

labour and employment lawflash

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French Employers: Only Three Months Left to Set Up a Single Database

French law requires companies with 300 or more employees to set up a single database for economic and employment information by no later than 14 June 2014.

The French Job Security Act of 14 June 2013, which codified the national multi-industry agreement (*Accord National Interprofessionnel* [ANI]) of 11 January 2013, requires the creation of a single database that groups all information that employers must provide prior to a consultation to allow the Works Council to issue an opinion. This information must be concise and in writing. The Job Security Act specifies what information is required and its mode of transmission.

The single database must contain information and reports regularly communicated to the Works Council in print or electronic form. Moreover, the database's aim is to give staff representatives all the information they need on the strategic orientation of the company and the consequences for a new compulsory annual consultancy procedure introduced by the legislature.

The single database must be updated regularly, at least as often as provided for in the French Labour Code. Updating the database constitutes notifying members of the Works Council of the information contained in the said reports, provided the following:

- The information is updated regularly
- The employer makes analytical or explanatory information available to members of the Works Council when it is required by the French Labour Code (R. 2323-1-9)

In normal conditions, the single database will contain information for the current year and the two previous years and will incorporate the outlook for the next three years. **However, for 2014, companies with 300 or more employees are not required to provide information for the two previous years.**

The database must be set up at the company level but a group agreement may provide for the creation of a database at the group level.

Even if the content is expanded by an industrywide or companywide agreement, the minimum information to include in the database has been specified by a decree dated 27 December 2013:

Investments

- Employment investment
 - Change in headcount by contract type, age, or seniority
 - Change in employment categories
 - Gender equality and action taken
 - Change in employment of disabled persons and action taken

- Change in number of internships
- Vocational training: investment in training and target audience
- Working conditions: working time, including part-time and work-time organization; exposure to risks and arduous work factors; accidents at work; occupational diseases; absenteeism; and security-related expenditures
- Tangible and intangible investment
 - Change in net assets and any depreciations (fixed assets, R&D expenditures, if applicable)
- For companies subject to provisions of the fifth subparagraph of article L. 225-102-1 of the French Commercial Code, environmental information presented in application of this subparagraph and mentioned in section 2 of I of article R. 225-105-1 of the same code

Equity Capital, Indebtedness, and Taxes

- Company's equity
- Borrowings and financial debts, including maturities and financial charges
- Taxes and charges

Remuneration of Employees and Managers

- Remuneration trends
 - Personnel expenses, including social security contributions, salary changes by category and gender, and minimum basic salary and average salary by gender and professional category
 - For companies subject to provisions of article L. 225-115 of the French Commercial Code, the global amount of remunerations referred to earlier in this article, i.e., the overall total certified as accurate by the statutory auditors, remuneration paid to either 10 or five of the companies' highest-paid employees (depending on whether the headcount exceeds 200)
- Employees' savings plans: incentive schemes and profit sharing
- Incidental remuneration: bonuses by gender and category, fringe benefits, benefit plans, and supplementary pensions
- Remunerations of corporate officers as presented in the management report in application of the first three subparagraphs of article L. 225-102-1 of the French Commercial Code, for the companies required to provide the report referred to in article L. 225-102 of the same code

Social and Cultural Activities

- Amount of contribution to social and cultural activities by the Works Council
- Expenditures directly incurred by the company
- Sponsorships

Financial Remuneration Not Included in “Equity Capital, Indebtedness, and Taxes”

- Remuneration of shareholders (distributed income)
- Remuneration of employee shareholding (amount of shares held in employee savings plan, share in capital, and dividends received)

Financial Flows to the Company

- State aid
- Tax cuts
- Exemptions and reductions in social security contributions

- Tax credits
- Sponsorships

Subcontracting

- Subcontractors used by the company
- Subcontracting carried out by the company

For Companies Belonging to a Group, Commercial and Financial Transfers Between Group Entities

- Transfers of capital such as appears in individual accounts of the group's companies when they have a material significance
- Sales, mergers, and acquisitions

The Sensitive Issue of Confidentiality

The single database is permanently available to the employer and authorised personnel, in addition to the members of the Works Council or, if no Works Council, to staff representatives. It is also permanently available to members of the Committee for Hygiene, Safety and Working Conditions, including substitutes and union representatives (L. 2323-7-2).

Article L. 2325-5 al 4 of the French Labour Code specifies that any information contained in the single database that is confidential must be presented as such by the employer, and the duration of the confidentiality must be specified. Pursuant to case law from the *Cour de Cassation* (French Supreme Court), employers should justify the inherently confidential nature of the relevant information and also demonstrate the **prejudicial** nature of its disclosure. In other words, the judges interpret the confidentiality obligation as an infringement of the personnel representatives' right to information that flows from their constitutional right to participate in the company.

This issue could result in disputes except for with those who establish "a culture of trust", as was hoped by the drafters of the ANI.

Contacts

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