

Macron Reform – Labor Law Orders

September 4, 2017

After two months of consultation, French Labor Minister, Muriel Pénicaud, and French Prime Minister, Edouard Philippe, officially presented five orders on August 31, 2017, proposing "36 concrete measures" to carry out a radical reform of the French Labor Code. The orders will be presented shortly to five consultative bodies, which will include representatives of various trade unions. The texts will then be presented to the Council of Ministers on September 22 and will come into force in late September.

As the French Prime Minister, Edouard Philippe, underlined, "*the five orders propose to make up for lost years, these years of lost time. (...) It would have been easier and less risky to deal with the symptoms of our disease rather than treating them*". Prior to presentation of the orders, Edouard Philippe also recalled the principal purposes of the project: the "*massive development of social dialogue at company and branch levels*", the "*construction of real guarantees for everyone (in particular, the determination of damages and interests)*", "*the desire to provide real solutions for very small companies and small to medium-sized companies*", which are the majority of French companies, and the "*strengthening of the economic attractiveness of France*".

1. Limitation of the compensation granted by the Labor law Courts ("*Conseil des Prudhommes*")

In the event of an unfair dismissal, compensation granted by the *Conseil des Prudhommes* will be capped at 3 months' salary up to 2 years of seniority (compared to 6 months previously), which will then be gradually increased up to 20 months' salary up to 30 years of seniority.

A minimum of 15 days salary has been set for very small companies and one months' salary for other companies.

However, the limitation of compensation granted by the *Conseil des Prudhommes* will not apply in the event of a complaint for discrimination or an infringement of the fundamental rights of the employee. In this case, compensation will not be less than 6 months' salary.

2. An increase in legal damages for dismissal

In order to compensate for the limitation in compensation granted by the *Conseil des Prudhommes*, the French government has decided to increase the legal damages for dismissal by 25%. This will now be increased to 1/4 of a month's salary per year of seniority.

Up to now, legal damages for dismissal could not be less than 1/5 of a month's salary per year of seniority, plus 2/15 of a month per year of seniority beyond 10 years.

3. A reduction in the time limit for appeal to the Labor Courts

The time limit to bring a legal action before the *Conseil des Prudhommes* will now be limited to one year for all types of dismissals (compared to what was previously one year for dismissals on economic grounds and two years for other dismissals).

4. Negotiation within small companies

This measure only concerns small companies :

- within small companies with fewer than 20 employees: negotiations can be held, without trade union involvement, directly with an employee who has neither been elected nor mandated by a trade union. Any negotiated agreement would then be submitted to a referendum. In order to be validated, the agreement would have to be approved by two thirds of the employees.

NB : According to the Ministry of Labor, this measure is taken even though trade union representation is absent in 96% of small companies.

- within companies having between 20 and 50 employees: negotiations can be held with an employee representative who has not been elected by a trade union.

Currently, almost all companies with fewer than 11 employees do not have a trade union representative and are therefore obliged to comply with the provisions of branch agreements. Only those agreements relating to compensation for Sunday work can be negotiated and signed. This is incompatible with the desire of President Emmanuel Macron to ensure negotiations in close collaboration with all companies. Going forward, it will be possible for a business owner to discuss all non-industry related topics with his employees, without the participation of a trade union representative. A majority vote will be sufficient to obtain agreement. This will be deemed a company referendum, launched at the initiative of the employer.

5. Creation of a single employee representative body

A single employee representative body called the "social and economic committee" ("CSE") will replace and merge the works council ("CE"), the health, safety and working conditions committee ("CHSCT") and the staff representatives within companies with more than 50 employees.

Staff representative institutions will therefore be reduced from four to two, comprising (a) trade union representatives and (b) the staff representatives, the works council and the health, safety and working conditions committee.

This new entity, the company council, will be charged with:

- negotiating agreements in the absence of trade union representatives ;
- having a veto right on all matters relating to professional training and gender equality; and
- bringing legal actions and soliciting expert opinions.

A health, safety and working conditions committee, similar to the CHSCT, will continue to be present in companies with at least 300 employees. For companies with fewer than 300 employees, the labor inspectorate may impose the implementation of such a committee if it is deemed necessary.

The Labor Minister also announced the possibility of creating, by majority agreement, a "*company council*", which would be a "*more advanced means of social dialogue, in pursuit of joint decisions*" at the initiative of the trade unions.

6. Negotiation of bonuses at company level

Bonuses can be now negotiated at company level, by a majority agreement, regardless of the size of the company. Previously, they were exclusively negotiated by the branches.

7. Strengthening of the role of branches

Branches will now have more powers, including in the negotiation of the terms of fixed-term contracts (duration, number of renewals, deficiencies...). In addition, branches will also be entitled, by agreement, to authorize the use of permanent contracts on building sites, which until now have been used by the construction industry and terminated upon completion of the construction site.

8. Generalization of majority agreements

Corporate agreements must be majority agreements from May 1, 2018, instead of September 1, 2019 as initially provided by El Khomri Law.

To be valid, corporate agreements must be approved by organizations representing 50% of the votes (compared to 30% previously).

9. Dismissal for refusal to recognize a collective majority agreement

In a more personal register for the employee, a dismissal for refusal by the employee to recognize a collective majority agreement will no longer be subject to a regime similar to the one applicable for dismissal for economic reasons. The employee will no longer be entitled to "CSP", a special regime reserved for employees who are made redundant. However, their personal training account (which centralizes all rights of an employee to professional training) will automatically be credited with 100 additional hours.

As a reminder, the CSP provided employees with further monitoring by *Pôle Emploi* (the French governmental agency which registers unemployed people, helps them to find jobs and provides them with financial aid) and better unemployment benefits for the first year.

10. The justification of redundancy plans at a national level

In those instances where a multinational company, which experiences economic difficulties, dismisses employees in its French subsidiary, the judge will now only be entitled to take into account the French impact when assessing redundancy plans. Previously, the judge could consider the global impact of the company's plan.

11. The creation of conventional collective termination

Companies will now be entitled, through an agreement officially confirmed with the French government, to draw up a common framework for voluntary redundancies.

Previously, contractual terminations, which grant employees unemployment assistance, could only be concluded at an individual level.

12. A better understanding of working conditions

The French government wishes to reform the professional prevention account. According to the Labor Minister, some of the 10 criteria governing the difficulties of certain professions are no longer applicable today. In particular, the French government intends to abolish the declaration of difficult working conditions which has to be implemented by employers.

13. Clemency for procedural defects in dismissals

The sanction for procedural defects in the event of a dismissal will be capped at one month's salary. However, procedural defects will not prevent an examination of a case on its merits.

The French government also wants to abolish procedural errors by providing access to a standard form indicating the rights and duties of employers and employees during the dismissal process.

14. Strengthening of teleworking

The French government wishes to develop and secure teleworking.

15. Accessibility to the Labor Code for everyone

The French government intends to provide an online version of the Labor Code.

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