

2017 Employment Law Worldview Webinar

Sweeping Changes to French Employment Law:
What Employers Need to Know

Presented by:

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Today's Presenters



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Sweeping Changes to French Employment Law

What Employers Need to Know

INTRODUCTION

- Over the last decade, France has endeavoured to **reform an ageing Labour code**
- The 2017 Macron ordinances (administrative orders) are actually in line with previous reforms but are clearly taking a **significant and more incisive step**
- Priority is now being given to **negotiations** between employers and employee representatives/unions and to practical **solutions at industry-segment and company level**
- The ordinances were released by the official government register on 23 September 2017. Some had **immediate effect**, while others will come into effect once the ratifying decrees are published – which must be by **1 January 2018** at the latest. The ordinances will be deemed obsolete if not ratified by that date
- **Our presentation today will focus on the main elements of the reforms and the key consequences for HR management**

Sweeping Changes to French Employment Law

What Employers Need to Know

WEBINAR TOPICS

Facilitating/Securing the Termination of Employment Contracts

1. Grounds for termination
2. Redundancy/termination for economic reasons
3. Legal severance pay
4. Reduction of limitation periods
5. Indemnification scale for unfair dismissal
6. Reduction of other judicial indemnities
7. Voluntary leave plan

Simplifying Employee Representation Bodies

1. Creation of a sole employee representation body: Social and Economic Committee (CSE)
2. Functioning of the CSE

Fundamental Reforms of Collective Negotiations

1. Priority given to the company agreement
2. The negotiating partners
3. Competitiveness agreements

Other Key Changes Intended to Increase Flexibility

1. Grounds for Termination

- Employers will have the option to use a **dismissal letter template** *
 - An irregularity based on an **insufficient statement of the grounds for dismissal** will no longer, in itself, deprive the dismissal of its real and serious cause *
 - Employers will be able to provide **details of the termination grounds** after the notification letter *
 - Despite the **invalidity of one of the dismissal grounds**, the Labour Court will still be able to consider the remaining grounds for dismissal when determining the possible compensation
- * **Not in force yet** – subject to publication of implementing Decree by 1 January 2018 at the latest

2. Redundancy/Dismissal for Economic Reasons

Redundancies carried out by companies that are part of an international group

- Scope of assessment of **economic grounds** and geographical scope for **obligation of redeployment** are limited to France
 - **Already in force:** applicable to procedures started after 23 September 2017
- The **procedure of redeployment** is softened: authorization to display a list of available positions (vs. individual offers)
 - **Not in force yet** – subject to publication of implementing Decree by 1 January 2018 at the latest

3. Statutory Severance Pay

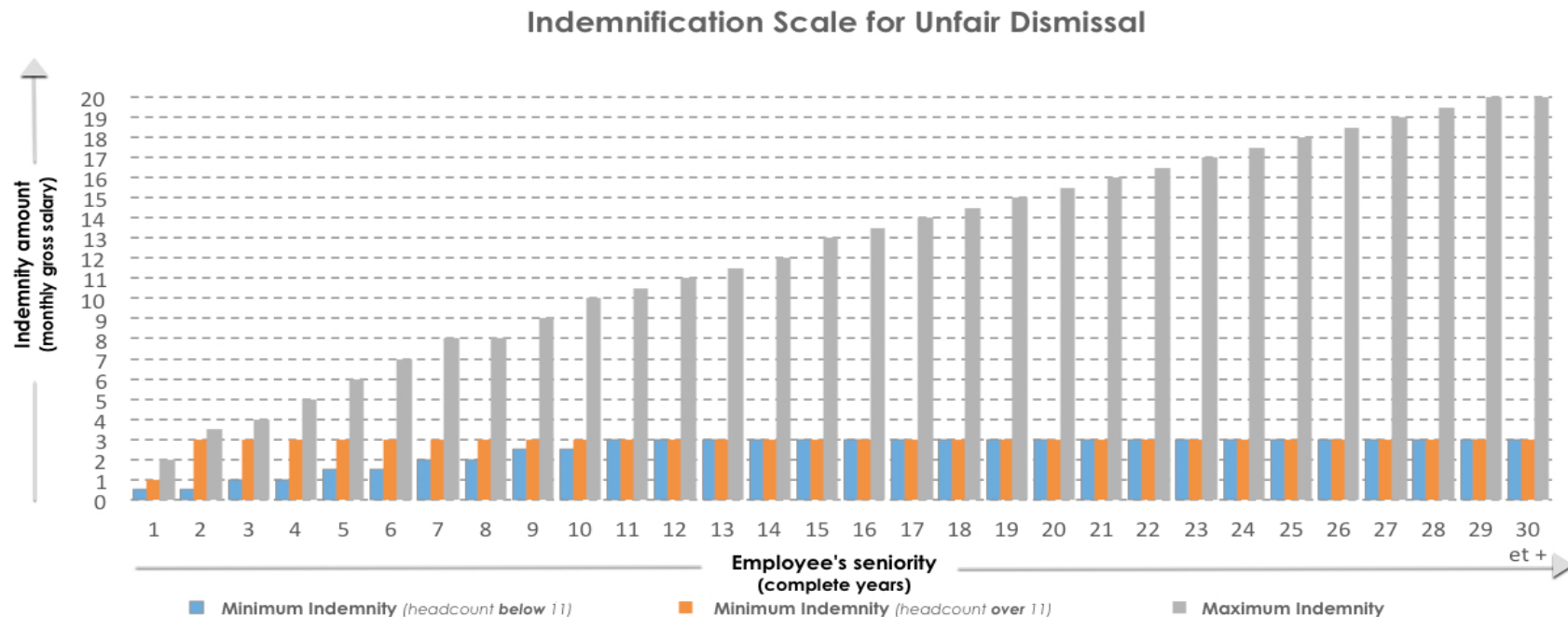
- Mandatory statutory severance pay payable to employees with at least **8 months of seniority (length of service)**
 - **Slight increase** of the statutory severance pay amount : 25% increase of the amount for the first 10 years of services
 - **Example** – employee with 15 years of service / €50,000 gross per year :
 - Statutory severance pay before the reform : app. €15,300
 - Statutory severance pay after the reform : app. €17,300
- **Already in force:** applicable to dismissals, constructive dismissals and termination by mutual consent concluded from 26 September 2017

