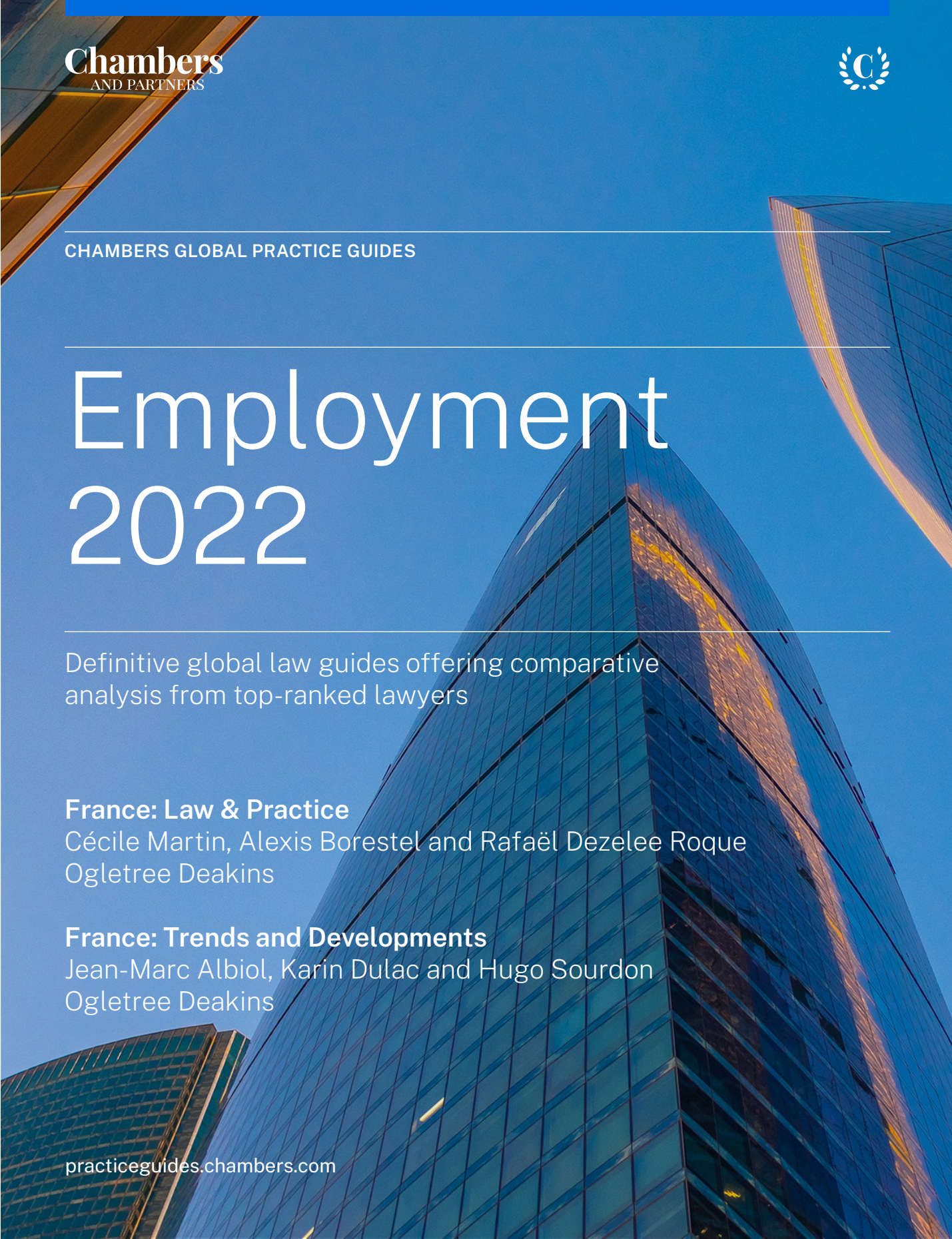

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FRANCE

Law and Practice

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Contents

1. Introduction

1.1 Main Changes in the Past Year

The main changes in French employment law over the last 12 months are as follows.

- Unemployment insurance reform – after several postponements due to the COVID-19 crisis, the provisions of the unemployment insurance reform that did not enter into force on 1 July 2021 finally did so on 1 October 2021.
- Health and safety at work – the Occupational Health Law of 2 August 2021 and its application decrees bring the following changes:
  (a) the introduction of a "prevention passport", which will have to include all the certificates and diplomas obtained by each worker within the framework of training related to health and safety at work;
  (b) the reinforcement of the obligation to update the single document for the evaluation of professional risks (DUERP), and a new obligation to consult the Economic and Social Committee (CSE) when the DUERP is implemented and each time it is updated;
  (c) the evolution of the definition of "sexual harassment" – from now on, words and actions with a sexist connotation may constitute sexual harassment. In addition, the new definition includes harassment committed by several people without the need for each of them to repeat the acts (the previous definition required repeated acts committed by the same person);
  (d) the provision of details on the duration of the training of staff representative bodies, depending on whether they are members of the health, safety and working conditions commission and/or in their first term of office; and
  (e) a change in the content of mandatory annual negotiations with trade unions is changing – Quality of Life at Work (QVT) becomes Quality of Life and Working Conditions (QVCT).

This new legislation reinforces the medical monitoring of certain categories of workers (eg, temporary workers) and the modalities thereof.

The following new provisions will gradually come into effect between 31 March and 1 October 2022.

- The Climate and Resiliency Law of 22 August 2021 established the environmental competence of the CSE in companies with at least 50 employees: the employer must now consult the CSE on the environmental impacts of its decisions. It also strengthened the information available to the CSE in the field of the environment, by changing the economic and social database (BDES) into an economic, social and environmental database (BDESE). The employer will now have to mention certain environmental indicators in the BDESE, such as the assessment of greenhouse gas emissions, etc.
- The "Macron scale" approved by the French Supreme Court (Court of Cassation). In 2017, the Macron Ordinances introduced a mandatory scale capping the compensation paid to employees in cases of unjustified dismissal. This scale was then challenged by several French courts, which considered that it did not comply with certain international texts, particularly ILO Convention No 158. The Court of Cassation put an end to this controversy on 11 May 2022 by ruling that the scale was compliant with international texts insofar as it allowed for fair compensation of the dismissed employee, while dissuading the employer from proceeding with unjustified dismissals. Henceforth, this scale can

no longer be overruled by the judge, except in cases of null and void dismissal (dismissal violating a fundamental freedom, discriminatory dismissal, dismissal linked to a situation of harassment, dismissal of an employee on maternity leave, etc).
- A bill currently under discussion in Parliament aims to renew and increase the ceiling of the Exceptional Purchasing Power Bonus ("Macron Bonus"), now renamed as the Value Sharing Bonus. This scheme would allow companies to pay an annual bonus of up to EUR3,000, or EUR6,000 for companies with a profit-sharing agreement, totally exempt from social security contributions and income tax.

