from communicating the criteria behind the decision to grant a bonus, and change these criteria every year to avoid the employee identifying them and being able to demonstrate a pattern.

2.3 When are employees entitled to profit-sharing?

Companies which have employed 50 or more employees over five consecutive civil years must implement a profit-sharing scheme which benefits all of its employees. The mandatory profit-sharing aims to guarantee employees' right to benefit from the company's performance. Its calculation is determined by application of the legal formula or the formula adopted in a company-wide collective bargaining agreement. The sums paid in this framework are subject to a favorable social and tax regime.

A voluntary profit-sharing agreement similarly linked to the results and performance of the company can be implemented as well, regardless of the company's headcount. The amounts paid accordingly are also subject to a favorable social and tax regime.

3 Working time

3.1 What is the legal duration of work under French law?

The legal working time is 35 hours a week. However, employees may be required by their employer to perform overtime if needed, provided that their working time does not exceed:

- an average of 44 hours a week during 12 consecutive weeks;
- 48 hours during any given week;
- 10 hours a day.

Overtime hours entitle the employee to a premium rate of pay and/or time off in lieu. Where no specific agreement exists, the law sets an annual overtime limit of 220 overtime hours. For all hours worked in excess of that limit, employees must be given time off in lieu.

Employers may adapt the working time in order to comply with the business needs. Through provisions of a company-wide CBA or industry-wide CBA it is possible to provide for instance the possibility to agree to annual day packages with certain employees. With annual day packages, employees work a fixed number of days throughout the year rather than a fixed number of hours each week.

Furthermore, companies may depart from the maximum duration of 44 hours a week during 12 consecutive weeks by collective bargaining agreements, provided that the maximum duration does not exceed 46 hours on such time-period.

Attention must be drawn to the fact that annual day packages do not exempt the employer from offering:

- a daily rest of 11 consecutive hours; and
- a weekly rest of 35 consecutive hours.

3.2 Are employees entitled to paid holidays?

Employees are entitled to a minimum of five weeks' paid holiday a year. In France, there are also approximately 10 public holidays every year.

Furthermore, the law and collective bargaining agreements provide for additional paid leave that can for instance be granted to employees who have reached a specific length of service or for family-related events.

3.3 What is the right to disconnect?

Since 1 January 2017, companies in which at least one trade union is present must negotiate annually with union representatives a set of measures about their employees' "right to disconnect". This negotiation must include the following topics:

- conditions under which employees are entitled to a right to disconnect from all devices;
- rules to regulate the use of digital devices to ensure observance of rest time and leave as well as personal and family life.

In case of failure to reach an agreement, the employer must adopt a charter of good conduct, setting out the conditions to ensure this right to disconnect.

However, this right to disconnect does not create a general right to ignore emails out of working time.

3.4 Should working time be monitored?

There are strict rules for monitoring working time, for employees whose working time is calculated in hours. The employer needs to be able to track the hours worked by each employee, with a pre-established individual or collective schedule, or by having the employees record their schedules themselves via timesheets or electronic tracking applications.

For employees whose working time is computed in days worked, as part of an annual day package, the employer does not need to keep track of the hours worked. However, employers need to monitor the employees' workload and ensure that they effectively use their rest time. This employer's obligation is linked to their duty to ensure employees' safety. It can be achieved through regular meetings, effective alert systems in case the workload becomes excessive, and tangible measures to alleviate it, if needed.

3.5 Are there any specific rules regarding remote work?

Remote work refers to any form of working arrangement in which work that could have been carried out on the employer's premises is carried out outside these premises, on a voluntary basis, using information and communication technologies.

Remote work can be used on a recurrent or occasional basis, or in cases of exceptional circumstances or force majeure.

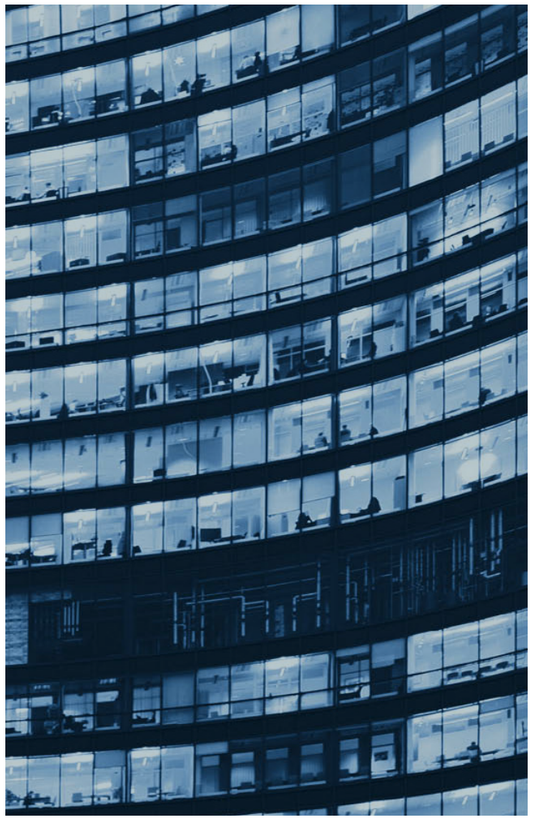
When remote work is part of the usual organization of the employment relationship, a company-wide collective bargaining agreement, a charter or a dedicated clause in the employment contract must address it. Whatever the option, it should include at least provisions with respect to:

