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France

EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in France.

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FRANCE
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1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

The employer does need a reason to lawfully terminate the employment relationship through a dismissal.

A dismissal must be based on real and serious grounds demonstrated by objective, accurate and real facts attributable to the employee. It can be either for disciplinary grounds (based on misconduct – minor, serious, or gross), performance issues or medical unfitness.

A redundancy must be based on real and serious grounds that are not attributable to the employee and that have specific consequences on their employment. It can be based either on:

- Economic difficulties,
- A need to preserve a competitive advance,
- Technological changes, or
- Full company closure.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The collective redundancy procedure varies depending on whether it involves less than 10 or at least 10 employees over a 30-day period, and whether the company has less than 50 or at least 50 employees.

If the company has elected staff representatives, a collective redundancy (2 or more) requires – in addition to the individual process that needs to be carried out with each employee – to inform and consult the staff representatives.

If the redundancies involve at least 10 employees over a 30-day period and where the employer has at least 50 employees and a work council, different rules apply, which complexify and lengthen the procedure.

Indeed, additional rules apply when it comes to informing and consulting the work council, as well as sending the mandatory information and documents to the French labour authorities.

The employers must also set up a social plan (“PSE”) for the purpose of avoiding or limiting the redundancies and providing for actions to ensure the redeployment of the redundant employees. The actions may, for instance, include outplacement, training, or financial aides.

Other requirements may apply depending on if the company has more or less than 1,000 employees in Europe or belongs to a group that has more or less than 1,000 employees in Europe.

3. What, if any, additional considerations apply if a worker’s employment is terminated in the context of a business sale?

As a general principle, employees are automatically transferred in case of a business sale, along with their employment contracts and all attached rights and benefits.

As such, the transferor is prohibited from making redundant the employees involved prior to the transfer.

However, once the transfer is completed, the transferee will be entitled to terminate the transferred employees, subject to the compliance with the applicable termination rules.

4. What, if any, is the minimum notice period to terminate employment? Are there

any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

In case of resignation (i.e. termination of the employment contract at the employee's initiative), the Law does not provide for a specific notice period. However, a notice period may be provided for in the applicable collective agreements or in the employment contract. In any case, the employee may benefit from the notice period that is the most advantageous to them.

In case of dismissal outside of the trial period, the Law provides that the minimum notice period depends on the length of service of the employee:

- For a length of service of less than 6 months, the Law does not set a minimum notice period and refers to the applicable collective agreements, or otherwise to the local and professional usage,
- For a length of service ranging between 6 months and less than 2 years, the minimum notice period is 1 month,
- For a length of service of 2 years and above, the minimum notice period is 2 months.

All employees may be subject to different notice periods provided by the collective bargaining agreement and/or employment contract. In such case, the employee shall benefit from the notice period that is the most advantageous to them. Generally speaking, the notice period ranges between 1 month (for regular employees) to 3 months (for managers).

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

To some extent.

The notice period can be either worked or paid in lieu. In the latter case, the payments are made every month with the regular payroll, for as long as the employee remains employed by the employer. The employee leaves the workforce at the end of the period only. There is no notion of garden leave per se (see **question 6** below).

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Under French Law, the notion of "garden leave" does not exist (see **question 5** above).

An employee who is not subject to a non-compete clause and who is exempted from working during their notice period may, in the meantime, work for another company.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Yes. The procedures vary depending through which vehicle employment is terminated.

Mutual termination agreement: The procedure to enter into a mutual termination agreement can be summarised as follows:

i. Preliminary meeting(s): The parties must hold at least one preliminary meeting, during which both the employee and the employer may be assisted, subject to specific conditions.

ii. Execution of the agreement: The parties must fill in an online form providing information on the parties, the exchange process, and the general terms of the agreement (i.e., the indemnity and termination date).

It is also advisable for the parties to enter into a termination agreement to define more specifically the terms and conditions of the agreement.

iii. Withdrawal period: Upon executing the form, each party has a period of 15 calendar days to withdraw their consent.

iv. Approval by the French labour administration: Once the withdrawal period has elapsed, the parties submit the form to the labour administration through the online portal, which in times has 15 working days to grant its approval.

