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Breaking New Ground in France: Labor Law Aspects

Baker & McKenzie

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Abstract
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Unless otherwise indicated, the law is as stated on _____.

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General Introduction

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 July 1, 2005.

1 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 internal rules of the company as well as any custom and usage in force within the company;
- the employment contract.

2 Immigration Requirements

Any non-EU citizen entering France for a period in excess of three months must obtain a visa from the French Consulate of his/her residence.

Therefore, as a general rule, it is not possible to obtain residence and/or work permits for foreigners who arrive in France as "tourists", and who then decide to stay and work in France.

New Applicants

General Rules

There are two main types of work permits in France: work permits for regular employees and commercial cards for corporate officers ("*mandataires sociaux*"). Other minor work permit categories include work permits for seconded employees (temporary assignees), trainees and students.

Whereas there is no minimum salary requirement applicable to corporate officers, they must obtain a "commercial card" before commencing their functions except if they have a resident card valid ten years. This commercial card is no longer required for corporate officers residing in the European Union or member countries of the OECD. The following are considered corporate officers for commercial card purposes: the "*Gérant*" of a limited liability company (S.A.R.L.), the Representative in France ("*Responsable en France*") of a branch or a liaison office and the President and General Manager ("*Président Directeur Général*"), General Manager ("*Directeur Général*") or the Deputy General Manager ("*Directeur Général Adjoint*") of a corporation (S.A.), or the President of a simplified corporation (S.A.S). However, the President of the board of directors who does not also hold the position of General Manager ("*Directeur Général*") is not required to obtain a commercial card.

As a general rule, work permits for regular employees will be issued only for highly skilled personnel who will be paid a monthly salary at least equal to 1,300 times the minimum hourly wage, i.e., at the present time, a monthly salary of at least € 4,043.

Administrative Steps for Regular Employee Work Permit

Prior to securing an immigration visa

The intended employer in France must first file an application with the national employment agency ("*Agence Nationale Pour l'Emploi*"), providing the grounds for requesting a foreign worker. The application file includes, in particular: an employment agreement signed by the employer, the employer's undertaking to pay the fees of the International Migration Office ("OMI"), a form with data on the foreign worker concerned and a form on the housing for said worker (administration forms). The file is then processed by the Labor authority ("*Direction Départementale du Travail*") in the locality of the employer's place of business.

The application concerning the transfer of an employee having more than one-year's seniority within a Group is filed directly with the Labor Authorities without having to follow the "ANPE" procedure.

It is then be passed on for processing to the French Consulate in the country nearest to the home of the employee.

The applicant, and if applicable his/her family, will obtain from the Consulate an "immigration visa", at which time they may then travel to and reside in France.

It normally takes approximately six to ten weeks from the date of filing the application to the date of obtaining the immigration visa (five to six weeks for a transfer within a Group).

After securing an immigration visa

The applicant, and possibly his/her family, will, upon arrival in France, be subject to a medical examination performed by the local agency of the OMI. After the medical examination, they must apply for their residence permit.

The employee (and his/her family) must go to the "*Préfecture*" having jurisdiction over their place of residence in France. Upon presentation of the immigration visa and related documents, the employee will receive a temporary residence permit valid for one year ("*Carte de Séjour Temporaire*"). This permit operates both as a residence permit and a work permit, and is renewable (cf. below). The accompanying family members will obtain a residence permit without work authorization.

Administrative Steps for Corporate Officers' Commercial cards

Prior to securing an immigration visa

The application for a commercial card must be prepared and filed with the French Consulate nearest the residence of the applicant.

The application is then forwarded by the Consulate to the French Ministry of Foreign Affairs in Paris, which will review the application and, if approved, will forward it to the local "*Préfecture*" in the district where the registered office of the French subsidiary, branch or liaison office, is or will be located. When the application is approved, the local "*Préfecture*" informs the French Consulate where the application was filed, which in turn issues a visa to the applicant.

The period of time from the initial application to the issuance of the visa varies from three to five months depending upon the "*Préfecture*".

Non-residents will have their commercial card application filed directly in France by a legal representative of the company.

After securing an immigration visa

Within eight days of arrival in France, the applicant corporate officer must go to the "*Préfecture*" having jurisdiction over his/her place of residence in France. Upon presentation of his/her immigration visa and related documents, he/she will obtain a one-year temporary residence permit identical to the permit issued for employees (cf. above) and a commercial card for the duration of the position. A medical examination must be performed by the OMI.

Foreigners Already Established in France

Renewals

Renewal of a residence permit and a commercial card, if applicable, should be requested no later than two months prior to the expiration date. It is necessary for the applicant to provide various documents to the "*Préfecture*".

Situation of Foreigners after Three Years of Residence in France

It is possible for foreigners, after three years of residence in France (this duration may be extended to five years in the near future), to obtain a ten-year residence permit ("*Carte de Résident*"), if they can prove that they have a regular business activity in France (as employees, corporate officers or otherwise) from which they derive sufficient income, and declare that they intend to reside in France for a long period or on a permanent basis.

