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The redeployment obligation in economic dismissals: modification of the law for companies and groups with entities outside of france

In the last several years, it has been difficult for companies to comply with their redeployment obligations, specifically in the international context. These obligations should have therefore been clarified and detailed by law. The legislators chose instead to partially address the issue, and with a sense of urgency, with the Law no. 2010-499 of May 18, 2010 *"aimed at guaranteeing fair conditions of remuneration for employees concerned by a redeployment procedure"* within the framework of a dismissal for economic reasons.

This Law, consisting of one single article, will inevitably create new difficulties because of its lack of detail, especially since the circular that should provide additional information and clarity has not yet been published.

1. The Law no. 2010- 499 of May 18, 2010:

1.1. Introduction of the notion of equivalent remuneration:

Article L.12334-4 now states that "The employee shall be redeployed to a job of the same category as the job he currently holds or to an equivalent job, with an equivalent remuneration."

The notion of "equivalent" remuneration was introduced to prevent job offers with local remuneration in countries where wages are very low. These offers were highly criticized in France, in and out of the media, even though they had been made by companies in strict compliance with applicable case law. Such offers have been deemed indecent, but indecency is being judged by only the French standard.

This provision applies to all redeployment opportunities offered, whether in France or internationally. In practice, nothing changes with regard to the companies' redeployment obligations in France.

Further, they maintain their obligation to also propose positions of lower categories if there are none available of equivalent categories.

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1.2. The redeployment/international mobility questionnaire: a new mandatory step in the procedure:

Article L. 1233-4-1 of the French Labor Code codifies the Law of May 18, 2010 and creates a new step in the procedure for dismissals for economic reasons.

This new step applies to all economic dismissals, whether individual or collective, and must become part of the applicable procedure which differs according to the number of contemplated dismissals, the staff size of the company and the employee representative bodies in place.

Article L.1233-4-1 states: *"When the company or the group to which it belongs has entities outside of France, the employer must ask the employee,* ***before*** *the dismissal, whether he 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 express his 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 of France, 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 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."

2. Practical consequences for companies:

Until the circular from the Ministry of Labor is published, accompanied by the model questionnaire to be used, we may glean the following:

- In our opinion, this new measure implies that the questionnaire should contain an exhaustive list of the group's entities and companies located abroad – it is not enough to list the countries where there are vacancies. Because the dismissal procedure in France requires a specific timeframe, essentially when consultation of the Works Council is necessary, a position may become vacant within a company where no recruitment was initially planned.
  Therefore, to prevent any omission, which could result in a judgment against the company for a dismissal without real and serious cause, it is vital that the company communicate a detailed and accurate list of the countries as well as the cities in which the group is established.
- The questionnaire must be sent or communicated "before the dismissal". Without further detail, companies should tread carefully, specifically when their Personnel Delegates or Works Council must be consulted on the dismissal procedure. Employee representatives must be informed and consulted

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notably on the provisional calendar/timeline of the procedure and on the redeployment opportunities. As such, it appears difficult to communicate these questionnaires before the end of the consultation phase. Although the Minister of Labor, during the parliamentary debates, recommended communicating the questionnaire after the first meeting of the Works Council, and even though the circular should follow this reasoning, we advise taking this step only after the employee representatives have given their opinion on the entire dismissal procedure, or at least once they have given their opinion on the issue of redeployment abroad. This is because, even though this is a measure required by law, the employee representatives may request a modification for the benefit of the employees concerned, e.g. a longer reflection period. Consequently, it appears inconceivable to distribute this questionnaire any sooner as it would prohibit the employee representatives from negotiating any possible improvement of the legal measures, which could constitute an obstruction by the company of the functioning of employee representation.

- The Law does not state what should be in the questionnaire. The circular should provide information as to the desired content and the Ministry of Labor should provide a model thereof.

  In our opinion, this questionnaire should be simple yet detailed and remain strictly within the bounds of Article L.1233-4-1. The company could include information on possible restrictions (remuneration and location), without risk, but it would be in its best interest to leave the questions very open so that the employees themselves have the opportunity to express their own restrictions.

  Otherwise, the French courts could consider that the purpose of the detailed questions therein was to manipulate the employees into refusing any redeployment opportunities and therefore, as the redeployment search was neither serious nor sincere, the dismissal would be deemed abusive.

- The questionnaires must be analyzed and processed carefully as they must lead to possible written and detailed redeployment offers as required by the French Labor Code.
  Please be reminded that the communication of a simple list of vacancies to employees concerned by an economic dismissal is not a serious redeployment offer. Redeployment offers must be individualized, written and detailed. Otherwise, the dismissal will be considered without real and serious cause.
  This analysis and the resulting offers necessarily mean more time added to the dismissal procedure. While some employees systematically refuse positions abroad, undoubtedly others will use this new step as a way to possibly lengthen the procedure by including in the questionnaire restrictions that must be analyzed with regard to vacancies within the group. Employees could also use this to argue there was a flaw in the dismissal procedure and subsequently file lawsuits. If employees today of companies that belong to international groups often center their lawsuits against economic dismissals on the redeployment obligation, it is because the complexity of how these groups are organized and how their vacancies worldwide are managed is not compatible with a French economic dismissal procedure that takes several months.
  We estimate that economic dismissal procedures will be lengthened by at least two to three weeks because of this redeployment/international mobility questionnaire.

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- Please be reminded that employees who receive redeployment offers must have a reflection period to analyze them. As the law is silent on how much time should be given, French courts and labor administrations often consider that an employee should have 2 to 3 weeks to think about a redeployment offer abroad.

- If the employee has already accepted the principle of expatriation (by accepting to receive redeployment offers abroad) and has already defined his personal restrictions in the questionnaire, a 2-week reflection period should be sufficient. Perhaps the circular will provide more information on this issue. If it does not, case law will probably define what is considered a reasonable amount of time.

- With regard to redeployment within France, the *Cour de Cassation* (French Supreme Court) refused the principle of this questionnaire. All compatible vacancies in France must be offered to employees concerned by an economic dismissal. These employees must also have sufficient time to think about these offers. As such, because this redeployment may require the employee to change residence, a 2 to 3-week reflection period is often required by the employee representatives and labor administrations.

  Further, companies must take into account and reconcile these reflection periods with the legal timeframes already required for the applicable redeployment measures depending on the size of the companies and whether they belong to a group (*Convention de Reclassement Personnalisé* – Personalized Redeployment Agreement – for companies with less than a 1,000 employees or belonging to a group with less than 1,000 employees, or *Congé de Reclassement* – a redeployment leave for all other companies).

We expected a law that would provide more security for companies in terms of international redeployment procedures. The redeployment/international mobility questionnaire may simplify the redeployment search. However, at this point, it remains doubtful as the law itself is quite succinct and opens the door to multiple interpretations. We must therefore await case law, which is clearly forthcoming on such an issue.

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