



Labour & Employment

in 43 jurisdictions worldwide

Contributing editors: Mark Dichter, Kenneth Turnbull,
Christopher Hitchins and Mark E Zelek

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- Vivien Chan & Co

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Contributing editors:

Mark Dichter, Kenneth Turnbull,
Christopher Hitchins and
Mark E Zelek
Morgan, Lewis & Bockius LLP

Business development managers

Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers

Ellie Notley
Sarah Walsh
Alice Hazard

Marketing assistants

William Bentley
Sarah Savage

Subscriptions manager

Nadine Radcliffe
Subscriptions@
gettingthedealthrough.com

Assistant editor

Adam Myers

Editorial assistant

Lydia Gerges

Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Subeditor

Davet Hyland

Production editors

Anne Borthwick
Martin Forrest

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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France

François Vergne and Antoine Jouhet

Morgan, Lewis & Bockius LLP

Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main statutes and regulations governing employment are the Labour Code, administrative regulations and collective bargaining agreements, either at a field-of-activity level or at a company level. International treaties, European legislation, the Constitution of 1958 and associated sources, and the Civil Code that can contain provisions which apply to employment should also be mentioned.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Labour Code protects employees against harassment and discrimination at work. Pursuant to article L1132-1 of the Labour Code, an employer must not take into account an employee's origin, gender, morals, sexual orientation, age, family situation, pregnancy, genetic characteristics, real or assumed belonging or non-belonging to an ethnic group, a nation, or a race, political opinions, union or mutual activities, religious beliefs, physical appearance, family name, state of health or handicap to hire, sanction, dismiss, promote or reward. In addition to this list, the Labour Code grants protection in favour of:

- employees who use their right of strike;
- fixed-term; or
- part-time employees as compared to permanent employees in similar situations.

3 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Data Privacy Law of 6 January 1978 (as amended in August 2004) protects employee privacy and personal data. Pursuant to this rule, an employer may collect information on employees, except information regarding racial origins, political opinions, religious or philosophical beliefs, health or sexual preferences. Pursuant to article L1221-6 of the Labour Code, an employer may collect personal information from an applicant only if the purpose of such collection is to assess the applicant's abilities to carry out his or her future duties or professional skills. The Data Protection Authority (CNIL) controls the collection of personal data. Based on article 9 of the Civil Code, employees have a general protection of their private life at work. The monitoring of employees at the work place is also subject to restrictive requirements (eg, e-mail monitoring, video monitoring). Prior to the processing or filing of data relating to its employees, the employer is required to:

- report its existence to the CNIL;
- inform and consult with relevant employees representatives; and
- inform individually each employee of the existence and the finality of the data processing.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The administration of French labour law is entrusted to the Ministry of Labour, which is represented by regional and departmental directors and by labour inspectors organised through regional bodies (DIRECCTE). The judicial enforcement of French labour law is the primary responsibility of the labour courts which are competent to judge all individual disputes arising out of the employment relationship.

Worker representation

5 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the work place?

Under French law, the employer is required to organise elections for staff delegates when the number of employees reaches 11 and for the works council when the number of employees reaches 50. Subject to certain conditions, a works council must be elected at establishment level and either or both at group level and European level.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The employer may ask an applicant to provide information directly or through a third party to the extent that such information is necessary to assess the applicant's professional capacities which have a direct link with the position and the employee's skills (article L 1221-6 of the Labour Code). Except where the information is relevant in the specific context of the position, the employer may not collect private background information (eg, criminal or credit record or the holding of a driving licence).

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Under French law, a medical examination is mandatory at the time of the recruitment (ie, the hiring date). An employee cannot refuse to submit to the examination. An employer can refuse to hire an applicant who does not submit to an examination.

This examination aims to verify that the applicant is not suffering from a disease that may affect his or her working environment and that he or she is physically capable of carrying out the job's future duties.

After hiring, the employee must submit to at least one medical examination every 24 months in order to verify his or her capacity to carry on the duties.