Foreigners who hold a ten-year residence permit may perform any activity of their choice in France without the need for a special permit (e.g., no commercial card is needed in order for them to hold a position as corporate officer).

Foreigners maintain this benefit of the ten-year residence permit if they are absent from France for up to three years maximum.

Transfer from a Regular Employee Work Permit to a Commercial card

As an exception to the general rule referred to above, foreigners who have already obtained a work permit as employees may apply to the local "*Préfecture*" while remaining in France, for a commercial card in order to be able to take up a corporate officer position.

Any foreigner who moves from one residence to another must register his/her new residence at the local police department ("*Commissariat de Police*").

3 Terms of Employment

Form of the Employment Agreement

The indefinite term employment agreement can be written, oral, or result from an 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 contracts for temporary work must always be in writing and must comply with restrictive regulations relating to the duration

of the contract, its term, its cause, the compensation paid, the renewal option, etc. If its terms are not specified in writing, the employment will be deemed full-time and for an indefinite period.

Pursuant to EC Directive no. 91/383 of June 25, 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 oral 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 agreement 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, or if the job is of a seasonal nature. It is also permitted, under very specific and strict conditions, to enter into specific fixed-term employment agreements created 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 18 months (this maximum can be reduced to 9 months or extended to 24 months in specific circumstances).

A non-EU worker's first contract is subject to administrative authorisation as mentioned in Section 2 above.

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). When the contract is not drafted in French, the employee can require the employer to have the contract translated. 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 Agreement

Most employment agreements in France are for an indefinite duration. The parties may provide an initial probationary period in the agreement. Such a probationary period must formally be agreed upon by the parties. Its duration can be fixed freely by the parties, subject however to any limits set out in any applicable collective agreement. Such probationary periods are usually one month for clerks and blue collar workers, and three months for executives employees ("*cadres*").

A distinction must be made between ordinary employees and key executives 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.

4 Working Conditions

Working Hours

Normal Hours

The working time reduction was introduced by the "Aubry I" Law of June 13, 1998, and completed by the "Aubry II" Law of January 19, 2000.

Since January 1, 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 reduction of legal working hours.

However, for businesses subject to seasonal fluctuations, and in companies where special agreements have been entered into, the standard working week can vary during the year within limits, provided the average standard working week calculated on an annual basis is 35 hours.

Under certain circumstances, and provided an in house agreement setting out the company's commitments in terms of creation/preservation of jobs is signed, companies may receive a State financial incentive for doing so. This incentive takes the form of a reduction of Social security contributions.

Although an in house agreement is not necessary where the company does not intend to receive the State aid, the conclusion of such an agreement will provide a certain flexibility in setting out the details of the actual reduction of the working time.

Thus, in companies where specific in house agreements have been entered into, the standard working week can vary during the year within certain limits, provided the average standard working week calculated on an annual basis is 35 hours or the working hours do not exceed 1,607 hours per year. A branch collective bargaining agreement specifically on the 35-hour work week may have been concluded at the national level and could then be applied within the company.

A Law dated March 31, 2005, has slightly modified the 35-hour legislation in France, in order to increase labor flexibility, in particular by increasing the amount of overtime hours that can be worked and decreasing the cost of overtime for employers.

Maximum Working Day and Week

The maximum number of hours that an employee may actually work per day is limited to ten, within a working day 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, individualised hours, night work and part-time employment.

Overtime

There are two types of overtime hours: discretionary overtime (i.e., overtime hours that may be used unilaterally by the employer) and overtime subject to authorisation by the Labor Inspector. The number of discretionary overtime hours is fixed either by the collective bargaining agreements applicable to the company or by decree and unless a "modulation" collective bargaining agreement is concluded (in which case the number of discretionary overtime hours may be reduced to 130 overtime hours per employee per year).

The maximum amount of discretionary overtime hours ("*contingent d'heures supplémentaires*") which the employer may require an employee to work has been increased, by Ministry Decree dated December 21, 2004, to 220 hours per employee and per year. Overtime hours above this amount are subject to authorization by the Labor Authorities and to consultation with the company's Works Council.

A collective bargaining agreement can provide a higher amount of overtime hours than this statutory maximum.

In companies employing more than 20 employees, overtime begins to be counted as of the 36th hour. Since the Law dated March 31, 2005, and up until December 31, 2008, in companies employing less than 20 employees, overtime begins to be counted as of the 37th hour.

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

The Labor Inspector's authorisation must be requested for non-discretionary overtime over the annual overtime limit. In theory, in all instances the Labor Inspector should be informed, and the Works Council must be consulted.

Overtime Compensation

Overtime Pay

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, assuming the collective bargaining agreement provides a higher rate than the legal rate described below. Statutory law provides that this rate cannot be less than the statutory 10 per cent per overtime hour. In the absence of rates determined by a branch collective bargaining agreement, the legal rates described below are applicable.

