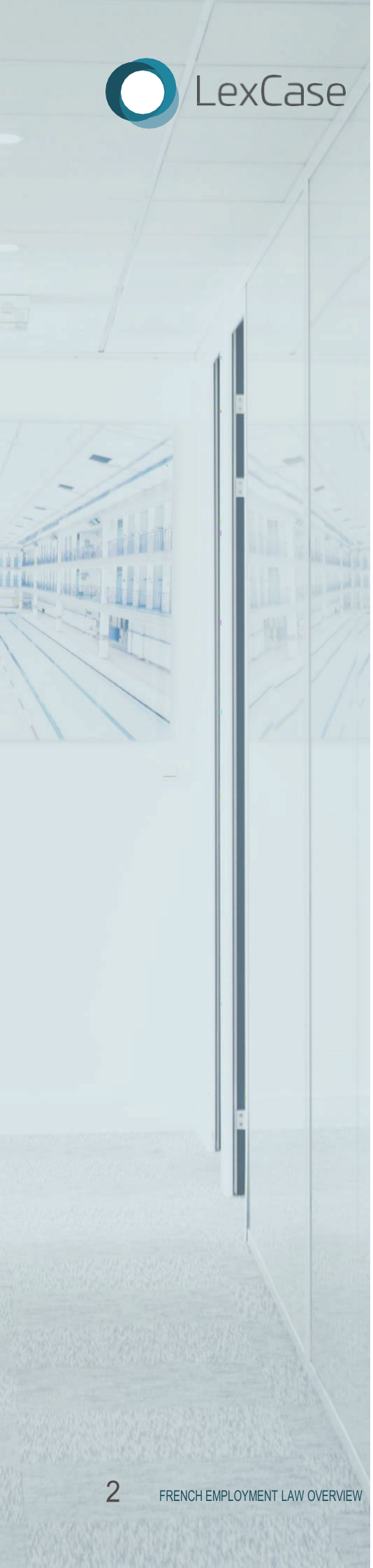
FRENCH EMPLOYMENT LAW OVERVIEW

LexCase

PARIS - LYON - MARSEILLE



The Firm

in a few words

LexCase has been founded in 2009 as an entrepreneurial project: to establish a multidisciplinary law firm, present in Paris, Lyon and Marseille and having close links with foreign law firms.

Regional, national and international, LexCase relies on the proximity with its clients with a view to excellence.

On the strength of its recognized expertise, LexCase continues to grow by acquiring leading- edge experts to advise and support its private and public clients in the implementation and success of their various projects.

With **LexFormation,** LexCase experts regularly conduct professional legal training to support the use of law and best practices of the law and best practices to its clients.

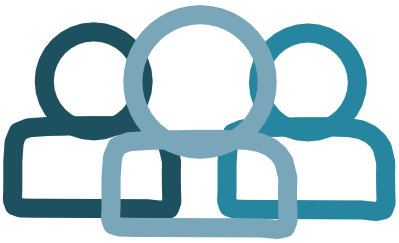
The firm created « Fondation LexCase », hosted by the Fondation de France. Through this initiative, the Firm joined the international collective 1% for the Planet, pledging 1% of its turnover to provide financial and operational support to projects run by associations dedicated to the environmental cause.

The employment law department at LexCase

Our employment team advises companies for them implementations of their human resources policies to optimize legal security and labour relations.

LexCase

Sommaire



Introduction

Employees in France benefit from a high level of legal protection.

Sources of French employment law include legislation (the Employment Code) and case law. In addition, there are collective bargaining agreements ("*conventions collectives*" or "*CBA*"), which have legal effect in most sectors of business. These are negotiated at a national, regional or company level between employers' organisations and trades unions for specific sectors of commerce and industry.

In most cases, foreign companies or businesses employing staff in France cannot contract out of French employment law or the relevant collective bargaining agreement.

The nature of the business activity will determine which collective bargaining agreement will apply (e.g. plastics, textiles or metallurgy depending on the composition of products). This needs to be checked before employing staff in France or setting up a representative office or business.