- Conditions for moving to remote work (circumstances, terms, eligible positions, etc.);
- Conditions for returning to work on the company's premises;
- Terms relating to the employee's agreement to remote work and the conditions for implementing remote work;
- Duration and range of remote work (terms for controlling working time or regulating the workload, determination of the time slots during which the employer can usually contact the employee, etc.);
- Terms of access to remote work for disabled workers; and
- Providing of equipment and reimbursement of costs arising from the recurrent exercise of remote work.

Employees working from home have the same rights as those working on the company's premises.

As such, and because of the difficulties arising from the remote performance of the employment contract, the employer shall monitor the workload and ensure that the employee effectively uses his or her right to disconnect and rest time.

The costs associated with remote work may benefit from a specific tax and social treatment.



4 Discrimination and harassment

4.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Employees are protected against discrimination based on their origin, gender, customs, sexual orientation, gender identity, age, family situation or pregnancy, genetic characteristics, particular vulnerability resulting from his/her financial situation, either only apparent or known by the employee himself/herself, belonging or absence of belonging, either assumed or effective, to an ethnic group, nation or assumed race, political opinions, union activities, the exercise of an elective mandate, religious beliefs, physical appearance, family name, place of residence or bank domiciliation, health, loss of autonomy, disability, ability to use a language other than French, according to the French Labor Code.

Employees who qualify as whistleblowers are also protected against discrimination and dismissal, provided that they act in good faith.

Employees or external collaborators (i.e., notably temporary workers or trainees) are considered to be whistleblowers when they report or disclose, without direct financial compensation and in good faith, information concerning a crime, an offence, a threat or harm to the general interest, a violation or an attempt to conceal a violation of international, EU or national laws or regulations.

Any discriminatory measure is void and criminally sanctioned.

4.2 What types of discrimination are unlawful and in what circumstances?

Any disparate treatment based on the above-mentioned protected characteristics implemented against current employees is prohibited. Any exclusion of applicants from a recruitment process based on these protected characteristics is also prohibited.

4.3 Are there any defenses to a discrimination claim?

The main defense is evidence of objective reasons justifying the decision taken vis-à-vis an employee.

4.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may bring discrimination claims before either the Employment Tribunal or the criminal courts. Employees have to produce evidence leading to assume the existence of discrimination, either direct or indirect. In turn, the employer has to prove that its decision was based on elements unrelated to discrimination of any kind.

Claims may be settled before or after lawsuits are initiated before the Employment Tribunal.

When the claim is filed before a criminal court, the public prosecutor may always maintain criminal proceedings against the company despite the conclusion of a settlement between the parties.

4.5 Which remedial measures are available to employees in successful discrimination claims?

Discrimination is a criminal offence punishable by:

- a maximum of three years' imprisonment and a fine of up to €45,000 for the author of the offence and employer's legal representative (namely the chief executive officer); or
- a fine up to €225,000 for the employing legal entity.

Any decision resulting from discrimination is void. For instance, in case of dismissal based on discriminatory grounds, the employee may be either reinstated or receive compensatory damages (on several occasions courts awarded damages up to two years of salary).

4.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) enjoy greater protection?

Atypical workers benefit from additional protection with respect to discrimination. They must not be subject to any discrimination related to the nature of their employment contract.

For example, workers under a fixed-term employment contract or under a temporary agency contract are entitled to the same remuneration as employees under indefinite-term contracts (provided that they share similar qualifications and length of service).

In addition, atypical workers benefit from the same protection than other workers (see question 4.2) in specific situations (e.g., prohibition of discrimination in case of renewal of a fixed-term contract, prohibition of discrimination regarding right to bonuses, etc.).

4.7 What are the requirements in terms of gender equality?

All companies that have union representatives are subject to the obligation to negotiate every year on gender equality, the quality of working life and working conditions. A collective bargaining agreement may provide for the negotiations to take place every four years. In the absence of a collective bargaining agreement, the employer must set up a dedicated action plan.

