Emilie Ducorps-Prouvost

e-Mail: e.ducorpsprouvost@soulier-avocats.com

Tel
+33 (0)1 40 54 29 29
Fax
+ 33 (0) 1 40 54 29 20

www.soulier-avocats.com

# REFORM OF FRENCH LABOR LAW: A SUCCESSFUL SHIFT TOWARDS A MORE PRAGMATIC AND FLEXIBLE LAW

Emilie Ducorps-Prouvost
September 29, 2017

**He had promised it and he did it: The Major Reform of French Labor law was the spearhead of Emmanuel Macron's presidential campaign. On Friday September 22, 2017, the President of the French Republic signed the five Ordinances that substantially reform French labor law.**

**While for Emmanuel Macron this reform constitutes a "Copernican revolution" of labor relationships, opponents, including in particular Jean-Luc Mélenchon, the head of the far-left party La France Insoumise, call it a "social coup d'état ». So, revolution or putsch? On both sides, the terms used are certainly exaggerated but a new wind is definitively blowing.**

**Human resources directors and in-house counsels all agree that it is a pragmatic, "encouraging" reform that "is moving in the right direction" to increase competitiveness in France. This article focuses on the flagship measures introduced by the Ordinances.**

Following their signature on September 22, 2017, the five Ordinances were published in the Official Gazette on September 23, 2017. They will come into effect only after the adoption of the ratification bill. The National Assembly will examine this bill in first reading during the week of November 20, 2017 and the final reading should take place in early 2018.

However, most of the measures introduced by the Ordinances are effective as from September 24, 2017, unless otherwise provided for or unless some of their provisions need to be further specified in implementing Decrees. The Government has made the commitment that the twenty or so expected Decrees will be published by December 31, 2017 in order to ensure that all measures will be applicable as of January 1, 2018.

1. Strengthening of collective bargaining and new articulation between industry-wide agreements, company-level agreements and employment contracts

### New articulation between industry-wide agreements and company-level agreements

Among the measures adopted to strengthen collective bargaining, the Government has showed its desire to **delineate the scope of precedence of**

**industry-wide agreements**.

To do so, it has defined three blocks for negotiations:

-The first block embraces issues for which industry-wide agreements mandatorily prevail. These issues include minimum wages, classifications, the pooling of funds collected by accredited social partners' bodies, including the funds designed to finance professional training, various measures concerning fixed-term employment contracts and the use of so-called project-based employment contracts for an indefinite term, gender equality, the terms and conditions for the transfer of employment contracts between companies as per the term of the applicable collective bargaining agreement wherever the legal conditions are not met, various measures on working time duration, working time allocation and working time arrangements, etc.

-The second block embraces issues for which the **industry sector has the right to have its industry-wide agreement prevail** over company-level agreements subsequently entered into. Wherever the industry-wide agreement provides for such precedence, the company-level agreement only applies if its provisions are at least equally favorable to employees. These issues include arduous factors, professional integration, the keeping of disabled workers in employment as well as the terms and conditions for holding a union mandate.

-The third block embraces all the issues falling within the scope of collective bargaining that are not dealt with at the industry level and for which c**ompany-level agreements prevail**.

- **Emphasis put on the majority nature of company-level agreements**

As from May 1, 2018, any and all company-level agreements must be majority agreements. As such, trade-unions must receive more than 50% of the votes cast at the last professional elections to be able to enter into a company-level agreement. However, non-majority agreements may be validated through referendum at the employer's initiative only if the relevant agreements are signed by trade-unions having obtained at least 30% of the votes at the last professional elections and, above all, if none of the signatory trade unions objects to such referendum.

A new type of majority agreements helps company swiftly adapt to market trends as they will address working time duration and organization, remuneration and internal professional or geographical mobility.

**The provisions of such agreements will automatically cancel and supersede all conflicting and inconsistent contractual clauses contained in employment contracts. Employees who refuse the implementation of such agreements can**

**be dismissed by their employer on a "sui generis" ground (not a dismissal on personal grounds or economic grounds) that will be considered as a real and serious cause** and the employer must add a training entitlement into the Professional Training Account of the relevant employees. According to the Government, this training entitlement – that will be defined by regulations – should amount to 100 training hours.

