Employment and Employee Benefits in France: Overview

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A Q&A guide to employment and employee benefits law in France.

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; relocation of employees; and proposals for reform.

Scope of Employment Regulation

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws Applicable to Foreign Nationals

Foreign nationals working in France can choose the law applicable to their employment contract under Article 8(1) Rome I Regulation (593/2008/EC) (Rome I). However, where the applicable law would have otherwise been French law, the Labour Code's mandatory laws apply. This usually applies where employees normally carry out their work in France (*Article 8(2), Rome I*). Mandatory laws have a much broader scope than public policy rules and are contained in almost all of the Labour Code provisions. They apply regardless of the contract's provisions, unless those provisions are more favourable to the employee (*Article 8(1), Rome I*).

In contrast, where the law would not have been French law, the law chosen by the parties applies. However, certain French rules apply regardless of this choice.

Special rules apply to posted employees (employees that are sent to a host member state under the framework of a transnational provision of services). They are only subject to the public policy rules listed in Article L.1262-4 of the Labour Code, which apply regardless of the governing law and the employee's nationality. Public policy rules are limited, and mainly cover:

- Individual and collective employment rights, including the right to strike.
- The minimum wage (*see Question 6*).
- Illegal work.
- Working hours (*see Question 7*).
- Paid holiday (*see Question 7*).
- Discrimination (*see Question 11*).
- Working conditions.
- Health and safety (*see Question 21*).

Laws Applicable to Nationals Working Abroad

Nationals working abroad can choose the applicable law (*Article 8(1), Rome I*). Public policy rules and mandatory laws do not apply unless French law is applicable to the contract. Generally, where the employer is French, French courts consider that French law is applicable.

Employment Status

> 2.Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of Worker

Employee/Worker. The main categories of workers are:

- Employees.
- Agency workers.
- Self-employed.
- Independent contractors.

See below (*Entitlement to Statutory Employment Rights*) for a brief description of the factors that determine which category a worker will fall into. The parties cannot choose which category of worker an individual falls into. If there is a dispute or issue to be decided regarding a person's employment status, the court must determine the type of worker on the basis of the particular circumstances. For example, if a court finds that an "independent contractor" actually works as an employee of the contracting company, the contractor can be deemed a permanent employee with an indefinite-term employment contract. The company can be held liable for illegally employing a person directly or through an intermediary.

Independent Contractor/Self-Employed. See above, *Categories of Worker: Employee/Worker*.

Entitlement to Statutory Employment Rights

Employees who are employed under a contract of employment (whether a definite or indefinite term contract) are subject to, and entitled to, all statutory provisions set out in the Labour Code and applicable collective agreements (such as the national collective bargaining agreement (CBA) applicable to the company and/or company-wide collective agreements).

Agency workers are workers employed by agency work companies to work for client companies (using companies) with a temporary need for workers. Using companies cannot use interim workforce to fill positions linked to their normal and permanent activity. The agency worker is not linked to the using company by a contract of employment (which is signed with the agency work company). Agency workers are entitled to the same rights and benefits as permanent employees (*see Question 10*).

The self-employed category consists of independent workers with special skills and state-recognised diplomas not working under a contract of employment. Self-employment is open to various areas of business, which are not considered as commercial activities (for example, lawyers, notaries, bailiffs, accountants, medical doctors, architects and so on). The self-employed have no entitlement to statutory employment rights but are instead subject to specific regulations (and sometimes professional rules) applicable to their activity. The self-employed usually perform their practice for more than one client/patient.

Independent contractors are companies or self-employed workers that are linked to another contractor by a contract to perform a service or deliver goods, but are still acting independently from their co-contractors. Independent contractors have no entitlement to statutory employment rights, and their activities are considered as commercial. They usually work for more than one client/co-contractor (working for only one client can lead to the recognition of an employment relationship).

Time Periods

The duration of agency workers' contracts and temporary workers' contracts can be defined by a CBA at the branch level. Alternatively, the time period is limited by law (*see Question 10*). There is no maximum legal duration for contracts with those who are self-employed and independent contractors, although either can be deemed a permanent employee with an indefinite-term employment contract if a court finds that the self-employed person or the contractor actually works as an employee (*see Question 10*).

Background Checks

3.Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

Restrictions/Prohibitions on Conducting Background Checks

Under Article L.1221-6 of the Labour Code, information requested by an employer to a prospective employee is strictly limited to matters linked to the position and must only be aimed at assessing that person's professional skills. Medical checks not linked to the considered position prior to the hiring are prohibited. The Labour Law of 8 August 2016 (*Loi travail*) removed the initial mandatory medical check for most employees.

Asking about an applicant's criminal record (*Extrait No. 3 du Casier Judiciaire*) is neither expressly authorised nor prohibited by the Labour Code. However, since all information requested must be linked to the position, it will only be justified in very few positions, such as ones linked with the regular use of money (for example, banking activities).

Background Checks by Third Parties

Background checks can be conducted by third parties (for example, an external provider) provided that the above conditions are met. The company must also ensure that this third party complies with French law as well as with the requirements of the General Data Protection Regulation (*(EU) 2016/679*) (GDPR).

The relevant works council (*Comité Social et Économique*) (CSE) must be made aware before an employer's use of any methods or technology used to assist in the recruitment of applicants and of any changes to it. In this context, the CSE should be informed of the reliance on an external provider and the methods it is using (*Circular DRT No. 93-10, March 15, 1993*).

Regulation of the Employment Relationship

4. How is the employment relationship governed and regulated?

Written Employment Contract

Employment can be on a full-time or part-time basis and for an indefinite period. Fixed-term contracts are only permitted in special cases (such as to replace a temporarily absent employee or to meet a temporary increase in the employer's activity).

Employment contracts are not generally required to be written, but certain forms of employment contract must be in writing (*see below*). In any event, the employer must provide the employee with a written statement of the essential terms governing the employment relationship.

A written contract is necessary where:

- An applicable CBA requires it.
- It is a fixed-term, part-time or temporary contract.
- It is an apprenticeship employment contract.

- It is a *professionalisation* employment contract.

Oral fixed-term contracts are irrevocably deemed to be indefinite-term contracts and oral part-time contracts are deemed to be full-time contracts. Fixed-term and temporary contracts must be conducted in writing and must be handed over to the employees within two working days following the beginning of their contract. A failure to hand over the fixed-term/temporary contract within this two-working-day timeframe entails a risk that the employer may be ordered to pay damages to the concerned employee (but that employee will not automatically be deemed to be a permanent employee).

Implied Terms

In addition to the employment contract, various sources of law govern the employment relationship, including:

- EU law.
- The French Constitution.
- The Labour Code.
- Case law.
- CBAs.
- Company collective agreements.
- Internal rules and regulations.
- Company practices.

The employment contract can only alter these implied provisions if this is to the employee's advantage.

Collective Bargaining Agreements (CBAs)

A CBA is a written agreement, entered into between:

- One or more trade union(s) representing employees.
- One or more trade union(s) representing employers in a specific sector (and sometimes, a specific location).

The CBA usually governs:

- Individual and collective labour relations.
- Working conditions.
- Social guarantees.
- Employee benefits.