Apart from this obligation to negotiate, companies with 50 or more employees are also required to publish annual information on the size of the pay gap between their male and female employees. The pay gap is assessed on the basis of five different indicators (four in companies employing between 50 and 250 employees). Each of these indicators represents a number of points.

Companies obtaining less than 75 points (out of 100) must implement and publish corrective measures or include a remuneration catch-up plan. If after three years, the overall score of the company is still below 75 points, the employer may be subject to a financial penalty of up to 1% of the total wages paid to its staff in France.

Companies obtaining less than 85 points (out of 100) must implement and publish progress targets for each of the indicators on their websites and that of the Ministry of Labor.

The overall score must be published each year on the company's website. The information on which the score is based must be provided to the company's social and economic committee ("CSE").

4.8 What type of behavior may be characterized as bullying or sexual harassment?

Bullying may occur where there are repeated actions which have the purpose or effect of damaging an employee's working conditions in a way that may harm their rights and dignity, physical and psychological health or professional prospects. This is widely interpreted by French courts and can cover situations of overly harsh management.

Sexual harassment may occur where there are statements or acts or pressure of a sexual or sexist nature – either isolated or repeated – that violate an employee's dignity because of their humiliating or degrading nature, or because they generate an intimidating, hostile or offensive environment, as well as pressure with the perceived or real aim of obtaining sexual favors for a person's own benefit or the benefit of a third party.

5 Maternity and family leave rights

5.1 How long does a maternity leave last?

Employees are entitled to a maternity leave, the duration of which varies as follows:

- 16 weeks (six weeks before childbirth and 10 weeks after childbirth – three weeks before childbirth may be transferred after childbirth);
- 26 weeks for a single birth that increases the number of children in the family to three or more (eight weeks before childbirth and 18 weeks after childbirth – four weeks after childbirth may be transferred before childbirth);
- 34 weeks for twins (12 weeks before childbirth and 22 weeks after childbirth – four weeks after childbirth may be transferred before childbirth);
- 46 weeks for a multiple birth (triplets or more) (24 weeks before childbirth and 22 weeks after childbirth).

The applicable collective bargaining agreement may provide for a longer leave.

5.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Employees on maternity leave receive an allowance from the French Social Security. The French labor code does not require companies to increase the amount of such allowance in order to maintain the employee's usual salary during maternity leave. Such requirement, however, often results from the applicable collective bargaining agreements. Finally, employees benefit from a strict protection against dismissal during that time.

5.3 What rights does a woman have upon her return to work from maternity leave?

Following maternity leave, employees are entitled to return to their original position (or, if such position is unavailable, to a similar position with the same remuneration). They must also be given a salary increase based on the average individual salary increases granted to employees belonging to the same professional category, or if that is not possible, within the company generally.

Employees (either the mother or the father) with at least one year's service on the date of the birth or adoption may, until the child reaches the age of three, either:

- work part-time; or
- take unpaid parental leave.

The company cannot object to this parental leave.

5.4 Do fathers have the right to take paternity leave?

The father, the mother's spouse or her civil partner may take a three-day leave upon the birth of a child, as well as 25 days of paternity leave (32 days in case of multiple births), which must be taken within six months following the birth. The first four days of paternity leave must immediately follow the three-day leave upon childbirth. The remaining days can be taken in one continuous period or in two periods of equal or unequal duration, corresponding at least to five days.

During the leave, the employment contract is suspended, and the French Social Security pays a specific allowance. The employer does not have to maintain the employee's usual remuneration during the leave unless provided otherwise by the applicable collective bargaining agreement.

5.5 Are there any other parental leave rights that employers have to comply with?

All employees authorized to adopt by social services are entitled to the following leave:

- adoption of a single child:
  - 16 weeks for the first two children adopted separately; and
  - 18 weeks when the adoption brings the number of children at home to three or more.
- multiple adoptions at one time: 22 weeks.

It is possible to split the leave between the two parents, in which case the duration of the leave is slightly increased. Finally, before adoption, employees may request to benefit from an unpaid leave of up to six weeks if they need to travel abroad to adopt the child.

In addition, an employee could ask for an unpaid educational parental leave at the end of the parental or adoption leave, either full- or part-time. The employee (with at least one year of service) can take up to three years of unpaid leave.

6 Termination of employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employers must serve notice in which they lay out the grounds for dismissal, either personal or economic.

The dismissal letter must be sent by registered mail no earlier than two days after a preliminary meeting at which the employee and the employer will discuss the contemplated termination. In case of termination for economic reasons this delay will be seven days, increased to 15 days in the case of the termination of an executive.

The notice period is usually one to three months, but the employee's age and the length of service can increase the length of the notice period (the duration is generally provided in the collective bargaining agreement).

