Employment Guide

A – Z for France (per June 2012)

1. Anti-discrimination regulations

The French Labour Code contains several provisions intended to protect job applicants and employees from discrimination.

Pursuant to the French Labour Code, employers and potential employers are prohibited from directly or indirectly discriminating against an employee or job applicant on a number of grounds, including the following: gender, sexual orientation, morale, age, marital status, religious beliefs, nationality, et hnic or racial origin, political
opinions, trade union activities, physical appearance, name, pregnancy, medical condition and disability.

Employers must treat employees equally regardless of the temporary or indefinite term of employment or the contractually agreed-upon working hours. However, non-equal treatment of employees is permitted if the employer has an objective reason that justifies the discriminatory treatment (age, medical condition or disability). Even if a discriminatory treatment may be justified objectively, the particular circumstances of the situation will determine how, and whether or not, such an exception applies to the general rule prohibiting non-equal treatment.

If an employer fails to comply with the anti-discrimination laws, the employer and the individual responsible for ensuring compliance within the organization incur certain risks. For example, the employer may be condemned to pay damages to the employee who was discriminated against, and if the employee was terminated as a result of the discrimination, the employer will be required to re-hire the employee. Furthermore, the individual within the employer organization responsible for ensuring compliance within the organization incurs personal liability and may be condemned to three years imprisonment and a fine of up to € 45,000 and the employer may be condemned to pay a fine of up to €225,000.

2. Business transfers

Under French law, the acquirer/transferee of a business (or even part of a business) must legally assume all of the transferor's obligation towards the employees, regardless of the type or characterization of the business transfer undertaken. Essentially, French law considers an employee's employment contract (or any other rights an employee may have under law) an essential asset of the transferred business that must be transferred along with the business (or part thereof). The transfer of employment contracts is non-negotiable by the parties.

An employer that terminates an employee before a transfer risks having the termination deemed void. If the termination was done with the intent to avoid the required transfer of such employee, the termination will be deemed void and the employee will be reinstated. If

the transferee terminates the employment of an employee after such a transfer, the termination is subject to the usual provisions of the French Code governing employment terminations.

Although employment contracts are transferred to the new owner of the business, collective bargaining agreements, and thus the employees' collective bargaining rights, are not required to be transferred. If collective bargaining agreements are not transferred, the transferred employees continue to benefit for a limited period of time from rights arising from the collective bargaining agreements that were in force with the transferor immediately prior to the transfer. During this limited period, the new employer must try to negotiate a new collective bargaining agreement.

3. Compromise agreement

Terminating an employee under French law can be complicated and filed with bureaucratic procedures. Sometimes, all goes smoothly and the parties part ways amicably; other times, the terminated employee brings legal action contesting the grounds for the termination or the way in which the termination was processed.

A compromise agreement called an *accord transactionnel* is one that is entered into by the former employer and former employee after the former employee had commenced legal action. In the typical compromise agreement, the former employer pays a certain amount of money to the former employee in exchange for which the former employee agrees to end the proceeding already initiated and agrees to not bring any new legal action against the former employer.

An agreement reached by an employer and an employee in the context of but prior to a termination is called a *rupture conventionnelle*. This type of agreement is not very often used by employers and employees. It is interesting to note that in the event an employer and an employee do wish to use this type of agreement, the national administration on employment (*direction départementale du travail*) has to approve the final terms of this agreement before it is signed by the parties.

4. Employment contracts

An employment contract does not need to be in writing, unless it is for a fixed term, or for a part-time position, for an apprenticeship, or the relevant collective bargaining agreement requires it. Even if a written contract is not required, the employer must provide the employee with a written statement of the essential terms governing the employment relationship.

The contract of employment must be in French, even where both employer and employee use the same language which is not French.

Fixed-term contracts are only permitted in limited circumstances and the rules on fixed-term contracts are construed strictly so as to dissuade the use of fixed-term contracts in favour of indefinite term employment agreements. A fixed-term contract is typically used for an employee who is to perform a precisely defined and temporary task.

Regardless of whether or not the employment contract is in writing, the employment relationship is governed by the terms of the particular employment contract and implied sources of law such as EU law, the French Constitution, the French Labour Code, case law and collective bargaining agreements. Actual provisions of an employment contract can only

deviate from the implied provisions derived from the implied sources of law if the deviation is in the employee's favour.

Although parties may execute independent contractor agreements instead of employment agreements to circumvent the various laws and regulations on employment contracts, independent contractor agreements are regularly "re-categorized" by courts as employment contracts if based on the facts the independent contractor relationship is in essence like an employment relationship.

5. Employee benefits

France has a national minimum wage which is periodically revised depending on the cost of living. The minimum wage is €9.22 per hour as of January 2012. This minimum wage of course does not prevent there from being a collective bargaining agreement that sets a higher minimum wage.

Other benefits include:
- Mandatory pension (social security, retirement, unemployment...);
- Paid vacations;
- Maternity / paternity leave;
- Parental leave for education of a child (depending on length of service);
- Illness leave;
- Individual training programmes (depending on length of service).