Whether a CBA is applicable to a particular company depends on the employer's main business activity. A CBA is usually mandatory if the main activity falls within its scope.

Company Collective Agreements

A company collective agreement is a written agreement entered into between the employer and one or more trade union(s) representing employees. Since the Macron Reform (five Ministerial Orders dated 22 September 2017), company collective agreements can address a widened variety of topics, including working time, remuneration or gender equality at work so as to become the centre of collective negotiation. In certain companies, the employer must negotiate on determined topics every year or every four to five years. A company collective agreement can, in a variety of cases, derogate from the provisions of the CBA or even the law.

Since 1 May 2018 the cumulative vote of the trade unions necessary to validly sign a company collective agreement has been increased to 50% of the votes cast during the last employees' representatives' elections (prior to the Macron Reform, the cumulative audience had to be at least equal to 30%). Specific rules apply if there is no union representative (*Délégué syndical*) within the company and have significantly changed with the Macron Reform.

5. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Whether or not an employer can change the terms and conditions of employment depends on whether the change results in a modification to the employment contract or a change to the conditions of employment.

In principle, if the change affects one (or several) of the essential terms of the employment contract (for example, salary or the duration of work), it is subject to the employee's prior express consent. The employee's refusal to accept this type of change is not a ground for dismissal, and the employer must give the employee a reasonable period during which to reflect on the proposed change, so that the employee can properly consider it.

If the change is grounded on economic reasons, the employer must, in principle, inform and consult staff representatives before proposing the modification. In this case, the employer must propose the modification by registered letter with acknowledgment of receipt to each concerned employee, and provide them with a one-month period to consider the change. If the employee refuses to accept the modification, the employer is then entitled to make the employee redundant on the same economic grounds that created the need for the proposed change.

However, since the Macron Reform, it is possible to sign a company collective agreement aimed at "answering the needs of organisation of the company or aimed at safeguarding or developing employment within the company". This agreement can change, for example, the duration of work, the remuneration of the employees, or the place of work. The provisions of the agreement automatically replace the provisions of the employment contract unless the employee refuses, in writing, the application of the agreement. In this latter case, the employer can dismiss the employee (it is a new ground for dismissal).

If the modification only consists of a minor change to the conditions of employment (for example, a small change to the workplace), the change anticipated by the employer can be directly applied to the employees. The employee's refusal in this instance could constitute misconduct.

Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

Minimum Wage

As of 1 May 2022, the minimum gross monthly wage is EUR1,645.58 for a 35-hour working week (it is expected to increase again on 1 August 2022). All employees who are employed under an ordinary employment contract (either indefinite or fixed term) are entitled to this minimum wage. CBAs also frequently provide for minimum wages (depending on job categories).

The Labour Code also provides for the monthly payment of wages, except for employees working from home, seasonal employees, intermittent employees and temporary employees.

Bonuses

It is common practice to reward employees through bonuses. Case law distinguishes between discretionary and contractual bonuses:

- **Discretionary bonuses.** Bonuses are discretionary when the employer is completely free to choose whether or not to award them. If so, they are not considered an integral part of the remuneration package. However, the French Supreme Court seems increasingly reluctant to admit the existence of purely discretionary bonuses.
- **Contractual bonuses.** Under case law, if a bonus is provided for in the employment contract or in any other document that has been expressly accepted by the employee, it is a contractual element of the remuneration package and can only be modified with the employee's prior consent. If the bonus is contractual:
    - its variation must be based on objective criteria, which are independent from the employer's wishes;
    - the employee must not share the employer's risk;
    - the employee's salary must not be less than either the statutory minimum wage (*see Question 6*), or the minimum salary set by a relevant CBA.

Some CBAs provide for bonuses, which are subject to the same rules as contractual bonuses.

Bonuses can also be paid as a result of company practice. If this practice is regular, fixed and applies to a set group of employees, the bonus forms part of the remuneration package that the employer must pay. An employer can end or alter such a bonus by following a procedure set by case law, which involves:

- Individually informing the employees.
- Informing the staff representatives.

- Observing a reasonable notice period (usually, at least three months).

However, the French Supreme Court recently ruled that a bonus paid as a result of company practice for many years had, in fact, become part of the employment contract.

Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

Working Hours

Restrictions on working hours. Usually, employees work 35 hours per week. In addition, employees must not work more than:

- An average of 44 hours a week during any 12 consecutive weeks.
- 48 hours during any given week.
- Ten hours a day.
- 220 hours of overtime a year (subject to applicable CBAs or company collective agreements).

It is possible to negotiate a more flexible working schedule for all employees at the company level. Working time can notably be reorganised on a multiple-week basis: the employee works an average of 35 hours over four (or more) weeks, while their working time is different each week.

However, statutory restrictions on working time must be met (*see above*) and the employees duly informed of the working schedule.

Overtime pay. Employers can agree a longer working week with their employees. In that case, they must pay any time worked over 35 hours a week in the same way as overtime work (although there is no entitlement to additional days off). Unless a collective agreement provides for a different rate of overtime pay (which cannot be less than an additional 10% of the normal rate of pay), overtime pay must be paid:

- At the rate of an additional 25% of the normal rate of pay for the first eight hours of overtime worked per week.
- At the rate of an additional 50% of the normal rate of pay for all overtime worked above eight hours per week.

Special restrictions applicable to autonomous executives. Special rules apply to autonomous executives (that is, executives of a certain level who freely organise their working time) and to employees who can autonomously organise their working schedules. If a collective agreement so provides (either a CBA or a company collective agreement), these employees can:

- Agree to a set number of days to be worked a year (this number cannot exceed 218 days, allowing, on average, nine additional days off a year).
- Relinquish some of their days off, depending on the applicable CBA. If there is no applicable CBA, they must not work more than 235 days a year.

However, case law has considerably increased the conditions to validly implement this type of working time arrangement (most notably, the employer must put in place a procedure designed to regularly check the workload of the concerned employee) and its use is becoming more difficult. The Labour Law of 8 August 2016 (*Loi travail*) aims at securing this type of arrangement by setting out minimum rules for monitoring the workload of the employees concerned in the case where no sufficient provisions are provided for by a collective agreement.

Most French laws regarding working time do not apply to senior executives (*cadres dirigeants*).

The Act of 10 July 2015 (*Loi Macron*) allows up to 12 Sundays (instead of just five) to be worked on authorisation from the Mayor, and allows shops located in an "international tourism area" to open on Sundays and up until midnight without the hours worked between 9 pm and midnight qualifying as night-time work.

Rest Breaks

Rest breaks during the working day. When employees work more than six hours a day, they are entitled to a rest break of 20 minutes, unless more favourable provisions are put into place by an applicable CBA.

Rest periods between working days. Generally, all employees (including executives) must be granted both:

- A daily rest period of 11 consecutive hours.
- A weekly rest period of 35 consecutive hours, including Sunday.

Special provisions for night/shift work. Shift working is only applicable in certain fields of activity, where it can be authorised by decree, convention or branch, venture or establishment agreement. Supplementary medical supervision is compulsory for shift workers and their maximum working time is strictly limited.

The working time of employees who permanently undertake shift work cannot exceed 35 hours per week (worked week) on average over the year (*Article L.3132-15, Labour Code*).

