

France

Introduction

Employment relationships in France are highly regulated, in particular with regard to termination of employment. The main sources of law that govern employment relationships are essentially the Labor Code, collective bargaining agreements and case law of the French Supreme Court (“*Cour de Cassation*”). In addition to the mandatory rules resulting from these various sources of law, employment relationships are also ruled by Internal Regulations (“*Règlement Intérieur*”) that may (or must for companies employing at least 20 persons) be in effect within a company, custom and usage in a company, and individual employment contracts.

According to the principles of private international law set forth in the Rome Convention of June 19, 1980, absent a different, express choice of law by the parties to an employment contract, French Labor law generally applies where an employee usually carries out his or her duties in France, notwithstanding the nationality of either the employer or the employee. Even in cases where a different law has been chosen in the employment contract, the Rome Convention provides that such a choice cannot result in depriving employees of the protection afforded by the mandatory rules of French law that would otherwise be applicable (including French Labor law provisions related to termination of employment).

Terminations

Restrictions on Employers

Unless a collective bargaining agreement or the employment contract provides otherwise, an employment contract can be terminated without any restrictions (i.e., without justification or indemnities) during the probationary period. However, according to the law, a minimum termination notice must be complied with during the probationary period when such probationary period is at least equivalent to one week (such termination notice will be respectively 24 hours, 48 hours, two weeks or one month when the employee has worked less than eight days, between eight days and one month, more than one month, or more than three months). Collective bargaining agreements may provide for a longer minimum termination notice during the probationary period.

The maximum duration of the probationary period is two months for clerks and blue collar workers, three months for technicians and intermediate supervisors, and four months for executive employees (“*cadres*”). The probationary period can be renewed once if the applicable collective bargaining agreement authorizes such renewal. The applicable collective bargaining agreement or the employment contract may also provide for a shorter probationary period.

After the probationary period, an employment contract can only be terminated in certain circumstances, depending upon whether the contract is entered into for a fixed term or an indefinite term.

In principle, fixed-term employment contracts (which can only be used in very limited circumstances provided for by law) cannot be terminated before their agreed duration and automatically expire at the end of such duration.

Upon the expiration of a fixed-term contract, the employee is generally entitled to a specific “end of contract” indemnity equal to 10% of the total gross salary received during the entire contract. The same indemnity is also due in case of early termination of the fixed-term contract that would not be justified by a gross misconduct (see further below). However, this indemnity may be reduced to 6% of the total gross salary received during the entire contract by a branch-level collective bargaining agreement. Such provisions are only valid if the branch-level collective bargaining agreement entitles the employees concerned to benefit from counterparts such as, in particular, a privileged access to professional training.

However, French Labor law authorizes the termination of a fixed-term employment contract before the end of the agreed duration (“anticipated termination”) (i) by mutual agreement of the parties to the contract, (ii) for gross misconduct (“*faute grave*”) of one party, (iii) in case of “force majeure” or (iv) at the employee’s initiative, when he or she finds an indefinite-term employment. Apart from these four situations, termination of a fixed-term employment contract is considered as a breach of contract by the terminating party, resulting in case of dispute in the payment of damages to the other party (the minimum amount of which would correspond to the salary normally owed to the employee until the end of his or her contract).

Regarding indefinite-term employment contracts, an employer can terminate the contract at any time, but it must be able to justify from a real and serious cause of termination (“*cause réelle et sérieuse*”), and it must comply with the applicable dismissal procedure (which varies depending on the type of dismissal).

There are two major categories of dismissals based on real and serious cause: dismissals based on the employee's behavior ("dismissals for personal/professional reasons," such as a poor performance, the employee's negligence or the employee's inability to work) and dismissals based on economic grounds ("dismissals for economic reasons"). Dismissals for economic reasons can be either individual or collective, depending on whether one or more positions are to be eliminated or significantly modified. An employer may also be considered as having "constructively" dismissed an employee if the employee refuses to accept modifications to his or her employment contract that the employer wishes to implement.

Certain categories of workers benefit from a specific protection under French law. For example, a woman on maternity leave cannot be dismissed, as she benefits during that period from an absolute legal protection against dismissal. Furthermore, during the pregnancy period and during a four-week period after the end of the maternity leave, a woman is deemed protected (called relative protection), which means that a dismissal is valid only in case of impossibility to maintain the employment contract, due to economic reasons or a gross misconduct unrelated to the maternity; a dismissal for other reasons is deemed null and void. The dismissal of an employee representative is also subject to specific requirements, such as a Labor Inspector's authorization.

Dismissals For Personal/Professional Reasons

By statute, any and all dismissals must be justified by a "real and serious cause" (*cause réelle et sérieuse*). The French Labor Code does not provide for either a definition of the real and serious cause or a list of situations considered as such. Rather, the content and scope of this notion has been defined by French case law. Pursuant to French case law, "real" means that the cause must be exact, accurate, and objective, and "serious" means that it must be of some significance, making it impossible for the employer to continue the employment relationship.

