

France: Macron's Reforms to the French Labor Code

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Authors: [Nicholas Greenacre](#), [Alexandre Jaurett](#), [Valerie Menard](#), [Sarah Taylor](#)

The long-awaited reform of French employment law is now on track. France is reforming its French Labor Code - a touchstone of French economic life for over a century — the centerpiece of a promise to revitalize the French economy. Flexibility and security are the key words of this ambitious in-depth reform of French employment law.

Emmanuel Macron's government has announced a major and ambitious transformation of France's complex labor laws aimed at tackling mass unemployment and making the country more competitive in the global market. Five legislative orders have been issued containing what French ministers said were "concrete and major measures" to overhaul and simplify the weighty Code du Travail, which covers almost every aspect of working life in France. Macron's changes to labor laws, which will affect all private sector workers in France, include a cap on payouts for unfair dismissals and greater employment flexibility for employers.

We summarize below some of the most significant changes proposed.

1. Changes to fixed-term employment contracts

The terms of France's most common fixed-term employment contract (the CDD) is set by law, which determines its maximum length (18 months in most cases) and how many times it could be renewed (a maximum of twice since 2016). The system is open to abuse, with employers routinely hiring or rehiring employees on fixed-term contracts to avoid giving them a long-term contract (the CDI) that would expose employers to dismissal costs and risk of claims. Under Macron's reforms, duration and renewal terms can be set at the level of the professional sector. Employers and employees' national trade unions have the possibility to negotiate new terms and conditions (extended maximum duration, number of renewals) within the frame of the collective bargaining agreements (CBAs). In the absence of successful negotiation at company and industry levels, the national law will continue to apply.

The French Government is making no change to the CDI contract but expects to increase its attractiveness by lightening and securing the dismissal procedures (see 4 below) and by granting employees a right to work remotely in order to develop telecommuting.

2. Negotiation of collective bargaining agreements

Company-level agreements are supposed to become the standard norm in certain matters such as working time. Their primacy over industry-wide agreements is strengthened to negotiate agreements more tailored to companies' needs. The French Government has defined the areas where industry-wide negotiation retains primacy (for example, on matters relating to employee classification, minimum wage, health care, working time and part-time, temporary and fixed-term employment contracts) or has the ability to retain primacy. In all other areas, company-wide agreements shall have primacy over industry-wide agreements. In the absence of successful negotiation at company and industry levels, the national law will however continue to apply.

The French Government has broadened the ability for companies without trade union delegates to negotiate collective bargaining agreements by allowing such negotiation to take place directly with elected employee representatives and, in small businesses (that is, companies employing less than 11 employees), by allowing a majority of two-thirds of the workforce to approve any draft collective bargaining agreements prepared by the employer. To protect the application of collective bargaining agreements negotiated at company-level, claims for their nullity will be time barred after 2 months.

This reform is aimed at promoting “social dialogue” in business with a view that such change will enable companies to reach deals of their own with employees rather than being forced to comply with industry-wide agreements.

3. Simplifying employee representation

The French Government has outlined proposals to streamline employee representation. Merging all different representative councils into one, training employee representatives, offering career recognition for involvement in unions, limiting the number of mandates and allowing employees to have their company finance the union of their choice are just some of the reforms favoring employee representation which are on the table.

Currently, when a company hires 50 employees in France, it must comply with a long list of requirements, notably the nomination of workers’ representatives and the setting up of a works council and a health and safety committee. Under Macron’s reform, all three of these groups will be folded into a single structure by the end of 2019. The new representative body will be called the Social and Economic Council (the “SEC”) and its rights and responsibilities will differ depending on the size of the employer. For companies with 50 or more employees, the SEC will have the same powers currently held by staff delegates, the works council and the health and safety committee. For companies with 300 or more employees, it will be mandatory for the SEC to have within it a specific committee which is dedicated to health and safety matters. Subject to a company collective bargaining agreement with the relevant trade unions, it is even possible to include trade union representatives in this new representative body, which would then be called the Company Council.

While this reform does not narrow the powers of the SEC as compared to the aggregation of those currently granted to staff delegates, the works council and the health and safety committee respectively, it nonetheless aims to reduce the administrative burden faced by employers with 50 or more employees as well as reduce the number of representatives.

4. Terminating the employment relationship

One of the thorniest problems for the French Government is how to make it easier for companies to dismiss employees. Therefore, among the measures in the Macron reform package are limits on the damages granted to employees in cases of unfair dismissal. Currently, it is left up to individual tribunals to decide and the damages awarded can vary widely. As such, employers have argued that costly and lengthy court cases often put them off hiring new staff to begin with.

Arguably, this reform has generated the most press interest and challenges by trade union representatives. The key points to note are as follows:

- a. The cap imposed for unfair dismissal will depend on the employee’s length of service.
- b. In short, it is proposed that the cap be limited to 3.5 months’ pay for 2 years of work and 20 months’ pay for 29 years and beyond. Until now the minimum pay-out for two years’ employment was 6 months of salary.
- c. The cap shall not apply in cases where the dismissal of the employee is held to be null and void or held to have breached a fundamental liberty (e.g., in cases involving discrimination and harassment).
- d. A slightly reduced table of minimum damages shall apply to smaller companies (i.e. those employing less than 11 employees).
- e. In consideration of the introduction of these caps, social partners obtained that the statutory severance pay increases. If no collective bargaining agreement applies or the collective bargaining agreement rate is lower than the statutory amount, the statutory pay applies. A decree has just increased it by 25% for the first 10 years of service. As an example, an employee with 4 years of service shall receive 1 month of salary (instead of 0.8 months’ salary formerly).

The French Government has also proposed reforms intended to simplify the procedure for dismissing employees. Such reforms include the opportunity for an employer to clarify and amend the reasons for dismissal given in the dismissal letter after the employee has been notified of his or her dismissal. Moreover, the limitation period for an employee to bring a claim relating to his or her dismissal will be reduced to 1 year (currently, employees have up to 2 years from the termination date to bring a claim).

In a further concession to companies, multinationals whose French operations are struggling will no longer have to assess the economic rationale at the level of the relevant business sector at international level, but only at the level of France. Same limitation applies to the redeployment obligation implemented prior to the notification of a redundancy. Under French law, a redundancy is classed as a dismissal for economic grounds, which the Labor Code defines in particular as financial difficulties or a need to preserve competitiveness.

The French Government has also decided to regulate collective voluntary departure plans, whereby both parties agree terms and conditions of departure in a company-wide agreement without the need to trigger a formal redundancy process based on the above economic grounds.

5. Comments

Except those subject to subsequent decrees to provide for implementation rules, Macron's reforms are almost all already in force whereas Parliament will have to formally approve the reforms for them to become law, but that is expected to be a formality.

Reforms to the unemployment insurance program and job training systems are the next items on the French Government's agenda. The measures are supposed to make the French labor market more flexible and responsive to changing business needs and economic conditions. Companies with operations in France should be aware of these changes to review their policies accordingly and take a proactive role in implementing this reform.

White & Case LLP
19, Place Vendôme
75001 Paris
France

T +33 1 55 04 15 15

White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom

T +44 20 7532 1000

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