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Contributing editors
Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek

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GETTING THE DEAL THROUGH

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Sabine Smith-Vidal and Charles Dauthier
Morgan, Lewis & Bockius LLP

Legislation and agencies

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

The main statutes and regulations relating to employment are the Labour Code, the Social Security 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, which contain provisions that 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, either direct or indirect, at work. Pursuant to article L. 1132-1 of the Labour Code, an employer must not take into account an employee's origin; gender; morals; sexual orientation or identity; age; family situation or pregnancy; genetic characteristics; vulnerability resulting from the employee's economic situation, assumed or real; belonging or not belonging to an ethnic group, a nation, or a race, real or assumed; political opinions; union or mutual activities; religious beliefs; physical appearance; family name; place of residence or bank domiciliation; state of health, loss of independence or handicap; or the ability to speak in a language other than French in making a decision to hire, sanction, dismiss, promote or reward that employee.

In addition to this list, the Labour Code grants protection in favour of whistleblowers, employees who use their right to strike and fixed-term or part-time employees as compared to permanent employees in similar situations.

3 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. 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. The Défenseur des droits, a French independent administrative authority, may assist the labour courts in order to identify and assess cases of discrimination.

Worker representation

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Before the reform of September 2017, the employer was required to organise elections at company level for staff delegates when the number of employees reached 11 and for a works council when the number of employees reached 50. Subject to certain conditions, a works council must also be elected at establishment level and either at group level or European level, or both.

Before 1 January 2020, all companies must have implemented a representative body, the social and economic committee, which takes and gathers the competences of the former works council, staff delegates and health and safety committee. An employer is required to organise elections at company level for the social and economic committee with reduced competences when the number of employees reaches 11. The social and economic committee gains full competences when the number of employees reaches 50. Subject to certain conditions, a social and economic committee must also be elected at establishment level and either at group level or European level, or both.

5 What are their powers?

In companies where the number of employees has reached 50, the works council/social and economic committee has both economic and social functions.

Economic function

The works council/social and economic committee's purpose is to ensure that the employees' interests are taken into account in the framework of the decision-making of the company on matters regarding the management and the evolution of the economic and financial situation of the company, work organisation, professional training and manufacturing technique.

It must be informed and consulted:

- each year, in the absence of a collective bargaining agreement providing otherwise, on the strategic orientation of the company, the economic and financial situation of the company and the social policy, working conditions and employment in the company; and
- more generally on each important project concerning the organisation, management and general activity of the company.

Employers must put in place a single economic and social database accessible on a permanent basis to the works council/social and economic committee members. The mandatory content of this database is very broad and covers the following:

- investments regarding employment and assets (both tangible and intangible);
- gender equality at work;
- equity and debt;
- all elements of compensation of employees and managers;
- social and cultural activities;
- payments made to investors/funds; and
- financial aid benefiting the company.

In the absence of a collective bargaining agreement providing otherwise, the economic and social database must also contain the following:

- investments regarding the environment for certain companies;
- outsourcing, recourse to subcontractors; and
- group-wide financial and commercial transfer.

Lastly, works council/social and economic committee members have the right to be present at the meetings of the board. They have an advisory voice.

Social function

The works council/social and economic committee ensures, controls or participates in the management of all social and cultural activities established in the company to the benefit of employees, their families and trainees.

The works council/social and economic committee therefore has responsibility for activities for the well-being of employees both internally and externally, and the management of social welfare, pension and mutual insurance institutions. It also regulates all aspects of social services, as well as occupational health services, leisure and sports activities.

The works council/social and economic committee can adjust the benefits according to certain criteria such as the employees' income or the age of their children.

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 that 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 driver's licence).

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

A medical examination is only mandatory as a condition of employment for an employee intended to work in a particularly dangerous environment (eg, employees exposed to carcinogenic agents, lead or ionising radiation). 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. A medical examination is also mandatory for employees returning from maternity leave, leave for occupational disease and leave of more than 30 days for a work-related and non-professional illness or accident. For other employees, an information and prevention visit shall take place before the end of the trial period and witahin the three-month period following the date of hiring.

Regarding the medical follow-up, the industrial doctor shall see each employee at least every five years. Particular provisions exist for some employees. Disabled workers and night workers, for example, must see an industrial doctor at least every three years and employees holding a high-risk position must see an industrial doctor at least every four years with an interim visit. This period may be adapted to the employee's health conditions.

In any case, the result of the examination is not communicated to the employer.