For example, courts have considered that dismissals were justified by a "real and serious cause" in cases of professional inability, repeated errors, refusal to follow work instructions, violation of non-competition and loyalty clauses, physical inability, and/or extended or repeated illness, although the latter cause becomes very difficult to use to support a dismissal.

In case of a dismissal based on personal or professional grounds, an employer must comply with the following procedure:

- The employer must give the employee formal notice of a pre-dismissal meeting, at least five business days before the meeting, by a hand-delivered letter against a signed release or a registered letter with return receipt requested, indicating the purpose, date, time, and place of the meeting. The letter must inform the employee of his or her right to be accompanied by a person of his or her choice who must be an employee of the company. If the company does not have any employee representatives, the letter must further indicate that the employee could also be assisted by a third party selected from a list prepared by the local State authorities, and indicate where this list is available;
- During the pre-dismissal meeting, the employer must indicate the reasons justifying the contemplated dismissal and listen to the employee's explanations. During the meeting, the employer must not act as if the decision to dismiss the employee had already been taken. The meeting must take place during working time; and
- If the employer decides to dismiss the employee, the latter must be notified of that decision by a registered letter with return receipt requested which can be sent at the earliest after the expiration of a minimum two full business days period following the pre-dismissal meeting, and must be sent no later than one month after the pre-dismissal meeting in the event the dismissal is based on the employee's misconduct. The employer must state in the dismissal letter the justification for the dismissal, which must characterize a real and serious cause for dismissal. Failure to give a valid justification of dismissal in the dismissal letter will result in a dismissal without cause. Assuming that the employer decides to release the employee from his or her work obligation during the notice period, this should be stated in the dismissal letter.

Dismissals For Economic Reasons

Pursuant to Article L. 1233-3 of the French Labor Code, a dismissal can only be considered as "economic" if it is based on a reason unrelated to the employee, resulting from a reduction or change in the workforce or a substantial modification of the employment agreement due, in particular, to economic difficulties or technical changes. The French Supreme Court has taken a very restrictive approach in its interpretation of acceptable economic reasons.

Furthermore, employers facing such circumstances must seek, on a worldwide basis, any alternative job opportunities for the employees concerned within both the company and the group to which it belongs, and offer professional training to these employees.

Three types of economic dismissals must be distinguished:

- An individual dismissal;
- A collective dismissal concerning two to nine employees; or
- A collective dismissal concerning at least ten employees.

A specific procedure must be complied with for each of these types of dismissals. Such dismissal procedure, which will vary depending on the importance of the economic dismissal, could be preceded (individual dismissal) or will have to be preceded (collective dismissal) by a preliminary procedure on the planned restructuring leading to such dismissals.

Consultation Procedure On A Planned Restructuring

This specific procedure is mainly related to the restructuring and the economic reasons behind the dismissals (e.g., discontinuation of an activity or product) and supposes that a Works Council has been set up in a company employing at least 50 persons. Usually, two Works Council meetings are called by the company: one is for information purposes, the other for consultation purposes.

This procedure is completed only once the Works Council has rendered an opinion (non-binding on the employer) on the contemplated restructuring.

Minimum procedure:

- Notice of call to the Works Council members, along with the agenda of the meeting and an economic note on the planned restructuring indicating the cause (economic justification), the content and the global consequences on employment of the company's restructuring.
- First Works Council meeting: information, with a possibility to appoint a chartered accountant (CA).
- Second Works Council meeting: consultation. The employer must necessarily reply to the Works Council's opinion and comments.

If a CA has been appointed by the Works Council during the first meeting, his or her report must be communicated to the Works Council at least eight days prior to this meeting.

Potential delay and disruption:

The Works Council must be given sufficient written information with regard to the cause of the contemplated restructuring (e.g., discontinuation of an activity) and enough time to review and study the company's economic justifications.

If the Works Council considers that the company did not fulfill its obligations in this respect, it can either refuse to render an opinion and therefore *de facto* delay the process or initiate summary proceedings before the Civil Court, which may consider that the Works Council was not properly informed/consulted and, on that basis, could decide:

- (i) to give more time to the Works Council by fixing another Works Council's meeting;
- (ii) to ask the employer to reinitiate the procedure from the beginning; or
- (iii) to suspend the procedure until satisfactory information /consultation with the Works Council.

The Works Council could also launch a specific procedure known as the "*Alert Procedure*."

Pursuant to Article L. 2323-78 of the French Labor Code, the Works Council is entitled to request information and explanation from the management when it has been made aware of events or facts that could presumably adversely affect the economic situation of the company.

Within the scope of the Alert Procedure, the Works Council is entitled to appoint a CA (whose fees will be borne by the company), who will have access to the relevant information and documentation on the contemplated restructuring and will prepare a report to the Works Council's attention, which can then be presented by the Works Council to the management of the company.

French law does not provide for a maximum period of time for the CA to carry out his or her mission, and the Works Council could refuse to give an opinion on the

contemplated transaction before having reviewed the CA's report. From a practical standpoint, the Alert Procedure could substantially delay the economic dismissal procedure by approximately two months.