Additional medical examinations are required for disabled employees, pregnant employees, after maternity leave, after illness leave of more than three weeks or repeated illness leaves. The medical examination must be carried out by the industrial doctor.

- 8** Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

The employer is not, in principle, entitled to ask questions about the applicant's private life and this includes questions about health. Information relating to a health condition should only be given by the applicant to the medical staff during the pre-hiring medical examination. The doctor may prescribe a drug or alcohol test if he or she thinks that it is relevant in deciding on the ability of the applicant to carry out the functions of the job. The applicant has to agree to the test and has been previously informed by the doctor of the possible consequences. The results of the tests are not communicated to the employer; the doctor indicates only if the applicant is able to work.

An employer can refuse to hire an applicant who has refused to submit to the pre-hiring medical examination.

Hiring of employees

- 9** Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

An employer cannot give preference in hiring to particular people or groups of people. This may be considered discrimination, which is prohibited by law.

Employers with at least 20 employees are legally required to employ disabled individuals at the rate of six per cent of the work force. Employers may decide to hire disabled employees, to outsource part of their activity to specified companies or to pay a financial contribution to a dedicated agency (AGEFIPH).

Temporary measures for hiring women or older employees are also authorised.

- 10** Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

A written employment contract is mandatory when an individual is hired as a temporary employee or is hired on a fixed-term or part-time contract. A written employment contract is not strictly required under French law in other cases, although it is recommended for evidentiary reasons. Moreover, the European Directive of 14 October 1991 requires employers to provide a written agreement. The collective bargaining agreement may also impose an obligation to provide the employee with a written employment contract or with specific information.

The essential terms of the contract include the starting date, the notice period, the job description, the salary, the working time, the trial period and the duration of the contract.

- 11** To what extent are fixed-term employment contracts permissible?

A fixed-term contract may only be used to hire an employee to perform a precise and temporary task in factual circumstances strictly defined by the law as follows:

- to replace an employee who is temporarily absent or whose contract is temporarily suspended;
- to temporarily replace an employee whose job is being eliminated;
- to temporarily fill a vacant job position while awaiting the arrival of a new employee (for a maximum of nine months);
- to deal with a temporary increase in business activity; or
- to hire for seasonal work or in business sectors in which fixed-term contracts are standard practice.

Usually, the maximum duration of a fixed-term contract is 18 months and may be extended to 24 months under specific conditions. Specific limitations apply to companies who have carried out a dismissal on economic grounds during the last six months.

Subject to the existence of a specific provision in a collective bargaining agreement, fixed-terms contract may be signed with executives and engineers for a period of 18-36 months for the completion of a specific and defined project.

- 12** What is the maximum probationary period permitted by law?

For indefinite-term employment contracts, the maximum probationary periods permitted by law are:

- two months for workers and employees;
- three months for technicians and supervisors; and
- four months for executives.

Such probationary periods may be extended once, if provided for in the collective bargaining agreement and in the employment contract. Such an extension, which is subject to the employee's express consent, must be agreed to before the end of the initial probationary period. The duration of the probationary period including renewal cannot exceed:

- four months for employees and workers;
- three months for technicians and supervisors; and
- eight months for executives.

A fixed-term contract may provide for a probationary period that depends on the duration of the contract and may last for up to one month for contracts exceeding six months.

- 13** To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Such covenants must be agreed to in writing. Under French law, the territorial scope and duration of non-competition covenants must be limited. Moreover, financial compensation should be provided in consideration of the covenant. If an employee is not compensated for his or her non-competition commitment, the covenant will not be enforceable, and the employee may make a claim for damages for the limitation to the right to work that has been suffered. Lastly, the company must justify the agreement as a protection of its legitimate interests.

The maximum period for a non-competition covenant depends on the employment contract and the collective bargaining agreement, if any. Usually, it lasts between 12 and 24 months.

Covenants not to solicit or deal with customers are regarded as limiting the right to work and, therefore, to be valid and enforceable and must provide for financial compensation.

- 14** What are the primary factors that distinguish an independent contractor from an employee?