COVID-19 Crisis
The past two years have been marked by waves of lockdowns and re-openings, forcing the government to adapt laws and measures according to these events.

The sanitary protocol in the workplace ceased to apply on 14 March 2022, as did the requirement to wear a mask in enclosed areas or to carry a vaccination pass in certain public places.

Nevertheless, the Ministry of Labour provides guidance on measures to prevent the risks of COVID-19 contamination, with the main measures being as follows:

- employee protection measures – in order to keep fighting against the spread of the virus, the rules of regular ventilation of the premises and regular cleaning continue to apply. The mask is no longer mandatory but the employee can wear one if desired;
- vaccination continues to be recommended and can be carried out by an occupational physician. Absences due to vaccination cannot lead to a reduction in pay and are considered as actual work time. Employers are required to encourage vaccination; and
- the "vaccination pass" has been suspended since 14 March 2022 but remains in force in health establishments, retirement homes and establishments for people with disabilities.

2. Terms of Employment

2.1 Status of Employee
Although it applies to all employees, the French Labour Code refers to different statuses or categories of employees, to which some specific provisions may apply. The most common are manual and clerical workers (*ouvriers* and *employés*), skilled workers and supervisors (*techniciens* and *agents de maîtrise*), and managers (*cadres*). Collective bargaining agreements may also have specific provisions for these categories, including compensation, severance pay and probationary periods.

2.2 Contractual Relationship
Indefinite-term employment contracts are standard. In principle, the contract does not have to be written and may be verbal or result from an exchange of correspondence. However, due to the complexity of working time arrangements and compensation structures, most contracts are written and contain detailed information such as the employee's job title and duties, working time and compensation. Moreover, the implementation of specific provisions sometimes requires a written document.

Fixed-term employment contracts must be written and concluded for precise temporary tasks that are restrictively enumerated in the French Labour Code (ie, absence, maternity, increase of activity). They may not generally be used to fill a job that is linked to the usual and permanent activity of the company. Mandatory clauses to be included in fixed-term employment contracts relate to the reason for fixed-term employment (ie, replacement of an absent employee,

temporary increase in workload or a job that is temporary by nature), the job description, the employee's compensation, the minimum duration or the term of the contract, the applicable collective bargaining agreement, etc. If mandatory material is not included, the sanction is the reclassification of the fixed-term contract as an indefinite employment contract.

All employment contracts, their amendments and all enclosed documents (such as bonus plans) must be drafted in French. Otherwise, the contractual provisions are not enforceable against employees. However, it is possible to provide bilingual documents as long as the French version exists and prevails.

2.3 Working Hours

Maximum Working Hours per Day/Week

Employees should not work more than ten hours per day, or 13 hours including lunch and other breaks. They may not exceed 48 hours in a given week, nor 44 hours (or 46 hours under certain conditions) per week on average over a period of 12 consecutive weeks. Specific provisions are set out for young workers (under 18) and night workers. Moreover, as soon as a worker has worked six hours in a day, they are entitled to a 20-minute break.

Working Time Arrangements

When employers want to adapt employees' patterns of work to avoid overtime in periods of high activity, the Labour Code allows them, under certain conditions, to organise working hours over a period longer than a week and at most equal to a year. Under all circumstances, the employee must have at least 11 consecutive hours of rest per day and 35 consecutive hours of rest per week.

There are specific provisions regarding managers (*cadres*), especially those who have sufficient autonomy to organise their own working hours. They can be subject to a work-per-day agreement (*forfait en jours*), providing such is allowed by a collective bargaining agreement and the individual employment contract. The total remuneration then corresponds to a number of working days per year, which cannot exceed 218.

Senior managers (*cadres dirigeants*) are not subject to the legal provisions on working hours. However, the French Supreme Court has placed strict limits on this category, taking several criteria into consideration, including that the post holder should have important responsibilities, implying a high degree of independence in the organisation of their hours of work, and that their autonomy in decision-making and their level of remuneration should be among the highest in the company.

Specific Requirements for Part-Time Contracts

Working time for part-time employees may not be less than 24 hours per week (or 104 hours per month). Specific provisions exist in certain collective bargaining agreements, and there are legal exceptions for specific categories of employees (eg, students). Part-time employees have priority for recruitment to full-time positions.

Part-time employment contracts must always be in writing. They must include information on:

- the employee's job title, compensation, working hours (monthly or weekly) and the pattern of work across days of the week or weeks in a month;
- procedures for modifying hours of work;
- procedures for communicating daily working hours in writing to the employee; and
- maximum permitted overtime.

If these matters are not covered, the penalty may be reclassification of the contract as a full-time contract.

Overtime Regulations
Any work over and above 35 hours per week qualifies as overtime. The Labour Code limits overtime to 220 hours per year if the collective bargaining agreement does not provide for a lower limit. Employees are compensated with a 25% enhancement for each of their first eight hours of overtime (ie, from the 36th hour to the 43rd hour) and with a 50% enhancement for subsequent hours worked. A collective bargaining agreement may stipulate a different percentage enhancement but it cannot be less than 10% per overtime hour.

Overtime hours above the maximum amount of annual overtime hours entitle an employee to be compensated by a compulsory rest period.

2.4 Compensation

Minimum Wage Requirements
The minimum national wage (known as the *salaire minimum de croissance* or SMIC) is determined by the government and adjusted in line with inflation at the beginning of each year. It is set at EUR10.85 per hour in 2022, or EUR1,645.58 per month for an employee who works 35 hours per week.

Collective bargaining agreements often fix minimum wages in relation to the status and grade of the employee. They are applicable in lieu of the SMIC if they are more favourable to the employees.

Entitlement to the 13th Month, Bonuses, etc
The 13th month of salary is an annual bonus paid to employees, corresponding to their monthly salary. It can be paid as a single payment at the end of the year or as several payments throughout the year. This bonus is usually found in employment contracts or in the applicable national or company-level collective bargaining agreement.

Other types of bonuses may be granted to employees as a result of collective bargaining agreements, employment contracts, unilateral decisions by the employer, etc. Bonuses may be linked to the employee's performance (productivity bonuses), seniority or skills. Based on the source of the bonus, the applied rules may differ, especially when the employer wants to modify or eliminate the bonus.

Employees may also have benefits in kind, such as private use of a company car or housing, which are subject to social security contributions.

Employees may also receive bonuses from profit-sharing schemes. These are mandatory in all companies employing at least 50 French-based employees (*accords de participation*), and there is also provision for optional profit-sharing agreements (*accords d'intéressement*). Benefits from these schemes are exempt from social security contributions under certain conditions.

Government Intervention
The government intervenes to adjust the real wages of employees to the socio-economic context. It may create bonuses such as the exceptional purchasing power bonus, or remove or reduce taxes and/or social security contributions in order to increase employees' purchasing power.

Since 2021, the government provides for a complete online social security database (*Bulletin Officiel de la Sécurité Sociale* or BOSS), on which companies can find administrative interpretations on social security regulations, the calculation of social security contributions, benefits

in kind, professional expenses and termination indemnities.