In addition, many CBAs provide a minimum rest break for each shift.

Holiday Entitlement

Minimum paid holiday entitlement. Employees are entitled to a minimum of five weeks' paid holiday a year, in addition to paid public holidays.

The law and CBAs grant additional paid leave for:

- Employees who have reached a specific level of seniority.
- Family-related events.

Autonomous executives also benefit from additional days off (*see above, Working Hours*).

Public holidays. France has the following paid public holidays, which are not included in the minimum holiday entitlement:

- New Year's Day (1 January).
- Easter Monday (March/April, this fluctuates each year).
- Labour Day (1 May).
- Victory in Europe Day: end of World War II (8 May).
- Ascension Day (May/June, this fluctuates each year).
- Whit Monday (May/June, this fluctuates each year).
- Bastille Day: National Day (14 July).
- Assumption of Mary (15 August).
- All Saints' Day (1 November).
- Veterans Day/Remembrance Day: end of World War I (11 November).
- Christmas Day (25 December).

Flexible Working

There is no general right to flexible working in France. However, certain arrangements can be set up on the initiative of, or with the agreement of, the employer to give employees more flexibility (for example, individualised working hours or "day passes").

Certain categories of employees may also benefit from specific rights. For example, employees with at least one year's service on the date of the birth or adoption of a child can return to work on a part-time basis.

Illness and Injury of Employees

> 8. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to Paid Time Off

Article L.1226-1 of the Labour Code provides that the employee's remuneration must be maintained (taking into account the social security payments) for a certain length of time (up to 90 days), depending on the employee's seniority and provided that the employee:

- Has at least one year's service with the employer.
- Provides a medical certificate within 48 hours of the absence.
- Is covered by social security.
- Benefits from medical care either in France or in a European member state.

In practice, this means that the employer must supplement the compensation paid by the social security system so that the employee continues to receive an income equivalent to their salary.

In addition, CBAs often specify that the employer must supplement social security payments for a certain period of time, up to the level of all or part of an employee's salary if that employee has attained a specific length of service. This is a personal obligation on the employer and it cannot recover these payments from the social security system. However, most companies are insured to cover these obligations.

Employees who are absent due to illness or injury must obtain a medical certificate covering the period of sick leave. During the period of illness or injury, the work contract is suspended. Unless it is necessary to replace the sick employee with another employee under an indefinite term contract, the former cannot be dismissed due to absence. In addition, some CBAs guarantee a minimum period of employment during the sick leave.

Entitlement to Unpaid Time Off

There is no legal "entitlement" to unpaid time off. Unpaid time off is not regulated by the Labour Code. Its organisation and duration are defined by mutual agreement between the employee and the employer, and the latter is free to accept or refuse it. In any event, ill or injured employees benefit from the social security system which ensures the payment of their income.

Recovery of Sick Pay from the State

Employees who are absent due to illness or injury receive daily indemnities from the social security system (for a maximum of three years). Sick pay paid by an employer cannot be recovered from the state.

Provisions Concerning COVID-19

Emergency provisions for sick leave pay have been implemented as a result of COVID-19. Temporarily, the following rules were made more flexible for employees who are unable to work because of COVID-19:

- Removal of the waiting time (*délai de carence*) of three days to be indemnified by the social security body. In practice, under normal circumstances, an employee on sick leave for ten days is only indemnified from the fourth day for the remaining seven days. Under the exceptional circumstances of COVID-19, the employee is indemnified from the first day (under certain conditions). To date, these rules are due to apply until 31 December 2022 at the latest (the exact end date of these measures is to be determined by a decree which has not yet been adopted).
- Removal of the length of service requirement to benefit from the additional compensation to be paid by the employer in accordance with the Labour Code (under certain conditions). To date, this special provision is expected to apply until 31 July 2022.

Bills are currently being considered by parliament and are expected to be passed by the end of Summer 2022.

Rights Created by Continuous Employment

9. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory Rights Created

Some statutory benefits are created after a certain length of service of the employee (most notably, the right to a severance indemnity or to a notice period, the right to vote or participate in employee representatives' elections, and so on).

The applicable CBA and company collective agreements may also award specific benefits linked to the length of service of the employees, such as:

- Certain leaves of absence (for example, parental leave).
- Increased protection on dismissal (*see Question 13, Protection Against Dismissal*).
- Maintenance of salary during illness or maternity leave.
- Participation in the election of employee representatives and qualification to be an employee representative.
- Ability to benefit from profit-sharing plans.
- Certain measures that are granted as a result of an employee's seniority.

Consequences of a Transfer of Employee

The employees' period of continuous service is carried over on a transfer of undertakings under the Employee Transfer Rules (*Article L.1224-1, Labour Code*) (*see Question 18*).

Fixed-Term, Part-Time and Agency Workers

10. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary Workers and Agency Workers

Temporary and agency workers are entitled to the same rights and benefits as permanent employees regarding:

- Working hours.
- Night work.
- Weekly time-off and statutory holidays.
- Health and safety in the workplace.
- Provisions that are applicable to women, employees with children and young workers.

In addition, the remuneration of an agency worker cannot be less than that of a permanent employee with the same duties in the same company.

Temporary and agency workers cannot benefit from the company's mandatory and/or optional profit-sharing schemes, but they are entitled to benefit from the mandatory and/or optional profit-sharing schemes of the agency with which they are under contract.

Fixed-term employees. Temporary contracts generally contain a fixed term (which can now be defined by a CBA at branch level (*see Question 2*)) not exceeding 18 months (renewal included). Otherwise, the contract may be deemed to be a permanent contract with the temporary employment company (*Article L.1251-40, Labour Code*) from the beginning of the worker's assignment. In addition, a breach of these provisions may be punished by a fine of up to EUR3,750.

In general, if the employer fails to comply with the provisions regarding fixed-term contracts, the employee is deemed to be a permanent employee. Notably, this is the case where there are multiple successive fixed-term contracts with the same employee. Additionally, fixed-term contracts cannot, in principle, be terminated before the term fixed in the contract, unless force majeure applies.

However, there are some exceptions to this rule: for example, where a temporary contract for an unfixed-term (with a specified minimum duration) is used when the employer ignores the future duration of the contract at the time of its conclusion (*Articles L.1242-7 et seq, Labour Code for Fixed-Term Contracts and Labour; Articles L.1251-11 et seq, Labour Code for Agency Workers*). In these cases, the contract ends when the purpose for which it has been concluded ceases (such as when the fixed-term contract replaces an employee on sick leave).

Employees under a fixed-term contract are entitled to a specific indemnity amounting to 10% of the total gross remuneration paid during the contract at the end of the term of their contract and provided that no indefinite-term contract of employment is agreed at the end of it.

Independent contractors. For independent contractors, if a court finds that the contractor actually works as a subordinate to the company that the contractor is contracted to work with, the contractor may be deemed to constitute a permanent employee with an indefinite-term employment contract. In these circumstances, the company can be held liable for both undeclared work-related social security payments and possibly the illegal use of an employee as an independent contractor.

Part-Time Workers

Part-time workers are entitled to the same rights and benefits as full-time employees, in particular regarding:

- The probationary period.
- Continuous employment.
- Holiday entitlement.