Additional rules apply if the employee being terminated has a protected status (e.g. in the case of an elected representative).

Dismissal: In case of dismissal, the procedure can be summarised as follows:

i. Invitation: The employer must invite the employee to a preliminary meeting, at least five working days prior to

the meeting itself.

ii. Preliminary meeting: The employer must hold the preliminary meeting with the employee to discuss the reasons for the contemplated dismissal. During this meeting, the employee may be assisted, subject to specific conditions.

iii. Notification: The employer must then notify the dismissal through a letter sent by registered mail with acknowledgement of receipt. At least two (2) working days must elapse between the preliminary meeting and the notification of the dismissal.

iv. Notice period: The notice period then starts to run, except in case of serious or gross negligence where no notice period is due, and the contract ends immediately upon notification.

Redundancy: The specific steps of the redundancy process vary depending on the number of employees made redundant, the size of the employer's workforce and the presence (or not) of staff representatives (see **question 2** above).

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

When the dismissal is based on real and serious grounds, but the prescribed procedure has not been duly followed (e.g. invitation letter, preliminary meeting, etc.), the employer may be ordered to pay the employee an indemnity of up to one month of salary.

When the dismissal is not based on real and serious grounds, the employers might also be ordered to pay the employee damages in accordance with the legal scale (called "Barème Macron"), which sets up the minimum and maximum amounts of compensation for unfair dismissal. The legal scale ranges from 1 to 20 months of salary and depends on the employee's length of service.

9. How, if at all, are collective agreements relevant to the termination of employment?

When it comes to terminating an employment relationship, the applicable collective agreements may include specific provisions that shall apply if more advantageous to the employee(s) specifically involved.

These provisions may cover a broad range of conditions, including (but not limited to) the applicable notice period, the different indemnities that are due (e.g. the dismissal indemnity), as well as any other additional formalities to be complied with as part of the termination process.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Yes, but only for employees with a protected status, such as elected members of the work council, union representative, employees who requested the holding of professional elections, etc.

Before terminating an employee with a protected status, the employer will have to seek the authorisation of the local labour authorities while complying with a specific procedure, which varies depending on the context (mutual termination agreement, dismissal or redundancy).

If a protected employee is dismissed without the employer being granted an authorisation from the local labour authorities, the dismissal will be deemed void, and the employee may be either reinstated in their job or granted with an indemnity equal to at least 6 months of salary.

Plus, the employer may be liable to a one-year prison sentence and a €3,750 fine.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Discrimination: Discrimination is prohibited throughout the recruitment process and employment relationship. As such, no employee may be terminated on the basis of their:

- Origin,
- Gender,
- Morals,
- Sexual orientation,
- Gender identity,
- Age,
- Marital status,
- Pregnancy,
- Genetic characteristics,
- Special vulnerability resulting from their

economic situation,
- Ethnicity,
- Nationality,
- Political opinions,
- Trade union activities,
- Exercise of a local elected office,
- Religious beliefs,
- Physical appearance,
- Family name,
- Place of residence,
- Banking domiciliation,
- Health condition,
- Disability,
- Ability to speak a language other than French,
- Whistle-blower status.

Furthermore, no employee shall be punished, dismissed or subject to a discriminatory measure as a result of them exercising their right to strike, serving as a juror or citizen assessor, having testified to discriminatory acts or having refused a geographical transfer to a state where homosexuality is a criminal offence on the grounds of sexual orientation.

Harassment: Employees are also protected from harassment (psychological and sexual) throughout the employment relationship, including in respect to termination. Both psychological and sexual harassment are statutorily defined by French Law.

Psychological harassment is characterized by repeated acts of harassment which purpose or result is the deterioration of the employee's working conditions, likely to affect their rights and dignity, their physical or mental health or their professional future.