When the parties enter into an amicable termination agreement, they have to comply with a specific process but there will be no notice period. The specific process takes approximately six weeks and requires the involvement of the labor administration (detailed explanation in question 6.12).

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend work?

There is no concept of garden leave under French labor law. The employer can exempt the employee from working during his or her notice period. However in such case, the employee will be free to work for another employer, even if he or she continues to be paid during his or her exempted notice period by his or her previous employer.

6.3 What protection do employees have against dismissal? Are there any categories of employees that enjoy a specific protection against dismissal?

A specific process must be followed by employers before implementing a termination. The preliminary meeting referred to in question 6.1 is part of the protection.

For example, the following employees benefit from a special protection against dismissal:

- pregnant women;
- employees on sick leave resulting from a work-related accident or illness;
- employee representatives; and
- employees benefiting from the protection offered to employee representatives (e.g., employment tribunal judges, etc.).

6.4 Is consent from a third party required before an employer can dismiss an employee?

Labor Inspector authorization is required when dismissing an employee representative or an employee benefiting from the same protection. All other cases do not require third party consent.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee or 2) business-related reasons? Are employees entitled to compensation upon dismissal, and if so, how is compensation calculated?

Under French law, employees can only be dismissed for a real and serious cause, either for personal or for economic reasons.

Personal grounds can either be based on disciplinary or non-disciplinary grounds:

- a disciplinary termination occurs when the employee has committed misconduct or violated one of the disciplinary rules established by the employer. Such termination cannot be implemented more than two months after the employer's acknowledgment of the misconduct;
- a non-disciplinary termination occurs when the employee fails to adequately perform the job assigned to her/him. The employer will have to show that the employee lacks the necessary main skills.

An employer is also entitled to dismiss for business reasons provided that two cumulative conditions are fulfilled:

- the termination results from the elimination or transformation of the position, or from a modification of the employment contract; and
- the termination results from economic difficulties, technical changes or a reorganization necessary to safeguard the competitiveness or cessation of the company's activity.

Employees having at least eight months of service are entitled to benefit from a severance indemnity that is determined by the applicable collective bargaining agreement or by the Labor Code (whatever is more favorable to the employee) which amounts to at least:

- 1/4 of the employee's monthly average gross salary per year of service for the first 10 years; and
- 1/3 of the employee's monthly average gross salary per year of service for every year beyond.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

In the case of termination for personal grounds, two main steps must be observed:

- the preliminary meeting:
  - inviting the employee to the preliminary meeting by registered mail or hand-delivered letter, which must be received by the employee at least five working days prior to the meeting. The convening letter must state the time and place of the meeting as well as the employee's right to be accompanied by a colleague (or an outside party subject to certain conditions);
  - meeting with the employee; and
- notification of the dismissal:
  - sending of the dismissal letter by registered mail after a certain time-period following the meeting (such time-period varies depending on the type of termination); the first presentation of the letter to the employee's home will constitute the start of the notice period (generally between one to three months).

For terminations based on economic grounds, the employer will have to:

- apply selection criteria to all the employees belonging to the professional category within which the employer wishes to eliminate the position. The criteria for selecting the terminated employees are determined by law: family situation (single parents for example), seniority, difficulties in finding a new job (age or disability), and professional skills;
- search for and offer all available positions within the company and within other affiliates of the group in France before making the employee redundant; and
- provide affected employees with the redeployment scheme documentation. In groups with less than 1,000 employees in Europe, the employer has a statutory obligation to inform the employee about his or her entitlement to benefit from the CSP scheme, i.e., specific State retraining programs allowing employees to follow training sessions in order to find new employment while receiving higher unemployment allowances. In groups of 1,000 employees or more, the employer must offer a redeployment leave to the employee in the redundancy letter. The employee has eight days to either accept or refuse such measure. If the employee accepts, he or she will benefit from a specific training for four to 12 months – extendable to 24 months in case of vocational retraining – while being compensated by his or her employer.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee can challenge the grounds for his or her termination before the Employment Tribunal and request the payment of additional indemnities.

If successful, the employee will be awarded damages which amount will comply with the below mandatory legal scale. This scale provides for a minimum and a maximum amount depending on the length of service and the size of the company's workforce.

Length of service (complete years)	Min (employees >11)*	Min (employees <11)*	Max*
0	NA		1
1	1	0.5	2
2	3	0.5	3,5
3	3	1	4
4	3	1	5
5	3	1.5	6
6	3	1.5	7
7	3	2	8
8	3	2	8
9	3	2.5	9
10	3	2.5	10
11	3		10,5
12	3		11
13	3		11,5
14	3		12
15	3		13
16	3		13,5
17	3		14
18	3		14,5
19	3		15
20	3		15,5
21	3		16
22	3		16,5
23	3		17
24	3		17,5
25	3		18
26	3		18,5
27	3		19
28	3		19,5
29	3		20
30 and more	3	20	20

** number of months of salary*

However this scale will not apply when the dismissal is declared void due to:

- harassment;
- discrimination;
- retaliatory measure further to reporting a criminal offense;
- retaliatory measure further to a legal claim based on equality between women and men;
- violation of the specific protection applicable to employee representatives.