6. Handbook for employees

In France employee handbooks are not commonly used because the information contained in them is actually found in the employment contracts and collective bargaining agreements.

7. Health and safety

The legislation regarding occupational health and safety regulations is extensive, complex and tends to be strictly enforced by the authorities. Occupational health and safety is governed principally by the Labour Code.

An employer must ensure that the work place is clean and hygienic and that regulations covering issues such as minimum space per worker, heat, lighting, noise, sanitation, meals, and employee accommodations are strictly observed.

Additional health and safety measures are imposed on certain types of businesses that have a potential for increased risks (e.g. explosives or chemicals).

Businesses with 50 or more employees must establish a committee on health, safety and working conditions ("CHSCT").

Businesses with more than 10 but fewer than 50 employees must assign the responsibilities of a CHSCT to certain employees.

To avoid both personal liability and the company's liability, the chief executive officer of the business must ensure that legal requirements concerning safety in the workplace are strictly followed at all times. The chief executive office must evaluate, in writing, the health and

safety risks when selecting manufacturing processes, work equipment, chemical substances used, and the workplace's layout or organisation.

Having made such evaluations, the chief executive officer must adopt and enforce a risk prevention policy, for example, by adapting the work to be done to the employee or replacing something dangerous with something less (or not) dangerous.

Non-compliance with these requirements (for example, failure to have a written evaluation or update the evaluation as necessary) is punishable by fines against both the chief executive officer and the business.

Moreover, if a business has more than 20 employees, the employer is required to post company policies (*réglement intérieur*) on health and safety (as well as, on discipline, morale, sexual harassment, and employee rights).

8. Illness regulations

When an employee takes ill, his employment contract is suspended. Illness is not a valid ground for termination of the employment contract.

An employee who is absent due to illness or injury must provide his employer with a medical certificate covering the period of sick leave. For a maximum of three years, employees receive monetary benefits from the social security system for each day out on sick leave.

Collective bargaining agreements may require an employer to supplement the social security payments during an illness leave.

In certain circumstances, and under certain conditions, an employee's employment contract may be terminated even if the employee is on illness leave if the prolonged illness disrupts the normal operations of the business.

Collective bargaining agreements may restrict the employer's right to terminate an employment because of prolonged illness.

9. Immigration and work permits

EU (other than those from Romania and Bulgaria) and European Economic Area (EEA)citizens, do not need a residence permit or a work permit to be employed in France. Nationals from Bulgaria and Romania are subject to a transitional period until 1 July 2013) but may obtain residency and work permits via a simplified authorisation procedure.

All non-EU citizens must obtain work permits to work in France. The local government (*préfecture*) will look at the employment situation within its territory when deciding whether to grant a work permit.

If the foreign national is living abroad, the future employer is responsible for the future employee's introduction into France. Thus, the employer must apply to the local French unemployment authority, social security service and any other national administration on employment on behalf of the employee. The application is then forwarded to the employment authorities. If the foreign national's application to work in France is approved, a temporary one-year work permit is issued.

10. Industrial action (strike)

The right to strike exists in France and is protected by the Constitution. However, the right to strike is subject to certain restrictions, such as: giving the employer warning and not damaging the employer's equipment.

11. Non-competition clause / other restrictive stipulations

The validity and scope of non-compete clauses are governed by case-law rather than by legislation.

For a non-compete clause to be valid after termination of the employment, the clause must:

- be in the employment contract;
- be essential in protecting the company's legitimate interests;
- be for a limited period of time (generally, maximum of two years according to case-law) and for a defined area;
- take into account whether the employee's position is specialised (if the employee has been trained to carry out a specific trade) and the clause must not prevent the employee from continuing to work in his professional field except to the extent that is necessary to protect the employer; and
- impose an obligation on the employer to compensate the employee (usually at least 30% of the employee's former salary for the duration of the non-compete period).

If the employer wants to waive the non-compete obligation, he must notify the employee of the waiver in writing, usually in the dismissal letter.

12. Restructuring and redundancy

When a company restructures and as a result certain positions become redundant, the selection of which employees are let go must be made in accordance with the applicable legal requirements. The applicable law, and thus procedure, depends on a number of factors. These include:
- The number of employee positions that are made redundant;
- The size of the employer's workforce;
- Whether the employer has a works council or only employee representatives;
- When redundancies are to take place; and
- Whether or not the works council appoints a chartered accountant for assistance.

The following procedure concerns restructurings and redundancies of at least ten employees in business that have at least 50 employees and a works council.

The employer must consult the works council before reaching a final decision on the planned restructuring. The employer must provide the works council with detailed information about the reasons for the restructuring. The works council must have sufficient time to review these issues and raise questions with the employer.

Among other things, the employer must, at the same time, set up a collective redundancy plan and inform and consult the works council on this plan. The plan must provide measures that encourage the redeployment or retraining of employees facing termination as a result of a redundancy.