Amongst other case by case elements, the primary factors that distinguish an independent contractor from an employee are the following:

- The contractor does not carry out duties in a subordinate position to an employer;
- The contractor does not belong to the employer's organisation;
- The contractor carries out the duties with either or both different equipment and from different premises;
- The contractor sends invoices for specific services rendered over a specific period of time;
- The contractor must have completed all relevant registration and declaration formalities to act as an independent contractor.

French labour law imposes a variety of requirements and obligations on the parties in an employment relationship that do not apply to independent contractors (eg, disciplinary regulations, working-time regulations and paid holidays).

Foreign workers

- 15** Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There is no numerical limitation on short-term visas (less than 3 months) for foreign employees working for the same employer in France.

All foreign workers need a visa and a work permit to work in France unless they are nationals of one of the member states of the European Union (subject to temporary formalities for the nationals of Bulgaria and Romania until January 2014). Foreign workers who are not nationals of these countries need an authorisation to stay and work in France: a residence permit, which is valid for 10 years, the temporary stay visa with an authorisation to work, which is valid for one year, and the temporary authorisation to work, which is valid for 12 months. Other authorisations exist for students, scientists, etc.

Less restrictive visa rules apply to employees seconded from a foreign corporate entity to another related entity located in France for the purpose of carrying out a service (assigned employees). Secondment is possible to the extent that:

- the foreign employer and the seconded employee have entered into an employment relationship before the secondment;
- the secondment is for a limited period of time (3 years renewable); and
- the employee's monthly gross compensation is at least equal to one and a half times the French minimum monthly salary (ie, in 2011, €1,365 for 35 hours of work x 1.5 = €2,047.50).

The employer is required to pay a special contribution, the amount of which depends on the duration of the assignment and the employee's salary.

Moreover, certain French labour legal requirements apply to the *seconded*, while on secondment, including working time provisions, days off, paid holidays, minimum salary, overtime and rules relating to health and safety. These requirements ensure that the secondment will not deprive the seconded employee from the rights that would have been granted under a French employment contract.

- 16** Are spouses of authorised workers entitled to work?

A temporary authorisation to stay in France for personal reasons is available to the extent that the individual meets the legal conditions set by French law. This authorisation is for a maximum duration of one year (automatic renewal) and allows its holder to carry out a professional activity.

- 17** What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The procedures to be followed to obtain a work permit depend on the place where the foreign worker lives. If the foreign worker lives in France, the employer would need to check the validity of his or her visa and authorisation to work. If the foreign worker does not live in France, the employer must prove that it has tried, with no success, to recruit a candidate in France in order to be entitled to recruit a foreign worker.

The labour authorities issue the authorisation to work. Except for certain categories of employees (such as assigned employees, artists, or high level executives) they take into account the employment situation in the territorial area where the foreign worker would work, the employment conditions (notably salary) that would apply to the foreign worker, and the technological and commercial purposes of the stay. Any refusal shall be written and shall provide the grounds for the refusal.

The usual formalities (notably, medical examinations) and labour requirements apply to foreign workers. The employer would have to pay a specific contribution for the employment of a foreign worker.

Failure to comply with the legal requirements governing the introduction of foreign workers to France may give rise to various sanctions including criminal liabilities. Courts will impose fines and imprisonment upon the employer (up to 10 years in prison and €100,000 fine for individuals, €500,000 for legal entities) while French authorities can withhold the employee's authorisation to work or stay in France. Additional criminal or administrative sanctions are incurred such as confiscation of all or part of the assets, exclusion from public procurement, dissolution, etc.

- 18** Is a labour market test required as a precursor to a short or long-term visa?

The labour market test does not depend on the duration of the visa but on the particular situation of the foreign worker.

Except for certain categories of employees (see question 17), the employment situation of the geographical area where he or she will work is taken into consideration by the relevant administrative authority in order to decide whether to grant the authorisation to work in France.

In addition, when the foreign worker does not live in France, the employer must post the position with the agencies that are used by the public employment service. The employer will be entitled to recruit a foreign worker only if it was unable to staff the position with someone who is already authorised to work in France.