Under these circumstances, the employee is entitled to a minimum of six months' salary. There is no maximum compensation.

In addition, if the Employment Tribunal decides in favor of the employee, it can order the employer to reimburse all or part of the unemployment compensation received by the employee, if any, to the unemployment agency *(Pôle Emploi)*. The amount of such reimbursement may not exceed six months of unemployment compensation (roughly equivalent to three months' salary).

In order to counteract an employee's claim, the employer must prove that either the economic or personal ground for termination was real and serious. For redundancies, the employer must also prove that it complied with its obligations regarding the selection criteria, the redeployment obligations, as well as with the social plan when required.

Such proof should be contained in written documentation and affidavits are the usual way to collect witness statements.

6.8 Can employers settle claims before or after they are initiated?

Employers can settle claims before and after they are initiated:

- before: so as to prevent the terminated employee from suing the company to obtain compensation for unfair termination, in exchange for the payment of a specific financial compensation. The risks and the costs of litigation will thus be avoided.
- after: so as to request the terminated employee to waive his or her claim in exchange for specific financial compensation.

In case of negotiation before the Employment Tribunal, the following indicative lump sum grading scale for the compensation to be offered to the terminated employee (at the stage of the conciliation hearing) applies as follows:

Length of service	Indemnity (number of months of salary)
less than a year	2
1 - 8 years	3 +1 month per year of length of service after the 1st year
8 - less than 12 years	10
12 - less than 15 years	12
15 - less than 19 years	14
19 - less than 23 years	16
23 - less than 26 years	18
26 - less than 30 years	20
30 years and up	24

6.9 Does an employer have any additional obligations in case of termination of several employees' employment contracts at the same time?

An employer is subject to additional obligations where several employees are made redundant at the same time.

Where there are two redundancies or more over 30 days (but less than 10): the information-consultation of the employees' representatives is mandatory as well as the information of the labor administration within eight days of the sending of the redundancy letter.

Where there are more than nine redundancies within a 30-day period in companies having more than 50 employees, the company will have to implement a social plan as per the following procedure):

- the employer must either negotiate an agreement with its unions providing for the content of a social plan or may choose to decide unilaterally on the content of the plan. In either process, the social plan will contain concrete and specific measures that the employer proposes to implement in order to accompany terminations but more specifically to avoid or reduce the number of redundancies and facilitate the finding of new employment positions within and/or outside the group. The social plan is also subject to the labor administration certification;
- the employees' representatives must be informed and consulted on the reorganization project and on the resulting redundancies, as well as on the social plan;
- in addition to reviewing the social plan, the labor administration checks the adequacy of the consultation procedure and notifies the employer of any relating remarks. The control of the labor administration is more limited in case of implementation of the social plan agreed with the unions.

6.10 How do employees enforce their rights in relation to mass redundancies and what are the consequences if an employer fails to comply with its obligations?

Employees through the intermediary of the employees' representatives can negotiate a higher severance indemnity and/or provision of outplacement or training in the social plan.

If the social plan is considered insufficient by the Employment Tribunal or if the employer did not comply with the redeployment obligation in the plan or with the redundancy process, the redundancies will be considered as without real and serious cause.

If the Employment Tribunal considers that the redundancy is not based on real and serious economic grounds, damages for unfair termination will be awarded to the terminated employee.

6.11 Do termination rules apply to fixed-term contracts?

Rules relating to termination do not apply to fixed-term contracts, which automatically terminate at the end of the term agreed upon by the parties, without any further process being applied. Employees under fixed-term contracts are entitled at the end of their employment to receive an end-of-contract indemnity usually equal to 10% of the total gross remuneration received by the employee over the course of the fixed-term contract.

6.12 Can employees and employers agree to terminate amicably the employment contract?

Reaching a mutual agreement is a popular way to terminate employment contracts in France. It allows termination of the employment contract by combining guarantees for the employee and flexibility for the employer:

- on the one hand, the employer does not have to justify the termination of the contract and the procedure is largely simplified;
- on the other hand, the employee will benefit from a severance payment and will be eligible for governmental unemployment benefits.

However, the employee's consent must be given freely.

If not, the employee could require the cancellation of the termination before an Employment Tribunal.