Typically, such collective bargaining agreements cover such matters as:

- minimum salary coefficient / job function and level of qualifications and experience
- trial periods
- notice periods
- termination indemnities (termination for cause (except very serious breach) or for redundancy)
- retirement
- salary rights in case of illness, maternity and accident
- holiday entitlements in case of marriage or civil partnership, death in the family, sickness of children, maternity and paternity leave etc
- length of service
- night working
- top-up incapacity, accident and life insurance
- job functions, hierarchical classification and minimum salaries
- non-competition clause
- staff representation

Finally, international legal sources, and in particular, European Community Directives and case law of the European Courts of Justice and Human Rights have had an important impact.

1.
HIRING STAFF

Written terms of employment

Language: All employment contracts must be in French – Although the contract can be translated into other languages, but the French version will prevail in the event of a dispute.

Working hours: These are defined in the contract by reference to weekly or monthly periods, or, in certain cases, by reference to an agreed number of working days or hours per year.

Applicable Collective Bargaining Agreement: If there is one, (Convention collective) has to be mentioned. In addition, the employee's echelon and coefficient should be stated.

Works rules and policies ("internal regulations"): These are contained in a written document, which is compulsory for companies employing at least 20 employees.

Trial period/ Probationary period

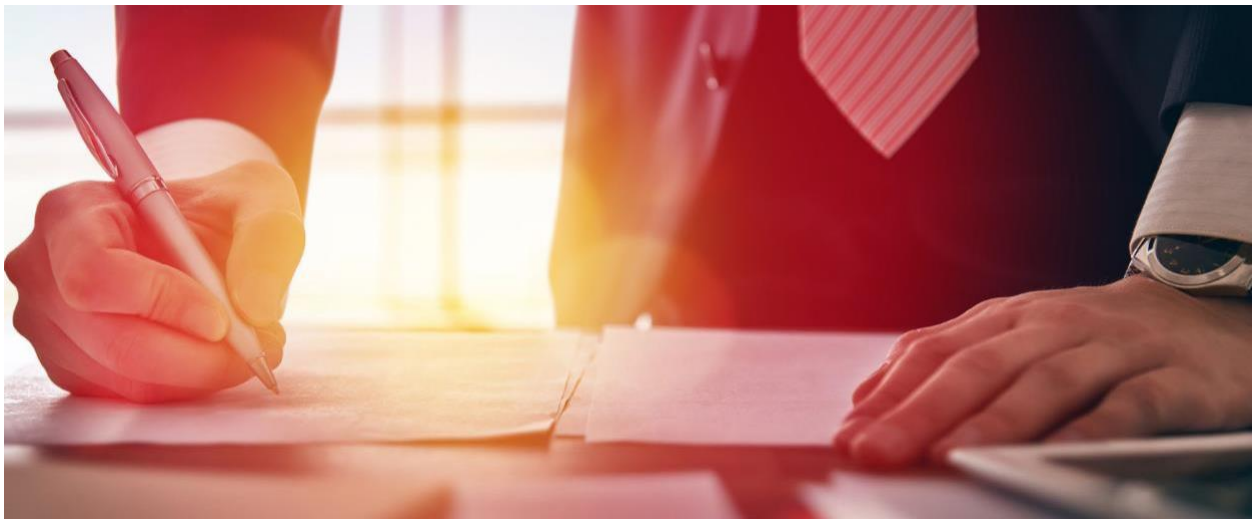
The employer may provide for an initial probationary period in the employment contract which must be agreed by both parties.

Its duration can be fixed freely by the parties, subject to any limits set out in the Employment Code, or any applicable collective bargaining agreement.

Common probationary periods are:

- 2 months for office and shop floor workers ("*Employés et ouvriers*")
- 3 months for supervisors andtechnicians ("*Agents de maîtrise et techniciens*")
- 4 months for executive level staff ("*Cadres*").

This period can be extended, once only, by agreement, provided the collective bargaining agreement allows for this.



Medical: Every employee must undertake a medical exam prior to employment or at the latest within 3 months of the date of commencement of the employment. After that, there is a medical check-up every 5 years.

Positions, functions and minimum salaries

Positions are defined by reference to diplomas, qualifications, experience and job functions.

Typically, companies employ:

- director level management (not subject to 35 hour working week rules)
- senior, middle and junior executive (managerial staff) ("*cadres*")
- senior qualified technical staff/ supervisors ("*agents de maîtrise*")
- office and shop floor workers ("*employés et ouvriers*")

The collective bargaining agreement will set minimum salary levels according to the defined level.

