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labor and employment lawflash

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France Enacts the Labor Law Reform Act

This comprehensive reform aims to introduce more flexibility and security into the employment market.

On June 14, France's law for labor market reform (referred to as the "Law for the security of employment" or "*Loi de Sécurisation de l'Emploi"*) was enacted. This reform comes on the heels of a nationwide agreement entered into on January 11, 2013 between trade unions and employers' unions for the purpose of introducing more flexibility and security into the employment market. The new law includes a combination of measures that are intended to provide employers with more flexibility and predictability in the management of their workforces, while at the same time reinforcing certain employee rights and assuring that employee representatives are provided with better information on employers' decisions and strategy. The principal measures of the law are summarized below.

I. Added Flexibility in the Employment Market

I.1 Facilitation of Mobility (Effective June 17, 2013)

The new legislation allows employers that are not engaged in a downsizing to negotiate with unions on **internal mobility** (geographic and/or occupational). Such agreements must detail the conditions for the mobility, including the measures intended to favor mobility (training, financial assistance) and the measures that would be applied to employees who refuse mobility. Internal mobility requires an amendment to employees' employment contracts. Employees who refuse may be terminated. Irrespective of the number of such terminations, each termination should follow the rules applicable to an individual termination on economic grounds. The employer is not required to set up a social plan, and the employee will benefit from the measures set out in the agreement.

External mobility is also encouraged. The new law provides that, in companies employing more than 300 persons, the employer and the employee (who must have at least two years of service) may agree to suspend the employment relationship to allow the employee to find a new employer. At the end of this period, the employee may either return to his or her prior position or decide to leave in the form of a resignation.

I.2 Employment Continuation in Case of Economic Downturn ("*accords de maintien dans l'emploi"*) (Effective June 17, 2013)

Companies that are subject to **serious cyclical economic difficulties** ("*graves difficulties conjoncturelles*") may negotiate agreements with their trade unions to safeguard employment. Under these agreements, employers may, for a limited period of time (up to a maximum of two years), modify work arrangements (including working time) and employee compensation (subject to certain minimums). In exchange, employers will agree to maintain the employment of the affected employees through the term of the agreement and set out measures that will apply to employees who refuse the application of the agreement to their employment contracts. Managers and shareholders are also required to contribute to such efforts.

The measures set out in the agreement apply to employees who accept the agreement. Employees who refuse to accept the application of the agreement may be terminated in accordance with the rules applicable to an individual termination on economic grounds. Irrespective of the number of terminations, the employer is not required to set up a social plan, and the terminated employees will benefit from the measures set out in the

agreement.

To be valid, the agreement to safeguard employment must be signed by one or more unions that have obtained at least 50% of the votes at the last elections of employee representatives.

I.3 Substantial Changes in the Dismissal Procedure (Procedures initiated beginning July 1, 2013)

The procedures for the termination of more than 10 employees over a 30-day period by companies employing more than 50 persons are substantially modified. The law introduces the following key changes:

- The law establishes **two procedural tracks:** collective lay-offs and social plans can be instituted either (i) pursuant to a collective agreement negotiated and signed between the employer and one or more unions that have obtained at least 50% of the votes at the last elections of employee representatives, subject to validation by the labor authorities; or (ii) pursuant to a plan adopted by the employer and subject to approval by the labor authorities.
- Irrespective of the track that is followed, **the Works Council must be informed and consulted on the restructuring measure and on the termination plan**. The Works Council must hold a minimum of two meetings, which may not be held less than 15 days apart. The time frame for such consultations will depend on the number of dismissals, but the law provides for maximum periods (two months if fewer than 100 dismissals, three months if the number of dismissals is between 100 and 250, and four months for more than 250 dismissals). In the absence of an opinion rendered at the end of the consultation period, the Works Council is deemed to have rendered a negative opinion, and the employer may enact its termination plan
- **The Works Council and the Health and Safety Committee can be assisted by an expert** in the review of the employer's project. The Works Council expert is an accountant whose mission can be expanded to advise the unions in connection with their negotiation with the employer (in the collective agreement track). The missions of the experts are subject to a predefined time frame.
- **The procedure will be closely monitored by the labor authorities** (*Direction Régionale des Entreprises*, *de la Concurrence*, *de la Consommation*, *du Travail et de l'Emploi*, the regional office of the French Ministry of Labor) which has the following prerogatives:
  - Monitor and control the entire information and consultation process and the social plan.
  - Present any observations to the employer during the procedure.
  - At the request of the Works Council, require the employer to provide information on the procedure in progress.
  - Rule on any dispute that may arise in connection with the experts' missions (Works Council's and/or Health and Safety Committee's experts).
  - Authorize the terminations pursuant to the validation or approval procedure outlined above. For such authorization, the labor authorities have a review period of 15 days for the validation of a collective agreement and 21 days for the approval of an employer's decision. A lack of response by the labor authorities is deemed to be a favorable decision, and the employer may terminate the affected employees. Disputes relating to the control of the termination procedure and the adoption of the social plan will be under **the exclusive jurisdiction of the administrative courts**, pursuant to a predefined time frame.
- **The civil courts** (labor courts and courts of appeal) will continue to have jurisdiction **over individual disputes** regarding the grounds of termination and the award of damages for unfair termination.
- Special rules apply to terminations in bankruptcy.
- The procedures described above will not apply to **small collective lay-offs**, i.e., **lay-offs in companies employing fewer than 50 employ**ees or lay-offs involving fewer than 10 employees. However, the labor authorities will have greater control over the procedures and measures that the employer intends to adopt to limit the dismissals or their consequences.