The French Labor Code does not require any other particular formalities. The employer and the employee must however hold at least one meeting to agree on the terms of the termination and for the employee to understand fully the procedure. In practice, there are between two and four meetings.

During these meetings, the employee can be accompanied. If the employee chooses to be assisted, the employer can also be accompanied.

When both employer and employee have agreed on the agreement's content, they must fill a specific pro-forma document to formalize their agreement, in which they set: the amount of the termination compensation (at least the amount corresponding to the severance indemnity) that will benefit from the favorable tax and social regime, the date of termination and all other terms they feel appropriate.

From the date of signature of the form, each party has a 15-calendar day retraction period.

At the end of the 15-calendar day period, the most diligent party (employer or employee) sends a request for certification to the Labor Administration along with a copy of the amicable termination agreement form.

The Labor Administration has 15 business days to ensure that all legal provisions have been complied with and that the consent of both parties has been given freely.

The silence of the Labor Administration during the 15 business day period will be considered as a certification.

There is no mandatory notice period. The parties are free to decide the official date of termination of the contract: either the day following the official approval by the Labor Administration or later.

6.13 Can the employer terminate multiple employees on an amicable basis?

The employer can reduce headcount by proposing voluntary departures in accordance with a collective agreement which it negotiates with union representatives or, if there are no union representatives, with the CSE or the employees, depending on the company's headcount and the existence of a CSE. The main advantage is that no economic justification is needed for the terminations.

The collective agreement must address specific issues such as:

- the maximum number of terminations contemplated;
- the conditions to be met for an employee to be eligible;
- the termination payments, which cannot be less than the statutory severance indemnity;
- external redeployment efforts.

Once signed, the collective agreement must be notified to the Labor Administration which has a 15-day period as from receipt to validate it.

The employment contract of all employees leaving the company through such a scheme, are terminated by mutual consent of the parties.

7 Protecting business interests following termination

7.1 What types of restrictive covenants are recognized?

Various types of restrictive covenants are recognized, mainly the following ones:

- non-compete;
- non-solicitation of employees;
- exclusivity; and
- confidentiality.

7.2 When are restrictive covenants enforceable and for what period?

A non-compete clause is valid only if it is necessary to protect the company's legitimate interests, taking into consideration the specificities of the targeted employee's job position, and is limited geographically and in time.

The duration of the non-compete obligation is generally defined by the collective bargaining agreement. If not, standard practice would typically provide for a restrictive covenant of one to two years' duration.

The non-solicitation of employees and the confidentiality clauses are enforceable without any specific conditions. The exclusivity clause is also enforceable without any specific condition except for the part-time employees.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Employees have to be provided with financial compensation in return for non-compete covenants.

The compensation is generally provided in the collective bargaining agreement. However, an employment contract can provide the employee with more generous compensation.

The compensation generally represents at least 30% of the employee's former salary for the period for which the clause is applicable. Payment of the compensation during the course of the contract is not valid.

7.4 How are restrictive covenants enforced?

A breach of the non-compete, non-solicitation, confidentiality or exclusivity covenants can be enforced by the employer or former employer before the tribunals which may:

- decide that the breach must immediately end; and/or
- decide to award damages to the employer (which for the non-compete clause could represent the reimbursement of the financial compensation plus additional compensation based on the prejudice suffered).

8 Employee representation and industrial relations

8.1 What are the rules relating to trade union recognition as representative?

Trade unions are considered as representative only when they have existed for more than two years and gained at least 10% of the votes at the latest social and economic committee election.

8.2 What rights do trade unions have?

The extent of trade unions' rights depends on whether they are representative or not.

A union section may be created by:

- representative trade unions;
- trade unions affiliated to a trade union confederation representative at the national level; and
- trade unions that meet several criteria, i.e., respect of republican values, independence, minimum two years of existence, having a geographical and professional scope which includes that of the company, or if they have at least two members in the company or establishment.

The union section's mission is to represent the social and economic interests of its members before the employer. In order to carry out this role, the union section may collect dues, post notices and hold meetings.

Furthermore, unions may distribute handouts within the company. The union sections may have union meetings once a month on the company's premises.

All unions that are representative and have established union sections in a company employing 50 employees or more, have the right to appoint one or more union delegates in order to represent the union section in discussions with the employer. Union delegates are the representatives with whom the employer may negotiate and enter into collective bargaining agreements.

In addition, non-representative unions who have created a union section may appoint a union section's delegate.

8.3 Are there any rules governing a trade union's right to take industrial action?

Industrial action may originate from trade unions or the employees themselves. Industrial action is defined as a collective and concerted work stoppage aiming to support professional demands. While trade unions may be bound by certain agreements providing notice or prior steps before calling for industrial action, these restrictions are not binding on the employees themselves.