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 medical examination or an information and prevention visit. The doctor may prescribe a drug or alcohol test if he or she thinks it is relevant in assessing the applicant's ability to carry out the functions of the job. The applicant has to agree to the test and must be 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.

If provided for by the Internal Regulations, justified by the nature of the position, and when the employee has been duly informed and able to require a second test, an employer may be able to conduct an alcohol or drug test within the company itself.

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 because it may be considered discrimination, which is prohibited by law (see question 2).

Employers with at least 20 employees are legally required to employ disabled individuals at the rate of 6 per cent of the workforce. Employers may decide to hire disabled employees, to outsource part of their activity to specified companies employing disabled persons or to pay a financial contribution to a dedicated agency in lieu. Employers may also comply with this obligation by applying a certified collective bargaining agreement providing for an annual or multi-annual programme in favour of disabled employees. A new law added three other ways to comply with this obligation:

- adaptation of the workplace to disabled undergraduate students for internship periods of at least 35 hours;
- offering a professional immersion period of at least 35 hours; and
- subcontracting agreements or services contracts with independent disabled workers.

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

Provided that an employee dismissed for economic reasons informs his or her previous employer that he or she would like to benefit from a re-hiring priority, the employer must inform and give priority to this employee for any hiring for a position corresponding to the employee's qualification within a 12-month period following his or her dismissal.

Certain collective bargaining agreements provide for an obligation to give priority to internal employees in terms of applying for new positions.

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 in specific cases provided by law, such as when an individual is hired as a temporary employee or is hired on a fixed-term or part-time contract. Restrictive covenants are also required to be in writing. 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 with the essential terms of the contract such as:

- the names of the parties;
- the place of the work;
- the job position;
- a brief characterisation or description of the job position;
- the starting date;
- for fixed-term contracts, the term of the employment;
- the duration or, if not possible, the terms and conditions of annual leave;
- the duration or, if not possible, the terms and conditions of the notice period;
- the amount and components of the compensation;
- the daily or weekly working time; and
- applicable collective bargaining agreements.

The collective bargaining agreement may also impose an obligation to provide the employee with a written employment contract or with specific information.

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

The normal form of employment is the indefinite-term contract. Therefore, 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;
- to facilitate the hiring of certain categories of unemployed person;
- to provide specific training to the employee; 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. There is

no maximum duration when the fixed-term contract may be made to replace an employee who is temporarily absent.

Specific limitations or prohibitions apply to companies that have carried out a dismissal on economic grounds during the past six months or hiring to fill a position requiring the performance of dangerous activities, and to replace employees on strike. In addition, the conclusion of successive fixed-term contracts with the same employee or for the same position is subject to limitations.

Subject to the existence of a specific provision in a collective bargaining agreement, fixed-term contracts may be signed with executives and engineers for a period of 18 to 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, mandatory probationary periods permitted by law are:

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

Longer probationary periods are authorised when they are provided by a collective bargaining agreement entered into before 26 June 2008. Shorter probationary periods are authorised when they are provided by a collective bargaining agreement or employment contracts signed on or after 26 June 2008.

Such probationary periods may be extended once, but only 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.

The probationary periods can be terminated respecting a notice period up to one month.

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

Among other case-specific elements, the primary factors that distinguish an independent contractor from an employee are that the contractor:

- does not carry out duties in a subordinate position to an employer;
- does not belong to the employer's organisation;
- carries out the duties with his or her own equipment or in premises that are different from those of the user company;
- sends invoices for specific services rendered over a specific period of time; and
- 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).

14 Is there any legislation governing temporary staffing through recruitment agencies?

Pursuant to French law, recruitment agencies must only carry out activities dedicated to providing temporary employees to their client companies. They are not allowed to conduct any other business.

When a temporary employee is made available to a client, two contracts are entered into: a service contract between the temporary agency and the user company; and a mission employment contract entered into between the employee and the temporary agency. Although the temp must comply with the working conditions applicable within the user company, his or her link of subordination remains with the temporary agency (ie, his or her employer).

With regard to contract requirements and conditions under which a company can use the services of a temporary worker, see question 11.

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 three 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. 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). After several legislative back-and-forths, the employer will soon be required to pay a special contribution only when it is in breach of the legislation on secondment.

Moreover, certain French labour legal requirements apply to the secondee during the 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 of the rights they 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 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 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 a fine of up to €750,000 for individuals, and €3,750,000 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 and dissolution.