The relevant level will also have other effects on the employment contract, notably working time.

A special category of employee is the VRP ("*Vendeur Représentant Placier*") or employed sales representative (sometimes working for multiple employers); whose legal position is different to that of other employees or a commercial agent. Special rules apply to the VRP employee's entitlements on termination.

Duration of the contract

Employment contracts are usually of indefinite duration; but ***fixed term contracts*** (CDD) are strictly regulated and recourse to such short-term employment contracts is limited to specific situations such as replacement of staff on sick leave or maternity leave, work overload of short duration or exceptional export orders.

The maximum duration of a CDD is between 18 and 24 months depending on the reason for recourse to the short term contract. There may be variations depending on the business sector collective bargaining agreement.

A fixed term contract must state in writing the duration agreed by the parties and the reason for the fixed term contract.

A special indemnity for lack of job security is payable at the end of the contract (10% of the total agreed salary).

Recourse to temporary employment agencies is also strictly regulated.

A fixed term contract can only be terminated in the following cases:

- serious misconduct ("*faute grave*"), or
- "*force majeure*"; or
- if the employee has an opportunity to take up employment under an indefinite term contract; or
- if the employee becomes unable to perform the assigned tasks for medical reasons.

The parties can renew a CDD only twice within the allowed maximum duration.

Working hours and the legal working week

The legal working week is 35 hours per calendar week.

However, it is possible for companies, subject to certain conditions, to increase working time above 35 hours per week.

The relevant collective bargaining agreement will frequently contain provisions on this subject.

An employer may opt to compensate overtime in salary or rest days.

Employees in France can be entitled to compensation days (also called JRTT – "*Jours de réduction du temps de travail*"), depending on the applicable working time agreement applicable to the company.

Working time limits

The maximum number of working hours allowed in each week is as follows:

- A maximum of 44 hours may be worked in any week on average over any given period of 12 consecutive weeks.
- In any working week hours worked may not usually exceed 48 hours; and even in exceptional circumstances, working time may not exceed 60 hours per week. Executive staff and management ("*cadres*") may be subject to specific rules regarding working time.
- Daily working hours may not exceed 10 working hours, (with some very limited exceptions).

- With certain exceptions employees must not work more than 6 days per week; and should not normally work on Sundays. In each 24 hour period during the working week, the employee must have 11 hours rest.

A twenty-minute break must be taken at least within every period of 6 hours.

The contract may also state that working hours are indicative and liable to change.

However, in the case of part-time contracts, the duration and the specific weekly or monthly working hours must be stated precisely.

Special provisions

Company cars

Private use of a company car is treated as a benefit in kind subject to tax and social security contributions.

There is also a special tax payable by the employer in relation to company cars.

It is quite frequent for companies to provide that where employees use their own vehicles for professional travel, they are entitled to reimbursement in accordance with the kilometric rates allowed by French tax regulations.

Travel & car insurance

Employers need to ensure that employees using their own vehicles for the journey to work (including to the train station or airport) have a specific extension to their car insurance policy.

Employee's inventions

Employees' patentable inventions developed

in the performance of their duties will belong to the employer.

However, the employee is then entitled to an additional remuneration, which should be negotiated between the parties based on an appropriate remuneration having regard to the employee's remuneration and the value of the invention. In some cases, the collective bargaining agreement will provide for this.

Furthermore, if an invention is made with the assistance of the company's know how, data or other means, the employer is entitled to acquire the intellectual and industrial property rights relating to the invention provided that the employee is remunerated.

Any other inventions will usually belong to the employee.

Non-disclosure clauses and computer protocols

It is advisable in most cases to include specific clauses dealing with these questions in the contract. Employers should consider putting in place suitable protocols dealing with access to an employee's computer. This may also involve data protection issues.