Dismissal Of One Employee For Economic Reasons

The steps for dismissing one employee for economic reasons are similar to that of the dismissal for personal/professional reasons, subject to some specific additional requirements. These steps may be summarized as follows:

- The employer must send or hand-deliver a notice of a pre-dismissal meeting under the same conditions as those outlined in the dismissal procedure for personal/professional reasons;
- During the meeting, the employer must explain the reasons for the dismissal and propose to the employee:
 - Within companies with fewer than 1,000 employees, a Personalized Redeployment Convention ("*Convention de Reclassement Personnalisée*") providing psychological assistance, professional counseling and coaching, professional abilities evaluation, and training, in order to facilitate the redeployment of the employee after his or her dismissal. Such measures are put in place by the Employment Agency ("ANPE"). The employee has 14 days as of the receipt of the information note to accept or refuse the Personalized Redeployment Convention. If the employee accepts the Personalized Redeployment Convention, the employment contract will be considered as terminated by mutual agreement between the parties as from the expiration date of the 14-day period. However, the employee will be entitled to a dismissal indemnity calculated according to the collective bargaining agreement applicable to the company. For the purpose of determining the dismissal indemnity, the notice period the employee would have been entitled to in the event he or she would have refused the Personalized Redeployment Convention is taken into account. The employer must inform the French Unemployment Fund ("ASSEDIC") of the employee's acceptance of the Personalized Redeployment Convention. During the Personalized Redeployment Convention, the employee will receive an allowance from the ASSEDIC. However, the employer must pay to the ASSEDIC a contribution equal to two months of the employee's salary. In a situation where the employee would have

been entitled to a three-month notice period, two months would be paid to the ASSEDIC and the remaining one-month notice period would be paid to the employee. In the event the company would fail to comply with its obligation concerning the Personalized Redeployment Convention, it would be required to pay to the ASSEDIC damages equal to two months of the employee's average gross monthly salary over the last twelve months.

- Within companies with 1,000 employees or more, a Redeployment Leave (“*Congé de Reclassement*”), financed in part by the employer, which purpose is to allow the employee to benefit from training measures and job search program. The duration of such Redeployment Leave is four months minimum and nine months maximum. The Redeployment Leave takes place during the notice period, during which the employee does not have to perform. In the event the duration of the Redeployment Leave exceeds the length of the notice period, the end of the employment contract is postponed until the end of the Redeployment Leave. During the Redeployment Leave exceeding the notice period, the employer must continue to pay a monthly remuneration to the employee equal to 65% of the average monthly gross remuneration received by the employee over the last 12 months.
- The employer must send a notification of the dismissal to the employee after a minimum waiting period of seven business days (15 business days for an executive employee). The dismissal letter must (i) explain in detail the economic reasons for the dismissal and their impact on the employee's position or employment contract, (ii) refer to the Personalized Redeployment Convention or Redeployment Leave and remind the employee of the remaining period of time for him or her to opt for such retraining program, and (iii) state that the employee has a right of priority for re-employment for one year after the dismissal if the company envisages to hire employees with the same qualifications and if the employee elects to use such right of priority within a year from the end of the employment relationship; and,
- The employer must notify the “*Directeur Départemental du Travail*” (Local Labor Administration) of the dismissal within eight days following the date of the sending of the dismissal letter.

Dismissal Of Two To Nine Employees For Economic Reasons

In cases where an employer intends to collectively dismiss two to nine employees within a 30-day period, the procedural steps required are as follows:

- The employer must set up a list outlining objective criteria to be used for determining the order in which the employees will be dismissed (e.g., seniority, family situation, age, job qualifications, etc.);
- The employer must provide written notification to the employee representatives (Works Council or, in the absence of a Works Council, employee delegates) with all supporting documents explaining the reasons for the collective dismissal and providing sufficient details on the latter;
- At the earliest three days later, the employer must meet with the employee representatives;
- In addition to the meeting with the employee representatives, the employer must send to each employee to be dismissed a convocation letter to attend a pre-dismissal meeting, under the same conditions as those outlined in the dismissal procedure for personal/professional reasons;
- The employer must hold individual pre-dismissal meetings with each employee to be dismissed and provide him or her with the Personalized Redeployment Convention/Redeployment Leave (as described in the dismissal procedure for one employee);
- A minimum waiting period of at least seven business days after the meeting must elapse before these dismissal letters (drafted as described in the dismissal procedure for one employee) can be sent to each employee, and such sending must be performed by registered letter with return receipt requested;
- The employer must then notify the “*Directeur Départemental du Travail*” (Local Labor Administration) of the dismissals within eight days following the date of the sending of the dismissal letters; and,
- An employee may request the employer to provide written information on the criteria used for selection of the employees dismissed. The request must be made by registered letter with return receipt requested or hand-delivered letter against a signed release within 10 days following the employee’s effective departure. The employer’s answer must also be sent by registered letter with

return receipt requested or hand-delivered letter against a signed release within 10 days following the first delivery (by the postal services) of the employee's letter of request.