I.4 Obligation to Seek a Buyer in Case of Proposed Site Closure (Effective July 1, 2013)

When a collective lay-off leads to a proposed site closure, companies or groups employing more than 1,000 employees must seek a buyer to take over the site. The Works Council must be informed and consulted by the employer on the efforts undertaken to identify a buyer and informed of the proposals. The Works Council can make proposals and be assisted by an expert accountant to review the offer process.

It should be noted that draft legislation has been proposed to strengthen this obligation.

I.5 Simplification of Employee Representatives' Consultation Process (Effective date will be set by a decree to be published)

- **Determining a time frame for the consultation with the Works Council:** Consultations with the Works Council on matters other than collective lay-offs will, for the first time, be subject to predefined time limits, which will be either (i) defined by agreements entered into between the employer and a majority of the Works Council or (ii) fixed by a decree to be published. In all cases, the consultation period that will be fixed by decree may vary depending on the issue on which the Works Council's opinion is sought and cannot be less than 15 days. This time frame cannot be suspended. It can be extended by agreement with the Works Council or pursuant to a court order, which can be granted in summary proceedings at the request of the Works Council (within eight days following the petition) if the judge finds that additional information should have been provided by the employer.

  Upon expiration of the predefined time period (or of the court extension thereof), if the Works Council has not rendered its opinion, it is deemed to have been validly consulted and to have rendered a negative opinion, and the employer may implement its project.
- **Determining a time frame for the missions of the Works Council's experts:** Similarly, the reviews and reports by the Works Council's experts will be subject to a reasonable time frame, which will be fixed either (i) by agreements entered into between the employer and a majority of the Works Council or (ii) by a decree to be published.
- **Coordination body for the Health and Safety Committees:** When a project affects various sites and would therefore require consultation with at least two Health and Safety Committees, a coordination body common to the various sites may be set up to organize recourse to a single expert and may render an opinion. Previously, each of the Health and Safety Committees involved could appoint its own expert. Both the expert's report and the opinion will be transmitted to the local Health and Safety Committees, which will have to render their opinions. The expert costs are borne by the employer.

I.6 Reform of Labor Court Procedure (Effective June 17, 2013)

- **Statute of limitations:** The statute of limitations for claims brought before the labor court is reduced from five years to three years for disputes regarding the termination of an employment contract. For disputes regarding the payment of salaries, the statute of limitations is also reduced from five years to three years. These reduced time periods will not apply in cases of harassment or discrimination or to claims to obtain compensation for personal injury.
- **Conciliation before the labor court:** The new law introduces an option for the parties to reach a mutual compromise agreement in a conciliation hearing to settle claims regarding termination. A decree to be published will set out suggested amounts that the parties will be free to follow. The amounts should range from two months' to 14 months' salary, depending on the employee's seniority. These amounts are paid in addition to "normal" termination costs (i.e., notice and severance pursuant to law or the applicable collective bargaining agreement). The compromise agreement can be proposed by the court or by any of the parties. The execution of a compromise agreement entails a waiver by the employee of his or her right to challenge his or her dismissal.

II. Reinforcement of Employees' and Employee Representatives' Rights

II.1 Expanding the Scope of Prospective HR Management

Gestion prévisionnelle des emplois et des compétences (*GPEC*)[1] negotiations must include the following areas: (i) professional and/or geographical mobility; (ii) trends and development of professional training for the next three years; (iii) recourse to the various forms of employment (part-time, interns, etc.) and ways to reduce recourse to nonpermanent positions; and (iv) information from contractors on the company's strategic choices that may impact them over the next three years.