In companies employing less than 20 employees, overtime must be compensated by a 10 per cent increase for each of the first four hours of overtime (i.e., from the 36th hour to the 39th hour) up until December 31, 2008, by a 25 per cent increase for each of the following four hours of overtime (i.e., from the 40th hour to the 43rd hour) and by a 50 per cent increase for any subsequent overtime (i.e., as from the 44th hour and above).

In companies employing more than 20 employees, overtime hours will 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 the collective bargaining agreement, the decision to compensate overtime hours accrued by the employees by way of additional time-off ("*repos compensateur de remplacement*") 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.

Mandatory Compensatory time off

In addition to the compensatory time off which may be granted in lieu of the overtime hour and/or its increased payment, compensatory time off is mandatory above specific thresholds provided by law. Different rates are applicable, depending on the number of employees within a company.

In companies employing more than 20 employees, the mandatory compensatory time off shall be:

- 50 per cent of the overtime for any overtime hour worked over 41 hours per week, within the 220-hour annual limit (or within the limit provided by the collective bargaining agreement applicable to the company);
- 100 per cent of the overtime (i.e., any hour above 35 hours) for any overtime hour worked over the 220-hour annual limit (or over the limit provided by the collective bargaining agreement applicable to the company).

In companies with less than 20 employees, the mandatory compensatory time off shall be 50 per cent of overtime work from the 36th hour, when the employee performs overtime over the 220-hour annual limit (or over the limit provided by the collective bargaining agreement applicable to the company).

The employee cannot take compensatory time off until he/she has accrued a credit of at least seven 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 fulfil 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.

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 autonomes*") 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 the collective bargaining agreement applicable to the company authorises the conclusion of an individual global remuneration agreement with this category of executives. Such agreements may be concluded either in hours or in days (within a 218-day limit), and on either an annual basis or (for agreements in hours only) a monthly or even a weekly basis;
- 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 an autonomous executive. Different types of global remuneration agreements based on a determined number of hours per week, month or year may be applicable to these executives.

However, in order to implement annual global remuneration agreements in hours within the company, either a collective bargaining agreement or an in-house agreement must allow this possibility.

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, (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 €8.03 per hour (i.e., €1,218 per month for employees working 35 hours a week) as of July 1, 2005.

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 five 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 ("*intéressement*") which is concluded for three years with the 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 Labor Authorities (DDTE) 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 policy is sufficiently established to have been 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, 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. According to the most recent Supreme Court decisions, modifications of an element of the remuneration (or the method of calculation of the remuneration) is a modification of the employment contract, and the employer must obtain the agreement of the employee prior to such modification.

However, if the bonus results from usage, or a unilateral decision of the employer, the Court has held that the employer can modify or delete 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 becomes effective).

Parisian Regional Transport Premium

All public and private sector employers must allocate to their employees working in the Paris region (which includes all of Paris and departments 92, 93, 94, as well as parts of 77, 78, 91 and 95) a reimbursement of 50 per cent of their monthly or weekly transportation tickets to cover a portion of their travel expenses to and from home within the Paris region. 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, May 1st, May 8th, July 14th, August 15th, All Saint's Day (November 1st), November 11th, and Christmas Day. A Law dated June 30, 2004, has eliminated a legal holiday (Pentecost Monday), which will be worked but not paid, in order to finance actions in favour of elderly people. A collective agreement or the collective bargaining agreement applicable to the company can however choose another day other than Pentecost Monday.

Aside from May 1st (Labor day) which is in principle a day off for all workers, official national holidays must necessarily 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 time. 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.

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 per se.

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 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 €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 behaviour 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 behaviour of the employee. Moreover, an employer is not authorised 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 conduct for which the employee is to be disciplined, 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 behaviour 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 one full day (two working days for a dismissal) 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 agree to the sanction before it may be implemented;
- 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 order the sanction to be cancelled if it appears to be irregular in its form or unjustified or out of proportion with the employee's behaviour. 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 favourable 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 three years 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. During the following thirty days, he/she will only receive 66% of his/her previous gross remuneration. (Each thirty-day period is increased by ten days for every five years of service, up to a maximum period of ninety days). This sick pay program does not begin until the eleventh 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 favourable 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 a 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.

An employee (male or female) adopting a child is entitled to the same leave as employees on maternity leave.

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 will of the employee.

At the end of her leave, the employee has the right to return to her previous 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 maternity benefit payable by social security funds is equal to 80.32% of the daily reference salary of the employee, which is calculated on the basis of the average of the last salaries paid during the three months preceding the maternity leave, within the social security limit (€2,516 as of January 1, 2005). The maternity benefit cannot exceed €67.27 per day. Most companies have supplementary health schemes which provide for additional compensation, so that the employee does not incur any loss of remuneration as a result of her maternity leave.

During the pregnancy period, and for four weeks after the expiration of the maternity leave, the employee is deemed protected. 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.