Sexual harassment, on the other hand, is characterized by repeated comments or behaviours with sexual or sexist connotations that either undermine the dignity of the employee because of their degrading or humiliating nature, or create an intimidating, hostile or offensive environment for them.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If an employee is terminated as a result of an act of discrimination or psychological or sexual harassment, the dismissal will be deemed as void and the employee may be either reinstated in their job and/or granted with an indemnity equal to at least 6 months of salary.

The employee may also be granted with additional damages if separate prejudices are proven as a result of the act of discrimination or psychological or sexual harassment.

Plus, the employer may be liable to:

- A three-year prison sentence and a €45,000 fine in case of discrimination,
- A two-year prison sentence and a €30,000 fine in case of psychological or sexual harassment.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Subject to some limited exceptions, some employees who are on family leave are entitled to specific protection against termination of employment, including:

- Pregnant employees are protected from being terminated during their pregnancy and up to 10 weeks after their actual return to work,
- All employees who are parents are protected from being terminated for a period of 10 weeks following the birth of their child,
- An employer may not terminate an employee for a period of 13 weeks following the death of their child (or person under their care) aged under 25 years old,
- Employees who are on adoption leave are protected from being terminated.

Also subject to some limited exceptions, an employee on sick leave as a result of a work accident or occupational disease cannot be terminated.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Yes. No employee shall be punished, dismissed or subject to a discriminatory measure as a result of whistleblowing.

The consequences for the employer if an employee suffers from a discriminatory measure resulting from whistleblowing are those mentioned under above **question 12**.

Plus, a whistleblower who is terminated following their lawful report or disclosure can request French labour courts to order the employer to contribute up to €8,000 to their personal training account.

Whistleblowers are also granted an immunity from criminal prosecution if the report or disclosure is lawfully performed, as well as an immunity from civil liability for the damages resulting from their report or disclose, if they had legitimate grounds to believe that it was necessary for the safeguard of the interests at stake.

Additional criminal sanctions might apply in case of impediment to the whistleblowing.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

In case of financial difficulties, an employer cannot unilaterally terminate an employee's employment contract to then offer re-engagement on less favourable terms.

It is interesting to note, however, that within the specific frame of the French redundancy rules, an employer may only terminate an employee based on economic grounds if all efforts have been made to reassign them to a position of the same category as the one they hold, or an equivalent one with equivalent remuneration.

As such, the proposed positions may offer less favourable terms, but the employee is entitled to refuse them.

French labour courts require from employers to make earnest efforts to reassign the employees, failing which the redundancies may be void.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

Use of artificial intelligence ("AI") in recruitment

AI can be very useful for employers when it comes to finding and recruiting their "perfect match" through smart recruitment tools. One of the downsides, however, is that recruiting through AI can potentially lead to hiring discrimination, if the algorithms replicate the bias that already exist within the data being processed.

As mentioned above in **question 11**, discrimination is prohibited throughout the recruitment process. Failing which, the employee may be granted damages and the employer may be liable to the criminal sanctions as mentioned above in **question 12**.

Another important consideration when using AI as part of the recruitment process (and, more generally, in the workplace), is the collecting and processing of personal data. Employers must make sure that they comply – at all times – with the legislation on data protection, including the General Data Protection Regulation, which applies to both employees and job applicants. Failing which, employers might be subject to heavy civil, administrative and criminal sanctions.

Use of AI as a termination ground

Employers must carefully consider if they have valid grounds to proceed to a redundancy as a result of AI having the potential to replace an existing job.

As mentioned in **question 1** above, technological change is – in and of itself – considered as a legal ground for redundancy under French Law.

However, to be considered valid, the underlying grounds must be real and serious, which is subject to the appreciation of French labour courts.

Plus, a redundancy based on technological changes is only legitimate if all efforts have been made by the employer to train the employees in acquiring new skills allowing them to evolve along with the evolution of their job.

If these requirements are not complied with, the employer risks being ordered to pay damages to the employee.

Use of AI in the termination process

French courts have yet to rule on a case where the use of AI in the termination process is at stake.

Regardless, employers should be extra careful when contemplating using AI technologies for the termination of employees considering how strictly regulated the process is in France.

17. What financial compensation is

required under law or custom to terminate the employment relationship? How is such compensation calculated?

