



New Labour law regulations of Macron's government: overview of the most emblematic and challenged provisions

The five ordinances n° 2017-1387 of 09/22/2017 of Macron's government reforming the French Labour Code were published on 23 September 2017.

Some of the voted measures immediately came into force but others require preliminary enforcement decrees announced by the end of the current year. By 1st January 2018 the entire reform should be applicable.

Scheme

- 1 Reform of the procedural rules and grounds for dismissal**
- 2 Creation of a collective procedure of termination of employment contract by mutual agreement**
- 3 Reform of the organization of work**
- 4 Reform of employees' representation**
- 5 Reform of the collective negotiation**
- 6 Reform of occupational health**
- 7 Contact us**

Reform of the procedural rules and grounds for dismissal

Dismissal grounded on personal or economic reasons

Disappearance of the classic dismissal letter and introduction of an option to revise it after its notification:

- It will be replaced by a standard document (Cerfa form);
- The grounds of the dismissal set forth in the letter can be completed after its notification at the employer's initiative or at the employee's request;
- The grievance related to the lack of motivation of the dismissal will only give rise to a compensation for procedural breach amounting to 1 month's salary at most.

The absence of preliminary interview will no longer invalidate the entire dismissal procedure

It will be only compensated by damages to the dismissed employee up to 1 month's salary at most.

⇒ ***The enforcement decrees are expected by the end of the current year***

Setting of both a minimum and a maximum threshold for damages granted to employees in case of (i) unfair dismissal (ii) grounded acknowledgment of the termination of the employment contract by the employee (referred to as “prise d’acte de la rupture du contrat de travail” in French) and (iii) judicial breach of the employment contract further to employer’s fault.

The minimum compensation is set at 3 month’s gross salary for employees having at least 2 years of seniority in companies of at least 11 employees.

The maximum compensation is set at 20 month’s gross salary for employees having at least 30 years of seniority.

Furthermore, the judge is still entitled to mitigate the damages granted further to the scale set for the dismissal allowance.

Setting of a minimum threshold for damages granted in case of a null dismissal (violation of a fundamental right or a specific protection, harassment or discrimination)

The compensation is set at a minimum of 6 month’s gross salary (without prejudice of the employee’s severance payment).

- breach of the legal rehiring priority in case of economic dismissal (at least 1 month’s salary instead of 2);
- nullity of the economic dismissal in the presence of a Safeguard Employment Plan (minimum 6 months’ salary instead of 12);
- failure to reintegrate the employee victim of a professional accident or an occupational disease, or breach of the reclassification obligation in case of incapacity (at least 6 months’ salary instead of 12).

Revaluation of 25% of the legal termination allowance and easing of its conditions of entitlement

Any employee having at least 8 month’s seniority in a company is now entitled to legal termination allowance

- ⇒ *Provisions already in force and applicable to dismissals notified since the ordinance’s publication (see revised articles L 1234-9, 1235- and following of the French Labour Code).*

Alignment of the delay to initiate legal action challenging an employment contract’s termination at 12 months for all dismissals (except for specific litigation or shorter deadline legally set)

Dismissal grounded on economic reasons

The economic grounds of the dismissal are now to be appreciated on a national scale as well as the reclassification obligation (excluding fraud). End of the employer’s obligations to reclassify the dismissed employee abroad when the company belongs to an international group.

- ⇒ *Already in force (see revised articles L1233-4 and followings of the French Labour Code)*

Creation of a collective procedure of termination of employment contract by mutual agreement

It is now possible to set a collective framework for multiple termination of employment contracts by mutual agreement which will be validated by French Labour Administration (DIRECCTE)

- ⇒ *The enforcement Decree is expected by the end of the current year (see new article L 1237-19 and followings of the French Labour Code).*

Reform of the organization of work

Home-based working is facilitated

It can be set up in the company further to a collective agreement or in an internal charter drafted by the employer.

Occasional home-based working is now possible further to a simple agreement between the employer and the employee without any particular formality.

- ⇒ *Already in force (see revised article L 1222-9 of the amended French Labor Code)*

Resorting to the temporary or fixed-term contracts further to collective bargaining agreement is facilitated

The agreement will set out the practical conditions of this (total duration of the contract, possible renewal, mandatory waiting time between 2 contracts etc....).

Possibility to conclude a permanent construction contract or a permanent operation contract by branch agreement

- ⇒ *Already in force (see revised articles L 1236-8 and followings of the French Labour Code)*

Reform of employees’ representation

Creation of a single representative entity named Social and Economic Committee (referred to as “Comité Social et Economique” in French (CSE)) no later than 31 December 2019

It would replace the current Employee’s representatives (referred to as “Délégués du

Personnel" in French) in companies having at least 11 employees and would also merge as well the Works Council ("referred to as *Comité d'Entreprise*" in French), the Workplace Health and Safety Committee (referred to as "*CHST*" in French and the Employee's representatives in companies having at least 50 employees.

The CSE will be set up in each company or at a higher level in the economic and social unit or at the intercompany level.

The members of the CSE would be elected for 4 years and would be limited to 3 successive terms of office (except for companies having less than 50 employees).

NB: A transitional period is provided to enable companies to align their structure and the CSE will only be set up after the end of the current term of office of the elected employee's representatives (no later than 31st December 2019)

⇒ *The enforcement Decree is expected for the end of the current year (see revised articles L 2311-1 and followings of the French Labour Code)*

Reform of the collective negotiation

Facilitation of the collective negotiation in small companies (referred to as "*PME*" / "*TPE*" in French)

The right to collective negotiation is extended to all companies having less than 50 employees (basically, the employer will be able to directly negotiate with the employees).

Companies having less than 20 employees will be able to negotiate with an unelected employee not properly mandated by a trade union. In companies having between 20 and 50 employees, the negotiation will be possible with an elected non-mandated employee.

⇒ *The enforcement Decree is expected by the end of the current year*

Creation of the term Company's Agreement (referred to as "*convention d'entreprise*" in French) to replace the former terms of corporate agreement or institution's agreement (referred to as "*accord d'entreprise*" / "*d'établissement*" in French) unless otherwise specified.

The architecture defined by the El Khomri law of 8 August 2016 is maintained

- Company's Agreement concluded before or after unless the latter provides guarantees at least equivalent;
- Domains reserved for to Company's Agreement;
- Public policy provisions.

Reform of occupational health

The scope of the employer's reclassification obligation in case of employee's physical incapacity is limited to national territory

⇒ *Already in force (see revised article L 1226-2 and followings of the French Labour Code)*

Creation of a Professional Prevention Account (referred to as "*compte professionnel de prevention*" in French) replacing the former Personal Account for the prevention of Arduousness (referred to as "*Compte Personnel de Prévention de la Pénibilité*" in French) which is exclusively managed and financed by the social security's branch dealing with professional accident and occupational diseases

⇒ *In force starting from 1st December 2018 (see revised article L4163-4 of the French Labour Code)*

Contact us

For more information, contact us

Address:

7 Boulevard Malesherbes, 75008 Paris, France

E-mails:

emmabensoussan@tmaparis.fr

charlottecallet@tmaparis.fr

Telephone:

+33 1 47 55 73 90