

Topic 1: New Rules on Dismissals

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New rules to reform French employment law, as announced in our previous client alert of September 19th, 2017, have been published in the French official journal on September 23rd, 2017. Some measures are immediately applicable, while others will come into force upon the publication of decrees on January 1st, 2018, at the latest.

This client alert focuses on the new rules applicable to dismissals, for both personal and economic grounds, which are outlined in ordinance n°2017-1387, and which aim to foresee and secure employment relationships (hereinafter the “Ordinance”).

Note: changes specific to redundancies will be addressed shortly in another client alert.

1. Lighter sanctions for the conduct of the dismissal procedure

FORMER RULES	NEW RULES Article 4 of the Ordinance
<ul style="list-style-type: none"> The employer who did not comply with conventional or statutory procedures prior to notifying the dismissal (for example: referring the matter to a disciplinary commission) could be held liable for the payment of damages for unfair dismissal (see point 5 below), even though the dismissal was based on a serious and valid ground. 	<ul style="list-style-type: none"> The employer who does not comply with such conventional or statutory procedures prior to notifying the dismissal can only be held liable for the payment of an indemnity that cannot exceed one month of salary should the dismissal be actually based on a serious and valid ground.
<ul style="list-style-type: none"> Entry into force: as from the publication of the Ordinance, from September 24th, 2017. 	

2. New rules on dismissal rationale and lighter sanctions

FORMER RULES	NEW RULES Article 4 of the Ordinance
<ul style="list-style-type: none"> The employer had to provide a precise dismissal rationale in the dismissal letter notified to the employee: in case of challenge of the dismissal ground(s) by the employee, the employer could only use the ground(s) 	<ul style="list-style-type: none"> Templates of dismissal letters will be proposed to employers. Following the notification of the dismissal, the employer can provide more details on the rationale leading to the dismissal, at his own

<p>mentioned in the dismissal letter.</p> <ul style="list-style-type: none"> If the dismissal was not based on a valid and serious ground, the employee could be awarded damages for unfair dismissal (see point 5 below). 	<p>discretion or upon the employee's request.</p> <ul style="list-style-type: none"> If, in spite of the additional details provided by the employer, the rationale remains insufficient, the dismissal will be held unfair and the employee could be awarded damages for unfair dismissal (see point 5 below). Would the employee fail to request additional details from his employer, the mere lack of rationale, would not result in the dismissal being held unfair: the employee could only be awarded damages amounting to no more than one months' salary.
<ul style="list-style-type: none"> Entry into force: modalities and implementation periods will be outlined in a decree and on January 1st, 2018 at the latest. 	

3. New rules on eligibility and increase of the statutory severance pay

FORMER RULE	NEW RULE Article 39 of the Ordinance
<ul style="list-style-type: none"> Employees with at least 1 year of service were entitled to the statutory severance pay. 	<ul style="list-style-type: none"> Employees with at least 8 months of service are now entitled to the statutory severance pay.
<ul style="list-style-type: none"> Entry into force: dismissals notified after the publication of the Ordinance, from September 24th, 2017. 	

In a decree published on September 26th, 2017 in the official journal of French law, the government also amended the calculation formula of the severance pay to increase it for employees with up to ten years of service:

FORMER RULE	NEW RULE
<ul style="list-style-type: none"> Up to ten years of service: one fifth of monthly salary per year. Beyond ten years of service: one third of monthly salary per year. 	<ul style="list-style-type: none"> Up to ten years of service: one quarter of monthly salary per year. Beyond ten years of service: it remains one third of monthly salary per year.
<ul style="list-style-type: none"> Entry into force: dismissals notified after the publication of the decree of September 26th, 2017, from September 27th, 2017. 	

4. Statute of limitations for individual claims arising out of the termination of the employment contract

Any claim arising out of the termination of the employment contract is subject to a time limit of twelve months from notification of the termination.

FORMER RULES	NEW RULES Articles 5 and 6 of the Ordinance ¹
<ul style="list-style-type: none"> Dismissal on personal grounds: any claim arising out of the termination of the employment contract was time barred after 2 years following “the date on which the employee was aware or should have been aware” of the facts enabling his action. 	<ul style="list-style-type: none"> Dismissal on personal grounds: any claim arising out of the termination for personal grounds of the employment contract is now time barred after 12 months following the notification of the termination, which clarifies the exact starting point of the statute of limitations.
<ul style="list-style-type: none"> Dismissal on economic grounds: the claim related to “the regularity or validity” of the dismissal on economic grounds was time barred after 12 months following the notification of the dismissal provided it was mentioned in the dismissal letter, which scope of application had been restricted by the courts to certain claims only. 	<ul style="list-style-type: none"> Dismissal on economic grounds: any claim arising out of a termination on economic grounds of the employment contract is now time barred following 12 months as from the notification of the termination, which covers all possible claims.
<ul style="list-style-type: none"> Entry into force: applies to ongoing limitation periods as from the publication of the Ordinance, without leading to an increase in the statutes of limitations formerly applicable. 	

5. Introduction of a table defining the amount of damages in cases of unfair dismissal

FORMER RULES		NEW RULES Article 2 of the Ordinance	
<ul style="list-style-type: none"> Employees with at least 2 years of service and employed in companies of at least 11 employees: minimum 6 months’ salary. 	No legal maximum	<ul style="list-style-type: none"> Employees with at least 2 years of service and employed in companies of 11 employees and beyond: minimum 3 months’ salary. 	Maxima (up to 20 months’ salary for 30 years of service and beyond (see table below))
<ul style="list-style-type: none"> Less than 2 years of service and / or in companies of less than 11 employees: no minimum, damages awarded at the discretion of the judge based on the prejudice suffered. 		<ul style="list-style-type: none"> Less than 1 year of service in companies of less than 11 employees: minimum 0.5 months’ salary. 	
<ul style="list-style-type: none"> Entry into force: dismissals notified after the publication of the Ordinance, from September 24th, 2017. 			

¹ These new rules also apply to any type of termination which includes constructive dismissals, mutual terminations etc.

Table of damages for unfair dismissal:

Years of service of the employee in the company	Minimum indemnity (in gross monthly salary)		Maximum indemnity (in gross monthly salary)
	Companies with 11 employees and beyond	Companies with less than 11 employees	
0	Not applicable		1 month
1 year	1 month	0,5 month	2 months
2 years	3 months	0,5 month	3,5 months
3 years		1 month	4 months
4 years		1 month	5 months
5 years		1,5 months	6 months
6 years		1,5 months	7 months
7 years		2 months	8 months
8 years		2 months	8 months
9 years		2,5 months	9 months
10 years		2,5 months	10 months
11 years		3	
12 years			11 months
13 years			11,5 months
14 years			12 months
15 years			13 months
16 years			13,5 months
17 years			14 months
18 years			14,5 months
19 years			15 months
20 years			15,5 months
21 years			16 months
22 years		16,5 months	
23 years		17 months	
24 years		17,5 months	
25 years		18 months	
26 years		18,5 months	

27 years		19 months
28 years		19,5 months
29 years		20 months
30 years and beyond		20 months

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