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# Companies subject to the so-called SYNTEC collective bargaining agreement should welcome a recent decision of the Cour de Cassation concerning the termination of trial periods

**A decision handed down by the *Cour de Cassation* (French Supreme Court) on September 16, 2015 (n° 14-16.713) provides an answer to a problem that arose in connection with the termination of a trial period for which the company had to comply with both the "*délai de prévenance*" (i.e. an advance notice period that must take place within the trial period), as provided for by Law n° 2008-596 of June 25, 20089, and the notice period set forth in the Collective Bargaining Agreement "*Bureaux d'Études Techniques, des Cabinets d'Ingénieurs-Conseils et des Sociétés de Conseils*" (i.e. the collective bargaining agreement that applies to many engineering and consulting firms and technology companies, hereinafter the "SYNTEC CBA").**

**We followed this case with great interest as the relevant company is one of our clients; we defended its interests before the Labor Court of Boulogne-Billancourt – which ruled in our client's favor**

**by dismissing the claims brought by the employee after the termination – and then before the Court of Appeals of Versailles – which reversed the judgment of the Labor Court – to finally appeal to the Labor Chamber of the *Cour de Cassation*, in the hope to have the termination of the trial period declared well-founded.**

It should be preliminarily recalled that the concept of trial period was almost completely disregarded in the French Labor Code until the enactment of the Law of June 25, 2008 (the "Law") that set a legal framework for the inclusion of trial periods in indefinite-term employment contracts. Previously, applicable legal provisions merely targeted specific categories of employees (such as *VRP statutaires*, i.e. a special type of salespersons) or employment contracts (fixed-term or part-time contracts).

As such, the trial period – which is optional – could be provided for either under the employment contract itself or under the applicable collective bargaining agreement. For a long time, a number of collective bargaining agreements have included specific rules governing the renewal and termination of the trial period.

Terminations of trial periods naturally gave rise to various types of disputes. The Labor Chamber of the *Cour de Cassation* had already been asked to rule on how the provisions of collective bargaining agreements should be applied in this respect.

The Law introduced a legal trial period (Article L. 1221-19 of the French Labor Code), the maximum duration of which varies according to the categories of employees:

- 2 months for workers and employees,
- 3 months for supervisors and technicians,
- 4 months for executives and employees with a managerial position.

These trial periods may be renewed if renewal is authorized by an industry-wide collective agreement and if the possibility to renew is expressly stipulated in the employment agreement. If renewed, the trial period may not exceed 4, 6 and 8 months respectively, for each of the above-listed categories (Article L.1221-21 of the French Labor Code).

The Law also introduced a "*délai de prévenance*" (i.e. an advance notice period that must take place within the trial period) applicable in case the employee or the employer terminates the trial period. The length of such "*délai de prévenance*" varies according to (i) whether termination is made on the initiative of the employee or the employer, and (ii) on how long the terminated employee has been within the company. Article L.1221-25 of the French Labor Code expressly stipulates that "*The trial period, renewal included, may not be extended by the duration of the "délai de prévenance"*."

In the commented case, a difficulty arose because of the combination between the "*délai de prévenance*"

provided for by law and the notice period provided for by the SYNTEC CBA.

Indeed, the *Cour de Cassation* had laid down the principle that, in the absence of any express indication in the applicable collective bargaining agreement, the length of the notice period under such agreement is required neither to run within the trial period nor to elapse before the end of such period (Labor Chamber of the *Cour de Cassation*, October 31, 1989, n° 86-43.894 and October 11, 2000, n° 98-45.170).

In this context, in the commented case, the company had notified the termination of the trial period by applying the "*délai de prévenance*" provided for by law, i.e. by giving a 1-month advance notice. The "*délai de prévenance*" takes place within and elapses at the end of the trial period. This notification also entailed the start of the notice period provided for by the SYNTEC CBA, i.e. 7 week, which started running as from such notification. As such, the end of that notice period necessarily fell after the end of the trial period.

The company released the employee from any and all activities, effective as from the termination notice: The employee did not work during the "*délai de prévenance*" and the notice period provided for by the SYNTEC CBA, but the contract termination date was set to fall on the end of the notice period provided for by the SYNTEC CBA, thereby equating the trial termination notice period with the dismissal notice period for which the French Labor Code expressly states "*The release from working the dismissal notice period has not the effect of bringing forward the date on which the employment contract terminates*".

The notice period is indeed a period during which the employment contract continues to apply. As such, the employee not only continues to receive the remuneration, including in-kind benefits, that would have been paid to him/her if he/she had worked during the notice period, but he/she also continues to benefit from the rights to which he/she is entitled as a result of being an employee of the company: death, disability and health insurance scheme, mandatory and, as the case may be, optional profit-sharing plan(s), works council, etc.

In practice, notice periods applicable in case of termination of the trial period have been subject to the same rules as those governing notice periods in case of dismissal.

The employee considered that exceeding the maximum duration of the trial period, as a result of the length of the notice period provided for by the SYNTEC CBA, was constitutive of an unlawful dismissal without any actual and serious basis.

The Labor Chamber of the *Cour de Cassation* had already been asked to rule on the terms and conditions governing the termination of the legal trial period introduced by the Law. In a decision issued on November 5, 2014, it had considered that the continuation of the work relationship beyond the end of the trial period, due to the duration of the "*délai de prévenance*", entailed the creation of a new contract that could be terminated only by way of a dismissal.

In its September 16, 2015 decision, the Labor Chamber of the *Cour de Cassation* took into account the fact that the employee had been released from working the "notice period" and that the company had duly complied with the "*délai de prévenance*" provided for by law.

The Labor Chamber of the *Cour de Cassation* has taken care to enclose the words "notice period" in quotation marks. By ruling that the company was entitled to extend the duration of the employment contract – subject that such contract be unworked after the end of the trial period – the Labor Chamber of the *Cour de Cassation* seemed to make a distinction between the "*délai de prévenance*" provided for by law and the notice periods provided for by collective bargaining agreements.

The issue concerning the effective end-of-contract date is not resolved with certainty, as the Labor Chamber of the *Cour de Cassation* merely based itself on the fact that the employee had been released from any and all activities to rule that the termination was lawful. Could companies consider that the employment contract terminates at the latest on the end of the trial period and merely pay an indemnity for the "notice period" provided for by the applicable collective bargaining agreement that exceeds the "*délai de prévenance*" provided for by law, which would have the effect of depriving the employee of certain rights, or should they instead treat this period like the notice period applicable in case of dismissals? The question remains open.