The Global Employer

Focus on France
The purpose of this booklet is to provide a summary of the major provisions applicable to employment in France. It does not purport to be exhaustive. The law stated below is up to date as of 1 May 2015.
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Governing Rules

Scope of French Labor Law
French Labor Law applies to all employment relationships arising from an employment contract that is performed in France, regardless of the nationality of the employee and the employer.

Sources of Law which Govern Employment Relationships
• the French Labor code (“Code du Travail”);
• the collective bargaining agreements applicable to the employment relationship (if any);
• the in-house agreements;
• the internal rules of the company as well as any custom and usage in force within the company;
• the employment agreement

Immigration Requirements

Short term visas (less than three months)
Except for nationals of EU countries and certain countries having reciprocity agreements with France, foreigners must, prior to coming to France for a short term period (less than three months), obtain a visa from the French Consulate in the country where they reside.
Currently, most Asian and African nationals are required to obtain such a visa.
The applicant then obtains a Schengen visa, if his/her main destination is France. Such a visa allows him/her to enter France and to move freely within other countries of the “Schengen area”.
Presently, the members of the Schengen area are the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain Sweden and Switzerland.
It is generally not possible for a holder of a Schengen visa to visit EU countries that are not members of the Schengen area.
The visa is generally granted for a maximum period of three months and allows single or multiple entries. During the validity of the visa, the foreigner is authorized to stay in the Schengen area for the period indicated on the visa.
The application must provide a return ticket and proof of sufficient financial resources for the stay in France.
The starting date for the authorized duration of stay is generally determined by the date stamped on the passport when crossing the border into France. In the absence of such a stamp, the foreigner has the burden of proving his/her actual date of entry into France by, for instance, showing his/her travel ticket.

Working visas
There are two categories of working visas:
a) visas for corporate executives, which are processed through the Trade and Foreign Affairs Department;
b) visas for employees, which are processed through the Labor and Immigration Department;

There are different types of visas for employees:

a) regular employees;

b) temporary assignments:
   i) intra-company transfers;
   ii) seconded employees

A) Corporate Executives

Definition and conditions

For immigration purposes, the following persons are considered to be corporate executives: the Managing Director (Directeur Général) of a French corporation (Société Anonyme – SA), the President and/or the Managing Director of a simplified corporation (Société par Actions Simplifiée – SAS), the Manager (Gérant) of a French limited liability company (Société à Responsabilité Limitée – SARL) or the Managing Director (Responsable en France) of a Branch or a Liaison Office.

The above corporate executives are required to obtain a visa (known as a commercial card) in order to both reside and hold the above positions in France. When the applicant has been employed by an international company for more than 6 months and earns a gross monthly salary of at least EUR 5,000, the employer applies for a visa before the OFII, the Ministry of the Interior and the Labor Administration (Direction Regionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi – DIRECCTE).

To hold the above positions without residing in France, a non-EU national must only obtain a prior simplified authorization (récépissé de déclaration).

Administrative steps

To hold positions with residency in France

The application for a commercial card must be filed in the foreign country where the applicant resides (normally his/her home country) at the French Consulate nearest his/her residence.

The time required for this procedure varies from four weeks to six weeks depending on the Consulate involved.

When the application is approved, the applicant, and possibly the members of his/her family, will obtain their visas from the French Consulate. Such visa will be affixed to the passport.

Upon arrival in France, the applicant and his/her spouse shall go to the "Préfecture" having jurisdiction where they will obtain a provisional residence permit valid for a period of three months.

Within this three-month period, they will be required to undergo a medical examination with the Local Immigration Office. After such an examination, a one-year residence permit will be granted.

To hold positions without residency in France

The application for such authorization must be filed with the "Préfecture" in the district where the registered office of the French company, branch or liaison office is or will be located. It is not necessary for the applicant to be present. A lawyer may indeed submit such an application on his/her behalf.

The simplified authorization is obtained within two weeks to one month from the date the application is filed.
B) Employees

Regular employees

In principle, foreign non-EU nationals are not allowed to work in France. However, a French employer may face difficulties in recruiting a local employee meeting the requirements for the position available. Consequently, the Labor Authorities, prior to the approval of such an application, must take into account the context of employment in France in the relevant sector. In order for the application to be processed with success, the employer should therefore describe in detail the hiring difficulties in its sector.

In the event the employer finds a non-EU employee who fulfils the conditions, such employer could be requested to obtain a clearance from the National Employment Agency. This clearance is not an automatic guarantee that the work permit application will be approved.

Temporary assignments

Intra-company transfers

The employees in this category (known as salariés en mission) are those who are working within a group and who are assigned by one company of a group to its French counterpart. The work permit applications must meet the following conditions:

- the employee has worked for the group for at least three months before his/her assignment in France;
- the monthly salary to be paid while he/she works in France must exceed a minimum salary, which currently represents a gross monthly income of approximately EUR 2,186 for 2015;
- given the recent case law, the intra-group transferee card is generally only delivered to employees with significant experience in the area in which they are employed.

The above category includes two types of employees, [a] those who become employees of the French company and; [b] those who, while working in France, remain employees of the foreign company.

The second type of employees is known as “détachés” or seconded employees. The employees will obtain a three-year residence permit renewable once. Such a permit enables the employees to work only in the defined position with the same employer.

Employee seconded in the framework of a service agreement

This category concerns employees temporarily seconded to France by their foreign employer to a third party entity for the performance of specific services (technical assistance) in the scope of a service agreement.

The secondment should not result in the employee’s effective involvement in the daily running of the third party host company’s activity.

Administrative steps

Procedure for obtaining a visa

The French employer must file an application with the DIÉCCTE in France. The application, when approved by the Labor Administration, is then processed by the Immigration Office (Office Français de l’Immigration et de l’Intégration – OFFI) who in turn will forward it to the French Consulate nearest the foreign residence of the non-EU national.

The employee and his/her family members who accompany him/her will then be able to obtain their long stay visas from the French Consulate.

The above administrative proceedings can take approximately four weeks to six weeks.
After obtaining the visa

When the employee and his/her family (if any) arrive in France with the visas, they must undergo a medical examination with the Immigration Office\(^1\). Regular employees (see above) must also take French language lessons (if they are not fluent) and follow civic training.

Upon presentation at the “Préfecture” of the visa and evidence of their domicile in France, the employee and his/her spouse (if any) will receive a provisional residence permit valid three months (récépissé) and then generally obtain a one-year residence permit (titre de séjour). They may also directly obtain a one-year residence permit depending on the “Préfecture” involved. The employees seconded in the framework of an intra-company transfer receive a three-year residence permit.

For the employee, the residence permit is both a residence and a work permit.

In principle, the employee’s spouse is not allowed to work in France. However, under certain circumstances, in particular if the employee’s spouse entered France according to intra-company transfer procedure, permission to obtain a work permit may be granted.

The one-year residence permit and the work permit when applicable are renewable. Such renewal must be requested three months prior to the expiration date.

Employment of foreign employees

C) Foreigners already established in France

Prior to the employment of a foreign employee already established in France, the employer must require that employees in this situation justify having a valid work authorization.

In addition, the employer must ascertain that such work authorization is valid and corresponds to the correct professional category, the proposed employment and the location of the employer. The employer must send a verification inquiry to the “Préfecture” at least two working days prior to the employee’s start date.

If the employer does not obtain a “récépissé” within two working days from the receipt of the verification inquiry by the “Préfecture”, it may validly employ the foreign worker.

D) New applicants

The employer is required to take part in the application process of the work permit for new applicants (see above). The work authorization is subject to a medical exam and to the payment, by the employer, of “employment fees” to the Immigration Authorities.

Once the employee is granted with such a work authorization, the employer may hire the foreign employee, subject to, as the case may be, complying with any geographical and/or professional restrictions provided in the work authorization.

\(^1\) The medical examination includes X-rays, a urine test and a consultation with a doctor.
Terms of Employment

Form of the Employment Contract

Indefinite term employment contracts can be written, verbal or result from a mere exchange of correspondence. In most cases, the employee accepts a verbal offer made by the employer and the specific conditions are determined in a letter or contract of employment; as well as the company’s internal regulations (règlement intérieur) and the collective bargaining agreement that may apply to the company.

However, fixed-term contracts and temporary work contracts must always be in writing and must comply with restrictive regulations as to the duration of the contract, its term, its justification, the compensation paid, the renewal option, etcetera. If its terms are not specified in writing, the employment will be deemed full-time and for an indefinite period.

Pursuant to EC Directive n°91/383 of 25 June 1991, which requires that the employee be provided with a document containing certain information regarding the key elements of the employment (place of work, duration, salary, etc.), all employment contracts should be in writing. From a practical standpoint, the contract may still be verbal because the Supreme Court (Cour de Cassation) considers that the individual payslip and the pre-hiring declaration to the Labor Authorities are considered sufficient to satisfy the EC Directive requirements.

An employment contract may only be entered into for a fixed period if it is for the performance of a precise and temporary task, if its purpose is to replace an employee temporarily absent, if it is justified by a temporary increase of workload, if the job is of a seasonal nature or if the use of a fixed-term contract is customary in the business sector.

It is also permitted, under very specific and strict conditions, to enter into specific fixed-term employment contracts set-up as part of public employment policies in order to grant long-unemployed or non-qualified employees access to employment.

The maximum duration of a fixed-term contract is in principle 18 months (this maximum can be reduced to 9 months or extended to 24 months in specific circumstances).

Language Requirements

Any written employment contract executed in France must be drafted in French. The same rule applies to the amendments to the initial employment contract (and to all the documents providing for obligations binding on the employee or information necessary for the performance of his/her work, and variable remuneration schemes). When the contract is not drafted in French, the employee can require the employer to have the contract translated or can claim that the English version is unenforceable at least regarding those provisions the employee prefers not to be bound by. In case of conflict between the French version and the foreign version, the French version will prevail. A foreign employee can require the employer to have the French contract translated into his/her mother tongue. In case of conflict between the two versions, only the mother tongue contract will be binding on the employee.

Standard Employment Contract

Most employment contracts in France are for an indefinite duration. The parties may provide an initial probationary period in the contract. Such a probationary period must formally be agreed upon by the parties. Its maximum duration 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 may be renewed once
if the applicable collective bargaining agreement authorizes such renewal. The applicable collective bargaining agreement or the employment contract may provide for a shorter probationary period.

The legal provisions determining the maximum durations of the trial period, with or without renewal, are not applicable when:

• longer durations are set by Branch level collective bargaining
• agreements entered into prior to 26 June 20081;
• shorter durations are set by Branch level collective bargaining
• agreements entered into after 26 June 2008;
• shorter durations are provided by the engagement letter or the 
  • employment contract.

A distinction must be made between non-executive employees and executive employees. The latter are generally hired under a written employment contract with specific terms and conditions that usually include confidentiality and non-competition clauses and higher pay. Executives are also entitled to specific additional retirement plan benefits.

1 As an example, the collective bargaining agreement of permanent employees of temporary work agencies which provides for a maximum 6-month trial period for certain executives therefore remains applicable.
Working Conditions

Working Hours
A Law dated 20 August 2008, has modified the working-time regulations. The purpose of this Law is to simplify the legal provisions governing the working-time and attempt to increase labor flexibility in France.

Normal Hours

Since 1 January 2002, the legal working-time in France is 35 hours a week (151.67 hours per month) in all companies, whatever the number of employees. A collective agreement may be concluded to set out the details of the working time reduction.

According to the Law, an in-house agreement or a Branch level collective agreement can define the modalities of the working-time organization and the distribution of working hours over a period between one week and one year.

The collective agreement must provide for:
• the conditions and notice for modification of the planning;
• the limits to be taken into account for the calculation of the overtime performed;
• the conditions according to which the employees’ absences, hiring or termination during the period must be taken into account for the calculation of the amount of the remuneration.

In the absence of such an in-house agreement, the working-time organization over more than one week is defined by Government decree.

Maximum Working Day and Week
The maximum number of hours that an employee may actually work per day is limited to ten, not possibly exceeding thirteen hours (i.e. working-time and breaks included), except for certain specific cases, such as a temporary increase in business activity. A request must be filed with the Labor Inspector for an exemption, unless a collective bargaining agreement agreed upon by all Trade Union representatives provides for specific exemptions without the Labor Inspector’s approval.

Employees are entitled to a 20-minute break every six hours.

The maximum working week is set at an average of 44 hours per week over a period of 12 consecutive weeks, with an absolute maximum of 48 hours. For example, this limit would allow a person to work 48 hours during the first six weeks and 40 hours during the last six weeks of any period.

Fixing Company’s Working Hours
The employer is required to establish the company’s working hours, send a copy to the Labor Inspector (Inspecteur du Travail) and display them in a prominent location in the workplace.