Terms of employment

- 19** Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The typical working week is 35 hours under French law, unless otherwise specified by the applicable collective bargaining agreement. The number of overtime hours that an employee may work during a calendar year is limited by the collective bargaining agreement or by the law (a legal threshold of 220 hours per year and per employee); beyond such limit, additional overtime hours may be authorised by the labour inspector. An employee may not work more than 10 hours per day. The average number of hours that an employee may work per week over any period longer than 12 consecutive weeks may normally not exceed 44 hours, nor may the number of hours the employee works during any given week exceed 48 hours. A temporary authorisation to exceed such a limit may be granted by the labour authority. Each failure by the employer to abide by the applicable rules and regulations relating to working hours or overtime hours is sanctioned by a maximum fine of €750 for individuals and €3,750 for legal entities. The fine is multiplied by the number of employees concerned by the violation of the law. The employee cannot opt out of such restrictions.

- 20** What categories of workers are entitled to overtime pay and how is it calculated?

All employees are entitled to overtime pay except high level employees with management duties (*cadres dirigeants*) who have the greatest independence in carrying out their duties and in the organisation of their schedule and whose compensation is in the highest range of the organisation. Other employees (itinerant workers and executives) may be subject to a particular arrangement which excludes overtime payment within a certain limit (eg, a maximum number of hours or days of work per month or per year).

Overtime pay is calculated on the basis of the rate applicable to the employee with a surcharge (eg, 25 per cent between 35 and 43 hours of work per week and 50 per cent above 43 hours).

Overtime pay may be replaced, fully or partially, by compensatory time off for overtime hours worked below the overtime threshold (see question 19). It must give rise to mandatory time off on top of overtime pay for hours worked above the overtime threshold.

21 Is there any legislation establishing the right to annual vacation and holidays?

French labour law grants any employee the right to a minimum amount of paid annual vacation. Two and a half workable days of annual leave are given per month in the reference year, not to exceed 30 workable days. A workable day is any one of the six days in the maximum six day working week. For individuals working the typical five day week during a full reference year, they will benefit from 25 working days for annual vacation. Paid vacation is in addition to public holidays.

22 Is there any legislation establishing the right to sick leave or sick pay?

An employee may be absent due to illness, provided that he or she has informed the employer and produces a medical certificate (usually within 48 hours following the absence). During the absence, the employee receives a social security allowance. The employment contract is suspended but the applicable collective bargaining agreement or the Labour Code ensures that (subject to certain conditions) in the event of any absence resulting from illness there is a continuation of the employee's salary. Pursuant to the Labour Code, the indemnity amounts to 90 per cent of the gross salary during the first 30 days of illness, and to 66 per cent of the gross salary during the following 30 days. Those periods are increased by 10 days for each five year period worked by the employee above one year within a limit of 90 days of indemnification for each period (maximum 180 days of indemnification). There is no maximum annual entitlement. Any social security allowance and complementary health care indemnity received by the employee is deducted from the amount paid by the employer.

23 In what circumstances may an employee take a leave of absence?

What is the maximum duration of such leave and does an employee receive pay during the leave?

Apart from annual vacation or absence due to illness, an employee may be absent in various circumstances including: maternity or adoption leave, family reasons (eg, marriage, death or illness of a parent), parental leave, training, creation of a business, etc. Payment and duration of the leave depends on the reasons for the leave, the existence of specific provisions of a collective bargaining agreement or from a specific agreement with the employer.

For example, in the case of maternity, the employee is entitled to a minimum of 16 weeks of absence with a maximum of 52 weeks (in the case of multiple pregnancy with medical risks). During the maternity leave, the employee receives a social security allowance. The collective bargaining agreement may also provide for an obligation to maintain the employee's salary. At any time after the birth of a child, the employee who has worked at least one year with the company before the birth may ask for parental leave or to move to part-time work for a maximum period of one year, which can be renewed twice, ending on the third birthday of the child. During parental leave, except in case of part-time work, there is no legal obligation to maintain salary.