2.5 Other Terms of Employment

Vacation and Vacation Pay

Employees are entitled to at least two-and-a-half days of paid vacation per month worked during a "reference year" (ie, from 1 June of the current year to 31 May of the next year). This reference year may vary if there is a company-level agreement or a collective bargaining agreement. The paid vacation must be taken during a specific period that runs from 1 May to 31 October.

The applicable collective bargaining agreement may also provide for additional paid vacation based on an employee's seniority, and the Labour Code provides for paid leave for certain events, such as weddings, births or deaths.

In addition, employees are usually entitled to paid leave on the following public holidays:

- 1 January (New Year's Day);
- Easter Monday;
- 1 May (Labour Day);
- 8 May (Victory in Europe Day);
- Pentecost Monday;
- 14 July (Bastille Day);
- 15 August (Feast of the Assumption);
- 1 November (All Saints' Day);
- 11 November (Armistice Day); and
- 25 December (Christmas Day).

Employees who work on these days will receive compensatory rest periods and/or additional financial compensation. Under certain conditions, employees may also benefit from unpaid leave such as sabbatical leave or leave to start a business.

Compulsory Paid Leave: Maternity, Disability, Childcare and Illness

Sick or injured employees have to submit a medical certificate to their employer within 48 hours of their absence. Sick pay is paid from social security funds (health insurance), and the employer may be required to contribute, especially when the employee in question has at least one year of seniority or when the collective bargaining agreement requires it.

Pregnant employees are entitled to a total of 16 weeks of maternity leave (six weeks prior to the expected date of delivery and ten weeks after the delivery). The maternity leave entitlement increases (up to 46 weeks) for multiple births or when the employee already has children. The employee can shorten the maternity leave, but she must take at least eight weeks' leave, six weeks of which should be after the delivery. During maternity leave, the social security funds pay maternity benefit, based on average salary over the previous three months.

Since 1 July 2021, fathers are entitled to paternity leave of 25 consecutive days (28 days for multiple births). For compensation to be paid from the social security funds, the leave must begin within the six months following the birth of the child.

In addition to the above benefits, employees are entitled to parental leave allowing them to stop work or work part-time for an entire year. They are also entitled to adoption leave of 16 weeks when they adopt a child; during that leave, one parent is also entitled to maternity benefits.

Confidentiality and Non-disparagement Clauses

An employment contract may contain a confidentiality, discretion or professional secrecy clause. In the absence of such a clause, the employee remains bound by a general obliga-

tion of loyalty that prohibits them from disclosing information that is likely to harm the company. This obligation is essential for senior managers, especially with regard to data concerning any difficulty the company may be experiencing.

A breach of this obligation constitutes serious or gross misconduct, depending on the circumstances and the duties of the employee. It also entitles the employer to claim damages and to obtain an injunction in order to restrain the employee from disclosing any confidential information.

An employment contract may also include a non-disparagement clause. As it limits the employee's freedom of expression, this clause must be justified and proportionate to the aim pursued by the employer (ie, the legitimate interest of the company).

Employees' Liability

Employees may incur civil liability in respect of third parties only when they act outside their functions, without authorisation and for purposes unrelated to their duties. Otherwise, the employer is liable. Employees are liable to their employer only if they commit gross misconduct (ie, they act with an intention to harm the employer or the company).

Employees may be held criminally liable for offences committed in the company that are personally attributable to them. For some offences, an employee is liable only if the employer has delegated authority to them.

3. Restrictive Covenants

3.1 Non-competition Clauses

Requirements for the Validity of Non-compete Covenants

A non-compete covenant prohibits employees from competing with their former employer through professional activities after the termination of their employment contract.

A non-compete clause is only valid if it:

- is limited geographically and in time (generally France mainland and no more than two years);
- reflects the specific features of the employee's job so as not to prevent them from continuing to work in the same profession;
- provides for the payment of financial compensation of at least 33% of the employee's average previous salary, on a monthly basis during the entire period of validity of the clause after the termination of the employment contract – this percentage may vary according to the applicable collective bargaining agreement; and
- is proportionate to the employer's legitimate interests.

Collective bargaining agreements may include further requirements for the validity of such clauses.

Enforcement of Non-compete Clauses

If the non-compete clause is valid and the employee has breached it, the former employer can claim damages from the employee and obtain an injunction from the labour court to stop the competing activities. The former employer can also claim damages from the new employer if the latter is aware of the non-compete clause binding the employee.

If the non-compete clause is void or if the former employer has breached it, an employee who has complied with the clause may sue the former employer to claim damages, especially for preventing the employee from finding a job. The employee can also seek to hold the new employer liable based on the commercial concept of unfair competition.

Non-compete Covenant in Mutual Termination Agreement
An employer may waive the enforcement of a non-compete covenant under certain conditions in the event of a state-regulated mutual termination agreement (*rupture conventionnelle*). If the employer intends to waive the non-compete covenant, it must do so no later than the date of termination set forth in the agreement, notwithstanding any stipulations or provisions contrary thereto.

3.2 Non-solicitation Clauses – Enforceability/Standards

Non-poaching Clause – Employees
A non-solicitation of employees clause prevents an employer from recruiting the employees of another employer even after the termination of their employment contracts. However, if an employee cannot be recruited to a new job because of it, they are entitled to claim damages from their former employer. Clauses of this type are particularly common in commercial contracts.

Non-solicitation Clause – Customers
A non-solicitation of customers clause prohibits employees from soliciting their former employer's customers after the termination of their employment contract. However, such a clause may be considered by the courts to be a non-compete covenant. This is the case when the clause prevents an employee from continuing to work in the same field as the former employer.

4. Data Privacy Law

4.1 General Overview

General Data Protection Regulation (GDPR)
As transposed into the French Data Protection Law (*Loi Informatique et Libertés*), the GDPR sets out employers' obligations with regard to their employees' personal data.

The GDPR and its French transposition apply to the processing of personal data carried out as part of the activities of an establishment in France. This includes all processing of personal data in the context of French HR management, even by a company established outside the European Union.

The GDPR aims to protect personal data (ie, information relating to identified or identifiable individuals). An individual is identifiable if they can be identified directly or indirectly, including by reference to a name, social security number or factors specific to the individual's identity (biometrics, address, etc).

Employers' collection of data
Employers need to collect and process their employees' personal data in order to perform the employment contract and are therefore considered as data controllers under the GDPR.

However, such collection is limited by law, and sensitive data cannot be collected unless doing so is allowed by a specific provision. Sensitive data includes:

- data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;
- genetic data;
- biometric data;
- data concerning health or a natural person's sex life or sexual orientation;

- data relating to criminal convictions and offences or related security measures; and
- the social security number.

