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Do the new rules governing the obligation to search for redeployment opportunities outside the national territory introduced by the Macron Law really alleviate the burden on businesses or is this pure demagogy?

Any and all French companies are required to search for redeployment opportunities before being entitled to dismiss an employee on economic grounds. This search must be carried out not only within the company itself but also within the group to which it belongs, both in France and abroad.

Law n° 2015-990 of August 6, 2015, known as the "Macron" Law, has amended the terms of the obligation to search for redeployment opportunities outside the French territory imposed on companies in connection with an individual or collective dismissal on economic grounds. The Macron Law has amended Article L.1233-4-1 of the French Labor Code. Decree n° 2015-1638 on the procedure for internal redeployment outside the national territory in case of dismissal on economic grounds dated December 10, 2015 provides the necessary clarification for the implementation of the redeployment procedure.

While it was portrayed by the Government as a reduction of the burden imposed on companies and as an infringement of the workers' right to continued employment by those who defend employees, this is, in my view, just another example of demagogy that only makes procedures more complex and increases legal uncertainty through endless changes to the law.

1. The evolution of the employers' obligation to search for redeployment opportunities outside the French territory:

From May 1, 2008 to May 20, 2010, former Article L.1233-4 of the French Labor Code (the "FLC") stipulated as follows: "*The dismissal of an employee on economic grounds may occur only where all training and adaptation efforts have been made and where his/her redeployment is not possible within the company or the group to which it belongs*".

Companies that complied with these legal provisions were vilified for having offered so-called "indecent" redeployment proposals, such as a position as worker with a monthly salary of 300 euros, without taking into account the cost of living in the relevant country and the fact that the employee would be able to find accommodations for less than 30 euros per month.

Some editorialists saw it fit to write inflammatory articles about these despicable employers who dared making such proposals, forgetting to specify that they merely abided by the law and followed the strict case-law of the Labor Chamber of the *Cour de Cassation* (French Supreme Court). Also forgetting that if an employer failed to offer a single vacant position, event with a remuneration of 90 euros and on the other side of the world, it would be found guilty of having dismissed the employee without cause and ordered to pay considerable damages.

The Law of May 18, 2010, designed to put an end to the confusion created by Article L.1233-4, introduced the redeployment/international mobility questionnaire, governed by Article L.1233-4-1 of the FLC that, until August 8, 2015, stipulated as follows:

"*Wherever the company or the group to which it belongs has entities outside the national territory, **the employer must ask the employee**, before the dismissal, whether he/she would accept receiving redeployment offers for positions outside of France, within each concerned establishment, and under which potential restrictions regarding the characteristics of the jobs offered, notably in terms of remuneration and location.*

***The employee must notify his/her consent**, including any aforementioned restrictions if applicable, to*

*receive such offers **within six business days** as from receipt of the employer's offer. Failure to respond shall be deemed as a refusal.*

The redeployment offers outside the national territory, which must be written and detailed, shall only be addressed to the employee who has accepted to receive them and shall take into account the restrictions he/she has mentioned. The employee can always refuse these offers. The employee who does not receive any offers shall be informed that there are none corresponding to those he has accepted to receive."

Effective as from August 9, 2015, effective date of the Macron Law, Article L.1233-4-1 stipulates as follows:

*"Wherever the company or the group to which it belongs has entities outside the national territory, **the employee** whose dismissal is contemplated may **ask the employer to** receive redeployment offers within these entities. In his/her request, he/she must specify the potential restrictions regarding the characteristics of the jobs offered, notably in terms of remuneration and location. The employer shall send the corresponding offers to any employee who has expressed an interest. These offers must be written and detailed.*

The terms and conditions in which this Article is to be applied, including the terms and conditions related to employee's information that he/she may request redeployment offers outside the national territory, shall be set forth in a decree."

The announced Decree was finally published four months later.

2. Decree of December 10, 2015: Introduction of a new article D.1233-2-1 in the FLC

To what extend are the obligations imposed on business reduced?

1. The company henceforth has the obligation to inform each concerned employee of the possibility to receive redeployment offers outside the national territory "***by registered letter, return receipt requested**, or by any other means showing a "date certaine"* [i.e. a specific and indisputable date as to the information]".

