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Ten things to know about labour and employment law in France



01 | It's codified

- Employer-employee relationships are governed by a complex set of laws and regulations which leaves little room for individual negotiation
 - The French Labour Code (*Code du Travail*) provides a comprehensive (perhaps too comprehensive – there are reforms under way to simplify it) framework for both individual and collective relationships between employers and employees.
 - Collective bargaining agreements (*conventions collectives*) may be negotiated between employers and labour unions covering a company or group of companies (*accords d'entreprise*), or between employers' associations and labour unions covering an industry as a whole; in the latter case, the government may decide that the collective agreement covers even those employers who are not members of the employers' association and is therefore mandatory throughout the industry.
 - Individual employment contracts cover only those points that are not already dealt with in the Labour Code or in the relevant collective bargaining agreement.
- There is a distinct hierarchy between these sources of rules governing the employer-employee relationship
 - In the event of conflict between the Labour Code and the relevant collective bargaining agreement, the provisions more favourable to the employee apply.
 - In the event of conflict between the individual employment agreement and either the Labour Code or the relevant collective bargaining agreement, the provisions more favourable to the employee apply.
 - Until very recently, in the event of conflict between industry-wide collective bargaining agreements and company-wide collective bargaining agreements, the provisions more favourable to the employee applied. However, under recent legislation, employers can actually enter into company-wide collective bargaining agreements that are less generous than industry-wide collective bargaining agreements in certain areas (e.g., working time rules and paid leave).
- Over 95 per cent of employees in France are covered by collective bargaining agreements (even in non-unionised industries), so the rules in the Labour Code are supplemented by more generous rules in areas such as paid leave, maternity leave, medical cover and even working time.

02 | Employee representatives play a very important role

- Depending on the size of a company, it may be required to have either employee delegates (*délégués du personnel*) or a works council (*comité d'entreprise*) and a health and safety committee (*comité d'hygiène, de sécurité et des conditions de travail*).
- Such employee representatives not only have an important say on significant business issues such as large-scale dismissals but must be consulted prior to a variety of changes in the business such as acquisition or disposition of business lines or of the company itself.
- Moreover, in companies with works councils, employee representatives are entitled to attend meetings of the Board of Directors (if there is one), although they do not vote at such meetings. Although the employee representatives are subject to confidentiality rules, this often results in real decisions being made outside of the Board meeting itself.
- However, under recent legislation ("Rebsamen Law" of August 17, 2015), there has been some "rationalisation" of the functioning of employee representative bodies, by permitting co-ordination of various bodies into a single *delegation unique du personnel*, combining the issues on which consultation is required into three annual mandatory consultations, permitting holding of meetings by videoconference, etc.

03 | The 35-hour working week you may have heard about is not all it is cracked up to be

- Under the original "Aubry Law" of January 19, 2000, a standard 35-hour working week was established. However, this is not a maximum working week – employees working beyond that amount are entitled to overtime.
- In any event, this proved to be quite unworkable in practice, particularly for senior executive- and management-level employees and subject to the relevant company being covered by a collective bargaining agreement providing for such possibility, it is possible for such employees to agree to calculation of working time in days rather than in hours (*forfaits-jours*). A company-wide collective bargaining agreement can provide for a maximum working time of 12 hours and a maximum weekly working time of 46 hours over 12 consecutive weeks. Extra time is either remunerated by overtime or can be compensated by taking extra days off ("RTT days").

04 | Specialised employment tribunals

- Employment disputes are initially brought before a specialised labour tribunal consisting of representatives of employers and employees. In the past, this skewed judgments in favour of employees, as even a single person with a domestic employee was considered an “employer”.
- This has been reformed under the “Macron Law” of August 6, 2015 and subsequent decrees
 - Employment tribunals will henceforth be staffed by representatives of employees and employers appointed by the Ministry of Justice and the Ministry of Labour.
 - Bringing of actions will require production of evidence supporting the claim (previously a simple filing of a claim was sufficient).
 - Timetables have been compressed in an effort to obtain speedier justice.