The working hours as well as any proposed change in the agreed working hours must be discussed with the employee representatives, i.e., the Works Council (Comité d’Entreprise) or, in the absence of Works Council, the employee delegates (Délégués du Personnel), and a copy sent to the Labor Inspector before announcing and implementing them.
Different sets of rules must be followed when instituting more flexible working hours, such as rotating shifts, individualized hours, night work and part-time employment.

A law for a More Secure Employment Market dated 14 June 2013, has modified the regime of part-time employment (article L. 3132-14-1 of the French labor code) for employment agreements signed after 1 July 2014.

The working time for part-time employees may not be less than 24 hours per week, subject to certain exceptions (including in case of replacement of an employee or contracts of less than 7 days, students under the age of 26 or household employees or upon written and justified request from the employee, to enable him/her either to deal with personal constraints or to perform several jobs to reach an overall working time of a least 24 hours per week). Employees working less than 24 hours per week have a priority to be offered available full-time positions.

Overtime

Any hour performed over 35 hours per week is considered as overtime. When the working-time is organized over all or part of the year, are qualified as overtime:

- the hours performed over (i) 1607 hours per year or (ii) a lower threshold defined by the collective agreement;
- the hours performed over 35 hours per week in average during the reference period as defined by the collective agreement.

Overtime hours can be performed within a maximum amount of annual overtime hours (contingent d’heures supplémentaires) provided by an in-house agreement or a collective bargaining agreement.

In the absence of a collective agreement, the maximum amount of annual overtime hours is defined by Government decree. It is currently equal to 220 hours per employee per year.

The Works Council or the Employee Delegates must receive prior information regarding performance of overtime hours below the maximum amount of annual overtime hours. The performance of overtime hours beyond the maximum amount of annual overtime hours requires their prior consultation.

The individual working hours of any employee (including a major part of the “cadres” employees) must be monitored by the employer. No overtime work must in principle be performed by an employee, unless the employer so requires or so permits.

Overtime Pay/ Compensation

Any hour exceeding 35 hours per week, or exceeding the average of 35 hours will be treated as overtime.

The rates for overtime may be set by a 35-hour branch collective bargaining agreement, which may be higher or lower than the statutory rate but cannot be less than 10 per cent per overtime hour (article L. 3121-22 of the French Labor code) described below.

In the absence of rates determined by a branch collective bargaining agreement, the legal rates described hereafter are applicable. Overtime hours must be compensated by a 25 per cent salary increase for each of the first eight hours beyond 35 hours (i.e., from the 36th hour to the 43rd hour) and a 50 per cent increase for the hours above (i.e., as from the 44th hour).
All overtime hours must be compensated by financial compensation, unless otherwise provided by the collective bargaining agreement applicable to the company or by a decision of the employer under certain conditions. In the absence of provisions of an in-house agreement or a branch level collective bargaining agreement, the decision to compensate overtime hours accrued by the employees by way of additional time-off (repos compensateur équivalent) may be taken by the employer subject to informing and consulting the employee representatives and obtaining their agreement on this form of compensation. If the overtime hours and the increase relating thereto are entirely compensated by an equivalent time off, such overtime hours are not accounted for in the annual overtime limit.

The Rectifying Social Security Act for 2012 has eliminated the favorable tax and social regime applied to the remuneration of overtime hours (except for companies with a maximum of 20 employees that can continue to benefit from the favorable regime).

**Compulsory rest**

Overtime hours performed over the maximum amount of annual overtime hours must be compensated by compulsory rest.

Different rates are applicable, depending on the number of employees within the company. The mandatory compensatory time off shall be:

- 50 per cent of the overtime in companies employing up to twenty employees;
- 100 per cent of the overtime in companies employing more than twenty employees.

Except if provided by a collective agreement, compulsory rest is not due for the overtime performed under the maximum amount of annual overtime hours.

**Executive employees (Cadres)**

There are specific provisions regarding the working-time legislation applicable to executive employees. A distinction must be made between three categories of executives, as mentioned below:

- **Key Managing Executives** (cadres dirigeants) are those who fulfill the following three criteria:
  - they perform high responsibilities implying a large independence in the organisation of their working-time;
  - they are granted powers to make decisions in an autonomous way;
  - they benefit from a remuneration which is in the upper level of the company.

A recent case law clarified that a Key Managing Executive should also be involved in the management of the company (Supreme Labor Court 31 January 2012).

These executives generally form part of the Executive Committee of the company and are not concerned by the legal provisions on working-time.

- **Integrated Executives** (cadres intégrés) are those who are subject to the company’s collective working-time and who are integrated in a working team. They are subject to the legal provisions on working-time.

The last category, which contains two sub-categories, concerns executives who are referred to as Other Executives:

- **Autonomous executives** (cadres autonome) are those who are granted executive status (statut cadre) by a collective bargaining agreement and that are neither Key Managing Executives, nor Integrated Executives.
They benefit from a certain degree of autonomy and their working-time is variable. Therefore, the employer may not supervise them and control their working-time. These executives are subject to the legal provisions on working-time, but they may be subject to global remuneration agreements (forfaits), provided that a collective bargaining agreement within the company authorizes the conclusion of an individual global remuneration agreement with this category of executives. Such agreements may be concluded on an annual basis in hours or in days if this possibility is provided by an in-house agreement or a branch level collective bargaining agreement.

- If the global remuneration corresponds to a number of working days per year, the global remuneration must specify the maximum annual working days which cannot in principle exceed 218 working days per year. However, the employee can, with the employer’s consent, renounce to part of his/her days of rest and, therefore, work more than 218 days per year. In such a case, the additional days worked must be paid at 110% of the salary. The in-house agreement or the branch level collective agreement implementing this global remuneration scheme must provide for the maximum number of days worked within the year, i.e., up to 282 working days per year. If this maximum is not provided by the collective agreement, the maximum number of working days is 235 pursuant to legal provisions.

- However, recent case law has considered that these global remuneration agreements corresponding to a number of working days per year are only valid under certain conditions that should be provided by the collective bargaining agreement that sets up such working time arrangement. In particular, the collective bargaining agreement must contain guarantees in order to ensure that the employees’ workload is not excessive in order to protect their health and it is now essential that companies closely monitor employees’ days of work.

- Non-Autonomous Executives (cadres intermédiaires non-autonomes) are those who in light of their type of duties have different working hours than the employees subject to the collective working-time implemented within the company, but who do not have sufficient autonomy in order to be considered autonomous executive. They may conclude a global remuneration agreement in hours on an annual basis provided they comply with the relevant categories identified by the applicable collective agreement.

They may always conclude, as any employee – including non-executive employee – a global remuneration agreement in hours on a weekly or a monthly basis.

The Works Council must be consulted, every year, on the impact of global remuneration agreements as well as the modalities in order to follow-up the employees’ workload.

**Salary**

The amount or method of determination of the salary which the employer is to pay to the employee must be set down in the employment contract. As a general rule, employers and employees are free to determine the remuneration to be paid to the employee. The general rule, however, is limited by (i) the provisions of the collective bargaining agreement applicable to the company, (ii) the requirement that there be no discrimination between the salary paid to men and women and between employees holding an equivalent position, (iii) the prohibition against certain types of indexation clauses and (iv) minimum wage regulations.
Minimum Wage

The minimum wage in France is known as the “salaire minimum de croissance” or “SMIC”. It is indexed by the government so as to ensure that the purchasing power of SMIC-paid employees does not decrease in comparison to the national cost of living. The SMIC has been set at EUR 9.53 per hour (i.e., EUR 1,457.52 per month for employees working 35 hours a week) as of 1 January 2015.

There is also a monthly minimum wage requirement in France which is equal to the product of an hourly minimum wage multiplied by the number of hours which an employee must work each month. The purpose of the monthly minimum wage is to guarantee to full-time employees that they will earn a predetermined salary even if their work schedule is reduced.

Payment of Salary

As a general rule, the employer must pay an employee his/her salary on a monthly basis by cheque or bank transfer. At the time of the payment of the salary, the employer must remit to the employee a payslip (bulletin de paie) which contains, inter alia, the following information: the name and address of the employer, the applicable collective bargaining agreement, the name, function, position and grade of the employee, the period and number of hours worked by the employee and the salary paid in consideration thereof, the nature and amount of any bonuses paid, the gross amount of salary paid, the net pay of the employee and the date of payment, as well as a breakdown of the social contributions paid by both the employee and the employer.

All the details contained in the payslip must be copied by the employer on a pay register (livre de paie). The employer must keep records in this pay register for a period of three years.

Benefits in Kind

Benefits in kind, such as housing, private use of a company car and in some instances clothing (fringe benefits), are considered as salary items and form part of the employee’s total compensation. Thus, unilateral cancellation of such benefits by the employer may give rise to the employee’s claim to a compensatory payment.

The value of benefits in kind is added to the base salary for the purposes of computing social security contributions, as well as severance payments which are due to the employee in case of termination of the employment contract.

Profit Sharing

All companies employing 50 employees or more (in any six months) are required to create a special profit sharing fund (réserve spéciale de participation) for all the employees, the amount of which is calculated by reference to the net profit of the company. The employer is required to negotiate a profit sharing agreement with employees or employee representatives.

Aside from this mandatory profit sharing scheme (réserve spéciale de participation), employers may also provide profit sharing to employees by way of an optional profit sharing scheme (intérèsement) which is normally concluded with employee representatives. The amounts paid under such a scheme must not exceed 20% of the total amount of all salaries paid to employees in any one year in order to benefit from a favorable social security and tax regime.

Both arrangements can provide for a minimum of 3 months seniority in the company before employees can benefit from the schemes.
Payment of the optional profit sharing after the last day of the seventh month following the closing of the accounting year yields an interest calculated in reference to the legal rate. Interest is paid at the same time as the principal, and benefits from the same social security contributions exemptions.

Profit sharing under a “participation” or an “intéressement” agreement is in principle not subject to social security contributions. In order to benefit from social security and tax exemptions for these profit sharing schemes, the agreement must in particular be sent to the DIRECCTE within 15 days of its conclusion. The mandatory profit sharing scheme must be sent to the Labor Authorities as soon as possible after its conclusion.

Bonuses

Bonuses can take various forms, such as payment of a thirteenth month of salary, vacation bonus, year-end bonus or balance sheet bonus.

Bonuses may result from the provisions of collective bargaining agreements, the employment contracts, undertakings of the employer, unilateral and discretionary decisions of the employer or custom and usage.

The law makes a distinction between these various sources of bonuses in order to determine the legal regime applicable to said bonuses. If the bonus policy is sufficiently established to be considered by the two parties as an essential element of the salary when the employment contract was formed, the bonus may be considered as contractual.

Contractual bonuses are taken into account when calculating the minimum wage, overtime, and severance indemnities, whereas discretionary bonuses are not.

Other Bonuses and Indemnities

Several types of bonuses and indemnities can be granted, depending upon the particular circumstances of the employee’s work position. Some will be considered as salary, others will be considered as expenses incurred in the scope of the work. The following are deemed to be salary:

- seniority and skill bonuses;
- production bonuses;
- bonuses for dangerous work or working in a hazardous geographical area.

Seniority and skill bonuses are not taken into account when calculating overtime pay. Amounts paid to reimburse specific expenses incurred in order to perform a particular job are not construed as salary.

Modification or elimination of a bonus

An employer can unilaterally modify non-essential elements of the employment contract. However, in accordance with French case law, when the employer envisages modifying a contractual item in the employment relationship, it must first obtain the agreement of the employee. A modification of an element of the remuneration (or the method of calculation of the remuneration) is generally construed as a modification of the employment contract, and the employer must obtain the agreement of the employee prior to such modification.

However, recent case law concerning bonuses stated that even if the bonus is provided in the employment contract, the employer could decide to modify the targets relating to the bonus without the employee’s consent if the employer has clearly specified that the bonus results from its decision and complies with certain conditions (the targets for the bonus must be
reasonable and the employee must be informed of any change of the targets at the latest before the start of the new bonus year).

Moreover, if the bonus results from usage, or a unilateral decision of the employer, the Courts have held that the employer can modify or eliminate the bonus provided it complies with the procedure applicable to the suppression of a custom and usage [i.e., preliminary consultation with the Works Council, if any, individual information of each employee and compliance with a «reasonable notice» before the suppression/modification/elimination becomes effective).

Transport Premium

All public and private sector employers must allocate to their employees a reimbursement of 50 per cent of their monthly or weekly transportation tickets (public transport subscriptions, including public bicycle rental services) to cover a portion of their travel expenses to and from home. This amount is not considered as a salary payment for Labor law, tax or social security purposes.