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

Employer's Contributions

The employer's social security contribution rates are split between the different types of social security benefits, as follows:

Social Security

	Employer's Rate	Monthly Basis
Sickness Insurance	12.8%	total gross salary
Old Age Insurance • with upper limit • without upper limit	 8.2% 1.6%	 0 to €2,516 total gross salary
Family Allowance	5.4%	total gross salary
Housing Allowance	0.1%	0 to €2,516
Accident at Work Insurance	rate depends on company's activity	total gross salary

Unemployment Contributions

	Employer's Rate	**Monthly Basis**
ASSEDIC	4%	0 to €10,064
AGS	0.45 %	0 to €10,064

Additional Retirement

	Employer's Rate	**Monthly Basis**
All employees AGFF	1.2%	0 to €2,516
"Cadres" AGFF	1.3%	€2,516 to €10,064
"Non-Cadres" AGFF	1.3%	€2,516 to €7,548
"Cadres" ARRCO	4.5%	0 to €2,516
"Cadres" Life Insurance	1.5%	0 to €2,516
"Cadres" APEC	0.036%	€2,516 to €7,548
"Cadres" AGIRC	12.5% approx. 10%	€2,516 to €7,548 €10,064 to €20,128
"Cadres" CET	0.22%	0 to €20,128
"Non-Cadres" ARRCO	4.5% 10.5%	0 to €2,516 €2,516 to €7,548

Payroll Tax

	Employer's Rate	**Monthly Basis**
	4.25%	total gross salary

Companies with at least 10 employees

	Employer's Rate	Monthly Basis
Tax on Provident Contribution	8%	employer's provident contribution
Additional Housing Allowance	0.4%	total gross salary
Participation Construction	0.45%	total gross salary
Professional Training	1.5%	total gross salary
Training Tax	0.5%	total gross salary
Transport Contribution	variable	total gross salary

Employee's Contributions

An employee's social security contributions are also split between the different types of social security benefits, as follows:

Social Security

	Employer's Rate	Monthly Basis
Sickness Insurance	0.75%	total gross salary
Widow Insurance	0.1%	total gross salary
Old Age Insurance • with upper limit • without upper limit	 6.55% 0.1%	 0 to €2,516 total gross salary
General Social Contribution • not deductible • deductible	 2.4% 5.1%	 97% total gross salary
Contribution to Repayment of Social Debt	0.5%	97% total gross salary

Unemployment Contributions

	Employer's Rate	Monthly Basis
ASSEDIC	2.4 %	0 to €10,064

Additional Retirement

	Employer's Rate	Monthly Basis
AGFF All employees	0.8%	0 to €2,516
AGFF "Cadres"	0.9%	€2,516 to €10,064
AGFF "Non-Cadres"	0.9%	€2,516 to €7,548
ARRCO "Cadres"	3%	0 to €2,516
ARRCO "Non-Cadres"	3% 7%	0 to €2,516 €2,516 to €7,548
AGIRC "Cadres"	7.5% approx. 10%	€ 2,516 to € 7,548 €10,064 to €20,128
APEC "Cadres"	0.024%	€2,516 to €10,064
CET "Cadres"	0.13%	0 to €20,128

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.

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 30% of the employee's 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. The 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. The Courts can also order him/her to stop competing with his/her former employer. Thus, the employee may be ordered by the Courts to terminate his/her contract with his/her subsequent employer.

Where the employment contract and/or the non-competition clause provides for liquidated damages, the 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. However, if the employee refuses, the employer has no other alternative than either allow the employee to work during his/her notice period or suspend him/her during said notice period and 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.

Unless the employer can prove that the employee's presence was likely to jeopardise the conduct of the business, the employee could potentially claim that it is an aggravating circumstance to his/her termination (emotional distress resulting from the abrupt departure) and request damages.

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 Labor code as this obligation is derived from the employee's general obligation to perform work in good faith and with loyalty.

The French Criminal code ("*Code Pénal*") prohibits an employee from disclosing his/her employer's trade or manufacturing secrets to third parties. However, the definition of trade or manufacturing secret within the Criminal code is limited to trade and manufacturing secrets and does not encompass any and all information which the employer may think is of a confidential nature.

It is therefore 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.

5 Business Transfers

The general principles dealing with the business transfer are contained in Article L. 122-12 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 July 18, 2000, and involving the Perrier company, the Supreme Court has restricted the application of Article L. 122-12 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. 122-12 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 an 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.122-12 of the French Labor code.

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

The Courts also held that they would more generally allow employers to proceed in outsourcing scenarios when it was clear that the position of employees would not 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 which involves a specific procedure if an autonomous activity cannot be proven.

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. 122-12 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 decree of the Government 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. 132-8 of the Labor code operates to exclude all the terms and conditions of the previous collective bargaining agreement.