Upon termination of an employment contract at the employer's initiative, the employee is entitled to, except in cases of serious or gross misconducts, a dismissal indemnity and a notice period (for the latter, please refer to **question 4** above).

The dismissal indemnity is based on two factors: (a) length of service and (b) the employee's average remuneration.

(a) To be entitled to a dismissal indemnity, the employee has to have a length of service of at least 8 months at the time of the notification of the dismissal. Beyond this threshold, the total length of service (notice period included) is taken into consideration.

(b) The average remuneration is calculated either on the 12 months or 3 months prior to the notification of the dismissal, whichever is more favourable to the employee.

Then, the dismissal indemnity is calculated using the most favourable of the two formulas:

- The legal formula which is:
  - 1/4th of the average remuneration per year of seniority for the first 10 years;
  - 1/3rd of the average remuneration per year of seniority from the 11th year and onward.
- The formula provided by the collective bargaining agreement: it depends on the applicable collective bargaining agreement.

Plus, when the dismissal is not based on real and serious grounds, the employers might also be ordered to pay the employee damages in accordance with the legal scale (called "Barème Macron"), which sets up the minimum and maximum amounts of compensation for unfair dismissal. The legal scale ranges from 1 to 20 months of salary and depends on the employee's length of service.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

No, it is impossible to reach an agreement with an employee on the termination of employment which includes a valid waiver of rights. In France, one can either:

- Execute a mutual termination agreement which is an agreement between the employee and the employer to terminate the contract amicably. The employee will receive a payment (the minimum being the equivalent of the dismissal indemnity). However, there is no waiver of rights.
- Execute a settlement agreement which contains a waiver of claims. However, a settlement agreement relating to the termination of the contract can only be negotiated and executed after the notification of the dismissal.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

It is possible to restrict an employee from working for competitors after the termination of employment through a non-compete obligation.

Such an obligation is either agreed upon at the time of hiring and is included in the employment contract or after the termination in a separate non-compete agreement.

To be valid, the non-compete has to be limited in time and in space. Moreover, a monthly financial compensation has to specified in the agreement. Finally, the non-compete restriction has to be set up to preserve the company's business and must not prevent the employee from being able to work entirely.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, of course. There is a general obligation of loyalty towards the employer which would restricts the employee from acting in a manner which would be prejudicial to the company. On top of this, the employment contract can include a clause to remind the

employee of the obligation to keep the information relating to the employer confidential.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

No, there is no obligation to provide references.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

As the possible causes for termination are legally limited in France, it can be quite challenging for employers to assess whether they have sufficient grounds to terminate an employee.

One way for employers to anticipate these difficulties is to make sure to document:

i. The performance of their employees, by explicitly setting their duties and objectives and evaluating their work through performance reviews; and
ii. Any other behaviour that could be considered as a misconduct.

Another alternative to mitigate the judicial risks is to terminate the employment amicably through a mutual termination as mentioned in **question 18** above.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

In January 2024, the French government announced that a new phase in its plan to reform the Labour Code will be launched in the upcoming months.

The specifics have however not been disclosed yet, which means that employers will have to wait to find out if and how it will affect the way they approach termination of employment.

It should also be noted that, since our last comparative guide was published in 2023, the legislation around job abandonment has changed quite drastically.

For the readers' perfect understanding, job abandonment refers to the situation where an employee is persistently absent from work without authorisation or explanation.

Until recently, employers could not consider employees to have resigned simply because they had abandoned their job. Employees who were unable to reach a mutual termination agreement, but still wanted to end their employment relationship without being deprived of unemployment benefits thus often abandoned their job in an attempt to force their employer to dismiss them.

However, since April 2023, employees who abandon their job and do not return or justify their absence, despite having been presented with a formal notice from their employer, are presumed to have resigned (and are therefore deprived of unemployment benefits).

There is still a great deal of uncertainty surrounding this mechanism. For instance, does an employer still have the possibility to dismiss an employee who has abandoned their job? What should be done if the employee who has abandoned their job is protected? These are questions that will have to be dealt with by French courts in the near future.

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