Holidays

Weekly Day Off

In most sectors of activity, a person cannot be required to work for more than six days a week. Subject to very limited exceptions, the weekly day off must be Sunday.

Legal Holidays

Legal holidays are: January 1st, Easter Monday, Ascension Day, Pentecost Monday, May 1st, May 8th, July 14th, August 15th, All Saints’ Day (November 1st), November 11th, and Christmas Day.

However, a Law dated 16 April 2008, provides that one additional day should be worked every year, in order to finance actions in favor of elderly persons. A collective agreement or the collective bargaining agreement applicable within the company can define which day should be worked by the employees. Alternatively this could be implemented unilaterally by the employer. Such additional worked day may be, in particular, one of the legal holidays or a Saturday or be compensated by the renunciation to one vacation day.

Aside from May 1st (Labor day) which is in principle a day off for all workers, official national holidays must be given as days off only for young employees (under 18 years old). When an employee works on May 1st, he/she must be paid double for this day. Most collective bargaining agreements provide for days off on all legal holidays.

A particular business custom and usage should be mentioned in this context. Companies sometimes grant one or two “bridge holidays” (ponts) during the year (Mondays or Fridays off to “bridge” the gap between the weekend and a holiday falling on a Tuesday or Thursday).

Normally, the decision to grant a “bridge” is made by the company concerned. It is lawful to ask employees to work overtime before or after the “bridge”, to compensate for the working hours lost on those “bridge” days.

Paid Vacation

French Labor Law provides for an annual paid vacation based on two and a half days for each month of work during the reference year, the standard annual paid vacation being thirty business days [i.e., five weeks] if the employee has worked during twelve months. The law dated 1 June 2012 has
eliminated the requirement for a minimum period of work (to benefit from paid vacation).

Paid vacation days are calculated on a reference year which runs from June 1st (of the previous year) to May 31st (of the current year).

Any absence during the reference period as a result of illness or strike is not included (except otherwise provided by a collective agreement or by the individual agreement).

Collective bargaining agreements may also provide for additional paid vacation, depending on seniority or age.

The period during which employees must necessarily take part of their paid vacation runs from May 1st to October 31st. During this period, employees may take as much as four consecutive weeks (and they cannot take less than two weeks) of paid vacation. This period of vacation may be modified in the applicable collective bargaining agreement.

Company Rules and Disciplinary Sanctions

Although the employer is granted the power to define the rules of conduct applicable to the employees within the company, its authority is not unlimited.

**Company Rules**

There are two types of company rules: internal regulations and internal memoranda. Although both types are subject to certain requirements relating to their method of promulgation and content, both constitute a unilateral act of the employer and do not require any employee or governmental approval.

**Internal Regulations (Règlement Intérieur)**

Any employer who employs 20 employees or more on a regular basis must draft Internal Regulations (Règlement Intérieur) which set out certain rules relating to (i) health and safety matters, (ii) disciplinary provisions and (iii) sanctions, as well as (iv) measures to prevent sexual and moral harassment. The Internal Regulations must specify the measures taken by the employer to guarantee the health and safety of the employees and may also determine the sanctions to be imposed on employees who fail to comply with such measures.

The Internal Regulations may only contain those disciplinary rules that are necessary to allow the co-existence of all employees and the proper performance of their work (working hours, requirement that an employee notify the employer that he/she will be absent from, or late for, work, hierarchy among the disciplinary sanctions, etc.).

The text of, or an amendment to, the Internal Regulations cannot be adopted by the employer before it has been submitted to the employee representatives (the Works Council and the Sanitation, Safety and Working Conditions Committee – “Comité d’Hygiène, de Sécurité et des Conditions de Travail”). The Internal Regulations must expressly mention the date on which it will enter into effect, i.e., one month minimum as of the date on which all appropriate formalities of publication have been completed. Such formalities include the posting of the Internal Regulations at the work sites, filing a copy with the clerk of the Labor Court as well as with the Labor Inspector.

The Labor Inspector may at any time require the deletion or modification of any of its provisions which do not comply with applicable law.
Failure by the employer to comply with the applicable rules and regulations relating to the adoption or posting of Internal Regulations is punished by a EUR 750 maximum fine.

**Internal Memoranda (Notes de Service)**

The employer may issue such Internal Memoranda as may be necessary or appropriate to supplement the Internal Regulations. These memoranda are applicable as soon as they have been notified to all employees (by internal distribution or posting).

In the event that an Internal Memoranda sets out permanent rules concerning matters normally dealt with in the Internal Regulations, it must be adopted pursuant to the same rules and regulations applicable to the latter.

**Disciplinary Sanctions**

Disciplinary sanctions are defined as “any measures, other than verbal warnings, taken by the employer in response to an employee’s behavior which the employer considers incorrect and/or negligent, where such measures may affect the continued presence of the employee in the company, his/her duties, his/her career or his/her remuneration”. A disciplinary sanction may not consist in a fine or other financial sanction.

Where the disciplinary sanction consists of nothing more than a warning, the employer may give it without observing any formalities. Where the sanction may immediately or subsequently affect the job situation of the employee, the following disciplinary procedure must be initiated by the employer within two months from the date on which the employer learns of the improper behavior of the employee. Moreover, an employer is not authorized to mention this sanction after a period of three years (statute of limitations).

The employer must either hand-deliver or post by registered mail a notice to the employee. This notice must set out the sanction considered, the date, hour and place of the meeting at which the employee may defend himself/herself and a statement that the employee may be assisted at the meeting by another employee of the company. However, if the company does not have any employee representatives, the employee may be assisted by a third party selected from a list prepared by Local State Authorities.

During the meeting, the employer must inform the employee of the behavior of which he/she is accused and must give him/her an opportunity to explain his/her conduct.

If the employer is not satisfied with the explanation given by the employee, a sanction may be notified to the employee, either by hand-delivered letter or by registered mail with return receipt requested, not earlier than two working days and not later than one month after the meeting.

The most serious sanctions that an employer may impose are:

- the temporary suspension of the employee (mise à pied) for a period of time specified in the notice of sanction;
- the demotion of the employee (déclassement) pursuant to which both the duties and the remuneration of the employee are modified. According to case law, the employee must accept this sanction prior to its implementation;
- the assignment of the employee to another job or work site (mutation). The employee must accept this sanction prior to its implementation; and
- the dismissal of the employee (licenciement)
The employee may challenge the sanction before the Labor Court (Conseil de Prud'hommes) and the Court may cancel the sanction if it appears to be irregular in its form or unjustified or out of proportion with the employee's behavior. However, a dismissal cannot in principle be cancelled (except for protected employees and collective dismissals for economic reasons) and the Court may order the employer to pay damages to the employee instead of reinstatement.

**Sick Pay**

The employment contract of an employee who is on sick leave is considered suspended (sick leave cannot be construed per se as a termination of employment). However, in cases of extended sick leave or repeated sick leave, the employer may, under certain conditions, be entitled to terminate the employment contract on the grounds that the repeated absence of the employee hinders the proper functioning of the company and the company is consequently required to permanently replace the employee.

If the collective bargaining agreement applicable to the company is not more favorable to the employee, he/she will continue to receive his/her salary during the sick leave if he/she fulfils the following conditions:

- being employed with the company for more than one year as of the first day of absence;
- substantiating his/her sick leave within 48 hours of the absence;
- being indemnified by the French social security system;
- being medically treated in France or within the EU.

If the above four conditions are satisfied, the employee will continue to receive his/her remuneration at the rate of 90% of the gross remuneration which he/she would have earned had he/she worked. However this is subject to the deduction of all indemnities paid by the social security system and any other health insurance programs.

This remuneration is paid for thirty days. From the following thirtieth day, he/she will receive 66.66% of his/her previous gross remuneration. The sick pay paid directly by the employer to maintain remuneration does not begin until the eight calendar day after the first day of absence. However, if the employee is away from work because of a work-related accident or professional disease, the remuneration must be paid as from the first day of absence.

Most collective bargaining agreements or internal regulations of companies provide for more favorable rules. Very often the compensation amounts to 100% of the previous remuneration, the period of indemnification is extended, and the seniority condition is reduced.

**Maternity Pay, Maternity Leave and Paternity Leave**

An employee who is pregnant is entitled to suspend her employment contract from six weeks before the expected date of delivery until ten weeks after the actual date of delivery and thus for a minimum period of sixteen weeks. If the delivery is earlier than expected, the post-natal period of leave may be extended until the expiration of the sixteen weeks.

If the delivery is later than the expected date, the employee may extend her pre-natal maternity leave until the date of delivery. In such case, the duration of her post-natal maternity leave would not be reduced. The maternity leave may also be extended in case of delivery of a third child, multiple birth, or medical complications regardless of the number of dependent children.

The employee can request that part of her maternity leave before the expected date of the delivery be taken after the delivery.
This possibility is subject to 2 conditions:

• favorable opinion of the doctor; and

• the part of the maternity leave which can be postponed is limited to 3 weeks maximum.

The total duration of the maternity leave remains unchanged (i.e., 16 weeks for the first and second child and 26 weeks for the third child and subsequent).

An employee (male or female) adopting a child is entitled to ten weeks leave (or more if the adopted child is the third child in the household).

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, right to participate in elections of employee representatives within the company, and right to annual paid vacation.

The employer is strictly prohibited from making a pregnant employee work during a total period of eight weeks prior and after the date of delivery. During this period, the employment contract must necessarily be temporarily suspended, even if against the employee’s will.

At the end of her leave, the employee has the right to return to her employment position. She is also entitled to benefit from a meeting with her employer in order to discuss her professional projects.

During maternity leave, maternity benefits are paid directly to the employee by the social security fund, unless the applicable collective bargaining agreement provides that the employer will maintain salary. In such a case, the employer is required to pay to the employee either the difference between her normal salary, had she worked, and the amount paid by the social security fund as maternity benefits, or to pay her normal salary and obtain reimbursement of the maternity allowance from the social security fund.

The employer is strictly prohibited from making a pregnant employee work during a total period of eight weeks prior and after the date of delivery.

During maternity leave, the employee is protected against dismissal. Accordingly, any dismissal other than for economic cause or gross misconduct is deemed void. In any case, no dismissal can be notified during the actual maternity leave and for 4 weeks thereafter as the employee benefits from a full protection against dismissal during this period.

Paternity leave rights

Any father can benefit from a paternity leave of eleven consecutive days (eighteen days in case of multiple births) which must be taken within four months following the birth. The employee must inform his employer at least one month before the date on which he contemplates to be on leave. During the leave, the employee is paid an allowance by the Social Security Authorities but is not remunerated by the employer.
### Social Security and Retirement Contributions