Pursuant to Article L. 132-8 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 (or employee representatives if there is no Works Council in the Company) 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 failing to comply with this obligation can be sued by the Works Council (or the employee representatives) before the Criminal Court on grounds of interference with their functions ("*délit d'entrave*"). The criminal sanction is 12 months of imprisonment and/or a fine of €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 €7,500.

Termination of Employment

Under Article L. 122-12, paragraph 2, 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. 122-12 was violated. Alternatively they may obtain damages in lieu of reinstatement. Current case law has not in the framework of violations to Art. L 122-12 pronounced reinstatement.

6 Sex Discrimination

Equal Treatment

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 is a member State of the European Union and therefore the provisions of the Treaty of Rome concerning discrimination are applicable. France has also enforced a number of Conventions signed within the International Labor Organisation.

Article L. 122-45 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, customs, sexual tendency, age (unless the difference of treatment based on age can be justified by a legal 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.

The EEC Equal Treatment Directive has been incorporated into the French Labor code, under which employers are prohibited 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 their employment on those grounds;
- providing remuneration, training, promotion, classification or grading to an employee on grounds of sex discrimination.

French law also provides that indirect discrimination constitutes discrimination as well. Indirect discrimination is the adoption of criteria that are not necessary to perform certain functions, but may adversely affect workers of one sex. French law allows employers to discriminate in favour of one sex where the needs of the job require the jobholder to be of that sex. However, the categories in France are limited to actors (playing male or female roles) and models.

Violations of the "equal treatment" principle 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 the employer in Civil Courts for damages, or can seek to obtain an order requiring reinstatement or promotion.

However, burden of proof of the sex discrimination is now on the employee. The employer must then demonstrate that the measures taken were justified and cannot be considered as discrimination.

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 two years and/or fined a maximum of €30,000 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 re-instatement and can elect to receive damages instead. These damages amount to a minimum of six months' 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 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 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 two jobs in question 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 Labor code to display on notice boards in any factory or office, all its legal 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 him 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 up to €1,500 which can reach up to €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.

Sexual Harassment

In France, sexual harassment in the workplace is governed directly by a law dated November 2, 1992 and by the French Criminal and Labor codes. A law dated January 17, 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. 122-46 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 regards to their remuneration, training, redeployment, assignment, qualifications, classification, professional promotion, transfer or renewal of the employment contract, for having suffered or refused to suffer from harassment on behalf any person whose intention is to require sexual favours for themselves or for someone else.

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 hierarchical superior who engages in such pressure shall also be subject to disciplinary sanctions by his/her employer.

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.

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 organisations may bring court action in favour of any employee provided the employee has given written permission.

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 €15,000 and/or an imprisonment of a maximum of one year, if he/she harasses an employee or a prospective employee in order to obtain sexual favours.

Article L. 152-1-1 of the 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/or a fine of a maximum of €3,750. The Courts can also order that the decision be published in newspapers.

An act of 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. 112-5 of the Labor code states that the employees who are recognised as being held responsible for sexual harassment may be subject to disciplinary sanctions.

Moreover, French Labor courts have consistently held that sexual harassment, if proven, constitutes 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 where the employee suffered a prejudice due to the termination of his/her employment contract resulting from sexual harassment.

Moral harassment

Pursuant to Article L. 122-49 of the Labor code, no employee should be victim of any repeated acts of harassment on behalf of the employer, its representative or from any person who abuses of the authority attributed by his/her functions, that may be harmful to the employee's basic dignity or would make his/her working conditions humiliating or degrading.

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 will be able to void the dismissal and reintegrate the employee. Moreover, criminal sanctions may potentially be imposed on the offender (maximum €15,000 and/or one year imprisonment).

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

7 Race Discrimination

The preamble of the Constitution dated October 27, 1946, incorporated in the 1958 Constitution, states that: "every human being, without distinction of race, religion or belief possesses 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. Any employer who does so is liable to a fine of up to €30,000 and/or a jail sentence of up to two years. The courts can also order the employer to publish the decision.

The Criminal code also prohibits any obstruction to an individual or company's activity that is based on grounds of race. Penalties in that case are the same as those mentioned above.

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

Furthermore, Article L. 122-45 of the 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 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 law 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 written in French. However, if an employee is a foreigner, he/she can ask for his/her employment contract to be translated into his/her own language.

8 Termination of the Employment Agreement

Introduction

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

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

The employer may terminate an indefinite term employment agreement at any time, but it must (i) prove a real and serious cause ("*cause réelle et sérieuse*") for the termination of the employment agreement 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 an 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 an employee 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) 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 salary.

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

Breach of a fixed term agreement

After the probationary period, a fixed-term agreement 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, it is impossible to breach the employment agreement (unless to pay a compensation equivalent to the salaries that the employee would have received during the remaining of his/her contract). The dismissal procedure is however applicable in case of 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.

However, 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 entitles the concerned employees to benefit from counterparts such as, in particular, privileged access to professional training.

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 the 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 void. 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 has been held and no later than one month for disciplinary dismissals only.