Dismissal Of At Least 10 Employees For Economic Reasons

In cases where an employer intends to collectively dismiss at least 10 employees within a 30-day period, the procedural steps are more substantial and may be summarized as follows:

This procedure deals specifically with the social consequences of the restructuring discussed during the first part of the procedure (see further above), i.e., the collective dismissal that should result from said restructuring.

Minimum procedure:

Article L. 1233-34 of the Labor Code allows the Works Council to appoint a CA for assistance during its consideration of the information presented by the management on the proposed economic dismissals.

Such appointment results in three Works Council meetings (instead of two, as with other dismissals).

The total duration of the procedure mainly depends on the length of the negotiations and the attitude of the Works Council, and takes usually between approximately two to six months (however, the latter duration does not constitute a maximum duration).

- Notice of call to the Works Council

The corporate representative of the company gives written notification to the employee representatives, providing them with all “useful information” on the dismissals. This information concerns the economic, financial or technical reasons for the dismissals, the number of employees in the company, the number of dismissals planned, the professional categories concerned, the criteria proposed to establish the list of the employees to be dismissed (job qualification, family situation, seniority with the company, social particulars making it difficult to find a new job, e.g., age or incapacity), and the schedule planned for the dismissals. The criteria must be considered for each professional category.

This information on the planned dismissals must be accompanied by a draft Employment Safeguard Plan (previously known as a “Social Plan”) containing information on the measures proposed to limit the number of dismissals or to avoid them (which will include remedies in the form of part-time jobs, professional training, outplacement, financial or organizational support to help the employees to find new jobs, etc.).

All this information must be simultaneously sent to the Labor Authorities.

- First Works Council’s meeting, where a CA may be appointed by the Works Council. Information on the planned collective dismissal if a CA has not been appointed.
- Formal notification of the dismissal project to the Labor Administration on the day immediately following the first meeting of the second part of the procedure (i.e., the part on the dismissal project as opposed to the part on the restructuring itself). Upon reception of this formal notification, the Labor Administration will benefit from an eight-day period to issue a “*constat de carence*”, i.e., a document considering that the Employment Safeguard Plan is not sufficient and appropriate.
- Second Works Council’s meeting with information on the planned collective dismissal (and review of the CA’s report if a CA has been appointed). Consultation with the Works Council on the planned collective dismissal if a CA has not been appointed (consultation means getting the Works Council’s non-binding opinion through a vote of its members).
- Assuming that a CA has been appointed, holding of a third Works Council meeting with consultation on the planned collective dismissal, vote on the Employment Safeguard Plan and determination of the order of the dismissals. The employer must address in writing the comments and suggestions made by the employee representatives. During this meeting the employer must also inform the employee representatives that the employees will be offered a Personalized Redeployment Convention (“*Convention de Reclassement Personnalisée*”) or a Redeployment Leave (“*Congé de Reclassement*”) as mentioned above. The minutes of this meeting and the list of the employees whose dismissal is contemplated must be sent to the Labor Administration.

- Convocation of each protected employee to a pre-dismissal meeting. The protected employees are in particular the employee representatives (Works Council's members, employee delegates, trade union delegates, members of the Hygiene and Safety Committee) and the employees having an office as Labor courts judges.
- Individual pre-dismissal meeting with each of the protected employees.
- Specific Works Council's meeting regarding the contemplated dismissal of protected employees.
- Notification of the dismissal to each employee by registered letter with return receipt requested not earlier than either 30 days after the notification of the dismissal project to the Labor Administration if no CA has been appointed or 30 days after the expiration of a 14-day period following this notification if a CA has been appointed (for protected employees, the notification of their dismissal can only take place once the Labor Inspector's authorization has been obtained).

The procedure and timeframe for this type of collective dismissal are extended if the number of employees to be dismissed exceeds 100.

Potential Delay And Disruption

Before the first Works Council's meeting on the contemplated collective dismissal, the company's legal representative must give written notification to the employee representatives, supplying all "useful information" on the dismissals (see further above).

- The above-mentioned information is extremely important since, if a court finds the information insufficient, it can order the company to resume the consultation procedure from the beginning.
- It is also important that the Employment Safeguard Plan, as drafted by the employer, be "sufficient" (i.e., substantial enough) when initially presented to the Works Council. It must contain proper redeployment measures, the absence of which may lead a court to suspend the procedure and order the company to resume the consultation procedure from the beginning, even if the Employment Safeguard Plan is improved or amended based on the Works Council's comments between the two meetings.

- An insufficient Employment Safeguard Plan may lead the court to suspend the individual notification of dismissal to the employees. The Supreme Court, in a decision dated February 13, 1997, decided to cancel an Employment Safeguard Plan several years after the individual dismissals had been notified. The Court ordered the reinstatement of the dismissed employees (which obviously caused an important number of practical problems), and the payment of their salaries from the date of their dismissal to their effective reinstatement. The Court may order the reinstatement of the employees if they request so, except if such reinstatement has become impossible (e.g., closing of the company). When the employee does not wish to be reinstated or when such reinstatement is impossible, the employer will be required to pay an indemnity of at least 12 months of salary.
- If a court decides that the employer did not provide all the necessary information to the CA, it can order the postponement of the second meeting, in order to allow the CA to review the documents.
- The Works Council can also obtain an order from the Court imposing upon the employer, under penalty (including daily penalties), to disclose any economic document necessary to the CA's mission, including documents concerning the company's parent company and other subsidiaries in France and abroad.