*(On 1 January 2015)*

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Rate (%)</th>
<th>Threshold (EUR )</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employer</td>
<td>Employee</td>
</tr>
<tr>
<td>1. CSG + CRDS non deductible</td>
<td>2.90</td>
<td>98.25 % of the monthly gross salary (limited to 4 times the social security ceiling, i.e., EUR 152,160) Above the ceiling, 100 % of the monthly gross salary</td>
</tr>
<tr>
<td>2. CSG Deductible</td>
<td>5.10</td>
<td>98.25 % of the monthly gross salary (limited to 4 times the social security ceiling, i.e., EUR 152,160) Above the ceiling, 100 % of the monthly gross salary</td>
</tr>
<tr>
<td>3. Autonomy - Solidarity</td>
<td>0.30</td>
<td>-</td>
</tr>
<tr>
<td>4. Sickness Insurance</td>
<td>12.80</td>
<td>0.75</td>
</tr>
<tr>
<td>Old Age Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• with upper limit</td>
<td>8.50</td>
<td>6.85</td>
</tr>
<tr>
<td>• without upper limit</td>
<td>+ 1.80</td>
<td>+0.30</td>
</tr>
<tr>
<td>Family Allowance</td>
<td>5.25</td>
<td>-</td>
</tr>
<tr>
<td>Accident at Work Insurance</td>
<td>rate depends on company’s activity</td>
<td>-</td>
</tr>
<tr>
<td>5. Additional retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non executive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Bracket 1</td>
<td>4.65</td>
<td>3.10</td>
</tr>
<tr>
<td>• Bracket 2</td>
<td>12.15</td>
<td>8.10</td>
</tr>
<tr>
<td>Executives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Bracket A</td>
<td>4.65</td>
<td>3.10</td>
</tr>
<tr>
<td>• Bracket B</td>
<td>12.75</td>
<td>7.80</td>
</tr>
<tr>
<td>Exceptional and temporary contribution</td>
<td>0.22</td>
<td>0.13</td>
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<tr>
<td>6. Additional Retirement (AGFF)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions</td>
<td>Rate (%)</td>
<td>Threshold (EUR )</td>
</tr>
<tr>
<td>--------------------------------</td>
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<td>-----------------</td>
</tr>
<tr>
<td></td>
<td>Employer</td>
<td>Employee</td>
</tr>
<tr>
<td>Non executive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Bracket 1</td>
<td>1.20</td>
<td>0.80</td>
</tr>
<tr>
<td>• Bracket 2</td>
<td>1.30</td>
<td>0.90</td>
</tr>
<tr>
<td>Executives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Bracket A</td>
<td>1.20</td>
<td>0.80</td>
</tr>
<tr>
<td>• Bracket B</td>
<td>1.30</td>
<td>0.90</td>
</tr>
<tr>
<td>7. Unemployment insurance</td>
<td></td>
<td></td>
</tr>
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<td>2.40</td>
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<tr>
<td>AGS</td>
<td>0.30</td>
<td>0.036</td>
</tr>
<tr>
<td>APEC</td>
<td>0.036</td>
<td>0.024</td>
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<tr>
<td>8. Construction - Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation in construction (companies with at least 20 employees)</td>
<td>0.45</td>
<td>total gross salary</td>
</tr>
<tr>
<td>National funds for housing assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• All companies</td>
<td>0.10</td>
<td></td>
</tr>
<tr>
<td>• Companies with at least 20 employees</td>
<td>0.40</td>
<td>0.50</td>
</tr>
<tr>
<td>9. Apprenticeship contribution</td>
<td>0.68</td>
<td></td>
</tr>
<tr>
<td>10. Professional training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies with at least 20 employees</td>
<td>1.60</td>
<td></td>
</tr>
<tr>
<td>Contributions</td>
<td>Rate (%)</td>
<td>Threshold (EUR )</td>
</tr>
<tr>
<td>---------------</td>
<td>---------</td>
<td>-----------------</td>
</tr>
<tr>
<td></td>
<td>Employer</td>
<td>Employee</td>
</tr>
<tr>
<td>Companies having between 10 and 19 employees</td>
<td>1.05</td>
<td></td>
</tr>
<tr>
<td>Companies with less than 10 employees</td>
<td>0.55</td>
<td></td>
</tr>
<tr>
<td>11. Tax on wages (employers not subject to VAT)</td>
<td>4.25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8.50</td>
<td>EUR 7,704 to EUR 15,385</td>
</tr>
<tr>
<td></td>
<td>13.60</td>
<td>EUR 15,585 to EUR 151,964</td>
</tr>
<tr>
<td></td>
<td>20.00</td>
<td>&gt; EUR 151,964</td>
</tr>
<tr>
<td>13. Transport</td>
<td>variable</td>
<td>-</td>
</tr>
<tr>
<td>14. Other flat rate contribution (Forfait social)</td>
<td>8.00</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>20.00</td>
<td></td>
</tr>
</tbody>
</table>

Notes:

Employer and employee’s social security contributions are payable on both (i) salary inclusive of bonuses and commissions and (ii) those fringe benefits which are treated as remuneration for social security purposes.

Most benefits fall within this category, with the exception of the following:

- reimbursement of business expenses incurred by the employee;
- mandatory and optional profit sharing ("participation" or "intéressement");
- dismissal indemnity and damages payable on termination, provided the damages compensate for a loss suffered by the employee distinct from the mere loss of his/her salary.

Since 1 July 2013, the employer’s contribution on fixed-term employment contracts to unemployment insurance has been increased to:

- 7% for fixed-term employment contracts with a duration of one month or less;
- 5.5% for fixed-term employment contracts with a duration of one to 3 months;
- 4.5% for fixed-term employment contracts in specific industries.
This tax increase shall not apply to seasonal contracts, to contracts concluded to replace an absent employee and temp employment arrangements ("contrats d’intérim").

Confidentiality and Restraints against Competition

Restraints During Employment

French law assumes that there is an implied obligation in all employment contracts that, unless otherwise agreed, an employee will not compete with his/her employer during his/her employment. Indeed, competing with the employer may be construed by the French Courts as a breach of the common law obligation of fidelity owed to the employer, and thus “gross misconduct” from the employee. It is therefore unnecessary to include an express non-competition clause in the contract to prevent the employee from competing against his/her employer during the course of the employment. The duty not to compete must also be observed during the notice period, unless the employee is released by his/her employer from performing work during the notice period.

Restraints After Employment

To prevent an employee from competing with his/her employer after the contract has been terminated, a non-competition clause must be included in the employment contract.

In accordance with French case law, a non-competition clause is only valid under the condition that, in particular, a financial compensation is provided in the employment contract (in the absence of provisions of an applicable collective bargaining agreement in this respect which would automatically apply). French case law does not state the minimum amount required for such financial compensation. However 33% of the employee’s average previous salary seems to be a minimum. The non-competition clause must, also, be limited (i) geographically, (ii) in time, and (iii) in the scope of the products and activities concerned, the principle being that the employee may not be prevented from continuing to work in his/her profession and that the non-competition must correspond to the “legitimate business concern” of the employer. Courts have the authority to modify a non-competition clause or to declare it void if any one of the above conditions is not met.

Remedies

If a non-competition clause is valid, an employee who is in breach of the clause may be ordered to pay damages to his/her former employer. Courts can also order him/her to stop competing with his/her former employer. Thus, the employee may be ordered by a Court decision to terminate his/her contract with his/her subsequent employer.

Where the employment contract and/or the non-competition clause provides for liquidated damages, Courts may order the employee to pay this stipulated amount to the employer, but they may also decide to reduce this amount if it is considered excessive. The new employer may also be found liable (and be ordered to pay damages) if it is established that it knew that the employee was bound by a non-competition clause.

“Garden Leave”

“Garden leave” upon dismissal

The notion of “garden leave” as such does not exist under French law.
Upon termination of employment, the employer may release the employee from working during all or part of the notice period. In such case, the employee must pay him/her an indemnity in lieu of notice equal to the salary (including fringe benefits) that he/she would have received had he/she worked and the employee is free to find employment with another employer.

Unless the employer can prove that the employee’s presence was likely to jeopardize the conduct of the business, the employee could potentially claim that the immediate work release it is an aggravating circumstance to his/her termination (emotional distress resulting from the abrupt departure) and request damages; however, such a risk is remote.

If it is the employee who expressly requests to be released from his/her obligation to work during the notice period, and if the employer agrees to it, then the employer is not required to pay the employee and the employment contract may be terminated upon the employee effectively leaving the company.

“Garden leave” upon resignation

The same rule applies when an employee resigns. The employer may release the employee from working during all or part of the notice period and pay him/her an indemnity in lieu of notice, or alternatively require the employee to work until the end of the notice period.

Confidentiality

There is no express obligation of confidentiality contained in the French Labor code as this obligation is derived from the employee’s general obligation to perform work in good faith and with loyalty.

Moreover, the French Criminal code (Code Pénal) prohibits an employee from disclosing his/her employer’s trade or manufacturing secrets to third parties. However, such restriction and the criminal sanctions applicable are limited to trade and manufacturing secrets and do not encompass any and all information which the employer may think is of a confidential nature.

It is recommended to include a confidentiality clause for any employees having access to confidential information and to strictly define in the employment contract what the employer considers to be confidential.
Business Transfers

The general principles dealing with business transfers are contained in Article L. 1224-1 of the French Labor code. This provision requires the automatic transfer of all employment contracts and benefits in effect at the time of the business transfer to the transferee. A business transfer includes among other possibilities: sale, merger, change of activity, incorporation or sale of part of a business.

If the transfer does not constitute an autonomous business transfer, the employees remain employed by the original employer.

The French Supreme Court (Cour de cassation) has always held that the business transferred (with which the employment is associated) must be sufficiently autonomous to be specifically identifiable. However, because of the recent increase of outsourcing, the Court has now strengthened and limited the definition of an autonomous business.

By several decisions dated 18 July 2000, and involving the Perrier company, the Supreme Court has restricted the application of Article L. 1224-1 of the French Labor code. In this particular case, the company decided to outsource one of its activities which consisted in the manufacturing workshop of wooden pallets to transport the bottles of water. The Works Council contested the transfer of the employees to the new employer and the Supreme Court held that in fact there was no transfer of an economic entity sufficient to constitute an autonomous business.

The workshop transferred was only a part of the company. It had no staff devoted solely to that activity and it did not have a separate accounting system or separate human resources management. Consequently, Article L. 1224-1 of the French Labor code should not have been applied and the outsourcing should not have resulted in the transfer of any employment contracts.

In a subsequent case, the Supreme Court confirmed its strict position with respect to outsourcing. In this case, it was held that the cleaning and restaurant activities managed within a hospital did not constitute autonomous activities.

Prior to these decisions, the position was that such transfers of economic activities would have been considered as a business transfer within the meaning of Article L.1224-1 of the French Labor code.

However, in addition to the objective criteria set forth to determine what constitutes an autonomous activity, Courts stated that the purpose of these decisions was to dissuade employers from outsourcing.

Courts also held that they would more generally refuse employers to proceed in outsourcing scenarios where the employees’ positions could be jeopardized (e.g., cases where the transfer is from a large group with numerous employee benefits to a small organization which does not have such benefits or which could potentially impact their job stability).

In most of the outsourcing cases, the company will be required to either retain the employees who are devoted to the outsourced activity or dismiss them on economic grounds.
In the event of a dismissal, the employer has the obligation to attempt to redeploy the employees within or outside the company and the group. This could include redeployment within the company to which the activity is outsourced. However, in such a case, unlike Article L. 1224-1 of the French Labor code where the employee automatically transfers, the employee is not obliged to accept such a proposal even if it is suitable.

Terms and Conditions of Employment
Since employment contracts are automatically transferred by virtue of law, the employee concerned retains with the new employer the rights he/she acquired under his/her employment contract with the former employer, including seniority.

In France, most collective bargaining agreements negotiated and concluded at national level are made compulsory by Government decree for all companies belonging to a same sector of business. For example, the collective bargaining agreement of the Metallurgy Industry applies to all companies engaged in the metallurgy industry, irrespective of a change of employer as a result of a business transfer.

If, however, as a result of a restructuring (merger, sale, etc.), the transferred business is merged into a larger business which is different from the transferor’s activities, the collective bargaining agreement applicable to the transferee’s main activities will also be applicable to the business being transferred unless the parties negotiate a new collective bargaining agreement. In such a case, Article L. 2261-14 of the French Labor code operates to exclude all the terms and conditions of the previous collective bargaining agreement.

Pursuant to Article L. 2261-14 of the French Labor code, the former collective bargaining agreement will automatically be denounced. Negotiations must be undertaken within a three-month period following the automatic denunciation and the parties then have twelve months to negotiate a new collective bargaining agreement. During that period, the former collective bargaining agreement continues to apply, until it is replaced by the new one. In the event no new collective bargaining agreement is concluded within the twelve-month period mentioned above, the rights individually acquired by an employee pursuant to the former collective bargaining agreement are incorporated in the employment contract and therefore maintained. Although the denunciation appears to be automatic, it is advisable in practice to inform each of the employees concerned of such automatic denunciation in order to avoid any dispute.

When mandatory and optional profit sharing schemes (i.e., accord d’intéressement and accord de participation) cannot be applied due to business transfers, they end between the former employer and employees. If there is no enforceable agreement in the new company, the new employer must initiate negotiations to conclude a new agreement within the six months following the date of transfer.

Consultation
A union does not, in principle, have a special right to be informed or consulted about an impending business transfer. However, Works Councils (and the CHSCT or Employee Delegates under some circumstances) must be informed and consulted on the impending transfer, in particular if the business transfer has consequences regarding terms and conditions of employment. This obligation to inform and consult applies to both the transferor and transferee. The employer’s representative failing to comply with this obligation can be sued by the Works Council (or the employee delegates, as the case may be) before the Criminal Court for having hindered their prerogatives (délit d’entrave). The criminal sanction is 12 months of imprisonment and/or a fine of EUR 3,750. In cases of repeated offences,
these sanctions are increased to up to a two-year imprisonment and/or a fine of up to EUR 7,500. The legal entity can also be fined up to EUR 18,750. Furthermore, the transaction could potentially be suspended/delayed.

**Obligation to inform employees of a contemplated sale (new provisions under the “Hamon Law” dated 31 July 2014)**

The Social and Solidary Economy law (or Hamon law) dated 31 July 2014, has created a new prior employee information procedure in companies which qualify as “small and medium-sized businesses” with less than 250 employees. This procedure applies in particular in case of a contemplated sale of a going concern or of shares, equity, or securities giving access to the majority of the company’s capital.

Now, in addition to the prior consultation of the Works Council in case of a contemplated sale of a business, the seller must also inform individually its employees of the contemplated sale in order to allow them to make an offer to potentially purchase the business.