Written explanation 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 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 Labor code, the applicable collective bargaining agreement (if any), internal regulations, custom and usage, or the employment agreement itself.

The 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 or contractual provision more favourable 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 or contractual provision);
- executives employees ("cadres") are generally entitled to a three-month notice, irrespective of 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 favourable provisions, such as those resulting from an applicable collective agreement.

The legal minimum dismissal indemnity is based on the employee's seniority as follows:

- 1/10th of the average monthly remuneration per year of service for employees with more than two years of service;

- additional compensation of 1/15th remuneration per year of service after ten years' service.

These dismissal indemnity rates are doubled for economic dismissals.

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 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 abusive 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 abusive dismissal).

Residual Obligations

Irrespective of the reasons for the dismissal, the employer must also give the employee a work certificate ("*certificat de travail*"), a final statement of accounts ("*reçu pour solde de tout compte*"), payslips corresponding to the notice period, and a specific document for the Unemployment Authorities ("*attestation ASSEDIC*").

Dismissal for Economic Reasons

A number of changes regarding redundancies in France have occurred following the recent Social Cohesion law dated January 19, 2005.

A dismissal can only be characterised 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 agreement, due to, inter alia, economic difficulties or technical changes (Article L. 321-1 of the French Labor code). 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.

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:

- 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 law dated January 18, 2005, has replaced the former scheme (i.e., the "*Pare Anticipé*") by the Personalized Redeployment Agreement ("*Convention de Reclassement Personnalisée*") providing psychological assistance, professional counseling and coaching, professional abilities evaluation, and training, in order to favour the redeployment of the employee after dismissal. Such measures are put in place by the Unemployment Authorities. The employee has a 14-day period as of the receipt of the information note to accept or refuse the Personalized Redeployment Agreement. If the employee accepts to benefit from the Personalized Redeployment Agreement, the employment agreement will be considered terminated by mutual agreement between the parties, as from the expiration date of the 14-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 with more than 1,000 employees, a Redeployment Leave ("*Congé de Reclassement*"). Such a Leave is of a minimum duration of four months and a maximum duration of nine months and is financed in part by the employer. The purpose of such a Leave is to permit the employee to benefit from training measures and a job search program. The Redeployment Leave takes place during the notice period that the employee is exempt from performing. A draft bill which should be implemented shortly provides that employees within companies with more than 1,000 employees will only be entitled to benefit from the Redeployment Leave and not from the Personalized Redeployment Agreement;
- 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 Personalized Redeployment / 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 "*Directeur Départemental du Travail*" (Local Labor authority) within eight days from sending the dismissal letter.

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

The first part of the procedure (Book IV of the Labor code) mentioned below must also be followed in companies with employee representatives.

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 "*Convention de Reclassement Personnalisé*" / "*Congé de Reclassement*" 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 letter with return receipt requested;
- notification to the "*Directeur Départemental du Travail*" (Local Labor authority) 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 planned in the first three months of the following year must necessarily abide by the following rules concerning dismissals of at least ten employees.

Dismissal of at least ten employees for economic reasons in a thirty-day period

The procedural steps for such collective dismissal are as follows:

First part of the procedure (Book IV of the Labor code)

This specific procedure is mainly related to the restructuring and the economic reason behind the dismissals (e.g., discontinuation of an activity or product). Usually, two Works Council meetings are called by the company: one is for information purposes, the other for consultation purposes.

This first part of the procedure is only completed once the Works Council has rendered an opinion (non-binding on the company) on the contemplated restructuring.

Minimum procedure

- Notice of call to the Works Council members, along with the agenda of the meeting and an economic note on the planned restructuring indicating the cause (economic justification), the content and the global consequences on employment of the company's restructuring;
- First Works Council meeting: information, with a possibility to appoint a chartered accountant ("CA");
- Second Works Council meeting: consultation. The employer must necessarily reply to the employee representatives' opinions and comments;

- If a CA has been appointed by the Works Council during the first meeting, his/her report must be communicated to the Works Council at least 8 days prior to this meeting.

Potential delay and disruption

The Works Council must be given (i) sufficient written information with regard to the cause of the contemplated restructuring (e.g., discontinuation of an activity) and (ii) enough time to study the company's economic justifications.

If the Works Council considers that the company did not fulfil its obligations in this respect, it can either refuse to render an opinion and therefore *de facto* delay the process, or, initiate summary proceedings before the Civil Court which can decide that the Works Council was not properly informed/consulted and therefore:

- grant a delay to the Works Council by fixing another Works Council meeting;
- decide that the procedure must be reinitiated from the beginning;
- suspend the procedure until satisfactory information / consultation of the Works Council.

The Works Council could also launch a specific procedure known as the "Alert Procedure".

Pursuant to Article L. 432-1 of the French Labor code, the Works Council is entitled to request information and explanation from the management when it has been made aware of events or facts which could presumably adversely affect the economic situation of the company.