Therefore, for all data processing, employers must do the following:

- define a purpose and a legal basis – the most commonly used legal bases in the employment context are the existence of a legal obligation, the performance of the employment contract or the employer's legitimate interest. However, consent is not considered as having been validly given in an employment context;
- reference the processing in records of processing activities that contain information describing every processing undertaken, including the data, recipients and time limits involved;
- conduct a data protection impact assessment when the processing is likely to result in a high risk – in this regard, the French Data Protection Authority (CNIL) has established a non-limitative list of the types of processing that are considered to cause a high risk (including processing carried out in order to monitor employees' activities or for the management of whistle-blowing hotlines). The CNIL has also provided a list of types of processing that are never considered to cause a high risk, including processing carried out solely for HR purposes under the conditions laid down in the applicable texts, for companies with fewer than 250 employees;
- where they use the services of a subcontractor to carry out processing (eg, a payroll provider), establish a binding contract stipulating the specifics of the processing and the specific measures ensuring the appropriate protection of the personal data; and
- where they transfer the personal data to a country outside the European Union or the European Economic Area, ensure that appropriate protection of the personal data abroad is applied through implementing appropriate safeguards such as an adequacy decision or standard contractual clauses, and prevent undue access, even by government agencies.

As data subjects under the GDPR, employees must be informed of data processing and its specific characteristics through an information notice, which must provide a list of the individual's rights (access, rectification, erasure, restriction, portability, right to object).

The personal data collected must not be retained for longer than necessary for the purpose for which it was collected.

Data controllers must also provide for organisational and technical measures ensuring the security of data, to prevent any unlawful access, unavailability or change. This includes limiting access to the data for its own employees to those who actually need it.

Breaches

Any personal data breach must be notified to the CNIL within 72 hours after the employer becomes aware of it, and to the data subject if the breach is likely to cause a high risk to the individual's rights.

In the event of a breach of the above-mentioned obligations, the employer may be subject to litigation from an employee, a trade union or the CNIL. In addition to civil damages, the employer may be unable to rely in court on certain documents if they have been unlawfully processed. Lastly, the employer may be subject to an administrative fine, the maximum amount of which varies according to the provision violated, but may rise to EUR20 million or 4% of the total worldwide annual turnover, whichever is higher.

French Labour Code
Further to the above-mentioned obligations, the French Labour Code (Articles L.2312-38, L.1221-8 and L.1222-4) also provides that:

- the CSE must be informed of data processing concerning job applicants and employees prior to implementation or modification;
- the CSE must be informed of, and consulted on, measures and techniques for monitoring employees' activity, prior to their implementation or modification;
- job applicants must be informed of the assessment techniques used concerning them; and
- employees must be informed of the systems collecting data about them.

Failure to inform and/or consult a CSE may constitute a criminal offence punishable by a EUR7,500 fine for natural persons or EUR37,500 for legal persons. Failure to fulfil any of the above-mentioned obligations may make the documents that have been unlawfully processed inadmissible in court.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

Nationals of the Member States of the European Union and the European Economic Area do not need a work permit in order to work in France; the employer simply needs to check that they have a valid national identity card or passport.

Non-EU nationals cannot work without an appropriate work permit.

When hiring a non-EU national residing in France, the employer must verify that the foreigner has a title that authorises them to carry out a salaried activity in France (or within EU countries, as the case may be). To check the authenticity of the work permit, the employer must send a registered letter to the prefect of the department of the place of employment with acknowledgement of receipt, or an email, including a copy of the document produced by the foreigner, at least two working days before the effective date of hiring. In the absence of a reply within two working days from the receipt of the request, the obligation to ensure the existence of the work permit is deemed to be fulfilled.

If the foreigner does not reside in France, the employer must apply to the labour administration (DREETS) in order to obtain a work permit for its new employee. After obtaining the authorisation, the foreign worker must undergo a medical examination and the employer has to pay a fee to the immigration authorities.

5.2 Registration Requirements

The mandatory register of employees must mention the type and number of the work permit (or equivalent document), and a copy of it must be attached to the register.

6. Collective Relations

6.1 Status/Role of Unions

Unions have legal personality and their exclusive aim is the study and defence of the rights and interests of workers covered by their articles of association. They can bring legal actions before the courts and are empowered to negotiate collective agreements if they are representative. Under the French Constitution, employees are free to adhere to a union of their choice.

In 2019, around 10.3% of employees were members of unions in France. This percentage is higher in the public sector. Although the percentage is low compared to other European countries, there is extensive collective bargain-

ing coverage, reaching 98.5% in 2013. This is due to the fact that a worker does not need to be a member of a union in order to benefit from the provisions of collective bargaining agreements.

Unions can organise themselves freely in all companies. A union branch can be constituted if the union has at least two members within the company and if it is representative within the company or at the industry or national level, or if the union meets the following criteria:

- it respects republican values;
- it has independence;
- it has been legally constituted for at least two years; and
- its professional and geographical scope covers the company.

A union branch may hand out union leaflets, have a union office, post communications and hold branch meetings.

Certain prerogatives are reserved to representative unions, such as the appointment of union representatives or the negotiation of company agreements. A union needs to meet the following additional criteria in order to be considered representative:

- financial transparency;
- influence that will be primarily characterised by activity and experience;
- having members and subscriptions; and
- having support (it must have obtained at least 10% of votes cast).

The audience of the trade unions is assessed every four years by the French Ministry of Labour at national and interprofessional levels, and at the level of the professional branches. The CFDT, CGT, FO, CFE-CGC and CFTC are the five representative organisations until the next elections, which will take place in 2025.

6.2 Employee Representative Bodies

The mandatory transitioning and regrouping of the previous employee representative bodies (ie, the Works Council – *Comité d'Entreprise* or CE), the staff representatives (*Délégués du Personnel*) and the Health, Safety and Working Conditions Committee (*Comité d'Hygiène, de Sécurité et des Conditions de Travail* or CHSCT) into the CSE was completed by 31 December 2019.

The establishment of a CSE is mandatory in every company that has 11 or more employees over 12 consecutive months. A company can have a central CSE and a local CSE for each distinct establishment if the company has at least two separate establishments and at least 50 employees. Members of the CSE are elected every four years. The number of members and the duties of the CSE depend on the number of employees.

A CSE in a Company with Fewer than 50 Employees

A CSE in a company with fewer than 50 employees does not have a legal personality. The CSE has one or two elected members (along with one or two substitutes who can only attend meetings in the absence of the titular member), depending on the number of employees.

In this situation, the CSE has the following duties:

- the presentation of individual and collective claims concerning the employees to the employer;
- the promotion of health and safety and the improvement of working conditions within the company and conducting surveys on occupational injuries and illnesses, or illnesses presenting an occupational character;
- whistle-blowing in the event of serious and imminent danger or infringement of individual rights; and

- referral to the Labour Inspectorate of complaints and observations on the application of the legal norms that it oversees.

The CSE must be consulted on redundancies and numerous other matters, including health and safety, and the redeployment of an employee declared unfit to work by the occupational physician.