If the employee is absent without a valid reason, he or she will not be paid and may be dismissed.

24 What employee benefits are prescribed by law?

Employees are entitled to statutory social security benefits that consist of statutory pensions and protection against exceptional situations relating to the employee's health, family events, work related accident or illness. Employees are also covered against unemployment risk. Such benefits are sponsored by the state through social security contributions paid by the employee (at the approximate rate of 20 per cent of the employee's gross salary) and the employer (at the approximate rate of 45 per cent of the employee's gross salary).

French law requires that any company employing at least 50 employees must manage a mandatory profit-sharing plan.

25 Are there any special rules relating to part-time or fixed-term employees?

An employer may not discriminate against part-time or fixed-term employees based on the fact that they are not employed on a permanent and full-time basis.

At the end of the fixed-term contract, the employee must generally receive an indemnity which is equal to 10 per cent of his or her gross salary received during the contract. For fixed-term employees, refer also to question 11.

For part-time employees, specific terms and conditions are required in writing in the employment contract (qualification, compensation items, working time, weekly schedule, amendment of schedule and additional hours). Part-time employees have the priority of applying for a full-time position (for similar duties or professional category) and to obtain such a position if there is an opportunity.

Liability for acts of employees

26 In which circumstances may an employer be held liable for the acts or conduct of its employees?

When an employee injures a third party, the employer may be held jointly and severally liable for such an injury. The employer is not liable for the acts of any of its employees when an employee acts outside of the course of his or her employment or the employee acts in violation of the terms and conditions of such employment.

Taxation of employees

27 What employment-related taxes are prescribed by law?

All employees working for an employer in France must be affiliated with the French social security system. The amount of the contribution is based on the employee's salary. In addition to social security and unemployment contributions, the main employment-related taxes are: CSG, CRDS, providence (for employers employing more than nine employees), AGS, additional pensions for manager level employees, tax on wages, construction, apprenticeship and continuing training. The employer must withhold the employee's portion (at the approximate rate of 20 per cent) from the employee's gross salary and pay its own contribution to the social security bodies (at the approximate rate of 45 per cent) that comes on top of the employee's gross salary. Specific deductions are awarded to recently registered companies.

Specific taxes may also apply in the case of hiring foreign employees, distribution of profit sharing, free-shares, stock-options, etc.

Employee-created IP

- 28** Is there any legislation addressing the parties' rights with respect to employee inventions?

The Intellectual Property Code provides the rules applicable to any software created by an employee. When an invention is created by the employee in the performance of his or her duties, such an invention belongs to the company and all rights shall be assigned to the company. The employee will be eligible for additional compensation in consideration of the invention.

When the invention is created by the employee outside of normal work duties, the invention belongs to the employee. However, when such an invention has been created by the employee during the performance of normal work duties, in the field of activity of the employer, by knowledge of documents or studies belonging to the employer or with material or installations belonging to the employer, the employer has the option to claim ownership of all or part of the rights deriving from the invention. The employee will be eligible for fair compensation in consideration for his or her invention.

The employer has no rights on inventions created by corporate officers.

Business transfers

- 29** Is there any legislation to protect employees in the event of a business transfer?

Directive No. 77/187/EEC on the transfer of undertakings, as modified by Directive No. 98/50/EC (the Acquired Rights Directive), has been introduced in French law by article L1224-1 (formerly article L122-12) of the Labour Code.

Article L1224-1 of the Labour Code provides that individual employment contracts transfer automatically from one employer to another as a consequence of the transfer of the activity at which they are working if such activity meets the case law criteria of 'an economic and autonomous entity which keeps its identity and which activity is maintained'.

The characterisation of a business or activity as an economic and autonomous entity depends mainly on factual circumstances. The criteria used by the courts to determine whether such an economic and autonomous entity exists include, principally, the following elements:

- assignment of a team of employees to the activity;
- the consistency and autonomy of such a team;
- the dedication of specific assets to the activity; the internal rules specific to the activity and autonomous hierarchy; and
- financial autonomy.