8.4 Are employers required to set up employee representative bodies? If so, how is this body chosen/appointed? What are its main rights and responsibilities?

A Social and Economic Committee ("CSE") must be established in companies with at least 11 employees. The members of the CSE are elected for four years and may be re-elected by employees. The number of members elected to the CSE depends on the company's headcount.

The CSE replaces the previous employee representative bodies which existed in France: staff delegates, works council and health and safety committee.

The roles and responsibilities of the CSE depend on the company's headcount.

In companies having less than 50 employees, the CSE's roles and responsibilities are namely to put forward to the employer the employees' individual or collective claims, to promote health, security and working conditions within the company and to refer to the Labor inspector all complaints relating to the employer's non-compliance with legal provisions. In these companies the CSE has the principal roles and responsibilities of the staff delegates.

In companies having at least 50 employees, on top of the above roles and responsibilities, the CSE has both the duties of the works council and health and safety committee.

Thus, the CSE is in charge of expressing the opinions of the employees and in that respect plays an important role in the economic and financial evolution of the company as well as the work conditions and the training.

It also contributes to the protection of employees' physical and mental health, as well as the improvement of working conditions. It does so by taking an active part in the employer's assessment of occupational risks and by being consulted on the document for the evaluation of occupational risks.

For this purpose, all members of the CSE benefit from a training period of at least five days when they first get elected as staff representatives. They must also undergo a minimum three-day training course when they get reelected.

The CSE also manages the social and cultural activities for employees, which the employer pays for.

The CSE must be informed and consulted on almost all major company projects, including:

- matters relating to the employer's organization, management, and general running of the business;
- decisions likely to affect the company (e.g., the volume or structure of the workforce, working hours and conditions, and training);

- decisions likely to affect employees' working conditions;
- restructuring operations and collective redundancies;
- change in the company's economic or legal structure, especially in the case of mergers, transfers or undertakings, or major changes in the production structure of the company, as well as of takeovers or sale of subsidiaries.

The information and consultation must include relevant written information on the project so as to enable the CSE to take an informed decision. Such relevant information includes any environmental data which may be induced by the implementation of the project, and its consequences.

The information and consultation of the CSE must have occurred before taking a decision on any project.

In order to allow the CSE to express a reasoned opinion, the employer has to provide it with a reasonable time to consider all elements, and provide an answer to the CSE's observations.

The consultation calendar may be set by an agreement with the CSE. If there is no agreement, the CSE is deemed to have issued a negative opinion at the expiry of a maximum consultation period of one month (general cases) or two months (if an expert is appointed).

Any employer, who fails to consult the CSE, or only consults it irregularly, may be fined up to €7,500 for the employer's legal representative (€37,500 for the employing legal entity).

The employer can also implement an employee representative body, the *"Conseil d'Entreprise"*, which will have the roles of both a trade union delegate and the CSE. An indefinite-term company-wide bargaining agreement may implement a *"Conseil d'Entreprise"*, the duties of which will be to negotiate, conclude and revise most company-wide bargaining agreements and carry out the roles and responsibilities of the CSE set out above.

The agreement implementing the *"Conseil d'Entreprise"* would have to set out namely the themes on which the CSE consent is required for example training.

8.5 What information is made available to the CSE?

All companies with 50 or more employees must implement an economic, social and environmental database ("BDESE"). The BDESE must contain:

- information giving a general overview of the company's overall situation;
- all reports, balance sheets, and other information which must be communicated to the CSE on a regular basis, including information on the environmental consequences of the company's activity.

Subject to different arrangements negotiated by collective agreement, the BDESE must contain this information for the current year, the previous two years as well as forecasts for the subsequent three years.

8.6 In what circumstances will a CSE have co-determination rights, so that an employer is unable to proceed until it has obtained the CSE's agreement to proposals?

The CSE 's consent, favorable opinion, or absence of opposition is only required in a very limited number of cases, notably:

- introduction of an exception to collective working hours;
- replacement of overtime pay by additional rest;
- refusals of certain employees' absences.

8.7 How do the rights of trade unions and CSE interact?

The CSE expresses notably the employees' opinion on economic matters and promotes health, security and working conditions within the company, whereas trade unions aim at satisfying varied professional claims.

8.8 Are employees entitled to representation at board level?

Two members of the CSE (or four in large companies), appointed by the CSE may attend board meetings. These CSE representatives must be invited to every board meeting as are directors and must receive similar information prior to the meeting. The CSE representatives cannot vote on the resolutions but have the right to express their opinions on them.

Two CSE representatives, appointed by the CSE, can also attend shareholders' meetings. They have the same rights as for the board meetings.