The Act of 14 June 2013 (as modified by the Order dated 29 January 2015) requires part-time workers' contracts to provide for a minimum working time of 24 hours per week (*Articles L.3123-1, L.3123-7, L.3123-19 and L.3123-27, Labour Code*) unless fewer hours are authorised by an applicable CBA. Derogations from the 24-hour minimum working time are also possible when requested by the employee. The 24-hour minimum working time does not apply to fixed-term contracts of a duration of up to seven days.

Discrimination and Harassment

11. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from Discrimination

Discrimination is prohibited throughout the employment relationship. It is prohibited to punish or dismiss employees, or exclude potential employees from the recruitment process, on the basis of their (*Article L.1132-1, Labour Code; Articles 225-1 et seq, Criminal Code*):

- Origin.
- Gender.
- Morals.
- Sexual orientation.
- Gender identity.
- Age.
- Marital status.
- Pregnancy.
- Genetic characteristics.
- Particular vulnerability due to an apparent or known economic condition.
- Nationality.
- Ethnic or racial origin.

- Political opinions.
- Trade union activities.
- Religious beliefs.
- Physical appearance.
- Family name.
- Place of residence.
- Banking domiciliation (that is, the place where the employee has their bank).
- Medical condition.
- Disability.
- Ability to speak another language other than French.

In addition, employees cannot be dismissed for going on strike in accordance with the legal provisions.

Discrimination is a criminal offence punishable by:

- For the employer's legal representative (namely the chief executive officer, most of the time), a maximum of three years' imprisonment and a fine of up to EUR45,000 (*Article 225-2, Criminal Code*).
- For the employer (as a company), a fine of up to EUR225,000 (*Article 225-4, Criminal Code*).

The qualifying period for claims concerning discrimination is five years from the date of its revelation (*Article L.1134-5, Labour Code*).

Since 2016, trade unions and associations can submit class actions to bring the infringement to an end or to be awarded compensation for the prejudice suffered by the employees (*Articles L.1134-6 et seq, Labour Code*).

Protection from Harassment

Employees are protected from sexual and moral (that is, psychological) harassment as well as from "sexist behaviours" (*Articles L.1153-1, L.1152-1 and L.1142-2-1, Labour Code*). Harassment is a criminal offence punishable by up to two years' imprisonment and a maximum fine of EUR30,000 (*Article 222-33-2, Criminal Code*).

Any disadvantageous measure taken against an employee (such as a dismissal) that results from either an act of discrimination or an act of sexual or psychological harassment (or the reporting of these acts) is void. The employee must be reinstated or receive compensatory damages. The Labour Law of 8 August 2016 provides for a minimum payment of six months' salary as damages if the employee does not ask to be reinstated, in addition to the payment of the employee's remuneration for the period covered by the disadvantageous measure.

Additionally, the employer is liable for its employees' mental health and must take measures to ensure that they work in a safe environment. For example, the Labour Code requires employers to:

- Implement actions to prevent occupational risks by providing information and training, and appropriate organisational measures.
- Appoint harassment advisers (*référents harcèlement*) at company level and on the works council (*Comité Social et Économique*).

Amendments to the Labour Code (introduced by the Law dated 6 August 2012) have toughened sanctions against persons guilty of harassment. These amendments introduced into the Labour Code a new offence of discrimination following harassment (*Article 225-1-1, Criminal Code*). They also impose obligations on the employer (such as to display the text of the Criminal Code on harassment at the workplace) and give a right of alert (*droit d'alerte*) to the staff representatives on the matter (*Article L.2312-59, Labour Code*).

The qualifying period for claims concerning harassment is five years before the civil court and six years before the criminal court.

Trade unions can submit lawsuits on behalf of an employee to bring the infringement to an end or to compensate an employee who has suffered such prejudice (*Article L.1154-2, Labour Code*).

Termination of Employment

12. What rights do employees have when their employment or employment contract is terminated?

Notice Periods

The parties must observe, and cannot unilaterally waive, the required notice periods before an indefinite-term contract is terminated. There are exceptions to this rule (for example, dismissals for gross misconduct, for which there is no notice period required to be observed).

The notice period depends on the employee's length of service and is determined by the National Collective Bargaining Agreement applicable to the employer or by statutory law if the latter is more advantageous (it being specified that in the event of dismissal, the longest notice period is considered to be that which is the most advantageous for the employee). By way of example, in the case of dismissal, statutory law provides for a minimum notice period of:

- One month, where the employee has between six months and up to two years' service.
- Two months, where the employee has at least two years' service.

Employees who are dismissed or made redundant are entitled to pay in lieu of notice if they are not required to observe their notice period.

Severance Payments

Severance pay is only awarded if:

- The employer terminates an indefinite-term contract.
- The employee has the minimum length of service required by the Labour Code or an applicable CBA. The minimum length of service has been reduced to eight months of seniority by the Macron Reform.
- The dismissal is not based on serious or gross misconduct (*faute grave/faute lourde*). In such a case, no severance payment is due.

Severance pay depends on the employee's length of service and the relevant CBA's provisions. It is generally calculated on the basis of an employee's average salary (often including bonuses as well as basic salary) during the last 12 months of employment. Employees receive statutory severance pay (that is, one fourth of their monthly salary for each year of service for the first ten years of service and one third for each year above ten years of service) if no CBA applies or the CBA rate is lower than the statutory amount.

Employment contracts can also provide for severance payments, provided that their rate is higher than that of the CBA or the statutory amount. However, severance payments in company directors' employment contracts must be approved by the company's corporate governance body.

The consequences of unfair dismissal in terms of severance payments are detailed below (*see Question 13, Protection Against Dismissal*).

Procedural Requirements for Dismissal

In the case of an indefinite-term employment contract, there must be real and serious grounds for dismissal, either on personal or economic grounds (*see Question 13, Protection Against Dismissal*).

Once an employer believes that there is a valid ground for dismissal (except for redundancies, which are dealt with at *Question 15*), it must hand deliver, or send by registered mail against acknowledgement of receipt, a letter giving the employee five working days' notice of a meeting. This letter must set out the (*Articles L.1231-1 et seq, Labour Code*):

- Time and place of the meeting.
- Employee's right to be accompanied by a fellow employee or (in companies without staff representatives) by somebody belonging to a list established by the *Préfet* (French local authority).

During the meeting, the employer must state why it intends to dismiss the employee and take note of the employee's explanations. The employer must notify the employee of its decision (at the earliest, on the third working day following the meeting) and, as the case may be, specify the grounds for dismissal in a letter sent by registered mail against acknowledgement of receipt.

Since the Macron Reform, the employer can clarify the ground of dismissal on its own initiative or at the request of the employee after the notification of the letter of dismissal (however, it is not possible to refer to a new ground) (*Article L.1235-2, Labour Code*). The employee must acknowledge receipt and can dispute the dismissal's grounds before an employment tribunal.

When terminating an employment contract, the employer must also perform some incidental duties. The employer must:

- Give the employee a:

- certificate of employment;
- receipt acknowledging full settlement; and
- certificate for the State Unemployment Fund (*Pôle Emploi*) to enable the employee to apply for unemployment insurance benefits.