When the company employs less than 50 employees (or does not have a Works Council), the information of the contemplated sale to the employees must take place at least two months before the date of the envisaged sale. In other cases, employees must be informed in parallel with the Works Council consultation.

Since this new obligation has been severely criticized and in light of many uncertainties in the procedure, this legal obligation will most certainly be modified.

**Termination of Employment**

Under Article L. 1224-1 of the French Labor code, there is no specific rule prohibiting the dismissal of employees in connection with a business transfer. However, if employees are dismissed prior to and in connection with the business transfer, they may claim reinstatement on the grounds that their right to be transferred under Article L. 1224-1 was violated. Alternatively they may obtain damages in lieu of reinstatement. There is no current case law having ordered reinstatement in the framework of a violation of Article L. 1224-1.
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”. It also expressly provides that women at work have the same rights as men and are entitled to equal pay in case of equal work. In addition, France being a member State of the European Union, the provisions of the Treaty of Rome concerning discrimination are applicable. France has also enforced a number of Conventions signed by the International Labor Organization.

A Law dated 27 May 2008, adapting European law in the field of anti-discrimination, defines discrimination as follows:

• **Direct discrimination**: situation in which, based on whether a person belongs to an ethnic group, in reality or by supposition, or based on that person’s ethnic group or race, religion, beliefs, age, handicap, sexual orientation or gender, is treated in a less favorable manner than another person who is, has been or would have been in a comparable situation.

• **Indirect discrimination**: an apparently neutral provision, criteria or practice but which may result, for one of the reasons mentioned above, in a specific disadvantage for persons, as compared to other persons, unless this provision, criteria or practice can be objectively justified by a legitimate purpose and the means to achieve this purpose are necessary and appropriate.

This Law provides that moral and sexual harassment as well as instructing anyone to discriminate another employee are considered as discrimination.

The Law specifies that the following types of discrimination are prohibited:

• discrimination based on whether a person belongs, whether in reality or by assumption, to an ethnic group or race, with respect to social welfare, health, social, education benefits or the benefit of the supply of goods and services;

• discrimination based on gender, on whether a person belongs, whether in reality or by assumption, to an ethnic group or a race, on race, religion or beliefs, handicap, age or sexual orientation, with respect to affiliation with a union or professional organization, including the benefits provided by a union or professional organization, access to employment, employment, professional training and work, including independent work, as well as working conditions and possibilities of promotion;

• discrimination based on maternity, including maternity leave.

However, from a general standpoint, differences in treatment are authorized when they result from essential and determining professional requirements and provided that the objective is legitimate and the requirements are proportionate.

1 The Law specifies that this principle does not prevent measures to be taken in favor of women for maternity purposes.
The French Labor code also provides that differences of treatment based on age do not constitute discrimination when they objectively and reasonably are justified by a legitimate purpose, such as, for example, workers’ health and safety, their occupational integration, their job, their redeployment or their unemployment benefits, and when the means required to achieve such purpose are necessary and appropriate.

French law also specifies that an employee who has testified in good faith concerning discriminatory actions must not be treated unfavorably as a result.

**Sex Discrimination**

**Equal Treatment**

A new legal criteria of discrimination: place of residence was adopted on 22 February 2014. Therefore, Article L. 1132-1 of the French Labor code provides that no candidate may be turned down from a recruitment process, no employee may be punished, dismissed or be subject to a discriminatory measure [directly or indirectly] notably as regards to remuneration, training, relocation, appointment, classification, qualification or advancement because of his/her origin, sex, morals, sexual orientation, age [unless the difference of treatment based on age can be justified by a legitimate purpose], marital status, being part of an ethnic group, a nation or a race, political or religion beliefs, union involvement, external appearance, surname or state of health, handicap, place of residence, pregnancy and maternity.

However, according to article L. 1142-2, paragraph 1, it is allowed to be gender specific in situations set out in article L. 1142-1 of the French Labor code (in particular job offers and refusal to hire) if it corresponds to essential and determining professional requirements and the objective is legitimate and the requirements are proportionate.

The EEC Equal Treatment Directive has been incorporated into the French Labor code, which prohibits employers from:

- mentioning any condition which is directly or indirectly indicative of sex discrimination in any offers of employment;
- refusing to employ a job applicant because of his or her sex or by reason of criteria which are directly or indirectly related to his or her sex;
- assigning, transferring or dismissing someone because of sex discrimination, or not renewing his/her employment on those grounds;
- providing remuneration, training, promotion, classification or grading to an employee on grounds of sex discrimination.

As mentioned above, French law also provides that indirect discrimination constitutes a discrimination as well. Indirect discrimination refers to the adoption of a measure, a criteria or a practice which could disadvantage 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, the categories in France are essentially limited to actors (playing male or female roles) and models.

Violation of the “equal treatment” principle may also entail criminal sanctions in France. It is a criminal offence for any person to discriminate on grounds of sex. This includes sex discrimination which stops a person following his or her chosen career. Employees who consider that they have been discriminated against on grounds of sex can sue their employer in
Civil Courts for damages, or can seek to obtain a Court injunction for their reinstatement or promotion.

However, burden of proof of sex discrimination is shared between the employee and the employer. The employee must first evidence facts which allow to presume a discrimination. Secondly, the employer must demonstrate that the measures taken were justified and cannot be considered as discrimination.

However, in light of the constitutional principle of “presumption of innocence”, these rules do not apply before the criminal courts.

Where a French Civil Court finds the sex discrimination claim well-founded, it will declare the discriminatory act void. Thus, in case of a refusal of promotion the Court may order a salary adjustment, or in cases of dismissal it may order the reinstatement of the employee together with damages for lost wages in the interim.

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 three years and fined a maximum of EUR 45,000 per offence.

Any dismissal based on sex discrimination is deemed void and cannot therefore be based on real or serious cause. Thus, the dismissed employee can be immediately reinstated. 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’ gross 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.

**Equal Pay**

In France, the “equal pay” principle is set down in the French Labor code. Under French law, two jobs are considered to be equal and should therefore entail equal pay if the following two conditions are satisfied:

- Objective conditions which require the same or similar qualifications as established by title, diploma or professional background;
- Subjective conditions, where the two jobs require the same or similar knowledge and capabilities resulting from previous experience, comparable responsibilities and duties, and comparable level of stress and weariness.

Employers can defend equal pay claims if they can demonstrate that the reason why a man and a woman (performing equivalent jobs) are paid different salaries is due to a reason not related to sex (e.g., age or length of service). Such a reason must be provided by the employer. In addition, employers can defeat equal pay claims if a job evaluation scheme demonstrates that the comparison of two jobs compared are of different values, provided such schemes are based on either working conditions or subjective characteristics (e.g., skills or competence). The law does not, however, specify how such job evaluation schemes must be carried out except to the extent that they must be analytical and not directly or indirectly discriminatory on grounds of sex.

As a matter of routine, employers are required by the French Labor code to display on notice boards, in any factory or office, all of its mandatory provisions relating to equal pay. In addition, as part of their normal functions, French Labor Inspectors can check that the “equal pay” principle is being enforced and complied with. They have the authority to investigate alleged infringements of the “equal pay” principle and to require an
employer to comply with it. If an employer fails to do so, the matter can be referred to the Courts that have full authority to ascertain whether the two jobs in question are equivalent and whether the “equal pay” principle has been complied with or not.

When holding that the “equal pay” principle has not been complied with by an employer, the Courts have the power to order the employer to pay the salary which the employee should have received in the past (up to the 5 previous years), and to adjust the plaintiff’s salary for the future.

Moreover, the criminal sanction is a fine of up to EUR 3,750 and a one-year imprisonment. Besides the employer can also be condemned to a fine up to EUR 1,500 which can reach up to EUR 3,000 in case of repeated offences within one year. Nevertheless, the sanction can be postponed with the obligation to draw up, and if necessary to take within a definite time limit, suitable measures to restore equal treatment and pay in the company.

Claims under Article 119 of the Treaty of Rome are admitted directly before the French Courts, without the need for the matter to be referred to the European Court of Justice. From a practical standpoint, “equal pay” has not been a particularly “active” issue in France, despite the fact that annually the Works Council must be informed by the employer of the equality between men and women on the work site.

Race Discrimination

The preamble of the Constitution dated 27 October 1946, incorporated in the 1958 Constitution, states that: “every human being, without distinction of race, religion or belief enjoys inalienable and sacred rights. No-one may suffer in his or her work or employment because of his or her origins, opinions or beliefs”.

This principle has been incorporated into the Criminal code, which prohibits any discrimination by an employer against a prospective employee on grounds of race or religion. Depending on the nature of the breach, discrimination may be sanctioned by a maximum fine of EUR 45,000 and/or three (3) years imprisonment. The company itself can be liable for a maximum fine of EUR 225,000. The courts can also order the employer to publish the decision.

The French Labor code prohibits racial discrimination in any internal regulations of a company and as well as any regulation that incites racial discrimination.

Furthermore, Article L. 1132-1 of the French Labor code expressly prohibits dismissals or other sanctions by the employer based on grounds of race, origins, political or religious beliefs. Any such dismissal or sanction is void. The French Labor code also protects immigrant employees in collective bargaining agreements. It prohibits racial discrimination in collective bargaining agreements in the following areas:

- salary;
- hygiene, safety, housing;
- Trade Union membership and representation within the business;
- termination practices;
- unemployment.

Both the Labor and Criminal courts have the power to award damages to an employee who has suffered racial discrimination. The damages awarded are calculated with reference to the harm actually suffered.

Finally, any written employment contract signed in France must be drafted in French. However, if an employee is a foreigner, he/she can ask for his/her employment contract to be translated into his/her mother tongue language.
Harassment

Sexual Harassment

In France, sexual harassment in the workplace is governed directly by a law dated 2 November 1992 and by the French Criminal and French Labor codes. A law dated 17 January 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, no candidate for an employment position, for a traineeship or for a company training scheme may be sanctioned, dismissed, or either directly or indirectly discriminated against, in particular with respect to remuneration, training, redeployment, assignment, qualifications, classification, professional promotion, transfer or renewal of the employment contract, for having suffered or refused to suffer from sexual harassment.

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

The labor code now clearly specifies that the employer’s head management is responsible for taking all measures necessary to prevent harassment. In particular, the employer’s internal regulations must reiterate the rules against sexual harassment.

A law dated 6 August 2012, has redefined sexual harassment and provides for greater criminal sanctions as follows:

No employee should be subjected to acts of: (i) Sexual harassment as a result of repeated sexual comments or acts that either undermine his/her dignity because of their degrading or humiliating nature, or that create an intimidating hostile or offensive situation; (ii) any form of serious pressure, even non-repeated, carried out with the intention of obtaining a sexual favor, whether this be for the author of this behavior or for someone else.

The employee who considers that he/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.

Finally, union organizations may bring court action on behalf of any employee provided such employee has given written permission.

The Law dated 27 May 2008, provides that sexual harassment should be regarded as discrimination. Indeed, discrimination is broadly defined as any behavior corresponding to a situation 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.

Criminal and Labor codes

On the basis of article 222-33 of the Criminal code, any person may be punished by a fine of up to EUR 30,000 and an imprisonment of a maximum of two years, if he/she harasses an employee or a prospective employee in order to obtain sexual favors. This is increased to EUR 45,000 and/or imprisonment of a maximum of three years in case of aggravating circumstances.
Article L. 1155-2 of the French 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 a fine of a maximum of EUR 3,750. The Courts can also order that the decision be published in newspapers.

Sexual harassment may also be subject to criminal sanctions under article 333 of the Criminal code (indecent assault) or article R. 38.1 (assault and battery), as well as articles relating to sex, race or religious discrimination.

Article L. 1153-1 of the French Labor code states that employees who are held responsible for sexual harassment may be subject to disciplinary sanctions.

Moreover, French Labor courts have consistently held that sexual harassment, when proven, constitutes a gross misconduct, justifying the immediate dismissal of the employee without prior notice.

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

Articles 225-1 to 225-4 of the Criminal code must be posted in the employer’s premises.

Moral harassment

Pursuant to Article L. 1152-1 of the French Labor code, no employee can be subjected to repeated acts of moral harassment, the aim or effect of which is a deterioration in the employee’s employment conditions such that (i) his or her rights and dignity might be undermined; (ii) his or her physical or mental health might be affected; or (iii) his or her professional future could be jeopardized.

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 have authority to cancel the dismissal and order the employee’s reinstatement. Moreover, criminal sanctions may potentially be imposed on the offender (maximum EUR 30,000 fine and/or imprisonment of a maximum of two (2) years). The company itself can be liable for a maximum fine of EUR 150,000.