4. Reduction of Limitation Periods

- Limitation period for bringing claims reduced to **12 months** for all types of termination
- **Exceptions:** wage-related claims (*three years*) and discrimination claims (*five years*)
- The limitation period starting point is now clear: the **date of notification of the termination**
 - **Already in force:** applicable from 24 September 2017

5. Indemnification Scale for Unfair Dismissal

- Application by the court of a **mandatory indemnification scale** in case of unfair dismissal - applies to all dismissals notified after 23 September 2017
- The indemnification scale is **not applicable** to **invalid dismissals** (e.g. moral or sexual harassment, discriminatory dismissals)



6. Reduction of Other Judicial Indemnities

- Minimum indemnity amount for **failure to observe the priority to re-hire** an employee made redundant reduced to **one month's salary**
- Minimum indemnity amount for **invalid redundancy** due to an invalid social plan reduced to last **6 months' salary**

➤ **Already in force:** applicable from 24 September 2017

7. Collective Mutual Termination Agreements

- Majority collective agreement approved by the relevant administration
- No justification of economic reasons
- Informing the Social and Economic Committee (CSE) (negotiation) vs. consultation (follow-up)
- Specific termination allowance
- Payment of the revitalisation tax if the case may be

Simplifying Employee Representation Bodies

1. Creation of a Sole Employee Representation Body (CSE)

- 3 existing employee representation bodies (staff delegates, works council, health and safety committee) to be progressively merged into a single body: the **Social and Economic Committee (CSE)**
- CSE must be implemented at next employee representatives' election: as from **1 January 2018** and by no later than **31 December 2019**
 - **Not in force yet:** applicable when implementing decree published, which must be by 1 January 2018 at the latest

2. Functioning of the CSE

- **Powers and responsibilities** of the CSE depend on headcount thresholds
 - Less than 50 employees: same powers as currently held by staff delegates, plus health and safety aspects
 - 50 employees and over: same powers as currently held by staff delegates, works council, plus health and safety aspects
 - More flexibility in case of increases or reductions in headcount
- Frequency of **meetings**
 - Headcount below 50 or over 300 employees: at least **1 meeting per month**
 - Headcount between 50 to 300 employees: at least **1 meeting every two months**
 - 4 of these meetings during the year must address health, safety and working conditions

2. Functioning of the CSE (2)

- **Consultation process** – CSE will have to render an opinion within a given time limit
 - Time limits set by a company agreement, or an agreement between the employer and the majority of CSE members
 - By default, same time limit currently applicable to works council will probably be maintained by decree
- **Regulation of CSE expert appraisals**
 - CSE will pay **20%** of the expert's costs – **80%** of the remaining costs to be paid by the employer
 - Except for expert appraisals relating to social plan or serious health and safety risks: fully paid by the employer
- **Set up French-style collective decision-making**
 - Subject to majority agreement with union delegates, a **Company council** can bring together all of the staff representation duties: information, consultation, **negotiation**

