

CHANGES IN DISMISSAL PRACTICES

September 2006

This summer court session resulted in some surprising rulings in dismissal cases that should lead employers to review certain practices.

- **Settlement: an employee can only validly conclude a settlement agreement if he has picked up his dismissal letter (sent by registered mail with return notice); simple presentation of the post office notice does not suffice** (*Cass. soc.* 14 June 2006, FS-PB, *Sté Novoferm France*)

An employee was notified of his dismissal by registered letter with return notice dated 16 January, which was presented at his home address on the 17th. On the 18th, the employee signed a settlement agreement but did not go to pick up the letter from the post office until the 21st. A few days later he went to court to seek the cancellation of the settlement.

Previously, the settlement was valid when signed after the date of first presentation of the dismissal letter, regardless of when the employee actually went to pick up the registered letter.

The *Cour de cassation* reversed its position on prior case law, considering that the settlement was invalid since “it could only have been validly concluded by the dismissed employee had he had **actual knowledge of the rationale for his dismissal** by receiving the dismissal letter required under Article L. 122-14-1 of the Labour and Employment Code. Whereas [...] the dismissal letter was picked up by [the employee] [...] after having signed the settlement agreement, [...] that settlement agreement was invalid.”

- **Economic layoff: the 15-day limitation period in which to bring summary proceedings so as to contest the procedure for consultation of the works council only concerns procedural irregularities committed during the course of the consultation procedure on the contemplated economic layoff plan**

(*TGI Clermont-Ferrand*, summary proceedings, 10 January 2006, *Comité Central d'entreprise de l'UES Michelin c/ Manufacture Française des Pneumatiques Michelin*; *TGI Versailles*, summary proceedings, 5 May 2006, *Comité d'établissement du Centre Charles Nungesser de Thales Systèmes Aéroports c/ Sté Thales Systèmes Aéroports*)

Article L. 321-16 of the Labour and Employment Code, stemming from the framework law on societal solidarity (*loi de programmation pour la cohésion sociale*) of 18 January 2005 provides for a limitation period for “any action in summary proceedings concerning the compliance of the consultation procedure” of “15 days following each of the meetings of the works council”. Two decisions of the Civil Courts of Clermont-Ferrand and of Versailles specify the scope of application of this shortened limitation period for claims.

First, this 15-day period only concerns procedural irregularities (affecting for example the summoning of the works council to a meeting or the schedule of the meetings), and not irregularities concerning the content of the consultation (e.g. inadequacy of the information disclosed to the works council, inadequacy of the plan to safeguard employment). For the latter, the general provisions of Articles 808 and 809 of the Code of Civil Procedure (concerning actions in summary proceedings) continue to apply.

Second, the shorter limitation period only concerns Book III consultation procedures on contemplated economic layoff plans. The Civil Court of Versailles adopted a solution contrary to that of the labour authorities (DGEFP-DRT 2005-47 circular letter of 30 December 2005), according to which this shorter limitation period applies to all consultation procedures for the works council (Book III and Book IV).

- **Economic layoff: new exemption on payment of the Delalande contribution if the employee opts for a personalized job placement agreement**

(UNEDIC circular letter no. 2006-15 of 25 July 2006)

Article L. 321-13 of the Labour and Employment Code requires the employer to pay to the State unemployment fund (ASSEDIC) a penalty (called the “*Delalande contribution*”) of up to 12 months salary in companies with 50 or more employees and of up to 6 months in other companies when the employment contract of an employee aged 50 or over is terminated. This contribution is due where the upon termination of his employment contract employee actually receives unemployment benefits.

Yet there are many ways of getting around payment of this contribution. The Unedic has created two additional causes of exemption: 1) Acceptance by the employee of a personalized job placement agreement (*convention de reclassement personnalisée*); 2) At the end of that agreement, where the employee has not

found employment, and is eligible to receive unemployment benefits (*allocation de retour à l'emploi*).

It should be recalled that the draft legislation "*for the development of employee profit-sharing and shareholding*", presented on 21 June to the Council of Ministers and which should be examined by Parliament in the autumn, organizes the progressive phaseout of this contribution between now and 2010. In particular, the Delalande contribution should no longer be due for employees hired after publication of the law.

- **Duty of confidentiality of members of works councils: don't forget to remind them of the confidentiality of the information disclosed, during the meeting and in the minutes of the meeting; otherwise they will be authorized to disclose it** (*Cass. soc.* 12 July 2006, FS-P+B+R, *Sté KPMG*)

For members of the works council to be under a duty of confidentiality, the employment division of the *Cour de cassation* requires that the employer has indicated the confidentiality of the information during the meeting of the works council and that this statement be recorded in the minutes of the meeting.

In the case before the court, the employer had not mentioned that the information was confidential until after the end of the meeting of the works council. This late indication did not operate so as to prevent members of the works council from disclosing the information to the company's employees.

As a precautionary measure, it would be preferable to recall the confidential nature of the information disclosed in the documents provided to the members of the works council, during the course of the meeting and in the minutes thereof.

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