Confidentiality & data protection

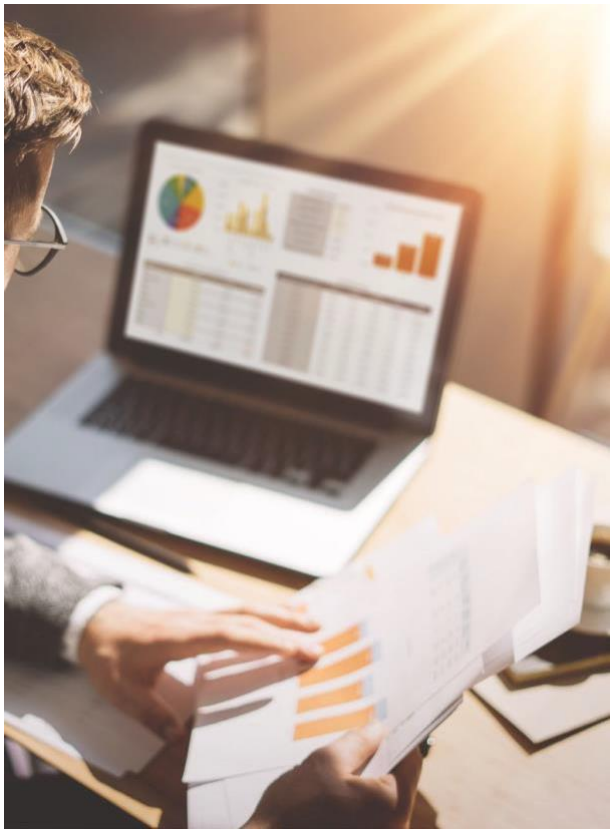
There is no express obligation of confidentiality contained in the Labour Code, as this obligation is derived from the employee's general obligation to perform work in good faith and with loyalty.

It is nonetheless recommended to include a confidentiality clause for all employees having access to confidential information; and to clearly define in the employment contract what the employer considers to be confidential. It is now necessary to include a specific clause dealing with compliance with General Data Protection regulations.

Non-solicitation and non-competition clauses

Non-competition, non-solicitation and non-disclosure/confidentiality clauses to apply both during the employment relationship and following termination also need to be carefully considered. While non-competition clauses are possible in France, French law requires financial compensation (sometimes defined in the collective bargaining agreement).

In order to be valid under French law, a non-competition clause must also be limited in time and space and restricted to the business activities concerned.



2. PAID HOLIDAYS

The "*Code du Travail*" sets out the 11 annual paid public holidays in France.

Annual paid holidays are calculated on the basis of 2.5 days per month worked which corresponds to 5 weeks paid annual leave.

The calculation of entitlements is based on a reference period from 1st June of the preceding year to 31st May of the current year.

Collective bargaining agreements frequently provide for slightly more favourable provisions.

Paid holiday, which is not taken for any reason not due to the employer, does not give rise to any compensation. In some cases, paid holiday can be carried forward (e.g. maternity leave).

On termination accrued paid holiday entitlements are the subject of compensation.

3. REMUNERATION AND PARTICIPATION

French law provides for a national minimum wage (SMIC), which is revised annually. The Collective Bargaining Agreement usually provides for slightly higher minimum wages or salary (depending on job categories).

Compensation must comply with the principle of equal pay for the same job functions.

Gross salary in France refers to salary before deduction of compulsory social contributions. The employee receives net salary after deduction of the employee's social security contributions by the employer.

Employers are obliged to deduct estimated employee income tax from employees pay sheets and pay the amount to the tax authorities.

Salary

In France, salaries are paid monthly.

Under French law, it is a requirement for the employer to provide a pay sheet to the employee at the end of each month. The form and content of the pay sheet is regulated and must contain a certain number of mandatory items (e.g applicable collective bargaining agreement, position, coefficient, social security number and contributions, income tax deduction, etc).

Participation

Where there are fifty or more employees, the employer is required to put in place a system of participation for staff in the results of the employer company. There are various methods for achieving this.

4. STAFF CONSULTATION AND REPRESENTATION

Businesses employing 11 or more staff have to organise elections of staff representatives to an employee representative body called the ***"Comité Social et Économique"*** ("employment and business committee", CSE)**.**

Previously, *staff were represented by either staff delegates (business with 11-50 employees) or a works council and health and safety committee (CHSCT – "Comité d'hygiène de sécurité et des conditions de travail") for businesses employing more than 50 staff.*

The CSE was designed to simplify the functioning of employee representation. It encompasses all the functions of the previous representative bodies. Similar rules to those in force previously apply to elections and meetings. (See below).