- Send the State Unemployment Fund a copy of the certificate that enables the employee to gain the unemployment insurance benefits.
- Declare to the administration the:
  - number of dismissals concerning employees over the age of 55 years;
  - age of the employee when that employee leaves the company;
  - amounts paid to the employee because of the dismissal (except some sums that are strictly the counterparts of the employment).

If the dismissal is made on economic grounds, the employer must also inform the administration of the dismissal. If more than one dismissal is made on economic grounds, the employer must communicate to the administration the documentation provided to the staff representatives.

13. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection Against Dismissal

In the case of an indefinite-term employment contract, there must be real and serious grounds for dismissal.

All employees are entitled to protection against dismissal regardless of their length of service. However, employees can be subject to a probationary period that enables the employer to assess employees' skills. This probationary period is not automatic and must be provided for in the employment contract (*Articles L.1221-23 et seq, Labour Code*). Article L.1221-19 of the Labour Code provides that the probationary period can be for two to four months (depending on the employee's position), unless provided for in a more favourable way in the employment contract or in the applicable CBA if concluded after 27 June 2008. During this period, the employer or the employee can terminate the contract without having to justify their decision, and without the obligation to respect the schedules and formalities normally applicable to dismissals or resignations. However, case law tends to reduce this absolute right by punishing abusive terminations, such as terminations based on discrimination, causing harm or not relating to the employee's skills.

In addition, termination of the employment contract during the probationary period is subject to a notice period.

There are two types of valid grounds of dismissal:

- **Personal grounds.** These can include:
    - poor performance or unsatisfactory professional skills;
    - inability to perform the assigned tasks;
    - misconduct within the company.

    An employee's repeated absence or absence over a long period of time (which is not related to a work-related accident or illness) can also constitute, in certain circumstances, valid grounds for dismissal.
- **Economic grounds.** The Labour Code permits the following main economic grounds for dismissal:
    - economic difficulties facing the relevant business sector at group level within France;
    - technological changes;
    - need to safeguard the company's competitiveness;
    - business closure.

Since the Macron Reform, it is possible to sign a company collective agreement which can change the duration of work, the remuneration of the employees or the place of work. The provisions of the agreement automatically replace the provisions of the employment contract unless the employee refuses in writing the application of the agreement. In such a case, the employer can dismiss the employee. This is a new ground for dismissal.

However, a fixed-term contract can only be terminated where any of the following occurs:

- Serious or gross misconduct.
- An act of God.
- Mutual agreement.

In addition, an employee can terminate a fixed-term contract unilaterally if another employer offers that employee an indefinite-term employment contract.

Employees who are unfairly dismissed can challenge their dismissal before an employment tribunal within a year following the termination of their employment contract (against two years prior to the Macron Reform). If the judges find the dismissals unfair, they can grant compensation. The way compensation for unfair dismissal is assessed has been completely transformed by the Macron Reform. As of 24 September 2017, the minimum and maximum levels of compensation are assessed depending on both the employee's length of service, and the number of employees employed by the relevant company (generally, employees with ten years' service or less, who are employed at a company with 11 or more employees, enjoy a higher minimum level of compensation than those employed at a company with fewer than 11 employees). The minimum and maximum levels of compensation payable are based on the employee's monthly gross remuneration, calculated according to the employee's length of service and the number of employees employed by the relevant company, as follows:

- Employees with less than one year's service: there is no minimum compensation level that applies (irrespective of the number of employees employed by the relevant company), and the maximum level of compensation is set at one month's gross remuneration.

- Employees with one complete year of service: the minimum compensation level for employees at a company with fewer than 11 employees is 0.5 of a month's gross remuneration, whilst for employees at a company with 11 or more employees it is one month's gross remuneration. The maximum compensation level is two months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with two complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is 0.5 of a month's gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is 3.5 months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with three complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is one month's gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is four months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with four complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is one month's gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is five months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with five complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is 1.5 months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is six months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with six complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is 1.5 months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is seven months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with seven complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is two months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is eight months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with eight complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is two months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is eight months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with nine complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is 2.5 months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is nine months' gross remuneration (irrespective of the number of employees employed by the relevant company).
- Employees with ten complete years' service: the minimum compensation level for employees at a company with fewer than 11 employees is 2.5 months' gross remuneration, whilst for employees at a company with 11 or more employees it is three months' gross remuneration. The maximum compensation level is ten months' gross remuneration (irrespective of the number of employees employed by the relevant company).

The minimum compensation level payable to all employees with 11 years' service or longer is three months' gross remuneration (irrespective of the number of employees employed by the relevant company), whilst the maximum compensation level

applicable varies depending on the employee's length of service (again, irrespective of the number of employees employed by the relevant company), as follows:

- Employees with 11 complete years' service: the maximum compensation level is 10.5 months' gross remuneration.
- Employees with 12 complete years' service: the maximum compensation level is 11 months' gross remuneration.
- Employees with 13 complete years' service: the maximum compensation level is 11.5 months' gross remuneration.
- Employees with 14 complete years' service: the maximum compensation level is 12 months' gross remuneration.
- Employees with 15 complete years' service: the maximum compensation level is 13 months' gross remuneration.
- Employees with 16 complete years' service: the maximum compensation level is 13.5 months' gross remuneration.
- Employees with 17 complete years' service: the maximum compensation level is 14 months' gross remuneration.
- Employees with 18 complete years' service: the maximum compensation level is 14.5 months' gross remuneration.
- Employees with 19 complete years' service: the maximum compensation level is 15 months' gross remuneration.
- Employees with 20 complete years' service: the maximum compensation level is 15.5 months' gross remuneration.
- Employees with 21 complete years' service: the maximum compensation level is 16 months' gross remuneration.
- Employees with 22 complete years' service: the maximum compensation level is 16.5 months' gross remuneration.
- Employees with 23 complete years' service: the maximum compensation level is 17 months' gross remuneration.
- Employees with 24 complete years' service: the maximum compensation level is 17.5 months' gross remuneration.
- Employees with 25 complete years' service: the maximum compensation level is 18 months' gross remuneration.
- Employees with 26 complete years' service: the maximum compensation level is 18.5 months' gross remuneration.
- Employees with 27 complete years' service: the maximum compensation level is 19 months' gross remuneration.
- Employees with 28 complete years' service: the maximum compensation level is 19.5 months' gross remuneration.
- Employees with 29 complete years' service or longer: the maximum compensation level is 20 months' gross remuneration.

In some cases, employees have a right of reinstatement (that is, the dismissal is not unfair but it is void). This includes:

- Discriminatory dismissals (*see Question 11, Protection from Discrimination*).
- Dismissals of employee representatives without the Labour Administration's prior authorisation (*see below, Protected Employees*).
- Insufficient redundancy plans (*see Question 15*).
- Dismissals implemented in violation of Article L.1224-1 of the Labour Code (*see Question 16*).

Protected Employees

Certain employees have various levels of protection against dismissal, including:

- Pregnant women.
- Employees on sick leave as a result of a work-related illness or accident.
- Employee representatives.

Employee representatives can only be dismissed if the regional labour inspector authorises the dismissal.

Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

Employees and staff delegates can refer all complaints and observations relating to the application of legal provisions to the labour inspector, free of charge.

The labour inspector can also help employees and employers to resolve conflicts within the company. However, the inspector is not competent to settle disputes relating to the employment contract (disciplinary sanction, payment of salary, taking days off and so on). These must be addressed to the Labour Court.

When the matter concerns discrimination or an infringement of equality, the employee can also refer it to the defender of rights (*Défenseur des droits*), free of charge.

Redundancy/Layoff

15. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of Redundancy/Layoff

A redundancy is a dismissal for economic grounds, which the Labour Code defines as any of the following:

- Economic difficulties.

- Technological changes.
- Need to safeguard the company's competitiveness.
- Business closure.

Since the Macron Reform, this economic rationale is assessed at the company level in France, or at group level, within a group of companies operating in the same business sector established in France.

If the employees challenge the redundancy as unfair dismissal before the courts, the employer must be able to provide evidence of the grounds for redundancy that appear in the dismissal letter.

For collective redundancies, the employer must send a detailed note to the staff representatives for the purpose of the information and consultation process which:

- Explains the grounds for the redundancy.
- Provides some evidence of the existence of an economic motivation.

See below, *Collective Redundancies*.

Procedural Requirements

The redundancy procedure to be followed depends on a number of factors, including:

- The number of employees being made redundant.
- The size of the employer's workforce.
- Whether the employer has staff representation bodies.
- The time frame for the redundancies.
- Whether or not the works council appoints a chartered accountant for assistance.

The following procedure applies to restructurings and redundancies of at least ten employees over a 30-day period where the employer has both:

- At least 50 employees.
- A works council.

The law on job security (*loi de sécurisation du l'emploi*) dated 14 June 2013 has significantly modified the procedure concerning collective redundancies (with a choice between a negotiated procedure with the representatives of the trade unions (leading to the signature of a collective agreement) or a unilateral process, a new timeline of procedure, and an increase in the role of the labour administration).

The Macron Reform has consolidated all staff representatives into one new works council (*Comité Social et Économique*), which exercises all the powers of the former staff delegates and works councils. The scope of their powers depends on the size of the company (*see Question 16*) (*Articles L.2312-5 and L.2312-8, Labour Code*)).

The employer must start a two-stage works council information and consultation process, either concurrently or consecutively. The works council has a limited time to consider the project (depending on the number of redundancies contemplated) and to give its opinion. The employer must take the works council's opinion into consideration, although it is not binding.

Restructuring. The employer must complete this procedure before reaching a final decision on the planned restructuring (*Articles L.2312-39 et seq, Labour Code*). Among other things, the employer must:

- Provide detailed information about the reasons for the restructuring.
- Answer all questions the works council raises.

Since 1 April 2014, companies with over 1,000 employees must, before closing a site, look for a potential buyer for the site concerned (*Articles L.1233-57-10 and L.1233-57-14, Labour Code*). The sanction for not complying with this obligation is the refusal of the labour administration approval required for the collective redundancy plan (*see below, Collective Redundancies*). Since 1 November 2014, companies with less than 250 employees must inform employees of any operation resulting in the sale of more than 50% of the equity of the company to allow them to present an offer to buy the equity.

Redundancy/Layoff Pay

In addition to the plan's benefits (*see above*), employees who are made redundant are entitled to:

- Severance pay (*see Question 12, Severance Payments*).
- Pay in lieu of notice (*see Question 12, Notice Periods*).
- Pay in lieu of holiday.

Collective Redundancies

The employer must complete this procedure before reaching a final decision on the contemplated redundancies (*Articles L.1233-21 et seq, Labour Code*):

- Among other things, the employer must set up a collective redundancy plan, and inform and consult the works council on this plan.
- The collective redundancy plan must either be in the form of a collective agreement signed with representatives of trade unions and validated by the labour administration, or a unilateral document drafted by the employer and approved (*homologué*) by the labour administration (*Direccte*). The control of the labour administration is more stringent in the second scenario.
- The plan provides measures that encourage the redeployment or retraining of employees facing redundancy. The works council or representative trade unions often negotiate an increase in severance pay.
- The works council (as well as trade union representatives, where a negotiation takes place) can be assisted by an expert or a chartered accountant. In particular, the expert's mandate is to assist the works council with all financial and economic issues and to help the works council analyse the economic rationale behind the contemplated collective redundancies. Since the Macron Reform, the works council can also ask the designated expert to analyse the potential consequences of the project on the working conditions, and health and safety. Experts can access the same documents

as auditors and can request any document they consider useful from the employer and its group of companies. Depending on the number of redundancies considered, the works council has between one and four months to give its opinion (except as provided otherwise in the potential collective agreement signed with trade union representatives).

- The employer can inform employees of their redundancy in writing after the notification of the labour administration of its approval of the decision (*decision d'homologation*) in the case of the unilateral procedure or validation decision (*decision de validation*) in the case of the negotiated procedure with trade union representatives.
- The employer must offer each employee facing redundancy the option of taking advantage of a redeployment programme (which varies depending on the size of the employer's workforce).
- If the attempts at redeployment fail, the employer must inform the labour administration of the notified redundancies.

Employee Representation and Consultation

16. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management Representation

The Macron Reform has profoundly changed the way that employees are represented. It has created a single works council, the size and attributes of which will depend on the number of employees. This set up in all companies with 11 or more employees. It can appoint two to four of its members to attend board and shareholders' meetings.

The law on job security has introduced the obligation for certain types of large companies (with at least 1,000 employees) to have employees' representatives on the board, with voting rights.

Consultation

The works council has wide-ranging powers, and must be informed and consulted on almost all major company decisions, including:

- Matters relating to the employer's:
    - organisation;
    - management;
    - general running.
- Decisions that are likely to affect:

- the volume or structure of the workforce;
- working hours and conditions;
- training.

- Restructuring operations and collective redundancies.
- A change in the company's economic or legal structure, especially in the case of mergers or transfers of undertakings, or major changes in the production structure of the company, as well as of the takeover or sale of subsidiaries.

In the case of a public bid, the head of the company must inform the works council as soon as a takeover bid (*offre publique d'achat*) launched against a company or a public offer of exchange (*offre publique d'échange*) has been brought to their knowledge. In the case of a takeover bid, the target company must consult the works council before the board's decision on the bid. If the works council deems it necessary, it can invite the entity that launched the bid to a meeting to present its project to the works council (*Article L.2312-42, Labour Code*). However, this opinion is not binding on the employer.

Similarly, when a concentration is notified to the European Commission or the French national authorities for merger control and competition regulation, the head of any undertaking which is deemed a party to the concentration must inform the works council of the expected impact of the concentration on competition within three days of the publication of the submission notice (*Article L.2312-41, Labour Code*).

The consultation process requires the employer to (*Article L.2312-15, Labour Code*):

- Communicate precise written information to the works council.
- Give motivated answers to the work council's comments on the projects subject to consultation.

Major Transactions

Employees are consulted through their elected representatives, not directly, on major transactions (*see above, Consultation*).

17. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

If the chief executive, or another high-level company representative, breaches the consultation provisions, an offence is committed, punishable by a maximum fine of EUR7,500 (EUR15,000 for repeated offences).

The company may also be liable to pay a fine of up to EUR37,500.

Employee Action

Whilst individual employees cannot take direct action to prevent proposals from going ahead, the works council and/or the trade unions are entitled to obtain an injunction to suspend the implementation of the decision until they are properly informed and consulted.

Consequences of a Business Transfer

18. Is there any statutory and/or common law protection of employees on a business transfer?

Automatic Transfer of Employees

Employees are automatically transferred if there has been a transfer of an autonomous economic entity (although the former employer can, with the relevant employees' approval, agree to retain certain employees) (*Employee Transfer Rules (Article L.1224-1, Labour Code)*). An autonomous economic entity is defined as an organised group of persons, with its own operating resources, clients and line of business.

The Employee Transfer Rules also apply to either:

- A transfer of part of the business.
- A change in service providers, depending on the circumstances.

Protection Against Dismissal

Dismissals implemented by the transferor before the transfer are prohibited and deemed void if they are to prevent the Employee Transfer Rules from applying. However, this protection is not applicable where the transfer is part of a social plan (*plan de sauvegarde de l'emploi*) that is required to safeguard some of the jobs that are at risk. In this case, only the jobs remaining after the social plan has been implemented benefit from the protection against dismissal (other exemptions apply for court-approved restructuring or insolvency proceedings). The relevant employees are entitled to reinstatement with the transferee or damages.

Dismissals implemented by the transferee after the transfer are subject to the usual rules on dismissals (*see Question 12*).

Harmonisation of Employment Terms

Employees' collective employment rights are not maintained, except for a limited period of time (usually 15 months), as collective agreements are not transferred to the transferee.

The new employer must try to negotiate a new collective agreement (*accord de transition ou d'adaption*) that defines the transferred employees' collective rights. Under the Labour Law of 8 August 2016 (*Loi travail*), if an agreement is not reached, the transferred employees continue to benefit from their last annual remuneration.

The transferred employees benefit from the existing collective agreements already applicable to their new employer.

Employment contracts are automatically transferred where the Employee Transfer Rules apply, without any modification. The terms and conditions of the transferred employees should therefore not be modified after the transfer.

The courts sometimes accept that the transferred employment contract can be modified following the transfer, but on the strict conditions that both:

- The employee expressly agrees to the modification (that is, they accept the modification in writing, while entering into an amendment to their initial employment contract).
- The new employer does not actually commit fraud against the Employee Transfer Rules. Courts notably rule for fraud where the new employer has proposed a new employment contract to the transferred employees on the day of the transfer (*Supreme Court, 9 March 2004, No. 02-42.140*), or when the proposed modification actually meant that the employee was downgraded (*Supreme Court, 14 January 2004, No. 01-45.126*).

Employer and Parent Company Liability

19. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer Liability

An employer can generally be held:

- Civilly liable for its employees' acts.
- Criminally liable for breaches of employment law that its representatives commit.

Parent Company Liability

In principle, a parent company cannot be held liable for the acts of a subsidiary company's employees, unless it has acted as their employer (for example, by directly supervising them). However, in specific cases where a French subsidiary of a foreign group is closed down, the courts can hold the foreign parent company liable for payment of severance indemnities, although this is rare.

Employer Insolvency

20. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee Rights on Insolvency

Employees employed by a company subject to an insolvency procedure (whether reorganisation proceedings (*redressement judiciaire*) or a compulsory liquidation (*liquidation judiciaire*)) remain employed by the company until their potential dismissal for economic reason (redundancy). The redundancies are decided by the judge in charge of following up the procedure, except in the case of a judicial winding-up where the employees are made redundant by the liquidator following the judgment providing for the winding-up. Both require the drawing up of a collective redundancy plan if the conditions relating to the number of redundancies and employees within the company are met.

State Guarantee Fund

Employees have the status of preferred creditors. The preference is divided between privileged debts and over privileged debts (*super privilège*). Employees benefit from the protection of the Salary Guarantee Insurance scheme, which is funded by a monthly contribution levied on salary. The guarantee applies to salary and various indemnities owed to the employee in the case of redundancy but is limited, depending on seniority, to a maximum of EUR82,272.

Health and Safety Obligations

21. What are an employer's obligations regarding the health and safety of its employees?

The head of the employer's organisation (chief executive) can be held criminally liable for breaches of the health and safety rules (*Labour Code*).

Employers also have an absolute contractual duty to protect their employees' safety. For example, the employer can be considered to have made an inexcusable error (*faute inexcusable*) in the event of a suicide in the workplace (*Supreme Court, 19 September 2013, No. 12-22156*).

Risk Prevention

To avoid liability, the chief executive must ensure that the legal provisions concerning health and safety in the workplace are strictly followed at all times. It is also necessary to evaluate the risks to employees' health and safety when selecting:

- Manufacturing processes.
- Work equipment.
- Chemical substances to be used in the work process.
- The workplace's layout or organisation.

Having made this assessment, the chief executive must adopt a risk prevention approach by, for example:

- Adapting work to the employee.
- Taking into account technological developments.
- Replacing something dangerous with something less (or not) dangerous.

The risk assessment must be recorded in a written document (*Document unique d'évaluation des risques*), which must be accessible to:

- The Health and Safety Commission that is mandatory in companies with more than 300 employees, in autonomous establishments with more than 300 employees or upon request from the Labour Inspector, employee representatives or, in their absence, any person subject to a health or safety risk.
- The occupational doctor.
- Control agents.

Failure to record in writing or update (at least each year) the risk assessment results is punishable by fines of up to:

- EUR1,500 for the chief executive.
- EUR7,500 for the company.

The employer must also establish a record for each employee exposed to one or multiple professional risks, a dangerous working environment or to intensive working schedules. That record must be transmitted to the occupational doctor.

Employees subject to difficult working conditions (including night shifts, exposure to noise or extreme heat) benefit from a "professional prevention account" (*compte professionnel de prévention*) where they collect points that can be converted into training or be used to reduce their working time or retire early.

Additionally, non-compliance with the Labour Code requirements regarding health and safety is punishable by a fine.

Work-Related Accidents

Employees who suffer work-related accidents are compensated by a lump-sum indemnity paid by the social security system and the employer.

If the employer is guilty of gross negligence or wilful misconduct, the employer fully compensates the employee and can also be held liable for:

- The endangerment of the life of others (*Article 223-1, Criminal Code*).
- In cases of death through a breach of a duty of care or a safety regulation, involuntary manslaughter (*Article 221-6, Criminal Code*). This offence is punishable by up to:
    - five years' imprisonment; and/or
    - a fine of EUR75,000.

When the employer is found guilty of gross negligence, the employee receives a higher indemnity through the social security system, which is compensated by the employer paying higher social security contributions.

Taxation of Employment Income

22. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign Nationals

Foreign nationals who are French tax resident are taxed as French nationals on their gross salary, net of social security contributions. Subject to international tax treaties, tax residents are persons to whom one of the following applies:

- They live in France (meaning that they or their household (spouse/partner/children) remains in France) or they have their main place of residence in France (which implies having stayed in France for more than six months (183 days) during the same year).
- They undertake their main professional activities in France.
- The centre of their economic interests is in France.