In addition, companies of a certain size (employing at least 1,000 employees in France or 5,000 employees worldwide) which have their registered office in France, must have employee representation on the board. At least two employees must be appointed to the board where the board has more than eight members, and there must be one employee representative for boards with eight or fewer members.

In addition, where no employee has been appointed as described above, and the employees together hold more than 3% of the share capital, at least one of those employees must be appointed to the board.

9 Business sales and transfer

9.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

In case of a share sale, the employees' contract is not directly impacted. They remain employees of the transferred entity.

In case of an asset transfer, if there has been a transfer of an autonomous economic entity, employees are automatically transferred (French TUPE rule).

An autonomous economic entity is an organized group of persons, with its own assets, clients and line of business. It must be organized in a stable and continuous way. Any employee who is fully or mainly (50% of their working time at least) dedicated to this entity will thus be transferred.

9.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

When the transfer of contracts is automatic under the French TUPE rules, the terms of each individual contract will transfer without any change.

On the collective employment front, the transferee must continue collective bargaining agreements but has an obligation to commence good faith negotiation with the aim of harmonizing or amending their terms within three months from the date of transfer. If an agreement is reached during the following 12 months, the new collective agreement will apply automatically to all the staff.

If no agreement is reached, the previous collective rules will cease to apply, but the transferred employees will continue to be entitled to remuneration that annually, for a similar working time, cannot be less than the remuneration received during the 12 months pre-transfer.

9.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The CSE must be informed and consulted on any proposed change to the economic or the legal organization of the employer, including changes resulting from a merger, sale of assets, or acquisition of a subsidiary, if such changes would affect employees (on the consultation process, see question 8.4).

There are also specific consultation requirements where there is a public open bid.

In addition, under French Commercial Law, there is an obligation to inform each employee in order to enable them to make a takeover offer where there is a sale of the business as a going concern or the sale of more than 50% of shares, stocks or securities giving access to the capital of the company. The employees must be informed no later than two months before the sale, so that they can submit an offer to acquire the business or the shares.

9.4 Can employees be dismissed in connection with a business sale?

In companies of more than 50 employees, where there is an asset sale to which TUPE applies, (see question 9.1) and the company has implemented a social plan to affect the transfer of employees for the purpose of preventing the closure of one or more establishments, the transferor can implement redundancies.

In such a case, the TUPE rules do not apply to the employees made redundant.

If the conditions described above are not met or if the restructuring is driven solely by the transfer of the business, dismissals implemented by the transferor before the transfer are not valid. They are considered as void as they prevent the employee transfer rules from applying. The sanction for the employer is to reinstate the concerned employees or to pay them compensation.

9.5 Are employers free to change terms and conditions of employment in connection with a business sale?

The employers cannot change the terms and conditions of employment because of a business sale. They have to comply with the normal process requiring the express employees' approval for changing terms. However, the fact that new collective rules apply to the buyer can impact individual employees.

10 Court practice and procedure

10.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The Employment Tribunal has jurisdiction to hear employment-related complaints at first instance level. It is composed of non-professional judges elected by the employees and the employers.

Claims for specific cases can also be brought before criminal courts, civil courts, administrative courts and tribunals for social security affairs.

10.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

The employment-related complaints are examined by the Employment Tribunal in two procedural steps:

- the conciliation hearing: judges intend to conciliate the parties (please see question 6.8 relating to the grading scale to facilitate post termination settlements); and
- the trial hearing: if the parties have not been able to conciliate, it is at the trial hearing that the parties plead their case.

The conciliation is therefore mandatory once the claim has been filed. There are some exceptions, notably:

- when a claimant seeks to obtain a reclassification from a fixed-term contract to an indefinite-term contract. In such case, the parties can be directly convened to the trial hearing, upon request;
- in case of constructive dismissal.

Furthermore, when the claimant seeks an interim injunction (for instance, in the case of late payment of salaries undoubtedly due), the case is directly brought to a trial hearing.

If the conciliation fails, the case is referred to:

- the ordinary chamber composed of Employment Tribunal judges (two elected by employers and two elected by employees); or
- four labor court judges (two elected by employers and two elected by employees) and a professional judge if requested by the parties or if required by the nature of the case; or
- a limited chamber composed of two judges (one elected by employers and one elected by employees) provided that:
  - the parties agree to it;
  - the case is related to a dismissal or a claim for court-order termination of the employment contract.

10.3 How long do employment-related complaints typically take to be decided?

There is no minimum or maximum time for the proceedings to be dealt with. It depends on how busy the local courts are.

On average, it takes one year for an employment-related complaint to be judged at first instance level.

10.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

A decision of an Employment Tribunal may be appealed before a Court of Appeal within one month after the decision has been given.

The procedure will take approximately another year before the Court of Appeal gives its decision.

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