Where the number of employees in a company exceeds the thresholds mentioned below, the employer is required to organize elections every four years for the CSE:

- 11 or more employees (averaged over a certain period), the employer has to organise elections for CSE which will have the functions of former Employee Representatives ("*Délégués du Personnel*")
- 50 employees or more, (averaged over a certain period), the employer must organise elections for a CSE which will have the functions of the former Employee Representatives ("*Délégués du Personnel*"), Works Council ("*Comité d'entreprise*") and Health, Safety and Working Conditions Committee (*CHSCT – "Comité d'hygiène de sécurité et des conditions de travail"*)
- Recognised (and representative) trade unions may appoint Union representatives (*Délégués syndicaux*) in companies having 50 employees or more.

The CSE enables regular consultation which must be organised by employers in businesses counting 11 to 49 employees on such matters as:

- paid holidays
- working hours and rest periods
- collective redundancy
- health and safety
- redeployment due to the incapacity of an employee

They must be kept informed by the employer on certain matters and can present complaints or contact the Government employment inspectorate in case of difficulty.

In businesses employing 50 staff or more,

the CSE must be informed and consulted by the employer in advance on a wide range of matters such as:

- regular information updates about the business
- planned operations of the company or situations liable to affect staff generally (e.g. pay structures, changes in conditions of employment, mergers and acquisitions, economic difficulties…)
- collective redundancy
- health and safety
- employee profit sharing schemes
- social and cultural matters affecting staff (e.g. end of year festivities, negotiation of discount terms for staff with outside suppliers e.g. for holidays, fitness clubs, presents…).

Employers are required to contribute to a budget financing the CSE's activities.

CSE meetings must be held regularly and must be attended by the employer.

Members of the CSE are entitled to a certain number of hours each month of paid time to perform their functions.

Failure by an employer to organise the elections or to enable proper information and consultation is sanctioned by criminal proceedings and the risk of invalidity of procedures (e.g. for certain cases of dismissal).

Functions of Trade Union Representatives (Délégués syndicaux)

Trade union representatives in companies represent interests of the union's members.

In order to qualify for representation within a company, a union has to be representative. It must meet several statutory conditions.

Union delegates have a certain number of paid working hours' time per month to carry out their activities depending on the size of the company.

Union representatives are involved in collective bargaining with the employer. Where a company has one or several union representatives it must hold annual discussions with them on such matters as: wage increases, working time, employment of disabled persons, equality between men and women, right to disconnect electronic media.

There is no legal requirement to reach

an agreement with them. Trade union delegates are authorized to attend all CSE meetings in businesses employing more than 50 employees.

Business Council (Conseil d'Entreprise)

Since January 2018, businesses which employ more than 50 staff have a CSE may conclude an agreement with the trade unions in order to establish a Business Council with the added power of negotiating collective agreements for the business in lieu of negotiations with trade union delegates.

In such a case, the Business Council has to be involved in the management of the business. (Similar to the German system of co-decision making.)

Statutory protection of representatives

It is important to note that employee representatives, members of the CSE and the union representatives enjoy specific protection concerning termination of their employment contract, involving prior clearance from the government employment inspectorate.

Criminal sanctions for non-compliance

Criminal sanctions can be imposed on employers who fail to comply with many of the rules concerning the functions of the various employee and union representatives.

5. DISCIPLINARY MATTERS AND SANCTIONS

French law does not allow the employer to impose pecuniary sanctions. Thus, no retention on the employee's salary may be made, whatever the circumstances. There are criminal sanctions where the employer fails to comply with these provisions.

In the case of very serious breaches of the contract of employment, an employee may be held liable to the employer in damages where the employer can prove an intention by the employee to damage the interests of the employer; although no retention on salary may be made for this.

Any damages may only be recoverable through Court proceedings against the employee.

In the event of misconduct, in most cases it is advisable to summon the employee to a meeting before serving a written warning.

At the meeting, the employer should indicate the reasons for any envisaged sanctions; and before deciding on whether such sanctions are appropriate, allow the employee an opportunity to be heard.

Subsequently the employer must notify the employee, the events of misconduct which the employer considers justify a sanction, and the sanction concerned.

There are detailed procedures for the

contents and method of service of the notice and the holding of the meeting, which need to be complied with, failing which the notice and meeting may be invalid and this will adversely affect any termination procedure.

Under French law the sanctions which are usually accepted are as follows:

- written warning
- suspension
- notice of termination of the employment contract

Finally, it should be noted that the employee may take proceedings in the employment tribunal to challenge the relevant sanction.