Information Provided To The Labor Administration

The Labor Administration ("DDTE") must receive all the documents sent to the Works Council prior to its meetings and must receive the minutes of each meeting, including amendments to the Employment Safeguard Plan, schedule of dismissals, etc.

The planned collective dismissal must be formally notified in writing to the DDTE at least one day after the first meeting on the planned economic dismissal with the Works Council. To this effect, the employer must send the DDTE a copy of the documents given to the Works Council's members along with a copy of the minutes of the first meeting, including the comments and proposals of the Works Council, and the schedule of the planned dismissals.

If such documents are not sent to the DDTE, the employer could be found guilty of a criminal offence and could be ordered to pay a fine of € 3,750 per offence.

The DDTE verifies:

- (i) The content of the Employment Safeguard Plan and can propose additions or amendments to the plan. The DDTE can also issue a “*constat de carence*” when the Employment Safeguard Plan does not contain appropriate measures. The Supreme Court once ruled that the “*constat de carence*” is not binding on the employer who can decide to pursue the redundancy procedure. Courts have jurisdiction to decide whether an Employment Safeguard Plan is insufficient. However, when a court finds the employer’s Employment Safeguard Plan insufficient, the legal effect is to invalidate all subsequent actions based on the plan and therefore to nullify the employer’s entire dismissal procedure.

In addition, in the event of a collective dismissal, when an Employment Safeguard Plan is invalidated by the Labor Courts, the dismissed employees can either claim reinstatement within the company or a specific indemnity equal to at least 12 months’ salary.

From a practical standpoint, when the Labor Administration issue a “*constat de carence*,” the employer must resume the entire dismissal procedure and amend the plan in order to take into account the DDTE’s observations.

- (ii) The compliance with the rules relating to proper information/consultation with the Works Council.

The employer is not compelled by law to observe the comments and follow the suggestions made by the DDTE, which may not be in the company’s best interest. Ignoring the DDTE’s comments and suggestions could however be unwise in view of possible future disputes that may be raised by the dismissed employees.

The employer must respond to the DDTE before sending the dismissal letters. Article L.1233-60 of the French Labor Code provides for a criminal fine of € 3,750 per employee dismissed if the employer dismisses the employees before responding to the DDTE.

If the company employs fewer than 50 persons or if there is no employee representative within the company, the above procedure will be simplified and shortened.

Dismissal Of An Employee Representative

Any employee representative, either member (“*titulaire*”) or deputy (“*suppléant*”) (Works Council’s members, members of the Hygiene and Safety Committee, trade union delegates or employee delegates), benefits from a special status that provides additional protection against dismissal. The employer can dismiss such an employee only after having consulted with the Works Council (except for trade union delegates) and subject to the express prior written authorization of the Labor Inspector.

Any dismissal made by an employer without a real and serious cause, or without complying with the procedural steps mentioned above, triggers the payment of damages to the employee. However, in cases involving employee representatives, if the dismissal occurs without securing the Labor Inspector’s prior authorization, or despite the Labor Inspector’s refusal, the dismissal is null and void, and the employee representative could be reinstated to his or her previous position with payment of all the salaries lost since the date of dismissal. In addition, failure to obtain the Labor Inspector’s authorization for the dismissal of an employee representative, or failure to inform and consult with the Works Council when required, is a criminal offence that is punishable, for a first offence, by a maximum one-year imprisonment and/or a fine of up to € 3,750.

Residual Obligations

Irrespective of the reasons for the termination of the employment contract, and regardless of whether it is a dismissal (for personal/professional reasons or economic reasons) or a resignation, the employer must provide the employee, at the end of his or her employment, with a work certificate (“*certificat de travail*”), a pay slip corresponding to the final payments made (including severance payments, if any) and a specific document for the unemployment authorities, the ASSEDIC form (“*attestation ASSEDIC*”). It is also common, but not mandatory, that a final statement of accounts (“*reçu pour solde de tout compte*”) be delivered to the employee at the end of the employment relationship.

Notice Provisions/Consequences Of A Failure To Provide The Required Notice

Under French Labor law, either party may serve notice of termination of the employment contract. During the notice period, the employment contract remains in force, and both parties continue, in principle, to perform their obligations under

the contract. Therefore, unless the employee is released from the performance of his or her duties, he or she will have to work during that period and will continue to receive his or her normal remuneration. However, if the employer does not wish the employee to work during that period, it may release the employee from this obligation, but will have to pay the employee an indemnity in lieu of notice, in an amount equivalent to the amount of remuneration the employee would have received had he or she normally worked. This amount is subject to both employer's and employee's social charges.

During the notice period, if performed by the employee, the latter is usually entitled to two hours off per day to look for a new job, depending on the collective bargaining agreement applicable to the company.

The notice period begins to run on the day of first presentation of the dismissal letter or the resignation letter by the postal services.