The consequences of the application of article L1224-1 of the Labour Code, in the event of such an automatic transfer, are that:

- all rights and obligations under individual employment contracts are transferred to the new employer;
- employees continue to work for the new employer without need for any change to their contracts;
- the new employer is bound by the terms of the employment contracts; and
- employees working at the transferred activity may not refuse the transfer of their contracts. A refusal may lead to dismissal for just cause.

The collective status of employees transferred, pursuant to article L1224-1 of the Labour Code, must be renegotiated with unions for the purposes of adopting a new collective status applying to the enlarged work force.

The automatic transfer rule of article L1224-1 of the Labour Code may apply in outsourcing arrangements where the business or function that is outsourced qualifies as an autonomous business entity. In this case, employees assigned to such business or function automatically

transfer to the services provider under the outsourcing arrangements.

In circumstances where the automatic transfer may not occur (ie, in the absence of a transfer of activity, or when the transferred activity does not qualify as an autonomous economic entity), the employees concerned are not bound to accept their transfer and the transferee of the activity is not obliged to employ them.

Termination of employment

- 30** May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer must have a real and serious cause to terminate the employment agreement and must comply with all applicable dismissal procedures (on economic or personal grounds). There is no legal definition of what is a real and serious cause. The judge will determine on a case by case basis whether or not the dismissal was legitimate. According to the courts, the cause must be 'real', meaning exact, precise and objective, and 'serious', which justifies the termination of the contract.

- 31** Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Whatever the cause for a contract's termination (except for serious misconduct or gross negligence), an employer must give a notice period prior to dismissing an employee. The employer may release the employee from working during the notice period and instead pay an indemnity in lieu of notice. The indemnity is equal to the base salary, bonuses, and benefits that the employee would have received if he or she were to work during the notice period. The employee may ask to be released from working during the notice period. When the employer accepts the employee's request, the employee does not receive any indemnity.

- 32** In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Serious misconduct and gross negligence are legal bases for terminating an employment contract without allowing the employee to serve his or her notice period and without having to pay him or her the notice period indemnity and severance pay. The qualification used by the employer is not binding on the judge who can order the employer to pay an indemnity in lieu of notice.

- 33** Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The employer must pay the dismissed employee a minimum legal severance pay, provided that the employee has been employed for a minimum of one year by the company. This severance pay is paid whether the grounds for dismissal are personal or economic. The severance pay is equal to one-fifth of a month's salary for each year of service increased by two-fifteenths of a month's pay per year of service longer than 10 years (one third of a month's pay per year of service after 10 years). The collective bargaining agreement may provide for higher severance pay in lieu of the legal requirement.

- 34** Are there any procedural requirements for dismissing an employee?

Yes. The procedure to dismiss an employee is highly formalistic. The employer or its representative must ask the employee to attend a preliminary meeting in order to discuss his or her potential dismissal. After this meeting, the employer must send a dismissal letter to the employee that indicates, amongst various requirements, the reasons for the dismissal and the duration of the notice period.

Update and trends**Redeployment obligation and alternative solutions to collective lay-off**

Due to the economic downturn, many employers have explored alternative solutions to dismissals on economic grounds such as voluntary departure plans (VDP). Pursuant to such plans, the employer does not impose any obligation to leave, the employee being free to volunteer for departure. Such plans are not regulated under French law and many questions remain open for court decisions. On October 26, 2010, the Court of Cassation held that the employer was not required to implement a redeployment plan in the context of a VDP when no dismissals were imposed (Renault case). The solution would be different when the employer intends to impose dismissals in parallel or after a VDP.

Legislative changes in social and tax regime of severance indemnities

The government has announced €47 billion in public savings in the country's 2011 social security budget. Among the various measures adopted by the French Parliament in Law No. 2010-1594, dated 20 December 2010, were some that impact on individuals and employers, including those relating to the social security contributions that apply to severance indemnities. Exemption ceiling has been reduced and the scope of social security contributions on severance indemnities has been extended.