A CSE in an Establishment or Company with 50 or More Employees

A CSE in a company with 50 or more employees has legal personality. The CSE serves as a channel of communication that allows the collective interests of the employees to be heard and as a supervisory body that makes sure that employees' interests are taken into account in decisions concerning the company that will necessarily have an impact on the employees themselves. It is therefore informed and consulted on questions of organisation, management and general conduct of the company, such as:

- measures likely to affect the size or structure of the workforce;
- modification of the financial or legal structure;
- conditions of employment (eg, hours of work and professional development);
- the introduction of new technologies and all significant changes affecting health, safety or working conditions; and
- redundancy.

A CSE in a company with 50 or more employees is chaired by the chief executive of the company (who can be assisted by three colleagues without the right to vote). It is also composed of staff representatives (the number of representatives and substitutes who attend meetings in their absence varies according to the size of the workforce) and representatives of representative unions (without the right to vote).

A CSE in a company with 300 or more employees must have a specific committee covering health, safety and working conditions.

An employer who does not set up a CSE risks a criminal penalty (a fine of EUR7,500 and one year's imprisonment). An employer who prevents the CSE from carrying out its duties may be fined up to EUR7,500.

Consulting the CSE

The CSE is called upon to give an opinion on the employer's choices. Two types of consultation are distinguished by the Labour Code: occasional consultations and recurrent ones.

The occasional consultations take place on the employer's decisions (ie, on manifestations of will that can be localised in time). Recurrent consultations are annual ones dealing with the economic and financial situation of the company, the social policy of the company, working conditions and employment, and the company's strategic orientations. The aim is to take stock of the consequences of past but recent developments and to keep abreast of all developments that the company is likely to face.

A debate has taken place in courts and the outcome remains ambiguous: when a restructuring operation is the subject of an occasional consultation after a recurrent consultation has taken place without the restructuring having been mentioned or even envisaged, does this undermine the validity of the occasional consultation?

French courts have been divided on the topic. One of the latest precedents in this matter (September 2021) did not invalidate the consultation on the specific reorganisation project. Nevertheless, the employer's disloyalty was characterised.

6.3 Collective Bargaining Agreements

Collective bargaining agreements are useful for improving employees' rights, subjecting employers in the same business or industry to identical obligations and organising the running of a company. These agreements are signed at different levels, such as industry (ie, for a specific business sector), group, company or establishment level. Where the same issues may be covered by agreements at more than one level, the Labour Code provides instructions on their application.

Industry-Wide Agreements

An industry-wide agreement takes precedence over a company-level agreement in areas such as minimum wages or job evaluation schemes. They may also take precedence in other areas, by agreement, such as bonuses for dangerous or unhealthy work. A company-level agreement takes precedence over an industry-wide agreement for all other issues.

Company-Level Agreements

A company-level agreement can be made binding by the Labour Code (eg, for a profit-sharing scheme). In addition, periodic collective bargaining is mandatory regarding wages and gender equality.

The negotiation of company-level agreements is subject to special conditions. Negotiation must take place with union representatives, but there are specific rules for companies that do not have any union representatives, allowing an employer to negotiate and/or to conclude an agreement, depending on the number of employees, with elected members of the CSE or directly with employees. In companies with fewer than 11 employees, the employer may offer a draft agreement directly to the employees, and a two-thirds majority of the staff must then approve the draft.

When a collective bargaining agreement is applicable, the employer must apply it and employees have the right to make claims in respect of their rights, and for damages, in the event of non-compliance with such agreements.

7. Termination of Employment

7.1 Grounds for Termination

Fixed-Term Contracts

Fixed-term contracts can only be terminated prematurely in the case of serious misconduct, force majeure or incapacity for work certified by the occupational physician, or at the initiative of an employee who can justify employment on an indefinite-term contract.

Indefinite-Term Contracts

For the majority of indefinite-term employment contracts, dismissals can rely on either individual grounds (*licenciement pour motif personnel*) or redundancy (*licenciement pour motif économique*). A dismissal can be backed by a number of reasons, facts and allegations, which should be sufficient to establish a real and serious cause. Prohibited grounds for dismissal include those that are discriminatory in relation to age or health. Employers must inform the dismissed employees of the grounds for their dismissal in letters. Where necessary, another letter specifying the reasons for dismissal must be issued within a maximum of 15 days from the dismissal letter. This may be on the initiative of either the employer or the employee.

Individual Grounds

Dismissals on individual grounds are specific to the employee in question. They may or may not be for disciplinary reasons.

Disciplinary reasons for dismissals are:

- misconduct (*faute simple*) – misconduct sufficient to justify the dismissal but not as serious as serious misconduct;

- serious misconduct (*faute grave*) – misconduct so serious that it is impossible to keep the employee within the company; and
- gross negligence (*faute lourde*) – very serious misconduct characterised by the employee's intention to harm the company or the employer.

Non-disciplinary reasons for dismissal are incompetence, prolonged sickness or repeated absences that interfere with the effective operation of the company leading to the necessity to replace the employee, or incapacity for work certified by the occupational physician.

Redundancy

Redundancies relate to the circumstances of the company, not to the individual employee. They can be on three different scales:

- individual redundancy (*licenciement économique individuel*) – when one employee is dismissed on economic grounds;
- small-scale redundancy (*petit licenciement collectif*) – when between two and nine employees are dismissed on economic grounds within a period of 30 days; and
- large-scale redundancy (*grand licenciement collectif*) – when ten or more employees are dismissed within a period of 30 days.

Redundancies follow from economic difficulties, technological change, reorganisation necessary to safeguard competitiveness or company closures. They can result directly from the end of the need for a particular job or from changes to jobs or company structures. The employer can also dismiss an employee on economic grounds after a refusal to accept a change to an essential element in the employment contract.

A company with 50 or more employees planning to carry out a large-scale redundancy must prepare a redundancy plan (*plan de sauvegarde de l'emploi*, also known as a *plan social*), which is subject to validation or approval by DREETS.

7.2 Notice Periods/Severance

Notice Periods

The notice period refers to the lapse of time between the sending of the dismissal letter to the employee and the date of the end of the employment contract. During this period, the employment remains effective, and both parties continue to carry out their obligations by working and paying the salary.

An employee who has committed serious misconduct or gross negligence can be dismissed without notice (ie, the termination is immediate).

An employee whose notice period is waived on the initiative of the employer will receive a compensatory payment (*indemnité compensatrice de préavis*) in lieu of salary for the notice period.

Notice periods for dismissal differ depending on the sector of activity, and are fixed by a branch collective bargaining agreement or by law. For most employees, the notice period is calculated based on seniority within the company. It is one month for those with six to 24 months' continuous employment and two months for those with at least 24 months.

Severance

Severance pay (*indemnité de licenciement*) is only applicable to indefinite-term employment contracts. All employees with more than eight months' uninterrupted seniority are entitled to severance pay, except for those dismissed for serious misconduct or gross negligence. The notice period is taken into account for the calculation of seniority, whether it is worked or not. The amount of severance pay is calculated on the basis of gross monthly salary prior to the termination of employment.