Fundamental Reform of Collective Negotiations

1. Priority given to Company Agreements

- To facilitate the competitiveness of companies, except specific topics dedicated to the sole prerogative of the branch CBA, **the company CBA prevails**
- **3 tables** defining the relationship between branch CBA and company CBA are implemented
 - **Not in force yet:** applicable when implementing decree published, which must be by 1 January 2018 at the latest

Fundamental Reform of Collective Negotiation

2. The Negotiating Partners

- **Generalization of the majority agreements** executed with trade union delegates
 - **Not in force yet:** 1 May 2018 at the latest

- **Collective negotiation within small companies** with neither trade union delegates nor a “works council” is facilitated
 - **Not in force yet:** applicable when implementing decree published, which must be by 1 January 2018 at the latest

3. Competitiveness Agreements

- Subject to **justification of requirements related to the company's running**, possibility to conclude a majority collective agreement to adapt its functioning to its needs.

- These agreements **apply automatically to the employment contract**
 - Employee has a one-month period to refuse
 - The possible further dismissal is based on a specific reason deemed to be real and serious grounds

- **Already in force** : applicable from 24 September 2017

- Extension of **project-based employment contracts**
 - The use of project-based employment contracts is now possible for companies having a branch agreement setting out the reasons to use such a contract
 - **Already in force:** applicable from 24 September 2017

- **Inability** to perform duties
 - The scope of the redeployment search will be limited to the domestic territory – i.e. France only
 - **Already in force:** applicable from 24 September 2017

- Facilitating **homeworking** - more secure and flexible
 - Homeworking will be implemented within the company via a collective agreement or, failing this, as part of a policy prepared by employer
 - In the absence of either a collective agreement or a policy, occasional home working will be possible by mutual agreement between employer and employee

- **Already in force:** applicable from 24 September 2017

- **Digital Labour code** – Improving and facilitation access to labour law
 - A digital version of the Labour Code will be implemented by 1 January 2020 at the latest

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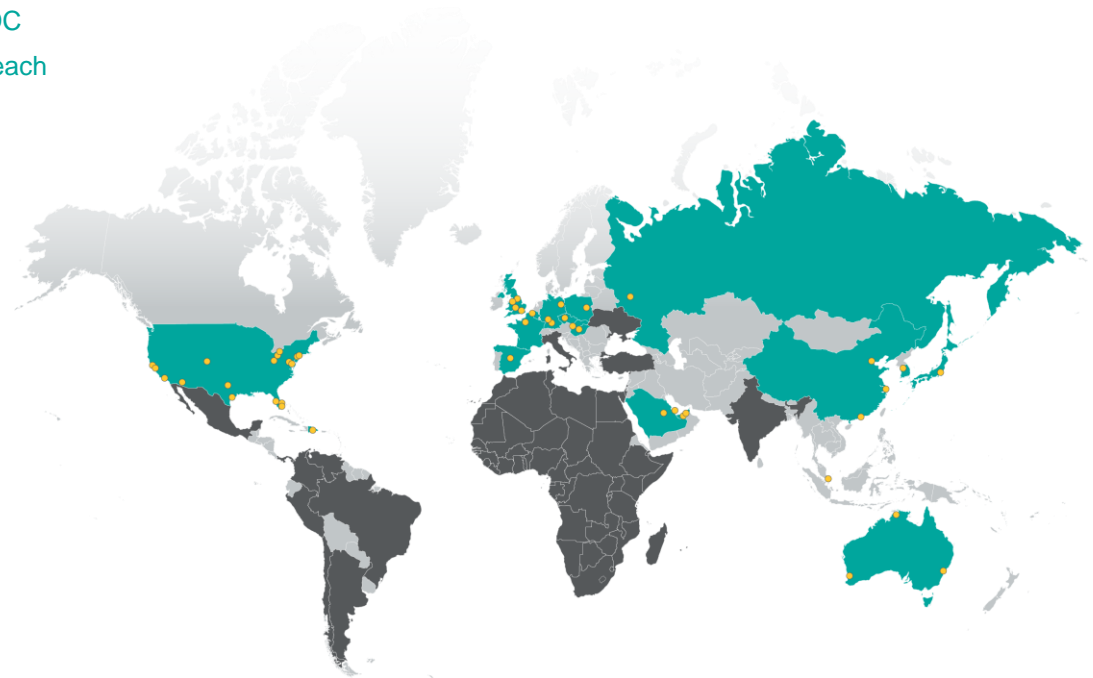
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