

The publication of the Macron ordinances

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The long-awaited reform of French employment law is now on track. The French government (the “Government”) presented five draft ordinances outlining the different topics and related modifications that should be formally ratified by the end of September 2017.

We extracted some of the most significant changes in each of the four main draft ordinances:

1. Reinforcement of collective negotiation

The Government shall reinforce the possibility for companies to negotiate company-wide collective agreements that prevail over those of branch/professional collective agreements. For that purpose, the Government shall strictly define the areas of law concerned. Public order rules shall continue to be excluded (e.g. minimum wage, classification, funding of social benefits, rules applicable to part-time, fixed-term and temporary work).

In companies employing less than 11 employees, employers could submit draft collective agreements for the employees’ prior approval (through a referendum requiring the majority of at least 2/3rds of the votes). In companies employing at least 11 but less than 50 employees, collective agreements could be negotiated with (i) the staff representatives or (ii) employees specifically empowered by trade unions, in which case the employees would have to approve the agreement through a referendum.

The statute of limitations for challenging the validity of collective agreements would be reduced to 2 months from its notification to trade unions (or from its publication to the employees). In the event a judge would rule null and void a collective agreement, he would have the power to adapt the consequences of his decision in order to avoid or mitigate adverse impact (e.g., deciding that the nullity would only apply in the future).

2. New organization of staff representation

2.1 Creation of a unique staff representative body: the Social and Economic Council

By end of 2019, in companies of at least 50 employees, the staff delegates, the works council and the health and safety committee would merge into one new representative body: the Social and Economic Council (the “SEC”). This would occur in each company at the time of the next professional election process (with the possibility to extend the current mandates by one additional year for companies whose next professional elections are supposed to take place before the end of 2018). Staff representatives could not be elected for more than 3 mandates.

In companies employing at least 11 employees (but less than 50 employees), the SEC would perform the duties of the staff delegates only.

2.2 The SEC could also become the Company Committee

A company-wide or a branch-wide collective agreement entered into with trade unions on a majority basis could provide for the merging of all staff representative bodies and trade-union delegates in to a Company Committee. The Company Committee would then have the power to negotiate collective agreements.

2.3 Facilitating the mandatory negotiations and consultations

A company-wide collective agreement could adapt the content and periodicity of the mandatory negotiations and consultations as well as the social and economic data base in order to take into consideration the specific situation of each company.

3. Foreseeing and securing employment relationships

3.1 The capping of damages and increase of the legal severance pay

In case of litigation, damages that could be awarded to employees would be capped/reduced:

- In case of unfair or constructive dismissal, the maximum amount would depend upon the length of service: in essence, the maximum amount would thus range between 2 months for employees with 1 year of service to 20 months for employees with 30 years and beyond¹. These amounts would be lower in companies of less than 11 employees. The judge could decide to deduct the severance pay from the damages to be granted to the employee;
- In case of a dismissal ruled null and void (e.g. discrimination, violation of a specific protection): a minimum of 6 months' salary would apply as damages, in addition to the severance pay applicable;
- Other damages would be reduced such as those applicable in case of a redundancy that would be ruled null and void (e.g., absence/insufficiency of the social plan): the damages would be decreased from 12 months to 6 months' salary per employee.

In consideration for the introduction of caps for damages, it is expected that the legal severance pay be increased by 25% for the first 10 years of service (e.g. 1.25 months' salary for an employee reaching 5 years of seniority instead of 1 months' salary).

3.2 Simplifying the dismissal procedure

- The employer could provide more details and/or supplement the dismissal grounds mentioned in the dismissal letter after notification to the employee. Would the employee fail to formally request those precisions, the mere insufficiency of grounds would no longer lead to the dismissal being held unfair. The employee could only be awarded damages for irregular dismissal amounting to no more than one month of salary.
- To mitigate the risk of litigation, a governmental decree should lay out templates of dismissal letters for personal and economic grounds setting forth the rights and obligations of the employee and the employer.
- The statute of limitations for claims arising out of the termination of the employment agreement (whether for personal or for economic grounds) would be reduced to 1 year.