   In conclusion: This information may no longer be hand-delivered, as used to do companies for the redeployment/international mobility questionnaire, as the hand delivery against receipt does not enable to establish a *date certaine*.

   Companies will no doubt welcome this simplification measure!

2. The employee has **7 business days** to review this information and make his/her request. He/she may specify in this written request any potential restrictions on the characteristics of the jobs potentially offered.

Assuredly, on this specific point, the rights of employees are not enhanced! The employee must use this period to collect, as best as he/she can, the list of countries he/she may mention in his/her request for redeployment offers. While the access to such information may be easy for some employees, e.g. those who hold high-level positions and work for entities with a large workforce, what will happen to the blue collar worker subject to a procedure of dismissal on economic grounds within a small French subsidiary that does not have any HR Department?

For their part, companies must allow for an additional period of three days, as compared to the previously applicable provisions, in a procedural time-table that is already complex. In practice, they will not be released from searching beforehand for vacancies within all the legal entities that are part of the group to which they belong.

As such, companies are not really released from constraints in this respect.

It is unfortunate that the new wording of Article L.1233-4-1 of the FLC does not re-state the provision according to which the employee's failure to respond within the applicable timeline is deemed a refusal. Under the previously applicable scheme, this provision provided a certain degree of security to companies.

3. The employer must, as the case may be, send written and detailed offers, i.e. offers that mention at the very least :
    - The name of the employer,
    - The location of the employment position,
    - The job title,
    - The remuneration,
    - The type of employment contract,
    - The working language.

The employer must also specify the **reflection period** granted to the **employee to respond to the offers, it being specified that said period** may not be less than eight clear days[1] (except if the company has entered into receivership or judicial liquidation).

The Decree adds few elements to the process that companies had to follow prior to its publication! How to offer a redeployment opportunity outside France without mentioning the above-listed information! The Decree specifies that this is the minimum information required to be stated in relation to the job. Well, I believe that the Decree fails to mention a piece of information that is very important for French employees, i.e. working time. One might believe that all the countries around the world work 35 hours per week or that this is incidental information for French employees.

If the employee fails to respond to the redeployment offer within the prescribed time-line, he/she will be deemed to have refused such offers.

If the employer is unable to offer a redeployment position "*that corresponds to the employee's request*", it

must inform the employee thereof.

In conclusion, I would not say that the new rules, as applicable after the publication of the Decree, have significantly changed the previously applicable scheme. I do not think that the number of employees who will request communication of redeployment opportunities outside France will diminish; those who filled in the redeployment/international mobility questionnaire will send their request as per the new provisions, even though the process is a bit more complicated.

I believe that the difficulties experienced by French companies, and more particularly by small businesses, arise out of their lack of real power in this respect since it should be noted that French law does not impose obligations on foreign companies. French employees, therefore, are not given priority to fill in vacancies within an international group, unless the group decides so and each foreign entity accepts a limitation of its own recruitment authority. Which is far from certain…

Redeployment within a group, including within the group's foreign entities, is considered as an internal redeployment, as opposed to an external one. This is absurd, both in law and in practice, but this does not seem to matter for French courts. Indeed, in this respect, it has been held that in situations where (i) the employees must obtain the hosting entity's approval on their application, and (ii) there are one application from a to-be-redeployed employee and another application from an applicant from outside the group, this other applicant could be selected by the hosting entity, the redeployment offer made on this basis does not meet the legal requirements (Labor chamber of the *Cour de Cassation*, July 12, 2010, n° 09-15.182). As a matter of fact, companies are not always able to make written detailed offers that correspond to positions effectively made available to the employees whose dismissal is contemplated, as per applicable French case-law requirements that are far away from the constraints associated with the life of every business.

The practice of labor and employment law taught us that French and employment legal provisions have the (purpose?) consequence of entitling employees able to prove that the company has committed an omission in this respect to claim damages since, in such a case, the dismissal is deemed without cause.

I am not sure this risk is smaller since the publication of the Macron Law…

[1] Clear day means a period of 24 hours starting from midnight. A time period expressed in clear days does not take into account the day on which the period starts running and the day on which the period expires. If the end of the period falls on a Saturday, a Sunday or a bank holiday, the period shall end on the first working day thereafter.

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