Within the scope of the Alert Procedure, the Works Council is entitled to appoint a CA (whose fees will be borne by the company) who will have access to the relevant information and documentation on the contemplated restructuring and will prepare a report which will possibly be submitted to the management of the company.

French law does not provide for a maximum period of time for the CA to carry out his/her mission and the Works Council could refuse to give an opinion on the contemplated transaction before having reviewed the CA's report. From a practical standpoint, the Alert Procedure could substantially delay the collective economic dismissal procedure by approximately two months.

Second part of the procedure (Book III of the Labor code)

This procedure deals specifically with the social consequences of the restructuring discussed during the first part of the procedure (cf. above), i.e., the collective dismissal that should result from said restructuring.

Minimum procedure

Article L. 321-7-1 of the Labor code allows the Works Council to appoint a CA for assistance during its consideration of the information presented by the management on the proposed economic dismissals.

Such an appointment results in a third meeting to be held 14 days after the second meeting.

However, the duration of the procedure mainly depends on the length of negotiations and the attitude of the Works Council.

- Notice of call to the Works Council

The corporate representative of the company gives written notification to the employee representatives, providing them with all "useful information" on the dismissals. This

information concerns the economic, financial or technical reasons for the dismissals, the number of employees in the company, the number of lay offs planned, the professional categories concerned, the criteria proposed to establish the list of the employees to be dismissed (job qualification, family situation, seniority, social particulars making it difficult to find a new job, e.g., age or incapacity), and the schedule planned for the dismissals. The criteria must be considered for each professional category.

This information on the planned lay offs must be accompanied by a draft Employment Protection Plan (previously known as a "Social Plan") containing information on the measures proposed to limit the number of lay offs or to avoid them (which will include remedies in the form of part time jobs, professional training, outplacement, financial or organizational support to help the employees find new jobs, etc.).

All this information must be simultaneously sent to the Labor authorities.

- First Works Council meeting, with appointment of a CA by the Works Council.
- Notification of the dismissal project to the Labor authorities.

Approximate deadline for the Labor authorities to issue a "*constat de carence*", i.e., a document considering that the Employment Protection Plan is not sufficient and appropriate (this right for the Labor authorities is open during an eight-day period from the day immediately following the first Book III Works Council meeting).

- Second Works Council meeting with information on the planned collective dismissal and reviewing of the CA's report.
- Third Works Council meeting with consultation on the planned collective dismissal, vote on the Employment ProtectionPlan and determination of the order of the dismissals.

The employer must address in writing the comments and suggestions made by the employee representatives.

During this meeting the employer must also inform the employee representatives that he/she intends to propose to the employees the "*Pare-Anticipé*" (until the modalities of the Individualized Redeployment Agreement are defined by the Unemployment authorities) or the "*congé de reclassement*" measures mentioned above.

The minutes of this meeting and the list of the employees whose dismissals are contemplated must be sent to the Labor authorities.

- Convocation of the protected employees, i.e., employee representatives (inter alia Works Council members, employee delegates, trade union delegates), to a pre-dismissal meeting.
- Individual pre-dismissal meetings with each of the protected employees.

Deadline for the Labor authorities to control the regularity of the procedure.

- Extraordinary Works Council meeting on the dismissal of protected employees.
- Notification of the dismissal to each employee by registered letter with return receipt requested no earlier than 30 days after the notification of the dismissal project to the Labor authorities, or 14 days after this notification if a CA has been appointed. (for protected employees, the notification of their dismissal may only take place once the authorization of the Labor Inspector has been obtained).

The procedure for this type of collective dismissal is extended if the number of employees to be dismissed exceeds 100.

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.
- It is also important that the Employment Protection Plan, as drafted by the employer, be legally sufficient when initially presented to the Works Council. It must contain proper redeployment measures, the absence of which may lead the court to suspend the procedure and order the company to resume the consultation procedure from the beginning, even if the Employment Protection Plan to is improved or amended based on the Works Council's comments between the two meetings.
- An insufficient Employment Protection Plan may lead the court to suspend the individual notification of dismissal to the employees. The Supreme Court, in a famous decision of February 13, 1997, decided to cancel an Employment Protection Plan several years after the individual dismissals had been notified. The court ordered the reinstatement of the dismissed employees (which obviously causes an important number of practical problems), and the payment of their salaries from the date of their dismissal to their effective reinstatement. The court may order the reinstatement of the employees if they request so, except if such reinstatement has become impossible (e.g., closing of the company). When the employee does not wish to be reinstated or when such reinstatement is impossible, the employer will be required to pay an indemnity of at least twelve months of salary.
- If the court decides that the employer did not provide all the necessary information to the CA, it can order a postponement of the second meeting thus allowing the CA to review the documents.
- The Works Council can also obtain an order from the court imposing upon the employer, under penalty -(including daily penalties), to disclose any economic document necessary to the CA's mission, including documents concerning the company's parent company and other subsidiaries in France and abroad.