05 | The “right to log off”

- Beginning January 2017, in companies with over 50 employees, the annual negotiation on professional equality between female and male employees and life quality at the workplace which was already in force must also include the conditions of exercise by the employees of a right to disconnect from all devices, and the implementation of rules to regulate the use of digital devices to ensure observance of rest time and leave and personal and family life.
- Failing any agreement, it is incumbent upon the employer to implement a policy to this effect.

06 | The “El Khomri Law” of August 8, 2016

- It is a staple of French political discourse that it takes a right-wing government to pass left-wing legislation and a left-wing government to pass right-wing legislation.
- This was proved most recently by promulgation by a Socialist government of a law sponsored by Myriam El Khomri, the Minister of Labour (*Loi Travail*), intended to curb former excesses and make the French labour market more flexible. The government was constrained to “railroad” the legislation through Parliament by using exceptional powers under the French Constitution (Article 49-3, permitting legislation to be passed without a vote in certain circumstances).

- In addition to permitting company-wide collective bargaining agreements to prevail over industry-wide CBA and increasing the permitted maximum working day as described above, the El Khomri Law permits company-wide CBA to be adopted by referendum of a majority of employees actually participating in the vote (which is considered as having weakened the authority of unions), reducing overtime pay (if this does not breach a collective bargaining agreement), codifying grounds upon which dismissal for economic reasons (*licenciement économique*) can occur, and fixing suggested objective limits on amounts of damages for unjustified dismissal.

07 | The use of French language is mandatory

- Any documents setting rights and obligations for employees must be prepared in French. Exceptions to this principle are extremely limited, and courts are very strict when scrutinising compliance with this principle. In practice, this has particular impact regarding bonus entitlements in French companies which are part of international groups, in which bonus policies are often in English. This has resulted in a number of employees, both in the past and currently, having been held entitled to claim a full target bonus on the grounds that the bonus rules were not transparently communicated to them.
- This principle also needs to be taken into account with respect to communications with employee representatives. Any document provided to them should be written in French or accompanied by a translation into French.

08 | Monitoring of emails is quite regulated

- A number of formalities must be complied with prior to implementing any monitoring of employee emails (even if the emails are saved on the company’s servers and are business related). Amongst other things, the employee representatives (works council and health and safety committee) must be consulted, and the employees must be informed thereof. If such monitoring may result in disciplinary sanctions being taken against employees, the “internal regulations” (*règlement intérieur*) of the company should also be checked to ensure that it contains provisions in this respect.
- Further, employees’ emails identified as “private” or “personal” may not be opened by the employer as this would constitute a breach of the secrecy of correspondence, which is a penal offence. Only a court order may override such prohibition.

09 | **Dismissing employees in France is not as difficult as you may think (though it may prove to be costly)**

- Any dismissal must be notified in writing and based on “real and serious” cause.
- A specific procedure must be followed, including convening the employee to a pre-dismissal meeting, holding such meeting with the employee, and notifying the dismissal by registered letter with an acknowledgement of receipt.
- Dismissals for economic reasons (especially mass redundancy dismissals) and dismissals of certain “protected” employees (e.g., employee representatives) are subject to additional formalities and requirements, particularly involvement (or even approval) of the labour authorities and consultation with employee representatives. In the context of economic dismissals, amongst other things, selection criteria must be implemented to identify the employees to be dismissed (the employer cannot choose on a discretionary basis the employees to be made redundant).
- Upon termination, employees are entitled to a number of indemnities (severance payment – the law provides for 1/5th month’ salary per year of service, notice period, paid holidays, etc.). But more importantly, if the dismissal is deemed unfair, employees are entitled to damages depending on the loss suffered. A minimum of six months’ salary is applicable to employees with at least two years of service working in a company employing at least 11 employees. But no maximum is set by the law.

10 | **Garden leave does not exist**

- Employees may either be asked to work during their notice period, or be released from working. In such a case, they should receive their full remuneration, under the same conditions as if they had continued working (including any benefit in kind such as a company car the use of which for personal reasons has been authorised).
- During the performance of the employment contract (i.e. prior to any notification of termination), employees cannot be asked to remain unoccupied. This would violate the essential principle that it is the employer’s responsibility to provide work to the employee, and this could entitle the employee to claim the equivalent of constructive dismissal, having the same consequences as an unfair dismissal.

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