Before informing the employees of their termination as a result of a redundancy, the employer must notify the employment authorities of the contemplated redundancies within certain deadlines (depending on the number of proposed redundancies).

The employment authorities review the collective redundancy plan and ensure that it has been drafted in accordance with the law and that the collective redundancy procedure has been followed.

13. Secondment of employees and expatriates

French labour law makes a distinction between an employee who is sent abroad on a temporary mission (*détachement*) and an employee who is sent abroad to work on a quasi-permanent basis (*expatriation*).

When an employee of a French employer is sent to work abroad (*expatriation*), the transaction is subject to French law. It is considered to be a substantial change in the employment contract and requires the employee's consent. If the employee is to work abroad for another employer, the French employment contract is suspended, which means the employee has the right to continue resume his former employment after the end of the mission abroad.

In the event of a temporary transfer (*détachement*) the employee's contract with his French employer continues. The employee will be reintegrated in to his employer's personnel once the temporary mission is completed, and the employer remains liable for all of the employeer's employment obligations should the new employer defaults on any of its obligations.

14. Social security

The French social security system is complex and contains over twenty administrative organisations, each concerned with collecting or allocating contributions for various welfare programs. The social security system is financed by payments from both employers and employees. An employer's share of social security contributions is between 40% and 50% of each employee's gross salary. An employee's share of social security contributions is between 20% and 30% of his gross salary.

An employee's social security contributions will be withheld at the source and shown in on pay slip. The social security contributions are for unemployment benefits, basic health care, state retirement and family benefits.

15. Specifics of French Employment Law

a. The legal relationship between an employer and his employee in France is very formal and highly regulated and the majority of direct and indirect legislation is considered, by most lawyers, to favour the interests of the employee rather than the employer. The national administration on employment exercises an important oversight and regulatory role.

b. A major legal distinction exists between "*Cadres*" (executives) and other employees.

16. Tax Matters

There are many social charges that must be paid in France based on income. Employers are responsible for withholding social charges on their employees' income. Self employed individuals must register with URSSAF and other administrative offices to coordinate the payment of their social charges due on their income.

17. Termination of Employment

a. In France it is impossible to terminate without cause. In other words, once an employer hires an employee, the employee may only be dismissed for a specific reason.

Employment may be terminated by: the employee resigning, by the employee retiring, by the employer terminating the employment or as a result of redundancy (see Section 12 above). The reasons or grounds for termination by the employer must be those recognised by French Statute or by case law. The termination must be based on "real and serious" grounds, otherwise the termination is considered unfair and may allow the employee to claim financial compensation.

The termination procedure for dismissal for disciplinary reasons is very formal and failure to follow the procedural steps, even where the dismissal is manifestly justified, may result in the Court overturning the dismissal and ordering the reinstatement of the employee.

Virtually all disciplinary measures must be noted in writing and notice generally needs to be sent to the employee by certified mail sent to his or her home address after a formal meeting between employer and employee.

b. The first instance labour court in France (*le conseil de prud'hommes*) is composed of only non-professional judges. When the *conseil* is petitioned in a case, the parties must first go before a conciliation board consisting of two of these judges (one representing employers and one representing employees) that hear the parties to facilitate an amicable solution.

Then, if the conciliation does not work, the parties go before the judgement board (composed of four of these judges, two representing employers and two representing employees and the president of the board may be either a representative of employers or employees) that judge the case on the merits.

There is no obligation to be represented by an attorney before the *conseil de prud'hommes* nor before the Court of Appeals (which is composed of professional judges).

18. Trade Unions

The French constitution guarantees the right of employees to organise unions, and the Labour Code authorises employees to organise and operate union committees within companies.

In terms of membership, the French trade unions are the weakest in Europe with only 8% of employees belonging to unions. French trade unions are divided up into a number of rival confederations, competing for membership. But despite low membership and the apparent competition among the unions, French trade unions have strong support in elections for employee representatives and are able to mobilise French workers to great effect.

The collective bargaining process in France covers workers who are not unionised. Collective bargaining agreements may apply nationally, throughout the whole of French

territory, or sometimes only at a local level. In general terms, collective bargaining agreements relate to a particular sector of industry or commerce and tend to set out in much greater detail the scope of the relationship between employers and employees in the covered sector.

19. Works Council

a. France has a complex system of employee representation at the workplace level, through both the unions and structures directly elected by the whole of the workforce. Where trade unions are present, the key figure will be the trade union delegate.

However, works councils are the main employee representative structures within companies with at least 50 employees. Works councils have wide-ranging powers and must be informed and consulted on almost all major company decisions such as: matters relating to the organisation and management of the company, and, in particular, measures likely to affect the volume or structure of the workforce, working hours, working conditions and training. Members of works councils have the right to attend company board meetings and shareholders' meetings in a consultative capacity.

b. There are two ways in which employee representatives can be members of the company board, either (i) by being elected by all the employees or (ii) as a representative of employees holding company shares. In addition, they can also be present at board meetings as non-board members, but with the right to ask questions.

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