

NEWSLETTER LABOR LAW – JANUARY 2018

MACRON CHANGES THE EMPLOYMENT GAME IN FRANCE

If you were debating whether to recruit in France or not, hesitate no more.

The Macron government passed a major reform of French Labor law, in September 2017, which includes 36 measures aiming to increase competitiveness of companies and securing employment relationships.

The 18th edition of the AmCham-Bain Barometer, which measures the morale of American investors, illustrates the positive consequences of this change in law for foreign businesses:

- the Macron government's actions are seen to effectively facilitate investment, improving the image of France in the U.S. (for 90% of respondents);
- More than 50% of American investors are considering recruiting new employees in France in the next 2-3 years, compared to only 21% last year.
- 21% of respondents recommended France as an investment destination, compared to only 3% in 2016.

You will find hereunder the most emblematic measures of the Macron ordinances.

➤ **Simplifying staff representation: the social and economic committee (“*comité social et économique*”)**

Previously, businesses dreaded to reach the threshold of 50 employees, as it triggered the obligation to implement a works council (“Ce”) and a health and safety committee (“CHSCT”), on top of the workers delegates (“DP”).

With the Macron ordinances, the different staff representative bodies (DP, CE and CHSCT) merge into one unique body: the Social and Economic Committee (“SEC”).

This simplifies the life of businesses, concentrating meetings into one, rather than having to hold three different meetings on the same subject.

In addition, the SEC will be entitled to negotiate and enter into collective bargaining agreements.

The SEC is mandatory for companies employing at least 11 employees over a consecutive 12-month-period.

The SECs are progressively introduced into companies. By 1st January 2020, SECs should have replaced all former representative bodies (i.e. DP, CE and CHSCT).

➤ **Enabling small and medium companies to conclude collective bargaining agreements, with or without unions**

- In small companies (less than 11 employees): employers may submit a collective agreement project to the employees' prior approval (through a referendum requiring the majority of at least 2/3 of the votes), with no intervention of unions.
- In companies employing between 11 and 50 employees (companies that formerly had workers delegates): a collective agreement may be negotiated (i) with the staff representatives or (ii) with employees specifically mandated by a union after approval through a referendum.

The time limit to challenge the validity of a collective agreement is reduced to 2 months, starting from its notification to trade unions or its disclosure to employees.

➤ **Enlarging the scope of collective agreements**

Employers are now able to negotiate:

- On the company level: bonuses, working time and remuneration and
- On the branch level: length, renewal and waiting period between fixed term contracts.

This enables each company to use a collective agreement to fulfill the specific needs of workers and companies, and tackle specific issues.

Company agreements will be the law, which is an incredible revolution.

➤ **Redefining redundancy rules**

In 2016, the El Khomri Law had redefined the economic rationale in the event of redundancies. The measures set forth in the 2017 ordinances push the redundancy reform to a new level.

The economic rationale is still considered at a group level but exclusively in France. This renders the justification of redundancies easier.

The obligation to redeploy targeted employees is narrowed:

- Targeted employees should be offered jobs available in France or in companies of the group whose organization, activities and location allow the transfer of employees;
- No obligation to ask if the employee accepts to be relocated abroad;
- Redeployment offers may now be transmitted, by any means, through a list to all employees (i.e. through the Intranet).

Finally, following the success of the highly popular mutually agreed termination (“*rupture conventionnelle*”), the government introduced a “collective mutually agreed termination” (“*rupture conventionnelle collective*”) which allows the company to implement collective voluntary departures without having to provide for an economic rationale.

The collective mutually agreed termination, called “RCC” in France, which is a flagship measure of the reform of the labor code, seems to have quickly found its audience: a first RCC agreement was formalized this January at the car manufacturer PSA, which targets 1 300 jobs.

➤ **Narrowing damages awarded in the event of an unfair dismissal**

Damages awarded by a Court in the event of an unfair dismissal are now reduced and capped. Courts should follow a table with minimum and maximum indemnities according to the employee’s seniority.

For example, the minimum indemnity of 6 months’ salary, for unfair dismissals for employees over 2 years’ seniority, is reduced to 3 months’ salary.

The legal severance pay will be increased to 1/4th month of salary per year of seniority.

Also noteworthy, the time limit to challenge a dismissal before labor Courts is now reduced to 1 year, against 2 years previously.

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With the Macron ordinances, the government aims “to renew the French social model”.

Farewell to the former guiding philosophy in labor relations by which the Labor Code was a shield used by workers against employers.

The French labor market is now more flexible and allows companies to adapt, whilst maintaining fundamental guarantees to the worker. The word “flexi-security” is used to describe this new model.

Cheers to the Macron effect on businesses in France! France is back.

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