There is a 10% professional expenses allowance deduction (limited to EUR12,829).

If a foreign national is not French tax resident and carries out a professional activity in France, a withholding tax at a progressive rate of 0%, 12% and 20% is imposed on salary payments (unless a double taxation treaty provides otherwise).

Nationals Working Abroad

If French nationals are French tax resident, they are taxed on their total income, regardless of its source (unless a double taxation treaty provides otherwise).

If they are not French tax resident, no tax is paid in France on income derived from work carried out abroad.

23. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of Taxation on Employment Income

French employment income is taxed according to a progressive tax rate. The rates on income earned in 2022 are:

- 0% for income under or equal to EUR10,225.
- 11% for income of EUR10,226 and up to EUR26,070.
- 30% for income of EUR26,071 and up to EUR74,546.
- 41% for income of EUR74,547 and up to EUR160,336.
- 45% for income over EUR160,337.

Social Security Contributions

The employer's share of social security contributions amounts to about 43% of the gross salary, while the employee's share amounts to about 22%. However, some contributions are capped for wages up to four or eight times the social security ceiling (EUR13,712 or EUR27,424 per month for 2022; the security ceiling remained fixed at EUR3,428 per month for 2022).

The employer is liable to pay social security contributions and must withhold the employee's share from the gross monthly salary.

Employers must file all their social security declarations through a monthly and dematerialised data transmission (*Déclaration Sociale Nominative*).

Intellectual Property (IP)

24. If employees create IP rights in the course of their employment, who owns the rights?

Patents

Inventions made within the scope of employment relationships are divided into three categories (*Article L.611-7, Intellectual Property Code*):

- Employee inventions that automatically belong to the employer: these include inventions made:
  - in the course of employment consisting of an inventive assignment (when the employment contract requires studies and research that may result in an invention);
  - when carrying out research or studies, which have been expressly assigned to the employee.

  The employee is entitled to receive additional compensation for the invention (which can be included as part of the employee's salary).
- Employee inventions that the employer can claim: the employer can assign to itself the ownership of all or some of the rights in an employee's invention that is made in any of the following cases:
  - during the performance of the employee's duties;
  - in relation to the company's business;
  - using specific company knowledge;
  - using technologies or specific means of the employer;
  - using data the employer has acquired.

  The employee is entitled to obtain a fair price based on the invention's industrial and commercial use. In the event of a dispute, the employment tribunal (*conseil de prud'hommes*) sets the fair price.
- Employee inventions that the employer cannot claim: all other employee inventions are considered to be non-attributable inventions and the employer has no rights over them.

Copyright

The author of an intellectual work owns, with effect from the date of creation, its exclusive IP rights, which are enforceable against all persons (*Article L.111-1, Intellectual Property Code*).

Ownership of the copyright can be assigned to the employer by written agreement. Employees always retain the moral rights to their work. They are not entitled to any additional compensation for a transfer of copyright ownership.

Other IP Rights

Specific provisions exist for IP rights in software, designs and models.

Restraint of Trade

25.Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of Activities

Restriction of activities during employment. Employees are bound by a duty of loyalty towards their employer, which prevents them from engaging in any activity that could be in conflict with their employer's interest during the employment relationship.

During the course of employment, employees can also be required to:

- Devote all of their attention to the company's business.
- Not take part in any other professional activity, whether compensated or not (except for part-time employees).

Restriction of activities after termination of employment. Post-termination restrictive covenants are fairly common in French employment contracts, especially for senior employees or those with access to confidential information, senior responsibilities or contact with clients. In principle, restrictive covenants must be justified by the nature of the duties to be performed and proportionate to the aim that is pursued.

There are several types of restrictive covenants, which can include:

- Non-compete clauses: these prohibit an employee from competing with their former employer after the termination of their employment contract (*see below*, *Post-Employment Restrictive Covenants*).
- Non-solicitation clauses: according to case law, this is a distinct obligation from the non-compete clause. This can cover the solicitation of customers and/or employees. A non-solicitation clause of employees usually prohibits employers from recruiting a competitor's or supplier's employees. It can also include a prohibition on employees recruiting their former colleagues after the termination of the employment contract.

Post-Employment Restrictive Covenants

Non-compete clauses after termination are valid if they are included in the employment contract (or in an amendment to it). In addition, the non-compete clause must satisfy all of the following criteria:

- Be essential to protect the company's legitimate interests.

- Apply over a specific period of time (two years is the limit generally upheld by the courts) and to a defined geographic area.
- Take into account whether the employee's position is specialised (that is, the clause must not prevent employees from continuing to work in their professional field).
- Impose a duty on the employer to pay the employee financial compensation (this is usually at least 30% of the employee's former average salary throughout the period during which the clause applies).

Non-compete clauses that do not meet all of these four conditions are invalid. CBAs can also provide for non-compete clauses.

Relocation of Employees

26. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Mobility clauses can be included in the employment contract provided that they precisely define their geographical scope (which can be wider than France) and that their implementation is justified by the legitimate interest of the employer. The mobility clause inserted into the employment contract must comply with the provisions of the applicable CBA on this matter.

The employer must use the mobility clause in good faith and give sufficient notice of the change of workplace to the employee if no specific notice has been previously agreed.

Even in the case that there is a valid mobility clause in the employment contract, the employee can lawfully refuse the mobility requested by the employer where the impact of that change of workplace on the employee's family life is disproportionate to the employee's work and the nature of the tasks to be performed.

The mobility clause cannot provide for a mobility implying a change of employer (even within a group of companies) or involve a change of position or remuneration.

Unless there are some contractual or conventional provisions on the matter (which often exist), there is no duty for employer to pay a relocation allowance or help the employee relocate.

Proposals for Reform

27. Are there any major proposals to reform employment law in your jurisdiction?

Several measures provided for by the "*Avenir Professionnel*" law came into force in 2020. The new employment obligations for people with disabilities became effective on 1 January 2020 and the extended obligation to calculate and publish the equality score became effective on 1 March 2020.

However, due to the economic and public health crisis (COVID-19), major reforms that were to be discussed during 2020 have been postponed (such as the pension scheme) and reforms that were to come into force have been suspended or adapted (for example, reform of the unemployment scheme). However, many temporary measures were introduced to deal with the crisis, particularly with regard to the short-time working system and the coverage of sick leave.

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Recent Transactions

- Advising a global tyre company on a major restructuring operation.
- Advising a global industrial group on various restructuring operations.
- Advising on various restructuring operations.
- Advising a pharmaceutical group on national and international aspects of acquiring another group.
- Advising a leading transportation group on creating a joint venture.
- Advising a public entertainment company on labour aspects of a merger.
- Advising major groups of companies on CBA negotiations.
- Litigation for a major petroleum company, expatriates of construction groups, a telecoms company, an aircraft maintenance group and for a multinational IT corporation.
- Litigation for a major transportation company in a discrimination claim brought by more than 1,000 foreign workers working for the company in France.

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Recent Transactions

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- Advising companies on CBA negotiations.
- Litigation for several companies for both individual and collective lawsuits.

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