3.3 Redundancies

- When an employer belongs to an international group of companies, the economic rationale (e.g., economic difficulties, preserving the competitiveness) would be assessed at the level of France and no longer at international level. The notions of "group" and "sector of activity" used to assess the economic rationale would be defined by law.

¹ The government has announced that a decree would be issued at a later stage to increase the legal severance indemnity, presumably by 25%.

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- The redeployment obligation to be implemented by employers prior to notifying the termination of an employment agreement would be limited to companies (i) belonging to a group of companies as defined by the French labor Code (i.e., companies under the control or supervision of one same parent company) and (ii) whose organization, activities and location allow the transfer of staff.
 - For companies required to implement a social plan (companies employing at least 50 employees and contemplating the elimination of at least 10 positions within a 30-day period) within a context of a transfer of a plant, the seller could be allowed to terminate some employment contracts prior to the transfer.
 - A company-wide agreement could set forth the conditions to implement a “collective mutual termination” whereby employees would apply to a voluntary redundancy plan without a need to provide for an economic rationale when no redundancy is contemplated. This “collective mutual termination” would be subject to a prior review of the French labor administration with a view to confirming its validity.

3.4 A new right to Remote work (or “Telecommuting”)

Telecommuting should be organized at the level of the company through a collective agreement or in-house regulations. Occasional telecommuting would be facilitated and employees could benefit from a right to work from home. Although employers could always refuse such arrangement, they would need to provide their employees with a valid reason.

3.5 Fixed-term employment agreements

- Duration, renewal and use of fixed-term employment agreements could now be decided and negotiated at branch level. The law would only apply in the absence of a branch-wide collective agreement.
- A fixed-term employment agreement would no longer be deemed to have been entered into for an indefinite term, would the employer fail to communicate the written agreement to the employee within two business days following the date of hire.
- In specific areas where employers are used to enter into indefinite-term employment agreements for the performance of a specific mission or work without knowing the exact term (e.g. construction), the use of this type of employment would be facilitated and secured.

4. Health

4.1 Inability at work

When an employee would be considered unable to come back to work by the occupational doctor, the territorial scope of the redeployment obligation to be implemented prior to any termination of the employment agreement would be limited to France and within the same limits as those defined for the prior redeployment obligation applicable in case of redundancies.

4.2 A new professional account for preventing professional risks

The “Personal account for the prevention of arduousness” would be replaced by the “Professional account for the prevention of risks.” Companies would no longer have to declare all risks to which employees are exposed but only those related to an “aggressive physical environment or to certain work places.” The two social security contributions that used to fund the former scheme would disappear but the new account would be managed and funded by the French social security through its branch for occupational accidents and diseases.

While some measures would be applicable immediately², others would require an application decree. The table below summarizes the various deadlines to be taken into account per ordinance and/or per measure.

ORDINANCES AND SPECIFIC MEASURES		APPLICABILITY
Ordinance on the reinforcement of collective negotiation		As from the publication of the application decrees and on January 1st, 2018 at the latest
Ordinance on the new organization of staff representation	Implementation of the Social and Economic Council	At the end of the mandates of the current representatives (if any) and by December 31 st , 2019 at the latest
Ordinance on foreseeing and securing employment relationships	The capping of damages in case of unfair dismissal	To dismissals notified after the publication of the ordinance
	1-year statute of limitation for all claims arising out of the termination of the employment contract	Immediately
	The simplification of the dismissal procedure and the possibility to complete the dismissal grounds after the dismissal	To dismissals notified after the publication of the ordinance
	Collective mutual termination agreements	Immediately
	Miscellaneous measures on redundancies	To redundancies launched after the publication of the ordinance
	Fixed-term contracts (including the indefinite-term contract for the performance of a specific mission or work on a construction site)	To contracts signed after the publication of the ordinance
Ordinance on the Professional account for the prevention of risks		October 1 st , 2017 but the provisions related to the management, control and funding of the account will enter into force on January 1 st , 2018

² By « immediately », we mean as from the publication of the ordinance in the French official journal

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