• **Negotiation even in the absence of a trade-union delegate**

In companies with less than **20 employees and without any elected staff representative**, the employer may **submit a draft agreement directly to the employees**. This agreement can address **all** the **topics** falling within the scope of collective bargaining. To become effective, such agreement must be ratified by a two-thirds majority of the personnel.

In larger companies without any trade union delegate, collective bargaining may be conducted only with an employee empowered by a trade union or a staff delegate.

• **Making a better use of collective bargaining**

The Government goes further than what was already provided for by the so-called "Rebsamen" Law of August 17, 2015[1] by allowing companies to freely define, through a framework agreement, the topics and the terms and conditions of mandatory periodical negotiations.

The collective agreement related to mandatory negotiations will be concluded for a maximum of four years and will specify:

-the topics of the negotiations;

-the frequency and the scope of each topic (with the obligation to re-negotiate every four years an agreement pertaining to one of the topics set forth by law for the mandatory negotiations);

-the time-frame and the place of the meetings;

-the information that the employer must deliver to the negotiators on the topics of the forthcoming negotiations and the date of delivery of such information;

-the terms and conditions in which the commitments made in the agreement will be monitored.

Companies that do not enter into a framework agreement shall be subject to a supplementary legal regime similar to the ordinary regime currently applicable (i.e. annual, triennial, and five-year collective negotiations).

These new rules shall become effective on the date of publication of the Decrees implementing the Ordinance and, in any event, by January 1, 2018 at the latest.

2. Merger of the employee representative bodies

Effective as from January 1, 2020, the creation of a new body called Social and Economic Committee (SEC) will be mandatory in companies with at least 11 employees. This Committee shall also assume the tasks related to staff representation in companies with less than 50 employees.

In companies with at least 50 employees, the works council, the staff representatives and the Hygiene, Safety and Working Conditions Committee will be merged into a single body that would be the SEC. This body will still have the right to initiate legal proceedings and to request the opinion of an expert insofar as it will bear 20% of the expert's fees (except in case of collective lay-off plans).

In addition, the creation of a health, safety and working conditions central committee will be mandatory in companies with at least 300 employees and, at the request of the labor inspector, in companies that conduct high risk activities that justify the creation of such central committee.

Lastly, a company-level agreement can provide for the merger of the employee representative bodies with trade-union delegates and grant to the newly created body the authority to negotiate collective agreements.

By January 1, 2020, any and all companies must implement this new body on different dates, depending on whether they already have employee representative bodies and, if yes, the date on which the mandate of such body(ies) is due to expire. In any event, companies will not be entitled to keep separate bodies (staff representatives, works council, Hygiene, Safety and Working Conditions Committee).

This Ordinance will come into effect upon publication of the implementing Decree and, in any case, by January 1, 2018 at the latest, unless otherwise specified.

3. Making labor relationships more predictable and secure: Flagship measures regarding dismissals

- **Cap on damages that may be awarded by French Labor Courts**

The Ordinance sets a mandatory sliding scale of damages that French Labor Courts may award in case of dismissals without cause. This scale will not, however, apply in case of discrimination, harassment or violation of fundamental freedoms.

This scale provides for a maximum ceiling, from one month's salary for less than **one year of seniority** to **20 months' salary for an employee with 29 years of seniority or more**.

The scale also sets out minimum compensation (minimum ceiling) ranging from half a month's to three months' salary, depending on the employee's seniority and the company's size (i.e. less than 11 employees or over).

This scale cancels and supersedes the indicative baseline of compensation and **shall apply to dismissal-related disputes notified after September 23, 2017**.

- **Increase of the legal severance indemnity**

The legal severance indemnity is increased. In addition, the seniority requirement for an employee to be entitled to the legal severance indemnity is reduced to 8 months (as opposed to one year currently). The implementing Decree dated September 25, 2017 was published in the Official Gazette on September 26, 2017. However, the increase announced by the Government shall only benefit to employees with maximum 10 years' seniority.

Henceforth, the dismissal indemnity is no longer less than:

-1/4 month's salary per year of seniority until 10 years of seniority;

-1/3 month's salary per year of seniority for 10 years of seniority or more

- **Reduction of the timeline for challenging a dismissal**

The timeline for challenging a dismissal should be aligned at one year for all types of termination.

- **Softened procedural rules governing dismissals**

In order to limit procedural errors, a s**tandard dismissal letter form, based on a so-called "Cerfa" form**, will be defined by Decree.