The calculation is as follows:

- for seniority of less than ten years, the minimum severance is one quarter of the gross monthly salary for each year of seniority; and
- for seniority of ten years or more, the minimum severance is one quarter of the gross monthly salary for each year to ten, plus one third of the gross monthly salary for each year of seniority beyond ten.

Formulas fixed by collective bargaining agreements, contracts or general practice that are more advantageous for the employees are applicable.

Other than severance, dismissed employees are also entitled to other compensation, such as compensation for unused paid leave entitlement.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

All dismissals must have a real and serious cause. The termination of an employment contract for serious misconduct or gross negligence is immediate, and the employee is deprived of the notice period and severance pay.

The distinction between dismissal for gross negligence and for serious misconduct is based on the intention to cause harm to the company or the employer. Moreover, gross negligence allows the employer to ask for compensation to repair the damage caused.

7.4 Termination Agreements

Termination of an Employment Contract by Mutual Consent

In addition to dismissal and resignation, employers and employees can mutually agree to the termination of an employment contract (*rupture conventionnelle*). An enforceable settlement agreement (*transaction*) can be concluded after the termination of employment only on claims regarding the conclusion and performance of the employment contract.

Termination of the employment contract by mutual consent has the advantage for the employee of compensation that is at least equivalent to the legal minimum of dismissal severance pay. The employer, on the other hand, is less at risk of future disputes compared to a non-consensual dismissal, provided that mutual consent was obtained in a lawful manner. The employer must not coerce the employee into signing a "mutual consent" termination agreement: consent obtained under such circumstances is defective and the termination agreement would be void. The employee should not force a termination agreement upon the employer either.

The following procedure must be observed:

- invitation to, and holding of, at least one meeting between the parties (if the employee chooses to be assisted by another person, the employer duly informed by the employee can also choose to be assisted by another person and inform the employee);
- conclusion of a termination agreement signed by both parties, with one copy given to the employee;
- a 15-day withdrawal window is available to both parties following the day after the signing; and
- after the withdrawal period, sending of the document to DREETS to obtain approval or to the Labour Inspectorate for authorisation if the employee is protected.

Since 1 April 2022, in principle, mutual termination document requests must be transmitted electronically via TéléRC (www.telerc.travail.gouv.fr). Paper applications can only be submitted in exceptional cases.

The labour administration has from 15 days (for non-protected employees) to a maximum of two months (for protected employees) to decide.

Unlike an individual termination agreement, only the employer can propose a collective contractual termination agreement (*rupture conventionnelle collective* or RCC). An RCC sets out the mutually agreed conditions of termination and is subject to validation by DREETS.

An RCC is different from a voluntary departure plan (*plan de départs volontaires*) included in a redundancy plan in the case of large-scale redundancy, and is extremely specific and more regulated. One difference is that there does not need to be an economic reason, unlike in the case of a redundancy plan, which must be justified on economic grounds, with this requirement also applicable to a classic voluntary departure plan.

Settlement Agreement
A settlement agreement prevents the introduction or pursuit of legal actions between the parties in relation to the matters it covers. It is concluded after the finalisation of a termination of employment, and includes reciprocal concessions by the parties: one party, usually the employee, refrains from legal action, and the employer usually pays financial compensation. The financial compensation must be effective and appreciable, and should not be derisory compared to the concession made by the other party.

7.5 Protected Employees

In France, some categories of employees benefit from protection against dismissal: employees who exercise representative functions, employees on sick leave due to a work accident, pregnant employees, etc. Levels of protection vary between the different groups. If protection is not observed, the dismissal is considered discriminatory, and null and void.

An authorisation from the Labour Inspectorate must be obtained for the dismissal of an employee exercising representative functions. The lack of such authorisation will render the dismissal void and without effect, thereby allowing the employee to ask for reinstatement or compensation. Candidates for elections and former staff representatives also benefit from such protection.

Other protected employees cannot be dismissed unless their dismissal is justified by serious misconduct or unless it is impossible to maintain the contract for reasons unrelated to the employee's condition or reason for absence. However, some employees also benefit from absolute protection from dismissal. For instance, while on maternity leave, an employee cannot be dismissed even for serious misconduct or because it is impossible to maintain the contract.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

In France, there are three types of claims for wrongful dismissal:

- unfair dismissal, when the dismissal is not well grounded (*licenciement sans cause réelle et sérieuse* or *licenciement injustifié*);
- null and void dismissal, when the law prohibits its dismissal in the specific situation (*licenciement nul*); and
- dismissal without proper procedure, when the required procedures have not been followed (*licenciement irrégulier*).

In all cases, the limitation period for a challenge to the grounds and/or procedure of a dismissal is 12 months after the notification of dismissal.

Unfair Dismissal

Any dismissal must be grounded on a real and serious cause:

- for a "real" cause, the cause must truly and objectively exist; and
- for a "serious" cause, the facts invoked must be sufficiently serious to justify a dismissal.

The dismissal letter must detail the grounds for the dismissal. In the event of litigation, the employer cannot argue that the dismissal is grounded on facts that are not mentioned in the dismissal letter.

When the dismissal is deemed to be unfair, the employee may benefit from the payment of damages, depending on length of service within the company.

Null and Void Dismissal

A dismissal is deemed null and void in the following situations in particular:

- dismissal violating a fundamental right or freedom;
- unauthorised dismissal of a protected employee;
- dismissal based on discriminatory grounds or prohibited discrimination or dismissal as a result of legal action against discrimination taken by the employee or on behalf of the employee; and
- dismissal of employees without complying with the mandatory rules for redundancy plans.

When a dismissal is declared null and void by judges, the employee has the option to be reinstated. Whenever the reinstatement is impossible or if they do not wish to be reinstated, the employee is entitled to be granted damages. In all cases, the employee shall receive payment of salary from the date of the dismissal until the date it is declared null and void. In addition, when the employee is not reinstated, the employer is required to pay the employee damages amounting to at least six months of the average monthly salary.

Dismissal Without Proper Procedure

A dismissal is irregular as long as the employer has not observed the specific dismissal process as provided by the French Labour Code (ie, sending an invitation to the dismissal meeting, organising a dismissal meeting, mentioning the possibility for the employee to be assisted during the meeting, etc), even though the dismissal is grounded on a real and serious cause. The employee is entitled to an indemnity at most equal to one month's salary. Such indemnity cannot be cumulated with damages for unfair dismissal.

8.2 Anti-discrimination Issues

Protection from discrimination benefits employees, interns and apprentices, as well as candidates for these positions. Discrimination can be direct or indirect. Direct discrimination refers to a situation where one individual is treated in a less favourable manner than another in a comparable situation because of a prohibited criterion, such as sexual orientation, religious beliefs or ethnic origin. Indirect discrimination occurs when a measure that appears neutral is detrimental to an individual because of a prohibited criterion.

The principle of equality of treatment, which revolves around the principle of "equal work, equal pay", should not be confused with the principle of non-discrimination.