Unless the employee's employment contract or the company's applicable collective bargaining agreement provides otherwise, an employee is generally entitled to one to three months' notice period, depending upon the employee's professional category and seniority with the company.

Generally the following minimum notice periods apply:

- For employees with less than six months' service, notice provided by the applicable collective bargaining agreements, if any;
- For employees with six months to two years service, notice is at least one month (subject to a provision more favorable to the employee resulting from the law, a collective bargaining agreement or the employment contract);
- For employees with two years of service or more, notice is at least two months (subject to any longer notice period resulting from the law, a collective bargaining agreement or the employment contract);
- For executive employees ("*cadres*"), notice is generally irrespective of their length of service.

Termination Indemnities

Even where a dismissal meets all of the substantive and procedural requirements, a dismissed employee is entitled to: (i) a paid vacation indemnity ("*indemnité de*

congés-payés”), which is equal to the cash value of the number of accrued and unused vacation days at the end of the notice period; (ii) a notice period indemnity (“*indemnité de préavis*”) in cases where the employer decides to release the employee from work during the notice period; and (iii) a dismissal indemnity (“*indemnité de licenciement*”), which is a statutory minimum indemnity, based on years of service, applicable by default in the absence of provisions more favorable to the employee, such as those resulting from a collective bargaining agreement.

The statutory minimum dismissal indemnity is based on the employee’s seniority as follows:

- 1/5th of the average monthly remuneration per year of service for employees with one year of service or more;
- Additional compensation of 2/15th remuneration per year of service after ten years’ service.

However, where the dismissal is justified by the employee’s gross misconduct (“*faute grave*”), neither the notice period indemnity nor the dismissal indemnity are due.

In case of willful misconduct (“*faute lourde*”), no severance payment is due.

In the event of an unlawful dismissal, the employee could also require the following additional payments:

- If the dismissal is found by a court not to be justified by a real and serious cause (unfair dismissal), the employee is entitled to additional damages to compensate for the loss he or she has suffered because of his or her abusive dismissal. If the employee has two years of service or more with the company and the company employs eleven employees or more, damages are set by law at a minimum of six months of gross salary. When the employee has less than two years of service or the company employs fewer than eleven employees, there is no minimum and the amount of damages is freely determined by the judges in light of the prejudice the employee can demonstrate.
- If the employer has not followed the applicable termination procedure, it may be ordered by a court to pay a maximum of one month’s salary as damages to each employee concerned (this indemnity cannot, in principle, be claimed in addition to damages for unfair dismissal).

Laws On Separation Agreements, Waivers, And Releases

Settlement Agreement

Under French Labor law, a settlement agreement will only be upheld if: (i) it is concluded after the dismissal is carried out (i.e., after the employee has received the dismissal letter); (ii) the dismissal has given rise to a dispute (and a potential claim of damages for the prejudice suffered); and (iii) the employee receives an additional payment, as a “settlement indemnity,” to compensate for the prejudice suffered, over and above the mandatory minimum amounts of severance and related benefits to which the employee would be legally entitled in the absence of a settlement.

The total package that an employer should be prepared to pay generally depends on the extent of the company’s exposure to damages in the event the employee is not willing to settle. The settlement indemnity is paid in addition to the amounts that the employee would receive by law pursuant to his or her dismissal. Ultimately, the amount of the settlement payment is a question of negotiation between the employer and the employee.

Mutual Termination Of The Employment Contract (“*rupture conventionnelle du contrat de travail*”)

A law dated June 25, 2008, has created a mutual termination procedure that allows the employer and the employee to agree on the terms and conditions of the contract’s termination. The parties must follow a specific and fairly stringent procedure, and the terms and conditions of the agreement must be validated by the Labor authorities. In addition, the employer must grant the employee an indemnity at least equal to the statutory or conventional dismissal indemnity. This indemnity is subject to a specific social and tax regime.

Litigation Considerations

Labor courts (“*Conseil de Prud’hommes*”) have jurisdiction for resolving individual labor disputes, whereas Civil courts (“*Tribunal de Grande Instance*”) have general jurisdiction for resolving collective labor disputes. An employee may challenge the grounds used for his or her dismissal by any means.

Before hearing a case on the merits, French Labor courts must convene the parties to a preliminary mandatory conciliation procedure before the Conciliation Committee (“*Bureau de Conciliation*”) of the court. If conciliation proves to be impossible, the

case will then be postponed to a new hearing before a Judgment Committee (“*Bureau de Jugement*”), where the parties will be heard on the merits and a decision will, in principle, be made by the Labor court. It is possible for any party to lodge an appeal against this decision, and the appeal must be lodged before the Court of Appeal (“*Cour d’Appel*”). The Court of Appeal will re-examine the entire case. The Court of Appeal’s decision can also be challenged before the social chamber of the French Supreme Court (“*chambre sociale de la Cour de Cassation*”). However, the Supreme Court is not supposed to re-examine the facts, but will only examine whether the law provisions have been infringed by the first degree courts.