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

The Law dated 27 May 2008, provides that moral harassment should be regarded as a discrimination.
Employee Representatives

The Works Council

Definition and Purpose
The Works Council is an entity representing the employees in their relationship with their employer. It is mandatory to hold Works Council elections in companies having 50 or more employees. The Works Council is composed of employees elected every four years (a collective bargaining agreement or an in-house agreement may define a different length, between two and four years) directly by the workforce. The electorate is divided into two categories:

- Blue collar workers and clerks;
- Professionally skilled, intermediate supervisors and executive employees.

However, if the number of executive employees exceeds 25, the second category is divided in two bodies of voters, the professionally skilled and intermediate supervisors on the one hand (techniciens et agents de maîtrise) and the engineers/executives on the other hand.

Works Council meetings are, in principle, held at least once a month and are presided over by the employer who is an ex officio member of the committee. The agenda of the monthly meeting is decided by mutual agreement between the employer and the Works Council’s secretary, who is responsible for drafting the minutes.

Establishment Required to Create a Works Council
All employers employing 50 or more employees are legally required to organize Works Council elections (elections must be held every four years). The company is treated as having 50 employees or more if it has employed 50 or more employees in any twelve months (whether consecutive or not) in the past three years.

The employer must advise the Trade Unions which are representative within the company to produce a list of candidates.

Following the elections, Trade Unions that are recognized representative are those fulfilling the criteria provided by the Law dated 20 August 2008, and, in particular those that have obtained at least 10% of valid votes.

The employer must organize mid-term elections if vacancies of council members exceed half the total number of representatives, or if one of the two categories is no longer represented.

Composition of the Works Council
The size of the Works Council depends on the number of employees employed in the company:

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<th>Employees From</th>
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<th>Members</th>
<th>Deputies</th>
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<tbody>
<tr>
<td>50</td>
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<tr>
<td>1,000</td>
<td>1,999</td>
<td>8</td>
<td>8</td>
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</table>
and an extra member (and an extra deputy) for every additional 1,000 employees (with a maximum of fifteen members and fifteen deputies for companies employing 10,000 employees or more).

Rights and Functions of the Works Council

Rights

Members of the Works Council are entitled to twenty hours per month of paid time off to perform their functions. They are also entitled to circulate freely on the company premises, and to be given office space in which to congregate and hold meetings. Unless otherwise agreed with the Works Council, this office space must be used exclusively by the Works Council and should include the usual office equipment and facilities.

Where a company has 50 or more employees, but there is no Works Council, the Employee Delegates have the same economic functions as the Works Council.

In addition to their contribution to the social and cultural activities, employers pay 0.2% of the gross salaries paid as a contribution to the operating expenses of the Works Council.

Functions

- The Works Council’s functions fall into three separate categories:
- Welfare of staff [direct management] – e.g., in-house cafeteria, sports, entertainment, vacation benefits, etc;
- Problems relating to staff [advisory capacity] – e.g., collective dismissal for economic reasons, dismissal of protected employees, etc.;
- Business policy and decisions [advisory capacity] – e.g., economic and financial matters, employment, working conditions, professional training, research and development policy, equal rights between men and women.

Economic Functions

In each company having a Board of Directors, two to four members of the Works Council attend Board meetings and are entitled to receive the same documents as the Board members.

In companies having 1,000 or more employees, an “economic committee” must be appointed from within the Works Council. Their members [five maximum] are entitled to an additional forty hours’ paid time off work per year.

The Works Council must be provided annually with specified detailed information and accompanying documents (financial, economic, employment, wages, etc.). The Works Council must be consulted prior to any merger, transfer, winding up of the company, or any modification of the legal and/or economic status of the company or its subsidiaries. It must also be consulted prior to any introduction of new technology or the implementation of any policy or decision likely to affect the employment situation.

In all companies, the Works Council may request the assistance of a CA at the company’s expense to examine the financial documents provided by the employer under the following circumstances:
- the annual audit;
- a collective economic dismissal;
- a review of the financial documents prepared to prevent company’s difficulties (bi-annually);
- the preparation of a report regarding the economic situation of the company (once a year), when the Works Council is informed of an adverse financial or economic situation.
The Works Council’s nominated CA must have access to the same documents as the company’s statutory auditor. In all corporations (SA) and limited liability companies (SARL), the Works Council may apply to the Court for an order for a judicial management audit carried out by a Court-appointed auditor.

When the Works Council is informed of facts likely to have an adverse economic or financial impact on the company, it may request the employer to give an explanation. If the information is deemed insufficient or if the adverse impact is confirmed, the Works Council is authorized to report same to the statutory auditor, the company’s Board of Directors, or to the shareholders (when the company does not have a Board).

The Works Council may request from the Commercial Court, in summary proceedings, to revoke the statutory auditor.

When the company files a petition in bankruptcy, the Works Council is kept regularly informed and consulted about the development of the procedure. In addition, the Works Council may inform the President of the Commercial Court and/or the Public Prosecutor that the company has discontinued its payments.

Each member of the economic committee is entitled to a special business training (maximum duration 5 days).

New rules on the consultation of the Works Council

The law for a More Secure Employment Market dated June 14, 2013, and the Decree dated December 27, 2013, have set specific timeframes for the consultation process with Works Councils. Indeed, the consultation process with Works Councils on matters other than collective dismissals are, for the first time, subject to predefined time limits, (i) which are defined by agreements entered between the employer and the majority of the Works Council (must be at least equal to 15 days) or, (ii) in the absence of any agreement, the Works Council has one month to render its opinion.

The timeframe starts from the communication by the employer of information provided by the Labor code for the consultation/information of the Works Council.

Longer time periods apply under certain circumstances, including:
- Intervention of a chartered accountant (CA) (2 months),
- Consultation of the Sanitation, Safety and Working Conditions Committee (CHSCT) (3 months),
- Consultation of a coordination body of the CHSCTs (4 months).

In the absence of an opinion being rendered within the above-mentioned applicable time frames, the Works Council will be deemed to have rendered a negative opinion and the employer may implement its project.

Economic and Social Database (article L. 2323-7-2 of the French Labor code)

The law for a More Secure Employment Market dated 14 June 2013, and the Decree dated 27 December 2013, set an obligation for companies to create a single economic and social database.

Companies concerned: companies of 50 employees or more.

Recipients: the data will be accessible on a permanent basis to employee representatives - members of the Works Council, (or in the absence of a Works Council, Employees Delegates), members of the central Works Council, members of the CHSCT, or Trade Union representatives.
All these employee representatives have a duty of discretion regarding the information presented by the employer as confidential.

The database will include information concerning the main economic and labor issues facing the company over the last two years and in the current year, as well as prospects for the upcoming three years. The content of this database is very broad and covers the following 8 items:

- investments regarding employment, assets (both tangible and intangible), and environment,
- equity and debt,
- all elements of compensation of employees and managers,
- social and cultural activities,
- payments made to investors/lunders,
- financial aid benefitting the company, including public subsidies and tax credits,
- outsourcing, recourse to subcontractors,
- groupwide financial and commercial transfer.

This database will need to be regularly updated.

Consequences: the database corresponds to communication of information transmitted on a regular basis (quarterly and annual information, accounting and financial documents...).

The database must be in place before June 1st, 2014, for companies with more than 300 employees and before June 1st, 2015, for companies with less than 300 employees.

Yearly consultation with the Works Council on the Company’s strategy

Each year, the Works Council must be consulted on the strategic orientations of the business (as defined by the body in charge of the company’s management or its control) and the consequences of such orientations on operations, the evolution of jobs and skills, the work organization, and the use of temporary employees, contractors, and interns.

In connection with the consultation, the Works Council may be assisted by a CA whose costs are borne in part by the employer (80%) and in part by the Works Council (20%). With respect to the information, the Works Council renders an opinion on the strategy and has the right to propose alternative orientations. The Works Council’s opinion is transmitted to the company’s board of directors which must respond.

Employer’s attempt to hinder the Functioning of Works Councils

Any act likely to hinder the creation and/or functioning of the Works Council is subject to penalties consisting of a fine up to EUR 3,750 fine and/or a maximum of 1 year of imprisonment which can increase up to twice in case of repeated offences.

The Sanitation, Safety, and Working Conditions Committee (CHSCT)

In each company employing 50 employees or more, the employer must create a Sanitation, Safety and Working Conditions Committee (CHSCT).

This committee is expected to contribute to the protection of the employees’ health and security and to the improvement of working conditions. The committee must be consulted in all cases of major changes regarding Sanitation, Safety and Working conditions in the company. Since recent case law, collective dismissals should be considered as a situation which impacts employees’ health and the working conditions requiring the consultation of the CHSCT.
The members are allowed the following amounts of time off work to perform their duties (excluding time spent meeting with the employer):

<table>
<thead>
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<th>Employees</th>
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<tr>
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<td>100 to 299 employees</td>
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<td>500 to 1,499 employees</td>
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<td>1,500+ employees</td>
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The Group Committee

A Group Committee must be created within each group composed of a parent company and its subsidiaries and all affiliated entities, having their registered office in France. However, this is subject to the condition that the parent company controls directly or indirectly 50% or more of the subsidiary’s shares. Upon request of their Works Council, companies of which parent company is located in France and controls 10% of the shares may be included in the group, provided there is other evidence of control (such as joint policy, same Board members, cooperation agreements, etc.).

Definition and Purpose

The Group Committee is not a substitute for the Works Council or European Works Council, although the European Works Council may replace the Group Committee. Its purpose is to provide the representatives of each company with more comprehensive information concerning the activity of the group of companies as a whole. The Group Committee meets at least annually and must be informed about the group’s financial and economic situation, the employment situation and progress in the group and the measures contemplated, if any, that may affect the group’s personnel and/or the employees of each company within the group.

Members of the Group Committee

The Group Committee includes employer’s representatives and employee representatives. The employer is represented by the manager of the parent company assisted by two other persons selected by him, while the employee representatives (maximum 30, with no more than 2 representatives from each Works Council) are appointed by the Trade Unions amongst the members of the various Works Councils.

Failure to Create a Group Committee

Failure to set up a Group Committee, as well as any act or omission likely to hinder its functioning is subject to the same penalties applicable in relation to Works Council as described hereabove.

The European Works Council (EWC)

The EWC Directive has been transposed into French Labor code on 12 November 1996.

Any company or group of companies with a «European dimension» must create an EWC where the company/group employs at least 1,000 employees and where at least two establishments/companies in the group employ a minimum of 150 employees in two different EU member states.
The competence of the EWC shall be limited to information and consultation on matters concerning the community scale undertaking or group. The definition of consultation is “the organization of an exchange of views and the establishment of a dialogue.” The role of the EWC is not insignificant: in 1997, the Versailles Court of Appeal held against Renault that the closing-down of a business unit that may make 3,000 positions redundant was one of those “exceptional circumstances greatly affecting the employees’ interests to a considerable extent”, where the EWC or equivalent must be consulted.

Further to this case, the French Court (TGI) on 9 April 2001 and the European Court of Justice on 29 March 2001 both issued decisions concerning the nature of the documents that the EWC must be provided with and the definition of the group’s perimeter.

The Employee Delegates

Definition and Purpose

Employee Delegates are elected, every four years (a collective bargaining agreement or an in-house agreement may define a different length, between two and four years), by employees following the same rules as those applicable to the election of the Works Council. Where a company has 11 or more employees, the employer is required to initiate the election. It must ask the representative Trade Unions (which have an exclusive right to present candidates for the first ballot) to propose candidates.

Where more than 25 persons are employed, employees need not be divided in two separate categories.

The employee delegates’ duties are:

• to assist the employees in submitting their grievances to the employer;
• to control the proper application of the provisions of the Labor code;
• in companies having 50 or more employees, to perform the duties of the Sanitation, Safety and Working Conditions Committee, and of the Works Council, where none exist. In such cases, the representatives are entitled to twenty additional hours per month (Works Council) and the number of hours allowed to the members of the Sanitation, Safety and Working Conditions Committee.

In companies with more than 49 and no more than 200 employees, the employer may choose to set up a sole body of employee representatives (délégation unique du personnel), whose duties and rights are those of the Employee Delegates on the one hand, and those of the Works Council on the other hand. The representatives thus appointed are elected along the rules applicable to Employee Delegates and are entitled to twenty hours per month to perform their duties.

Employee Delegates Elections

All companies employing 11 or more persons are required to hold elections for Employee Delegates every four years. The number of employees in a company is calculated according to the same method as for Works Councils. The number of delegates is proportional to the size of the work force.

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</tbody>
</table>

From 1,000 employees and above: one representative and one deputy for every 250 additional employees.