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

A labour market test may be required depending on the particular situation of the foreign worker and the local employment situation. 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 unemployment agency or with agencies that are used by the public employment service. The employer will be entitled to recruit a foreign worker only if it is 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 a collective bargaining agreement (although more flexible working time organisation may be applicable to executives). The number of overtime hours that an employee may work during a calendar year is limited by a collective bargaining agreement, by a company-level agreement or by law (a legal threshold of 220 hours per year and per employee); beyond such limit, the employee must be given a compensated rest period in addition to the overtime payment (see question 20). 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. 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 affected 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 who have the greatest independence in carrying out their duties and in the organisation of their schedules and whose compensation is in the highest range of the organisation. Other employees (itinerant workers and executives) may be subject to a particular arrangement that 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 hourly 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). The employee must be given compensated time off on top of overtime pay for hours worked above the overtime threshold.

21 Can employees contractually waive the right to overtime pay?

Aside from a specific organisation of working time, employees cannot waive their right to overtime pay.

However, employers can propose to employees who benefit from a certain level of autonomy in the organisation of their working time a global remuneration agreement for a certain number of hours worked per week or per month, including the payment of overtime hours, within the limit of either 20.8 hours per month or 4.8 hours per week (these thresholds can be lower depending on provisions regarding working time provided in a collective bargaining agreement or an in-house collective agreement). The remuneration of employees who benefit from this working time organisation must not be lower than the minimum remuneration corresponding to their classifications, as increased by the payment of the overtime hours included in their global remuneration agreements.

A collective bargaining agreement or an in-house collective agreement may allow employers and employees to enter into a global remuneration agreement for a certain number of days worked per year, without regard to the number of hours actually worked over the year by the employees. Provisions on overtime hours are not applicable to this category of employees and they are not entitled to receive overtime pay.

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

French labour law grants employees 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. Individuals working a typical five-day week during a full reference year will receive 25 working days for their annual vacation. Paid vacation is in addition to public holidays.

23 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 the employee's salary is maintained in full or in part (subject to certain conditions). The salary is maintained from the first day of absence when the absence results from a work-related illness or accident, and after eight days of absence in other cases.

Pursuant to the Labour Code, the indemnity amounts to 90 per cent of the employee's gross salary during the first 30 days of illness, and to 66.66 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 for each period of 12 months). Any social security allowance and complementary healthcare indemnity received by the employee is deducted from the amount paid by the employer.

24 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, sabbatical leave or creation of a business. Payment and duration of the leave depend on the reasons for the leave, and 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 a 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 in full or in part. 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 the case of part-time work, there is no legal obligation to maintain salary unless a collective bargaining agreement provides for it.

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

25 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 manage a mandatory profit-sharing plan and a company saving plan.

26 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 full-time or permanent basis.

At the end of the fixed-term contract, the employee must generally receive an indemnity that is equal, at least, 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, etc). If a full-time position in the same professional category or with similar duties becomes open, part-time employees must receive priority in terms of both applying for and obtaining such position.

27 Must employers publish information on pay or other details about employees or the general workforce?

Pursuant to French law, there is no general obligation to publish information on employees' pay. However, the economic and social database (see question 5) must contain information on gender equality, including the remuneration gap between men and women, and information on executives' and employees' remuneration.

All collective bargaining agreements, either at a field-of-activity level or at a company level, signed after 1 September 2017 must be published on a public electronic database. The collective bargaining agreement can be partly published or anonymised under specific conditions.

The Labour Inspector is entitled to require the receipt of specific documents such as pay slips.

Moreover, in French *sociétés anonymes*, every shareholder has the right to obtain information on the global remuneration of the five or 10 best-paid persons within the company.

Following the Directive 2014/95/EU of 22 October 2014 on disclosure of non-financial and diversity information by certain large undertakings and groups, a law of 19 July 2017 and a decree of 9 August 2017 have adapted the French legislation. Certain companies employing an average number of 500 employees during the financial year shall include in the management reports a non-financial statement containing, when relevant, the remunerations and their evolution. This non-financial statement must be published on the company's website.

Post-employment restrictive covenants

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

Such covenants must be agreed to in writing. The company must justify the agreement as a protection of its legitimate interests. Furthermore, the covenant must not prohibit the employee from working in his or her area of skill. The territorial scope and duration of non-competition covenants must be limited. Moreover, financial compensation should be provided in consideration of a non-compete 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 of the right to work that has been suffered.

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 or suppliers are regarded as limiting the right to work and are therefore generally subject to the same conditions as non-competition covenants.

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Yes, with respect to non-compete covenants. See question 28.

The compensation cannot be paid during employment but only after notification of the termination. The compensation must be fixed and its amount must be determinable (eg, it cannot be paid with stock options). It is generally fixed by the collective bargaining agreement, if applicable, and is paid through monthly payments during the period of restriction.