Regarding the grounds used to justify a dismissal, the employer will be allowed to specify or supplement, at its own initiative or at the request of the relevant employee, the grounds set forth in the dismissal letter after it has been notified (terms and conditions to be defined by Decree).

The supplemented letter can, as the case may be, set the limits of the dispute.

If the grounds for dismissal are not sufficiently substantiated, this irregularity will be sanctioned by an indemnity of a maximum of one month's salary. As such, the mere fact that the formal statement of the grounds relied upon to justify the dismissal is insufficient will no longer be likely to result in the dismissal being held without cause.

These provisions will enter into force upon publication of the implementing Decree and, in any case, by January 1, 2018 at the latest.

- **Simplification of the implementation of dismissals on economic grounds**

First of all, the economic ground will no longer be assessed at the international level (except in case of fraud). As such, the reality of the difficulties shall be assessed by the judge at **the level of the group companies operating in the same industry sector and located in the same national territory.**

The obligation to search for redeployment opportunities will also be simplified. It is now limited to the national territory and employers will no longer be required to inform in writing the employees of the relevant redeployment offers as they will be authorized to do so by any means, including, as the case may be, through their extranet.

- **Creation of the collective contractually agreed termination**

A procedure called "**collective contractually agreed termination**" will be created by Decree. The objective is to be able to prepare voluntary separation plans pursuant to a company-level agreement, without having to demonstrate the existence of an economic ground. As such, part of the obligations applicable in case of collective dismissals on economic grounds (internal redeployment, professional security scheme, redeployment leave, re-hiring priority) will be excluded.

4. Teleworking, a tool that makes work more flexible: Softened rules for implementation

Teleworking may now be instituted through a collective agreement or, in the absence of such agreement, through a specific company/group policy, after having obtained the opinion of the Social and Economic Committee (and no longer necessarily through the employment contract / amendment to the employment contract).

The possibility to perform telework on an occasional basis by mutual consent is also foreseen. The mutual consent can be established by any means.

It should also be noted that the obligation for the employer to bear the cost of teleworking is abolished.

The new framework governing teleworking became effective on September 24, 2017.

5. Simplification of the professional account for the prevention of arduousness

The employer must declare the exposure of its employees to "risk factors related to significant physical constraints, an aggressive physical environment or certain work rates [...]" wherever such employees are exposed beyond a certain threshold (Article L. 4161-1 of the French Labor Code). Until now, there were 10 risk factors.

This reporting obligation will henceforth apply only in relation to 6 risks factors, including night shift, repetitive work, noise or extreme temperatures.

Four risk factors are thus abolished: The handling of heavy loads, strenuous positions/postures, mechanical vibrations and chemical risks. However, employees exposed to these risk factors will still have the possibility to qualify for early retirement if it is established that they suffer from an occupational disease

or a permanent disability rate of at least 10%.

In addition, employees will no longer have either to demonstrate that they have been exposed to risk factors during a certain time or to establish that their permanent disability is directly linked to exposure.

This measure is supposed to enter into force on October 1, 2017, subject, however, to the terms of the implementing Decrees. As of said date, the terms "personal account for the prevention of arduousness" will be replaced by "professional prevention account".

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While the reform of French labor law is not a revolution, it indisputably brings about a fruit that had been hoped for and awaited for several years but that had never been brought to life. A perilous exercise: Finding the right balance between making labor relationships more secure and making the labor market more flexible. The new reform of the French labor law succeeds in finally taking the path of "flexi-security".

The reform does not undermine the protective set of employees' rights and offers pragmatic tools to businesses to implement an efficient labor policy, more in tune with economic realities and potentially better suited to the specific context of each company. This reform aimed at restoring the confidence of all social actors, including primarily foreign groups so that they invest again in France or at least stop fleeing the country.

This on-going transformation of French labor law that is designed to make collective agreements prevail over the law also requires a stronger commitment of employers who will henceforth have to negotiate more often, instead of "administratively" applying the law. This reform leads to a more pragmatic understanding of French labor law and must be seen as a tool to manage and develop businesses rather than as a constraint.

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Article authored by Emilie Ducorps-Prouvost

Notes

[1] Law n°2015-994 of August 17, 2015 on social dialogue and employment

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