**Employer’s Obligations**

An employer’s main obligations in respect of Employee Delegates include the following:

- to organize the elections;
- to organize monthly meetings with the representatives;
- to allow the representatives certain time off (up to fifteen hours a month) to carry out their functions;
- to allow employees’ representatives to circulate freely within the company.

**Trade Union Delegates**

**Definition and Purpose**

Trade Union delegates in companies are expected to carry out the activity of a Trade Union (i.e., to represent the professional interests of its members). The Trade Unions which can prove that they are representative within the company may request the appointment of delegates in any and all companies having 50 employees or more.

The employer does not have to initiate the appointment of Trade Union delegates, but may only request for the cancellation of the appointment in Court, if the designation is deemed fraudulent or if the required conditions for a valid appointment are not met.

**Number of Delegates**

<table>
<thead>
<tr>
<th>Employees From</th>
<th>To</th>
<th>Delegates per union</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>999</td>
<td>1</td>
</tr>
<tr>
<td>1,000</td>
<td>1,999</td>
<td>2</td>
</tr>
<tr>
<td>2,000</td>
<td>3,999</td>
<td>3</td>
</tr>
<tr>
<td>4,000</td>
<td>9,999</td>
<td>4</td>
</tr>
<tr>
<td>10,000 over</td>
<td></td>
<td>5</td>
</tr>
</tbody>
</table>

**Trade Union Delegates’ Rights**

Trade Union delegates are allowed 10 hours off per month in companies having 50 to 150 employees, 15 hours in companies having 151 to 500 employees, and 20 hours in companies having over 500 employees.

Appropriate premises and facilities must be made available to them (e.g.,
they must be allowed to put up information or notes on a special notice board, and be able to hand out information sheets prior to or after work). They are also entitled to circulate freely within the company.

Where a company has one or several union delegates, it must annually discuss with them the wage raise, the working conditions and the duration of working-time. However, there is no legal requirement to reach an agreement with them.

The Trade Union delegates are authorized to attend all Works Council meetings.

The Law dated 20 August 2008, allows Trade Unions which are not representative within the company to constitute a union section (section syndicale) provided that they meet the following cumulative conditions:

• existence for at least two years;
• respect of republican values;
• independence; and
• professional and geographical scope which includes the company.

In such a case, the union section may request the appointment of a union section representative (représentant de la section syndicale) who has the same prerogatives as the Trade Union delegates except that he/she cannot negotiate and conclude in-house agreements.

Special Protection of Employee Representatives

Any employee representative (whether member or alternate to the Works Council, to the Sanitation Safety and Working Conditions Committee, Trade Union delegate or employee delegate) is granted by law a special status, which is very protective of their right to employment. The employer may only terminate their employment subject to the prior written authorization by the Labor Inspector and, for certain of the above representatives, after having consulted the Works Council.
Termination of the Employment Contract

In accordance with a collective bargaining agreement or if the employment contract provides otherwise, an employment contract can be terminated during the probationary period (i.e., période d’essai) without any restrictions (i.e., without cause or indemnities) other than compliance with a short notice period.

After the probationary period, termination of an indefinite term employment contract is subject to specific rules.

The employer and the employee may agree to terminate the employment contract by “mutual agreement”. However, such termination is subject to complying with a specific procedure and to the payment of a specific indemnity.

The employer may terminate unilaterally an indefinite term employment contract at any time, but it must (i) prove a real and serious cause (cause réelle et sérieuse) for the termination of the employment contract and (ii) comply with the applicable dismissal procedure.

There are two basic types of real and serious reasons for dismissals: the employee’s poor performance or his/her negligence, and job elimination/modification resulting from economic reasons. Such “economic” dismissals can be individual or collective, depending on whether one or more positions are eliminated or significantly modified. An employer will also be considered as having dismissed an employee when the latter refuses to accept modifications that the employer wishes to implement in the employment contract or the main terms and conditions of employment (i.e., constructive dismissal).

The employer must also comply with a specific dismissal procedure which varies depending on the type of dismissal (economic or personal/professional) and on the status of the employee (regular employee, executive employee, employee representative).

If the dismissal is not justified, the employee is entitled either to damages equal to the loss he/she has suffered or, if the company employs eleven persons or more and the employee has two years of seniority or more with the company, to minimum damages equal to at least six months of gross salary.

If the employer does not comply with the appropriate termination procedure, it may be ordered to pay one month of salary as damages. This indemnity cannot be cumulated with the six months’ damages referred to above.

Early termination of a fixed-term contract

After the probationary period, a fixed-term contract can only be terminated in the following situations:

- employee finds indefinite-term employment;
- agreement between the parties to the contract;
- gross misconduct (faute grave) of one party;
- “force majeure”.
Apart from these four cases, the employment contract cannot be terminated before its term and the employer doing so is exposed to the payment of a compensation equivalent to the salaries that the employee would have received during the remaining of his/her contract. The dismissal procedure is applicable in case of an early termination for gross misconduct.

Upon the normal expiration of a fixed-term contract, the employee is entitled to an “end of contract” indemnity equal to 10% of the total gross salary received during the entire contract. Same indemnity is due in case of early termination not justified by a gross misconduct.

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 provides counterparts for the employees concerned, such as, in particular, privileged access to professional training.

**Termination by mutual or amicable termination agreement (rupture conventionnelle)**

The Law dated 25 June 2008, provides that an indefinite term employment contract can be terminated by mutual agreement and defines a specific procedure to be complied with for such termination.

The employer and the employee can agree to such termination after one or several meetings, during which both parties may be assisted under certain conditions.

The parties must execute an amicable termination agreement which must define the terms and conditions of the termination including necessarily:

- the amount of the specific termination indemnity, which cannot be less than the statutory legal dismissal indemnity; and
- the date of termination of the employment relationship, which cannot be earlier than the day following the ratification by the Labor Authorities.

The specific termination indemnity is subject to a specific tax and social security treatment.

As from the date of signature of the amicable termination agreement, each party has 15 calendar days to withdraw its consent. After this time period, the amicable termination agreement must be ratified by the French Labor authorities. The Labor authorities have 15 business days (as of receipt of the request) to ratify the agreement. In the absence of response within this 15-day timeframe, ratification is deemed obtained and the employment is terminated. The Labor authorities may however refuse to ratify the agreement. In such a case, the related employment contract is not terminated and remains in force.

Any dispute concerning the agreement, the ratification or the refusal to ratify may be brought before the Labor courts only, during a 12-month period after the ratification or refusal to ratify.

In addition, and contrary to the situation where the employee resigns, the employee is in principle entitled to receive unemployment benefits following the termination of the contract.

This agreement is not however a release of claims and should not be construed as same.

**Dismissal for Personal Reasons**

By statute, all dismissals must be justified by a “real and serious cause” (cause réelle et sérieuse). The French Labor code does not provide for a definition of “real and serious cause”. Indeed, the content and scope of this notion has been progressively defined by French case law. In accordance with case law, “real” means that the cause must be exact, accurate and objective, and “serious” means that it must be of a certain significance, making it impossible for the employer to continue the employment relationship.
The Labor courts have considered that dismissals were justified by a "real and serious cause" in the following situations: professional inability, repeated errors, refusal to follow instructions, violation of non-competition and confidentiality clauses, physical inability, extended or repeated illness. Obviously each reason for dismissal must be evaluated on a case by case basis.

**Due Process Procedure**

The due process procedure is separate from the special procedure applicable to the dismissal of an employee representative and the special requirements governing dismissals for economic reasons.

**Notice of meeting**

The employer must give the employee notice of a meeting at least 5 working days before the meeting by a hand-delivered letter against a signed discharge or registered letter with return receipt requested indicating the purpose, date, time and place of the meeting. The letter must inform the employee of his/her right to be assisted by a person of his/her choice (who must be an employee of the company), or by a third party selected from a list prepared by the local State Authorities (if the company does not have employee representatives), and indicate where such list is available.

**Meeting with the employee**

During the meeting, the employer must indicate the reasons justifying the contemplated dismissal and listen to the employee’s explanation. The meeting must take place during working hours.

**Dismissal letter**

If the employer decides to dismiss an employee, the latter must be notified of that decision by registered letter with return receipt requested failing which the employee could contest and the courts could consider the dismissal unfair and order the payment of damages to the employee. The employer must indicate the justification for the dismissal in this letter.

If the employer decides to release the employee from working all or part of his/her notice period, it must mention this in writing, preferably in the dismissal letter. The letter cannot be sent before the expiration of two working days after the meeting with the employee and no later than one month for disciplinary dismissals only.

**Written justification of the dismissal**

The employer must state in the dismissal letter the real and substantive reasons for the dismissal. Failure to do so raises an irreversible presumption of lack of real and serious cause.

**Notice Period**

Under French Law, either party can serve notice of termination of the employment contract. The notice period is a period of time during which the employment contract remains in force, and both parties continue to perform their obligations under the contract. However, the employer may waive the employee’s obligation to work; if so a payment is made to the employee in lieu of notice.
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 (this varies depending on the collective bargaining agreement applicable to the company).

The notice period begins to run on the day of presentation of the dismissal letter. The minimum notice period may be governed either by the French Labor code, the applicable collective bargaining agreement (if any), internal regulations, custom and usage, or the employment contract itself.

The French Labor code lays down the following minimum notice periods:

- for employees with less than six months service, the applicable collective bargaining agreements will apply;
- for employees with six months to two years service, notice is at least one month (subject to any legal, collective bargaining or contractual provision more favorable to the employee);
- for employees with two years of service or more, notice is at least two months (subject to any longer notice period specified in any legal, collective bargaining or contractual provision);
- executive employees (cadres) are generally entitled to a minimum three-month notice, irrespective of the length of service.

Compensation

Even where a dismissal meets all the substantive and procedural requirements, the dismissed employee is entitled to the following mandatory payments:

- outstanding holiday pay (indemnité de congés-payés) (i.e., where the employee has accrued holiday pay outstanding);
- notice period indemnity (indemnité compensatrice de préavis) (i.e., where the employer decides that the employee does not have to serve his/her notice);
- dismissal indemnity (indemnité de licenciement), which is guaranteed by law in the absence of other more favorable provisions, such as those resulting from an applicable collective agreement.

The statutory minimum dismissal indemnity, applicable to both dismissal for personal reasons and dismissal for economic reasons, is based on the employee’s seniority as follows:

- 1/5th of the average monthly remuneration per year of service for employees with at least one year of service;
- additional compensation of 2/15th of the average monthly remuneration per year of service after ten years of service.

However, where the dismissal is justified by the employee’s gross misconduct (faute grave), neither the notice period indemnity nor the dismissal indemnity is payable. In case of intentional gross misconduct (faute lourde), no indemnity (including the vacation indemnity for the current year) is owed.

An unlawful dismissal entitles the employee to the following additional indemnities:

- If the dismissal is not found by a court to be justified by a valid cause, the employee is entitled to additional damages to compensate for the loss he/she has suffered because of his/her unfair 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 salary.
- If the employer has not followed the applicable termination procedure, it may be ordered by 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).
Residual Obligations

Irrespective of the reasons for the dismissal, the employer must also give the employee a work certificate (certificat de travail), payslips corresponding to the notice period, a specific document for the Unemployment Authorities (attestation Pôle Emploi), and a final statement of accounts (reçu pour solde de tout compte) which may be challenged by the employee during six months only.

Dismissal for Economic Reasons

A number of changes regarding redundancies in France have occurred following the law for a More Secure Employment Market dated 14 June 2013.

A dismissal can only be characterized as “economic” if it is for a reason unrelated to the employee, and resulting from a reduction or change in the work force or from a substantial modification of the employment contract, due to, inter alia, economic difficulties or technical changes (Article L. 1233-3 of the French Labor code). The labor courts currently consider another acceptable reason for an economic dismissal is a restructuring to protect the company or the group’s competitiveness or a closure of the company. As with any economic dismissal carried out under French law, the dismissals must therefore result from the elimination of the positions held by the employees dismissed in the framework of, in particular, a reorganization decided for valid economic reasons.

Furthermore, employers facing such circumstances must seek any alternative job opportunities within the company and the worldwide group to which the company belongs, and offer professional training to the employees concerned.

Three types of economic dismissal must be distinguished:

• an individual dismissal
• a collective dismissal concerning two to nine employees,
• 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 will vary depending on the numbers of economic dismissals contemplated.