Liability for acts of employees

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

The employer will be held liable for all acts or conduct of its employees when carried out within the course of his or her duties.

When an employee injures a third party, the employer may be held jointly or separately 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

31 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: the general social contribution, contribution to the social debt, providence, 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

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

The Intellectual Property Code provides the rules applicable to any invention 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 employer and all rights shall be assigned to the employer. The employee will be eligible for additional compensation in consideration of the invention, except for software, unless otherwise provided for by collective bargaining agreements or by contract.

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 derived from the invention. The employee will be eligible for fair compensation in consideration for his or her invention.

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

33 Is there any legislation protecting trade secrets and other confidential business information?

Article 226-13 of the French Criminal Code prohibits any disclosure of any secret information from a person to whom the information was disclosed through his or her permanent or temporary professional duties. Any secret information disclosed to third parties in this framework is punishable by imprisonment of one year and a fine of up to €15,000.

Moreover, article L. 1227-1 of the French Labour Code incriminates disclosure of trade secrets. It provides that any legal representative or employee of the company that discloses or tries to disclose trade secrets can be sanctioned by imprisonment of two years and a fine up to €30,000. Courts can impose additional penalties (eg, deprivation of civic rights). Moreover, employees are bound by a general duty of loyalty without any time limitation. However, it is strongly recommended to provide a specific confidentiality obligation in the employment contract.

Finally, for confidential information provided to employee representatives in the framework of their functions as employee representatives, the latter are bound by a duty of confidentiality for any confidential information presented by the employer as such (although it is difficult to implement in practice).

Data protection

34 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 or ethnic origin, political opinions, religious or philosophical beliefs, union membership, health or sexual preferences. Pursuant to article L. 1221-6 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 in the workplace is also subject to restrictive requirements (eg, email monitoring, video monitoring). Prior to the processing or filing of data relating to its employees, the employer is required to:

- register the processing with the CNIL (a prior authorisation may be required for certain categories of data);
- inform and consult with relevant employee representatives; and
- individually inform each employee of the existence and the finality of the data processing.

The EU Regulation 2016/679 of 27 April 2016 (General Data Protection Regulation, GDPR), entering into force on 25 May 2018, has introduced a principle of 'accountability', according to which the persons or organisations in charge of processing personal data must continuously be able to prove their compliance with data protection regulations. In this respect, the obligation to register the processing is repealed, except in the case of a threat to 'privacy'. The authorisation procedure is also repealed, except if provided otherwise by a national legislation. The GDPR has strengthened the obligation to inform data subjects.

Business transfers

35 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) and Directive 2001/23/EC on the maintenance of employees' rights in case of business transfer, has been introduced into French law by article L. 1224-1 of the Labour Code.

Article L. 1224-1 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 L. 1224-1 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, subject to the authorisation of the labour inspector for employees' reps;
- 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, in certain circumstances, to dismissal for just cause.

The collective status of employees transferred, pursuant to article L. 1224-1 of the Labour Code, must be renegotiated with unions for the purposes of adopting a new collective status applying to the enlarged workforce.

The automatic transfer rule of article L. 1224-1 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.

The automatic transfer of the employee may also result from a collective bargaining agreement in the case of a succession of contractors on a contract for the same services (eg, cleaning, transport, security).

Termination of employment

36 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. The cause must be 'real', meaning exact, precise and objective, and 'serious', which justifies the termination of the contract.

37 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 (generally between one and three months, but sometimes up to six months). The employer may release the employee from working during the notice period and instead pay an indemnity in lieu of notice. The indemnity is calculated on the basis of 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, and when the employer accepts the employee's request, no indemnity shall be paid.

38 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 an indemnity in lieu of notice 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.

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

Yes. 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 for dismissals notified until 23 September 2017, and eight months within the company for dismissals notified since 24 September 2017. This severance pay is paid whether the grounds for dismissal are personal or economic. For dismissals notified until 26 September 2017, 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 (ie, one-third of a month's pay per year of service after 10 years). For dismissals notified since 27 September 2017, the severance pay is equal to one-quarter of a month's salary per year of service for each year of service up to 10 years, and one-third of a month's salary per year of service for each year of service after 10 years.

The collective bargaining agreement may provide for higher severance pay in lieu of the legal requirement.

Update and trends

In spring 2018 the French government will publish the seventh executive order concluding the labour law reform. This executive order will focus on secondment of workers. It is expected to enhance the applicable sanctions, promote the conclusion of bilateral agreements on cross-border workers and lighten certain administrative formalities.