Grounds for Discrimination

Grounds for claims of discrimination may be related to ethnic origin, sex, sexual orientation, gender identity, age, marital status or pregnancy, genetic characteristics, a particular vulnerability resulting from the claimant's economic situation,

political opinions, religious convictions, physical appearance, family name, place of residence, state of health, or competence in a language other than French.

Grounds for discrimination may also relate to the lawful exercise of the right to strike, witnessing discrimination, serving as a juror or non-legal member of a tribunal, or refusing to be geographically relocated to a state that criminalises homosexuality.

Whistle-blowers who report or testify in good faith to actions constituting a criminal or other offence of which they become aware in the performance of their duties, or who raise an alert in relation to transparency, the fight against corruption or the modernisation of economic life, are also protected against discrimination. New provisions on whistle-blower protection from the Waserman law must enter into force by 1 September 2022.

In the same way, those who have suffered from, refused to suffer from, witnessed or reported moral or sexual harassment are protected from discriminatory measures.

Supporting/Defending a Claim of Discrimination

The employer and employee share the burden of proof. For both direct and indirect discrimination, the employee must present factual information that suggests the existence of discrimination and the employer must then demonstrate that the potential differential treatment, if any, is justified by objective factors unrelated to any discrimination. As the production of evidence can be more difficult in the case of indirect discrimination, statistics are often used to demonstrate that a measure that appears neutral has an unfavourable effect on a specific group.

For claims of discrimination in recruitment, lack of information is an obstacle to the establishment of a presumption of discrimination.

The rejected candidate is not entitled to have access to information indicating whether another candidate was recruited in their place. However, a refusal to give access to such information may be one of the factors to be considered in establishing a prima facie case of direct or indirect discrimination.

The employer can seek to demonstrate that the alleged existence of discrimination is not sufficiently established by the information provided by the employee. The employer can also justify the alleged discrimination by proving that differences in treatment do not arise from a prohibited discriminatory ground but have an objective justification unrelated to discriminatory grounds.

The employer can also justify a discriminatory measure by proving that said measure:

- meets an essential and determining professional requirement and that the objective is legitimate while the requirement is proportionate, when accused of direct discrimination; or
- has a legitimate purpose, and that the means to achieve the end are necessary and appropriate, when accused of indirect discrimination.

An employee suffering from discrimination can seek damages and remedies from a labour court and may also file a criminal complaint against the employer. The discriminated employee is also entitled to terminate their contract of employment because of the misconduct of the employer (*prise d'acte*), which may be qualified by the judges as a null and void dismissal, with all the consequences that this entails.

Since 2017, class actions (*actions de groupe*) may, under certain conditions, also be brought for discrimination against a single employer before a civil court.

Dismissal of an employee in breach of the principle of non-discrimination is null and void, as is dismissal of an employee as a reprisal for legal action brought by or on behalf of the employee on grounds of discrimination.

A natural person found liable for discrimination may be condemned to three years' imprisonment and a fine of up to EUR45,000. A legal person found liable for discrimination may be ordered to pay a fine of up to EUR225,000 and may be subject to other penalties.

9. Dispute Resolution

9.1 Judicial Procedures

Specialised Employment Forums

In France, a dispute in employment law leads to judgments or rulings by different types of courts, depending on its subject matter.

A dispute related to the employment contract (performance, termination, etc) or to an employee's working conditions (harassment, discrimination, etc) is generally dealt with before the competent labour court, which are composed of elected lay judges. Appeals against decisions of a labour court may be lodged to the appeal courts, whose decision may be further appealed to the French Supreme Court.

Disputes relating to employee representative bodies' elections or arising from the application of social security law have to be brought before an ordinary civil court.

Disputes relating to decisions made by the labour administration fall under the jurisdiction of administrative courts. These decisions may, for instance, relate to the validity of a redundancy plan or an authorisation to terminate the employment contract of employees exercising representative functions.

Class Actions

Representative unions can initiate class actions for the benefit of employees working for the same employer. However, these claims are limited to discrimination and data privacy.

Representation in Court

Legal representation is not mandatory before a labour court; the parties can bring and take part in proceedings without representation by an attorney. A qualified person can represent absent parties, such as another employee from the same company or business sector, a registered union defendant, an attorney, a person with whom a claimant is living as a couple, or the mother, father or legal representative in the case of a minor. In some cases, the labour court can adjudicate on the dispute on the sole basis of evidence if a party is absent or not represented. However, the presence of an attorney is mandatory before the court of appeal or the French Supreme Court.

9.2 Alternative Dispute Resolution

Although arbitration is flourishing in Paris, there is no provision in France for arbitration on individual employment matters. Arbitration clauses in employment contracts are unenforceable as labour courts have exclusive jurisdiction over disputes relating to employment contracts.

However, arbitration is possible for conflicts arising from collective issues. Collective bargaining agreements can provide for arbitration procedures and establish a list of arbitrators agreed upon by the parties. In the absence of such an arbitration clause, the parties can still reach an

agreement to resolve a conflict through arbitration instead of mediation or conciliation.

9.3 Awarding Attorney's Fees

The prevailing party can be awarded attorney's fees paid by the other party for an amount determined by the judge. If the prevailing party benefits from legal aid, the payment is made directly to the lawyer of the beneficiary. The amount determined by the judge must take account of equity and the economic situation of the unsuccessful party, and the court may even waive the award of attorney's fees.

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Trends and Developments

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The Transposition of the European Directive on Whistle-Blowing in France: The Waserman Law Provisions

In France, a general regulation on the status of whistle-blowing employees was established in 2016 by the so-called "Sapin 2 law" on transparency, against corruption and for the modernisation of economic life. This was the first time that French law granted complete status to whistle-blowers (even if their status was first recognised in 2013 in the French Labour Code).

Previously, only scattered texts provided relative protection for persons reporting or testifying about certain facts of which they had knowledge in the performance of their professional duties, and only in specific matters.

This law has strengthened France's capacity to act, both nationally as well as internationally. Its legal framework in this matter is one of the most complete in existence.

In 2019, the European Union adopted a Directive to regulate whistle-blowing policies in EU member states. As opposed to a Regulation, which is automatically enforceable toward all EU members states, a Directive is merely a general legal framework that requires, to be enforceable, that each EU member state transposes it in their own national legislation. As a consequence, the various piece of enabling legislation may differ slightly depending on each member state's interpretation of the Directive.

It is in this context that the Waserman Law of 21 March 2022 transposes this Directive while also amending the Sapin 2 law. The Waserman Law broadens the scope of beneficiaries of whistle-blower protection, simplifies the procedures for whistle-blowing and improves the protection of whistle-blowers.

The new French regulations regarding whistle-blowing, in accordance with the EU Directive have rethought the definition of a whistle-blower.

Under the previous regulations, a whistle-blower was required to act in a "disinterested" manner, which required some interpretation that was a source of uncertainty for whistle-blowers.