Information provided to the Labor Authorities

The Labor Administration ("DDTE") must receive all the documents sent to the Works Council prior to its meeting and must receive the minutes of each meeting, including amendments to the Plan to Maintain Employment, planned dismissals, etc.

The planned collective dismissal must be notified in writing to the DDTE 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 DDTE a copy of the documents given to the Works Council 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 DDTE, the employer could be found guilty of a criminal offence and could be ordered to pay a fine of €3,750 per offence.

The DDTE verifies:

(i) the content of the Employment Protection Plan and can propose additions or amendments to the plan. The DDTE can also issue a "*constat de carence*" when the

Employment Protection Plan does not contain appropriate measures. The Supreme Court once ruled that the "*constat de carence*" was not binding on the employer who can nonetheless decide to pursue the redundancy procedure. The courts have jurisdiction to decide whether an Employment Protection Plan is insufficient. However, when the courts find the employer's Employment Protection Plan legally insufficient, the legal effect is to invalidate all subsequent actions based on the plan and therefore to nullify the employer's entire dismissal procedure.

In addition, in the event of a collective dismissal, when an Employment Protection Plan is invalidated by the Labor courts, the dismissed employees can claim either reinstatement within the company or a specific indemnity equal to at least 12 months salary.

From a practical standpoint, when Labor authorities issue a "*constat de carence*", the employer must resume the entire dismissal procedure and draft another plan which will take into account the DDTE's observations.

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

The employer is not compelled by law to observe the comments and follow the suggestions made by the DDTE, which may not be in the company's best interest. Ignoring the DDTE's comments and suggestions could be unwise in view of possible future disputes that may be raised by the dismissed employees.

However, the employer must respond to the Labor authorities before sending the dismissal letters. If the employer was to dismiss the employees before responding to the Labor authorities, Article L.321-8 of the French Labor code provides for a criminal fine of €3,750 per employee dismissed.

9 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 two 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 organise Works Council elections (elections must be held every two 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 last three years.

The employer must advise the five major trade unions (CGT, CGT-FO, CFTC, CFDT and CFE-CGC) to produce a list of candidates. These trade unions, as well as any other trade union which is representative within the company, have the exclusive right to present candidates for the first ballot. In the event there is no trade union candidate (or if less than 50% of the electors vote), then a second ballot is held, for which any employee may be candidate assuming that they comply with the conditions in order to be eligible for such elections (in particular the employees must be at least eighteen years old and have at least one-year of seniority within the company and should not be the spouse of or related to the head of the company).

The employer must organise mid-term elections if the 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:

Employees

From	To	Members	Deputies
50	74	3	3
75	99	4	4
100	399	5	5
400	749	6	6
750	999	7	7
1,000	1,999	8	8

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 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 effect on the company, it may request the employer to give an explanation. If the information is deemed insufficient or if the adverse effects are confirmed, the Works Council is authorised 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).

Employer's attempt to prevent 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 €3,750 fine and/or a maximum of 1 year of imprisonment which can increase up to twice in cases of repeated offences.

The Sanitation, Safety, and Working Conditions Committee

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

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.

The members are allowed the following amounts of time off work to perform their duties (excluding time spent meeting with the employer):

99 employees	2 hours per month
100 to 299 employees	5 hours per month
300 to 499 employees	10 hours per month
500 to 1,499 employees	15 hours per month
1,500 + employees	20 hours per month.

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 November 12, 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 companies in the group employ a minimum of 150 employees in two different EU member states.

Companies and Groups which have not set up an EWC before September 22, 1996 are to create a Special Negotiating Body (SNB). This SNB will negotiate the creation of the EWC in the company or group. If three years after the opening of the negotiation no agreement is reached, the legal provisions ruling EWC will automatically apply after a period of six months.

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 organisation 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 April 9, 2001 and the European Court of Justice on March 29, 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.

Employee Delegates

Definition and Purpose

Employee delegates are elected, every two 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 less 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 and safety 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 two 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.

Employees

From	To	Representatives	Deputies
11	25	1	1
26	74	2	2
75	99	3	3
100	124	4	4
125	174	5	5
175	249	6	6
250	499	7	7
500	749	8	8
750	999	9	9

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 organise the elections;
- to organise monthly meetings with the representatives;
- to allow the representatives certain time off (up to fifteen hours a month) to fulfil 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 five major trade unions 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

Employees

From	To	Delegates per union
50	999	1
1,000	1,999	2
2,000	3,999	3
4,000	9,999	4
10,000	over	5

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.

Most collective bargaining agreements, such as those regarding the duration of work may be entered into only with trade union delegates.

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.

Trade union delegates are authorised to attend all Works Council meetings.

Special Protection of Employee Representatives

Any employee representative (whether member or alternate to the Works Council, to the Sanitation 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 authorisation by the Labor Inspector and, for certain of the above representatives, after having consulted the Works Council.