The French government is currently working on reforming unemployment insurance, professional training and apprenticeships. The new legislation should be voted on in the French parliament in spring 2018.

A new bill regarding data protection was discussed in the French parliament in February 2018. Its aim is, in particular, to implement the new requirements set by the GDPR.

The French secretary of state in charge of gender equality has announced her desire to publish in March 2018 an 'action plan' aimed at reducing inequality of salaries between women and men after having consulted with unions.

40 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, among various requirements, the reasons for the dismissal and the duration of the notice period. For dismissals notified since 18 December 2017, the employee can request precision regarding the reasons for his or her dismissal within 15 days of the notification. In the absence of such a request by the employee, the dismissal cannot be void for insufficient motivation.

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

When applicable, the employer has to consult its works council/social and economic committee regarding the economic grounds and on a redundancy plan when the number of employees who are made redundant exceeds certain thresholds. The works council/social and economic committee has no veto power and simply provides its opinion. The employer must notify the council of the procedure and must look for any redeployment solution.

41 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 the employee representatives' contracts.

Moreover, as a general rule, it is illegal for an employer to treat an employee differently based on the categories listed in question 2 when terminating an employment contract. Specific procedures apply where the employment contract is suspended (eg, for illness or maternity). Termination of fixed-term employment contracts is also subject to specific rules.

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

Yes. The procedure is highly complex and formalistic.

The law provides for two different methods of carrying out a collective dismissal (10 or more employees dismissed in a company of 50 or more employees): negotiating a collective agreement or drawing up a 'unilateral document'.

A collective agreement must be negotiated and signed with one or several trade unions. The agreement must provide details of the content of the collective redundancy plan (measures aimed at avoiding or at least mitigating the effects of redundancies, including redeployment measures) and can also contain provisions concerning the consultation procedure to be carried out with the works council/social and economic committee. The trade union representatives may be assisted by an expert paid by the company.

The collective agreement is sent to the labour authorities at the end of the works council/social and economic committee consultation period for checking. If the labour authorities approve the agreement within a 15-day period, the employer can then dismiss the employees.

A 'unilateral document' drafted by the employer sets out the terms of the collective redundancy plan and other specific details concerning the redundancies. This document is then submitted to the works council/social and economic committee for consultation. The works council/social and economic committee is also informed and consulted on the restructuring leading to the collective dismissals.

The final document is sent to the labour authorities at the end of the works council/social and economic committee consultation period for checking. If the labour authorities validate the agreement and the project within a 21-day period, the employer can then dismiss the employees.

The law provides for a maximum period for the works council/social and economic committee to give its opinion following consultation on the redundancy process (two to four months depending on the number of employees to be dismissed). If the works council/social and economic committee does not give its opinion by the end of this period, it will be deemed to have been properly consulted.

If the works council/social and economic committee elects to be assisted by an expert, the law also provides for a specific framework and timing for the exchange of information and questions, and requires the expert to render its report 15 days before the end of the maximum period for consultation.

43 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Employees may assert labour and employment claims on an individual basis. However, several employees may petition the court and join their claims into one sole procedure.

Class actions are only allowed in the specific field of discrimination. They can pursue two different aims: to enjoin an infringement; and to establish the liability of the employer to obtain compensation for the prejudice suffered. Class actions can only be exercised by some particular associations or by a trade union representative of employees, before a civil court in order to establish that several applicants for a job, internship or training period at a company or several employees are subject to direct or indirect discrimination. A formal notice to cease the infringement or to repair the prejudice sent to the potential defendant is a prerequisite. No class action can take place until a six-month period has elapsed since the date on which the potential defendant received the formal notice, if he or she has not refused to answer in the meantime. Any term of a contract that aims to prohibit anyone from taking part in a class action is null and void.

44 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 the age of 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.

Dispute resolution

45 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.

46 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. A settlement agreement in which 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.

47 What are the limitation periods for bringing employment claims?

All claims regarding salary are subject to a three-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. Any claim in relation to the performance of the employment contract must be brought before the labour court within two years following the revelation of the employer's wrongdoing. Any claim in relation to the termination of the employment contract must be brought before the labour court within 12 months following the notification of the dismissal. Claims in relation to the validity of the collective agreement or the unilateral document drafted in the framework of a collective redundancy (see question 42) must be brought before the administrative court within a 12-month period following the date of the notification of the authorisation or validation decision by the labour authorities.

Morgan Lewis

Sabine Smith-Vidal **ssmith-vidal@morganlewis.com**
Charles Dauthier **cdauthier@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

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