II.2 Creating a Database on Economic and Labor Data

All companies with 50 or more employees will have to set up and maintain a database that will be accessible on a permanent basis to employee representatives and unions. The database will include information concerning the main economic and labor issues facing the company over the last two years and in the current year, as well as prospects for the upcoming three years. The database must cover **the following 8 items**:

- Investments regarding employment, amenities (both tangible and intangible), and the environment
- Equity and debts
- Employee and management compensation
- Social and cultural activities
- Remuneration of funders
- Financial aid benefitting the company, including public subsidies and tax credits
- Recourse to subcontractors
- Groupwide financial and commercial transfers

The detailed content of the information will be the subject matter of a decree. The database must be in place before June 17, 2014 in companies with 300 or more employees and before June 17, 2015 in companies with fewer than 300 employees. This database will be the primary support for the yearly consultation with the Works Council on the company's strategy, as described below.

II.3 Imposing a Yearly Consultation with the Works Council on the Company's Strategy (Effective per the same time line as II.2 above)

Each year, the Works Council will be consulted on **the strategic orientations of the business** (as defined by the body in charge of the company's management or its control) and the consequences of such orientations on operations, the evolution of jobs and skills, the work organization, and the use of temporary employees, contractors, and interns. In connection with the consultation, the Works Council may be assisted by **an expert accountant** whose costs are borne by the employer (80%) and the Works Council (20%). With respect to the information, the Works Council renders an opinion on the strategy and has the right to propose alternative orientations. The Works Council's opinion is transmitted to the company's board of directors, which must respond. The opinion of the Works Council is transmitted to the Group Works Council (GWC) when such a GWC has been established.

II.4 Assuring Employee Representation on the Board of Directors or Supervisory Board of French Corporations (Effective June 17, 2013, with modification of bylaws completed by 2014)

French companies organized under the corporate forms of *société anonyme* (*SA*) and *société en commandite par*

1. GPEC is a negotiated HR management tool that intends to anticipate the changes in a company's needs by the advance setting up of measures to adapt the workforce to changing employment trends. Companies with more than 300 employees, as well as European Union–wide companies and groups, have an obligation to engage in triennial negotiation with unions on prospective HR management.

action (*SCA*)[2] that are headquartered in France and employ (directly or together with their subsidiaries) more than 5,000 employees in France or 10,000 employees worldwide must modify their bylaws to provide for the presence of one or two employee representatives on their boards of directors (or supervisory boards). The nomination of the employees representatives will be fixed by the bylaws, which may provide for one of the following three options: (i) election by the employees of the company and its subsidiaries; (ii) appointment by the Works Council or GWC; or (iii) appointment by the labor union that obtained the greatest number of votes at the last elections for Works Councils. In the absence of change of the bylaws within six months following the date on which the applicable headcount thresholds are exceeded, any employee may petition the civil court to obtain an injunction to amend the bylaws to provide for an appointment of the employee representatives pursuant to an election by the employees of the company and its subsidiaries. The employee representatives will have the same rights and powers as the other members of the company's board.

II.5 Setting Up Measures Intended to Prevent Nonpermanent Jobs (Effective January 1, 2014):

The regime of **part-time employment** is modified as follows:

- Subject to certain exceptions (including students or household employees or an express written request by the employee), the working time for part-time employees may not be less than 24 hours per week.
- Time worked in excess of the contractual hours will give rise to increased compensation.
- In business sectors where one-third of the workforce is employed on a part-time basis, a mandatory negotiation on part-time employment must be conducted with labor unions.

Fixed-term employment agreements will give rise to increased contributions by employers to the unemployment branch of the social security system. The contribution rate, which previously was 4% (subject to certain caps), will be raised as follows: 4.5% for contracts shorter than three months, 5.5% for contracts between one month and three months, and 7% for contracts of one month or less. These increases do not apply if the fixed-term contract is subsequently converted into an indefinite-term contract.

The law also creates a **uniform legal regime for furlough**, which intends to simplify the existing regime. Recourse to furlough, which leads to the payment of unemployment benefits to employees while on furlough, remains subject to prior authorization by the labor authorities.

II.6 Health Insurance Coverage and Other Measures (Effective January 1, 2016)

The new law provides for a number of measures intended to provide additional security to employees. Such measures include the following:

- **Health insurance and contingency schemes:** Effective January 1, 2016, all private employers must be covered by an additional health insurance scheme for the benefit of their employees. The employers must bear at least 50% of this additional cost.
- **Other measures to improve employees' rights to unemployment benefits and occupational training** (e.g., the creation of a training account for each employee).

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2. This obligation does not apply, at this time, to other forms of corporations, such as s*ociété à responsabilité limitée* (*SARL*) or s*ociété par Actions simplifiée* (*SAS*).

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