Flexible working time for executive level employees in light of European legislation

In France, subject to certain conditions, executive level employees may agree to work a pre-determined number of days over the year without being entitled to overtime provisions (forfait jour). Employee union organisations have petitioned the European Committee of Social Rights to challenge this working time agreement, based on the European Social Charter of 1961.

On 29 June 2011 the Court of Cassation confirmed the validity of the forfait jour in light of European legislation. Based on this recent decision, the enforceability of the forfait jour is subject to the following conditions:

- it must be authorised by a collective bargaining agreement;
- it must be subject to the express consent of the employee in the form of a written covenant;
- the employee's workload and schedule must be reasonable;
- the employee's supervisor must control the employee's working schedule and workload on a regular basis; and
- at least once a year, a meeting must be organised with the employee to specifically discuss the employee's workload, the organisation of the time worked, the balance between the employee's personal and private life and the employer's compensation.

The applicable procedure depends on the nature of the dismissal, that is, for personal reasons (including disciplinary grievances) or for economic reasons. For an economic dismissal, the procedure depends on the number of employees to be dismissed as well as on the number of employees in the company.

A special procedure applies when one or more employees are dismissed for economic reasons: the employer has to consult its works council regarding the economic grounds. The works council has no veto power and simply provides its opinion. The employer must notify the labour inspector and must look for any redeployment solution.

A prior authorisation from the labour authorities (labour inspection) is needed in the case of termination of employee representatives (see question 35).

35 In what circumstances are employees protected from dismissal?

Employee representatives are covered by specific protection. A special procedure (authorisation of the labour inspector) must be followed should the employer wish to terminate their contracts.

Moreover, as a general rule, it is illegal for an employer to take into consideration an individual's sex or family situation when terminating an employment contract. Specific procedures apply where the employment contract is suspended for illness or maternity. Termination of fixed-term employment contracts is also subject to specific rules.

36 Are there special rules for mass terminations or collective dismissals?

Yes. When an employer proposes to lay off two or more employees for economic reasons, a consultation with the employee representative body in the company is mandated. In companies with more than 50 employees, when the employer proposes to lay off 10 or more employees in any 30-day period, companies must supply a redundancy plan to avoid some dismissals and to facilitate the employees' redeployment. The information provided to the employee representatives, and the minutes of their meetings, must be transmitted to the labour director with jurisdiction in the area where the employer is located. The individual dismissal letters may not be sent to employees before the expiration of certain periods, depending on the scope of the redundancy (ie, number of employees being made redundant).

37 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

No. Retirement ages are defined by statute and may not be imposed by the employer. Except in a limited number of situations which are strictly regulated (eg, public companies or companies governed by specific statute) the employer may not pension off an employee before 70 and covenants imposing automatic retirement from a certain age are therefore unenforceable. Below the age of 70, the employee's express consent is required for retirement and a specific procedure applies.

Morgan Lewis

François Vergne

fvergne@morganlewis.com

68, rue du Faubourg Saint-Honoré
75008 Paris
France

Tel: +33 1 53 30 43 00
Fax: +33 1 53 30 43 01
www.morganlewis.com

Dispute resolution

38 May the parties agree to private arbitration of employment disputes?

No. If the parties to a French employment contract agree to private arbitration, the opinion of the arbitrator will have no binding effect.

39 May an employee agree to waive statutory and contractual rights to potential employment claims?

No. An employee cannot waive statutory and contractual rights to potential employment claims in advance.

The only possibility is to enter into a settlement agreement after a dispute arises. The employee and the employer must agree on

reciprocal concessions. Settlement agreement whereby an employee waives claims in connection with employment termination is not valid when signed before a notice of termination has been given to the employee.

40 What are the limitation periods for bringing employment claims?

All claims regarding salary are subject to a five year statute of limitations following the date of the alleged violation. Discrimination claims are also subject to a five-year statute of limitations following the revelation of the alleged discrimination. All other claims are subject to a 30-year statute of limitations. As regards economic dismissal, a special one year statute of limitations applies to claims in connection with the implementation or the absence of a social plan, if it was expressly stated in the dismissal letter.

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