Individual Dismissal for Economic Reasons

The steps for dismissing a single employee for economic reasons are the same as for a dismissal for personal reasons, subject to some specific additional requirements, as follows:

• establishing criteria for selecting who will be dismissed after prior consultation with the employee representatives. The employer must set up a list indicating the proposed objective criteria that will be used for determining the order in which the employees will be dismissed, such as seniority with the company, family situation, age, etc.;

• notice of meeting sent or hand-delivered to the employee, under the same conditions as for a dismissal for personal reasons;

• during the meeting, the employer must explain the reasons for the contemplated dismissal and must propose to the employee:
  — within companies with less than 1,000 employees, the Professional Employability Agreement (Contrat de Sécurisation Professionnelle) provides psychological assistance, professional counseling and coaching, professional skills evaluation, and training, in order to favor the redeployment of the employee after dismissal. Such measures are put in place by the Unemployment Authorities. The employee benefits from a 21-day period as of the receipt of the information note to accept or refuse the Professional Employability Agreement. If
the employee accepts to benefit from the Professional Employability Agreement, the employment contract will be considered terminated by mutual agreement between the parties, as from the expiration date of the 21-day period. However, the employee will be entitled to benefit from a dismissal indemnity, calculated according to the collective bargaining agreement applicable within the company.

— within companies which belong to a group employing at least 1,000 employees in the European Union and at least 150 employees in each of two EU member states, a Redeployment Leave (Congé de Reclassement). Such a Redeployment Leave is of a minimum duration of four months and a maximum duration of twelve months and is financed in part by the employer. The purpose of such a leave is to allow the employee to benefit from training measures and a job search program. The Redeployment Leave takes mainly place during the notice period that the employee is exempted from performing.

— the employer must also provide impacted employees with a redeployment questionnaire in order to obtain information concerning their redeployment requirements. Employees must return the redeployment questionnaire within 6 business days.

— in addition, a note regarding the economic reasons justifying the contemplated dismissal shall be remitted to each employee.

• notification of the dismissal to the employee after a minimum waiting period of seven working days (fifteen working days for executive employees). The dismissal letter must (i) explain with sufficient details the economic reasons for the dismissal and the impact on the employee’s position or employment contract, (ii) refer to the Professional Employability Agreement/Redeployment Leave and remind the employee of the remaining period of time for him/her to opt for such retraining program, and (iii) state that the employee has a right of first refusal for positions which become available within the company for one year after his/her 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;

• notification of the dismissal to the “Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l’Emploi” (Local Labor Authority “DIRECCETE”) within eight days from sending the dismissal letter.

Dismissal of two to nine employees for economic reasons during a thirty-day period

A High Court decision dated 3 February 2011, ruled that the CHSCT should also be consulted when a collective dismissal is contemplated as such project will necessarily impacts the employees’ health and working conditions.

The CHSCT should be consulted prior to the Works Council and could request the appointment of an expert.

The procedural steps for such collective dismissal are as follows:

• establishing criteria for selecting who will be dismissed. The employer must set up a list indicating the proposed objective criteria that will be used for determining the order in which the employees will be dismissed, such as seniority with the company, family situation, age, etc.;

• written notification to the employee representatives (Works Council or, in the absence of such council, employee delegates), with all supporting documents explaining the reasons for the collective dismissal and supplying details for such dismissal (economic note);

• at least three days later, meeting with the employee representatives;

• individual notices of pre-dismissal meeting (cf. procedure for an individual dismissal above);
• individual pre-dismissal meeting with each employee to be dismissed. The eligible employees must be supplied with the information document on the Professional Employability Agreement ("CSP") and/or Redeployment Leave as well as the note regarding the economic reasons justifying the contemplated dismissal and the redeployment questionnaire (as mentioned above);
• at least seven working days after the meeting, dismissal letters drafted as indicated above must be sent to each employee by registered mail with return receipt requested;
• notification to the DIRECCTE within eight days of the sending of the dismissal letters;
• the employee may request the employer to provide written explanation on the criteria used for selection of the employees dismissed. The request must be made by registered letter with return receipt requested or by hand delivered letter in exchange for receipt within ten days of the employee leaving the company. The employer’s answer must also be sent by registered letter with return receipt requested or by hand delivered letter in exchange for receipt within ten days following the first presentation by the postal services of the employee’s letter of request.

If a company makes more than eighteen employees redundant in the same year, any further economic dismissal contemplated in the first three months of the following year must necessarily abide by the following rules concerning dismissals of at least ten employees. In the same manner, if over three consecutive months a company has dismissed more than ten employees without having reached 10 dismissals over a 30-day period, any new economic dismissal contemplated within the next three months would be subject to the procedure below.

**Dismissal of at least ten employees for economic reasons in a thirty-day period in companies employing at least fifty employees**

The law for a More Secure Employment Market dated 14 June 2013, substantially modified the procedure for the termination of more than 10 employees over a 30-day period by companies employing more than 50 employees.

Before the law was enacted, a collective dismissal triggered two major legal obligations for the employer, (i) a lengthy Works Council consultation process, without any possibility to impose any maximum time-frame on the Works Council, and (ii) provide a generous “Employment Protection Plan” (i.e., set of measures aimed at facilitating the redeployment of the employees to be dismissed, with a potential risk that it might be considered void by a Labor court several months after the implementation of the dismissal process).

Even though the law does not eliminate the legal obligation to provide an Employment Protection Plan, it reduces the risk that the Employment Protection Plan be declared void. Moreover, the law sets maximum timeframes which now apply to the Works Council consultation process.

The law establishes two procedural tracks. The Employment Protection Plan can be implemented either (i) pursuant to a collective agreement negotiated and signed between the employer and one or more Trade Unions that obtained at least 50% of votes at the last employees representative elections, subject to validation by the DIRECCTE; or (ii) by a written document adopted unilaterally by the company, which would then be submitted the DIRECCTE for approval. The employer can normally freely choose either track although it is highly recommended to first attempt to negotiate a company agreement with the Trade Unions.

The total duration of the procedure will mainly depend on the length of the negotiations with the Trade Unions. The length of the Works Council’s consultation is regulated by the French Labor code and the time-frame for
such consultation will depend on the number of dismissals contemplated: two months maximum if less than 100 dismissals, three months maximum if the number of dismissals is between 100 and 250, and four months maximum for more than 250 dismissals. In the absence of an opinion rendered at the end of the consultation period, the Works Council is deemed to have rendered a negative opinion, and the employer may implement the dismissal project.

The new procedural steps for such collective dismissal are as follows:

**Step 1: Negotiation of a collective agreement with the Trade Unions - No maximum time-frame**

a) **Negotiation with Trade Union representatives**:

Negotiations on the redundancy process and the content of the Employment Protection Plan (i.e., the social measures offered in order to facilitate the employees’ redeployment) with the Trade Union representatives, which would take the form of an in-house agreement.

In order to be valid, such an in-house agreement must be signed by at least one or several representative Trade Unions within the company (i.e., those Trade Unions which received, alone or together, at least 50% of the votes in the first round of voting of the last Works Council’s elections).

b) **Main contents of the in-house agreement**:

• modalities of the information and consultation process of the Works Council and the CHSCT;
• modalities of application of the selection criteria;
• timeframe for the dismissals;
• number of positions to be eliminated and professional categories concerned;
• modalities of implementation of the training, adaptation and redeployment measures.

c) **Consultation of the Works Council on the draft in-house agreement**:

The final draft in-house agreement must be submitted to the Works Council to obtain its opinion before signing the agreement with the Trade Union representatives.

**NB:** In the event no agreement is reached with the Trade Unions, the employer can still implement the dismissal procedure but, in such case, the Employment Protection Plan must be prepared unilaterally by the employer, and the Works Council must be consulted prior to the implementation of such unilateral Employment Protection Plan.

**Step 2: Information and consultation of the Works Council and CHSCT - Maximum 2 months if less than 100 employees are concerned**

a) **Works Council**:

The Works Council must be informed and consulted and render its opinion on the two separate following matters:

1. the reorganization project (i.e., in particular the economic justification of the project) ; and
2. if no in-house agreement has been entered into with Trade Unions: the contemplated economic dismissals and the measures of an unilateral Employment Protection Plan.

The Works Council must hold at least two meetings with a 15-day minimum period between the meetings.
The Works Council can appoint a CA during the first meeting. The cost of the CA (which is usually relatively significant) must be borne by the employer.

In the absence of the Works Council’s opinion within the maximum timeframe (as provided by law or by an in-house agreement), the Works Council is deemed to have rendered its opinion, assuming, however, that the employer has properly handled the consultation procedure and provided all the necessary information.

b) Health and Safety Committee (CHSCT):

If the contemplated reorganization could be seen as impacting the employees’ health and/or safety (e.g., increase of workload, increased stress), which is generally considered to be the case with a collective economic dismissal, the employer must also inform and consult the CHSCT. This consultation process can be carried out simultaneously with the Works Council consultation process. The employer should generally obtain the CHSCT’s opinion before the last meeting of the Works Council during which the latter will render its opinion.

Step 3: Validation by the DIRECCTE - Maximum 21 days

Once the Works Council consultation process is over, the envisaged Employment Protection Plan must be approved by the DIRECCTE:

• If an agreement has been signed with the unions, the DIRECCTE has 15 days from receipt of the in-house agreement in order to render its approval.

• If no agreement (or a partial agreement) has been signed with the unions, the DIRECCTE has 21 days from receipt of the in-house agreement in order to approve.

In the absence of a written response from the DIRECCTE at the expiration of the approval period, the agreement is considered as having been approved.

Once the process to be followed with the Trade Unions and Works Council is over, the employer must implement an individual process to notify the individuals concerned of their dismissal. The individual process may be briefly summarized as follows:

• Convocation of each protected employee to a pre-dismissal meeting. The protected employees are in particular the employee representatives (Works Council members, employee delegates, Trade Union delegates, CHSCT members) and employees hold positions as Labor courts judges;

• Individual pre-dismissal meeting with each of the protected employees;

• Specific Works Council meeting regarding the contemplated dismissal of protected employees;

• Notification of the dismissal to each protected employee and non-protected employee by registered letter with return receipt requested.

Potential delay and disruption

Before the first Works Council meeting on the contemplated collective dismissal, the head of the company gives written notification to the employee representatives, supplying all “useful information” on the dismissals (cf. above).

• The above-mentioned information is extremely important since, if the court finds the information insufficient, it can order the company to resume the consultation procedure from the beginning.

• If no collective agreement is reached with the Trade Unions, it is also important that the Employment Protection Plan, as drafted by the employer, be legally sufficient when initially presented to the Works Council. Indeed, if the Employment Protection Plan is considered insufficient, the DIRECCTE may refuse to ratify or approve it. In such
case, the employer must restart the procedure from the beginning. In order to reduce this risk, it is also crucial that the employer contacts and involves the DIRECCTE as from the very beginning of the procedure.

- If the court decides that the employer did not provide all the necessary information to the Works Council and/or the CA, it can order a postponement of the maximum timeframe during which the Works Council can render an opinion (i.e., 2 months where the dismissal of less than 100 employees is contemplated).

**Information provided to the DIRECCTE**

The DIRECCTE must receive all the documents sent to the Works Council and the CHSCT prior to its meeting and must receive the minutes of each meeting, including amendments to the Employment Protection Plan, planned dismissals, etc.

The planned collective dismissal must be notified in writing to the DIRECCTE 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 DIRECCTE a copy of the documents given to the Works Council and CHSCT members along with a copy of the minutes of the first meeting, including the advice and proposals of the Works Council, and the time schedule of the planned dismissals.

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

The DIRECCTE verifies, in particular:

(i) the content of the Employment Protection Plan and can propose additions or amendments to the plan.

(ii) the compliance with the rules relating to proper information and consultation of the Works Council and CHSCT.

The employer is not compelled by law to observe the comments and follow the suggestions made by the DIRECCTE, which may not be in the company’s best interest. However, ignoring the DIRECCTE’s comments and suggestions could be unwise in view of obtaining its ratification or approval on the Employment Protection Plan or possible future disputes that may be raised by the dismissed employees.

The employer must respond to the DIRECCTE before sending the dismissal letters. If the employer was to dismiss the employees before responding to the DIRECCTE, Article L.1233-60 of the French Labor code provides for a criminal fine of EUR 3,750 per employee dismissed.

In addition, and as mentioned above, the envisaged dismissals and Employment Protection Plan must be approved by the DIRECCTE before their implementation, failing which such dismissals would be considered void.

**Obligation to find a prospective buyer (new provisions under the “Florange Law” dated 24 February, 2014)**

Companies considering collective redundancy resulting in the closure of a site and subject to the obligation to propose redeployment leave to redundant employees, i.e., companies with more than 1,000 employees in France or companies belonging to a group established in the EU with more than 1,000 employees, and having at least 150 employees in two of EU member states), must in particular inform the Works Council of its search for a prospective buyer as from the very opening of the collective redundancy procedure (first meeting with the Works Council).

The employer must provide all relevant information on the contemplated project, in particular all measures planned to find a buyer.

The DIRECCTE and the City Mayor should also be invited.
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