As a matter of principle, the French Labor Code states that, in case of a dispute between an employer and an employee, the doubt must favor the employee. Moreover, from a practical standpoint, French Labor courts generally favor employees.

Employment Discrimination

Laws On Employment Discrimination

France has very stringent regulations prohibiting certain types of employment discrimination.

The French Constitution provides that “... *all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions.*” The Constitution also expressly provides that women at work have the same rights as men and are entitled to equal pay for a same work. In addition, because France is a member State of the European Union, the provisions of the Rome Treaty concerning discrimination are applicable. France has also enforced a number of Conventions signed within the International Labor Organization.

Article L. 1132-1 of the French Labor Code provides that no candidate may be turned down from a recruitment process, nor may any employee be punished, dismissed or be subject to a discriminatory measure (directly or indirectly), notably with regards to remuneration, training, relocation, appointment, classification, qualification or promotion, because of his or her origin, sex, life manners, sexual orientation, age (unless the difference of treatment based on age can be justified by a legal purpose), marital status, being part of an ethnic group, a nation or a race, political or religious beliefs, union involvement, external appearance, surname, state of health, handicap, pregnancy or maternity.

Additionally, the EEC Equal Treatment Directive has been incorporated into the French Labor Code. It prohibits employers from:

- Mentioning any condition that is directly or indirectly indicative of sex discrimination in any employment offers;
- Refusing to employ a job applicant because of his or her sex or by reason of criteria that are directly or indirectly related to his or her sex;
- Assigning, transferring, or dismissing an individual because of his or her sex, or not renewing their employment on those grounds; or,
- Providing remuneration, training, promotion, classification, or grading to an employee on grounds of sex.

French law also prohibits indirect discrimination, which is the adoption of criteria that are not necessary to perform certain functions, but may adversely affect workers of one sex. French law allows employers to discriminate in favor of one sex where the needs of the job require the jobholder to be of that sex. However, that exception is essentially limited to actors (playing male or female roles) and models.

Sexual harassment, as well as moral harassment, should also be regarded as discrimination. Indeed, discrimination shall be widely envisaged as any behavior in relation with a motive of direct discrimination and/or any behavior with a sexual connotation, which purpose or effect is to damage the dignity of any person or to create a hostile, degrading, humiliating or offensive environment.

Apart from situations regarding sex discrimination, most cases of discrimination concern adverse treatment due to alleged union activity.

Female employees also have specific protection during maternity. An employee who is pregnant is statutorily entitled to suspend her employment contract from six weeks before the expected date of delivery until 10 weeks after the actual date of delivery and, thus, for a minimum period of 16 weeks. If the delivery is earlier than expected, the post-natal period of leave may be extended until the expiry of the 16 weeks. If the delivery is later than the expected date, the employee may extend her pre-natal maternity leave until the actual date of delivery; in such a case, the length of her post-natal maternity leave would not be reduced. The maternity leave may also be extended in cases of delivery of a third child, multiple births, or

medical complications regardless of the number of dependent children. An employee (male or female) adopting a child is also entitled to the same leave as employees on maternity leave.

During maternity leave, the employment contract is merely suspended. The duration of the maternity leave is treated as a period at work for the purposes of deciding seniority rights, the right to participate in employee representative's elections within the company, and the right to annual paid vacation. The employee is strictly prohibited from working during a total eight-week period beginning prior to the delivery and expiring after the delivery and, in any case, during a six-week period following the delivery. During this period, the employment contract must be temporarily suspended, even if this is against the will of the employee.

During maternity leave, maternity benefits are paid directly to the employees by the Social Security Fund, unless the applicable collective bargaining agreement provides that the employer maintain the salary. In that case, the employer is required to pay the employee either the difference between the amount paid by the Social Security Fund as maternity benefits and her normal salary had she worked or her normal salary subject to obtaining direct reimbursement of the maternity allowance from the Social Security Fund.

Employee Remedies For Employment Discrimination

Under French law, all agreements or actions causing prejudice are considered null and void if they are based on discrimination. Violation of the "equal treatment" principle also entails criminal sanctions in France. It is a criminal offence for any person to discriminate on the grounds of sex, to make the performance of an activity more difficult for a person of the other sex, or to stop a person from following his or her chosen career by reason of sex.

Employees who believe that they have been discriminated against on the grounds of sex can sue their employer in the Labor court for damages or seek to obtain an order requiring reinstatement or promotion. The statute of limitation is five years from the discovery by the employee of the discrimination. The burden of proof of the discrimination is shared between the employee and the employer: First, the employee must produce evidence creating a presumption of discrimination. Once he or she does, the employer must then demonstrate that the measures taken were justified and should not be regarded as discrimination.

Potential Employer Liability For Employment Discrimination

Where a French Labor court finds a sex discrimination claim well founded, it will declare the discriminatory decision null and void. Thus, in a case where a salary increase is denied, the Court may order a salary adjustment; in cases of dismissal, it may order the reinstatement of the employee along with damages for lost wages in the interim period. However, the employee has the option to refuse reinstatement and can elect to receive damages instead. These damages amount to a minimum of six months' salary and benefits plus any severance terms available under any applicable collective bargaining agreement. In addition, any unemployment benefits paid by the State to the employee must be reimbursed by the employer to the State.