Under the Waserman law, it is now sufficient to act without receiving "direct financial compensation", which clarifies the conditions for being defined as a whistle-blower. Consequently, it is likely that whistle-blowing protection will now be more easily triggered, all the more so as this protection is now also provided to those who have helped whistle-blowers.

In addition to the simplification of the whistle-blower definition, the Waserman Law also extended the scope of the acts that could be reported. Under the new regulations, not only can the whistle-blower report an actual breach, but also an attempt to conceal such a breach, which again broadens the scope of whistle-blower protection.

Regarding internal/external alerts

The Waserman Law has also amended the reporting process to be followed by the whistle-blower, notably by giving the whistle-blower the opportunity to choose more easily the recipient of the report.

Indeed, the previous regulations required the whistle-blower to (i) bring an internal alert to their (direct or indirect) manager or a representative designated for this purpose, before (ii) being able to reach out to the judicial or administrative authorities (or professional bodies), while ultimately (iii) being able to disclose publicly the alert if the previous interlocutors had not responded in due time.

As of 1 September 2022, the whistle-blower can now choose between an internal or external (ie, administrative authorities) alert without being required to bring it first to their employer.

In light of this choice, it is now in companies' interest to build whistle-blowing policies that provides for strong guarantees regarding impartiality, independence and non-retaliation in order to convince their employees, or any other stakeholder that may file a report, to use an internal alert rather than an external one in order to foster better social relations within the company and avoid potential public disclosures that may harm its image.

The option offered to the whistle-blower to choose the channel through which they wish to report is not without risk: now that the three channels coexist without hierarchy, incentives can be offered to – and sometimes even intimidation can be exerted on – the whistle-blowing employee so that the channel chosen is the internal channel.

On the other hand, the external channel may be misused by whistle-blowers when an internal procedure might have been more appropriate under the circumstances.

One sure thing is that only time will tell how these new provisions will affect the statistics on the reporting channels chosen by whistle-blowers.

Regarding the investigation

If an alert is reported, a formal investigation of alleged wrongdoing is conducted, involving the company and/or its employees, designed to identify relevant facts and to assist the company in making appropriate decisions and taking corrective action. This investigation must be carried out by one or more qualified persons, appointed by the company's management, and must result in the formal drafting of an investigation report that establishes or removes the grounds for suspicion, as well as the method followed. The internal investigation report also makes a conclusion as to the action to be taken on the report.

Regarding the sanctions

In the event of retaliation against a whistle-blower, in particular a breach of the employment contract, the employee may file an application for injunctive relief with the *conseil de prud'hommes* (French labour courts). The latter may decide to oblige the employer to top up the whistle-blower's personal training account (CPF) up to the increased ceiling applicable to low-qualified employees (EUR8,000, otherwise, EUR5,000).

The personal training account allows its holder to finance, on their own initiative, skills training, a validation of acquired experience or a skills assessment.

This sanction is a way to facilitate and promote a possible professional retraining of the employee. Indeed, a report can considerably deteriorate the relationship between the employee and their employer so that their retention or reinstatement in the company would be compromised.

Moreover, obstructing the transmission of an internal or external report may lead to criminal and civil sanctions: one year of imprisonment and fines ranging from EUR15,000 to EUR60,000.

These sanctions can be cumulative and a real deterrent to employers from practising any "gag" procedures against their employees. In any case, any measure taken by the employer against a whistle-blower as a means of retaliation for their report is null and void.

The Waserman Law's provisions will enter into force as of 1 September 2022.

The decree of application is still to be published.

Presidential Elections, the New Relative Majority in the National Assembly and the Purchasing Power Bill

On 24 April 2022, the French Presidential election led to the re-election of President Emmanuel Macron (of the recently rebranded "Renaissance" party). Two months later, the second round of legislative elections on 19 June 2022 revealed a relative but not an absolute majority for the President's party in the National Assembly.

This means that the President's party will have to deal with deputies from other parties, the Republican Party (LR), the New Popular Ecological and Social Union (NUPES) and National Rally (RN), in order to examine and vote on new bills.

The first illustrative example of this was the "purchasing power" bill: on 7 July 2022, this bill was presented to the Council of Ministers and was then tabled in the National Assembly. The bill contains emergency measures to protect purchasing power.

Because of its purpose and content, this text is already proving controversial, with various parties differing over it and the new composition of the National Assembly should feed the debates on it even more.

To support the purchasing power of employees, the bill provides for the perpetuation of the purchasing power bonus, which will be renamed the value-sharing bonus, attempts to simplify the implementation of profit-sharing schemes and strongly encourages the professional sectors to negotiate industry-wide bargaining arrangements on a regular basis on minimum wages by threatening them with a merger of branches.

Following the so-called *gilets jaunes* movement initiated at the end of 2018 against the decline in purchasing power, the law of 24 December 2018 on economic and social emergency measures had allowed employees to exceptionally benefit from a bonus from their employers, under certain conditions. This bonus was exempted from taxes and social contributions. The measure was renewed in 2020 and 2021.

The government is now proposing to make it permanent while making its tax exemption temporary.

The bill was adopted by the deputies, on first reading, on the night of 21–22 July 2022. Some amendments have been made since the first version of the bill was presented to the Council of Ministers.

Consisting of about twenty Articles, this text aims to limit rent increases, to pay food aid at the beginning of the school year, to maintain the tariff shield on energy prices, to increase student grants, the index point of civil servants, etc.

One of the main reasons for this law is the increase in fuel and energy prices: in the context of the conflict between Russia and Ukraine, fuel prices in France have risen considerably, reaching historic amounts. The French people's purchasing power has been highly impacted by this situation, and this bill aims to allow them to be more comfortable.

The beneficiaries will be the same as for the initial version of the bonus, namely:

- employees holding an employment contract at the time of the payment of the bonus or of the filing of the deed that establishes the bonus;
- ditto for public employees;
- ditto for temporary workers (payment by the temporary work agency); and
- ditto for disabled workers benefiting from an employment support and assistance contracts.

Another measure in support of the purchasing power of the French people is the favourable taxation of the bonus, which will be exempted from social security contributions and, temporarily, from the generalised social contribution (CSG)/the contribution for the reimbursement of the social debt (CRDS), and income tax (IR), up to EUR3,000 per beneficiary per calendar year.

This exemption ceiling could be raised to EUR6,000 per beneficiary per calendar year depending on the situation of the company.

The value-sharing bonuses would be fully subject to IR and CSG/CRDS as of 1 January 2024.

The social security and tax regime should ultimately be aligned with the system that applies to amounts received as profit-sharing and incentive bonuses received immediately by the employee.

According to the French government, there are two reasons for the tax exemption to be temporary: (i) a more generous system over a shorter period of time would be more attractive, and (ii) the French Administrative High Court (*Conseil d'Etat*) is concerned about the risk of salary substitution.

These measures, among many others, have yet to be decided on by the Senate, which held a public hearing on the subject starting 28 July 2022.

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