In addition, the plaintiffs may file an action before the Criminal Courts to obtain criminal sanctions against the employer. If found guilty, the employer can be imprisoned for up to two years and/or ordered to pay a maximum fine of € 30,000.

Practical Advice To Employers On Avoiding Employment Discrimination Problems

In cases of different treatment between two persons, it is in the employer's interest to be able to demonstrate that this difference is based on actual, objective and reasonable reasons. Therefore, in any situation where a differentiation will have to be made among several employees holding similar positions, the employer should prepare appropriate documentation and records as to the reasons for such a difference.

Sexual Harassment

Laws On Sexual Harassment

In 1992, France adopted legislation on sexual harassment. The Law of July 22, 1992 makes sexual harassment a specific offence under the Criminal Code, as opposed to a mere kind of discrimination. The Law of 2 November 1992 amended the Labor Code and the Criminal Procedure Code to accomplish three major objectives: (i) to protect victims and witnesses of sexual harassment in the framework of the employment relationship; (ii) to encourage employers to discipline and punish harassers; and (iii) to implement measures to prevent sexual harassment at the workplace. The Law of January 17, 2002 has strengthened the preventive and

repressive provisions regarding sexual harassment. In particular, it provides that any person (including a colleague or a subordinate) may now be considered as a sexual harasser and punished.

Article L. 1153-2 of the French Labor Code provides that no employee, nor any candidate for an employment position, for a traineeship or for a company training scheme, may be sanctioned, dismissed, or discriminated against, either directly or indirectly, in particular with regard to remuneration, training, redeployment, assignment, qualifications, classification, professional promotion, transfer or renewal of the employment contract, for having suffered or refused to suffer harassment from any person whose intention is to require sexual favors for themselves or for someone else.

Discrimination against a victim of sexual harassment or a witness to such harassment in matters relating to promotion, renewal of the employment contract, or training is prohibited. The hierarchy who engages in such pressure shall also be subject to disciplinary sanctions by his or her employer.

Employee Remedies/Potential Employer Liability For Sexual Harassment

The employee who considers that he or she has suffered from sexual harassment must be able to evidence objective facts in order to demonstrate this harassment. The defender must then prove that those facts were justified and cannot be considered as sexual harassment.

Union organizations may bring court action in favor of any employee provided the employee has given written permission.

On the basis of Article 222-33 of the Criminal Code, any person may be punished by a fine of up to € 15,000 and/or an imprisonment of a maximum of one year, if he or she harasses an employee or a prospective employee in order to obtain sexual favors. Moreover, any sanctions by the employer based on these circumstances are deemed to be null and void.

In addition, Article L. 1155-2 of the Labor Code provides that the employer who takes disciplinary measures, who dismisses or discriminates against an employee

who was subject to, or who refused, sexual harassment will be liable for a maximum of one year imprisonment and/or a fine of a maximum of € 3,750. The Courts can also order that the decision be published in newspapers.

A behavior of sexual harassment could also be subject to criminal sanctions under Article 333 of the Criminal Code (indecent assault) or Article R. 38-1 (relating to assault and battery), as well as articles relating specifically to sex, race, or religious discrimination.

Article L. 1153-2 of the Labor Code states that the employees who are recognized as responsible for sexual harassment may be subject to disciplinary sanctions.

Moreover, French Labor courts have consistently held that sexual harassment, if proven, constitutes a gross misconduct, which justifies the immediate dismissal of the employee without prior notice and dismissal indemnity.

The offender may also be required to pay the victim damages in the event where the employee suffered a prejudice due to the termination of his/her employment contract resulting from sexual harassment.

Practical Advice To Employers On Avoiding Sexual Harassment Problems

Employers are vested with a general power to prevent sexual harassment in the workplace. The company's corporate officer is responsible for taking all measures necessary to prevent harassment. In particular, the employer's internal regulations must reiterate the rules against sexual harassment.

The Hygiene and Safety Committee is also entitled to make proposals as regards sexual harassment. To further prevent harassment, employers should also take steps to inform employees of their rights and of the sanctions that will be taken against harassers.

Training managers and providing information to the personnel may help to avoid sexual harassment situations or to minimize the risk of liability for the employer in the event harassment occurs despite the measures taken.

Moral Harassment

Pursuant to Article L. 1152-1 of the Labor Code, no employee should be the victim of any repeated acts of harassment on behalf of the employer, its representative or from any person who abuses the authority attributed by his or her functions, that may be harmful to the employee's basic dignity or would make his or her working conditions humiliating or degrading.

No employee should be punished, dismissed or discriminated against for bringing to light such harassment. Any disciplinary action taken against an employee in such circumstances would be declared void.

In the event a harassed employee is dismissed, the Courts will be able to void the dismissal and order the employee's reinstatement. Moreover, criminal sanctions could be imposed on the offender (maximum € 15,000 and/or one year imprisonment).

Employees must be able to evidence objective facts in order to support their claims.