6. TERMINATION OF EMPLOYMENT CONTRACT

In a case of an indefinite-term employment contract, there must be real and serious grounds for dismissal. There are two types of valid grounds:

"Personal" (performance or conduct) Grounds

These can include:

- Poor performance or unsatisfactory professional skills
- Inability to perform the assigned tasks
- Misconduct within the company; and
- An employee's repeated absence or absence over a long period of time (which is not related to a work-related accident or illness) can also constitute, in certain circumstances a valid ground for dismissal

Economic Grounds (redundancy)

The Employment Code permits three main economic grounds for redundancy:

- Economic difficulties facing the relevant business (at a group level in France in

the case of groups of companies)

- Technological changes
- The need to safeguard the competitiveness of the relevant business (local and group level in France)

Procedural requirements for Individual Dismissal /Redundancy

There are detailed legal provisions for holding a preliminary consultation meeting with the employee (notice, information on the grounds for termination being considered by the employer and process) and any decision following the meeting to proceed to termination. Failure to comply with these provisions will invalidate the procedure and the termination.

Procedural requirements for collective redundancy (2 or more employees within a period of 30 days) involve specific and detailed procedures.

Severance payment

Severance pay is only awarded if the employee has the minimum length of service of 8 months required by French Labour Code or an applicable collective bargaining agreement.

The amount of severance pay depends on the employee's length of service and the relevant collective bargaining agreement. It is generally calculated on the basis of an employee's average salary during the last year of employment.

Unfair dismissal and damages

An employee who claims that the dismissal was unfair can challenge the dismissal before the Employment Tribunal. If the judges find the dismissal is unfair, they may grant compensation. An employee is entitled to compensation if the dismissal is deemed unfair. The law provides for minimum and maximum levels of compensation depending on length of service and headcount in the company.

Termination by mutual consent

A third way to terminate an employment contract is by mutual consent. Parties must agree to terminate the contract, and the conditions of the termination at an obligatory meeting.

Parties will sign an official form and an agreement with compulsory provisions (date of termination, indemnities, compensation…) and can retract within 15 calendar days. The agreement has to be approved by the government employment administration within 15 working days from receipt of the termination documents.

7.
SICK LEAVE

Paid sick leave is covered by the French social security system. Employees are required to visit a doctor, who may decide to prescribe sick leave for an employee.

Doctors and employees are required to complete a sick leave form, which is submitted to the social security scheme and to the employer.

According to French law, illness gives rise to the suspension of the contract of employment, but is not a ground for termination. In certain cases, prolonged illness can be a ground for termination where the business is disrupted and cannot function without a permanent replacement.

French employment regulations provide that all or part of the salary is to be maintained subject to certain conditions. The collective bargaining agreement also contains more favourable conditions on this subject.

The employee is required to give notice to the employer as soon as possible and at the latest within 48 hours of any absence. Such notice must indicate the reason for the absence and the likely duration thereof. A medical certificate from the employee's doctor must be sent to the employer within 48 hours from the first day of the illness.

8.
HEALTH AND SAFETY AT WORK

A company's internal regulations must contain suitable provisions on health and safety. These have to be posted on the company's internal notice board. Compliance by employees is provided for in their contracts of employment.

The employer is responsible for the health and safety of employees (which includes psychological health), and is required to maintain proper supervision and maintenance of health and safety at work. This is very frequently done by written delegation to a senior executive responsible for such function.

Criminal sanctions apply in the case of non-compliance.

Every employer has to create a document setting out risks and prevention measures.

9. HEALTH INSURANCE

Employers and employees are required to contribute to health insurance provided by social security, as well as to complementary health insurance with private health insurers chosen by the employer or designated in the collective bargaining agreement. The contribution of the employers to such scheme must be at least 50% of the total amount contributed by both employer and employee.

10. RETIREMENT

The legal minimum retirement age is 64 for persons born after 1st January 1964 and who have paid a required minimum number of quarters of pension contributions.

Employees born after 1st January 1955 are entitled to a full pension at the age of 67 whatever the number of quarters' pension contributions paid. Persons with sufficient years of contributions, or who have a severe disability, or who have worked in an unhealthy or physically stressful environment, can claim their pension before reaching the legal age of retirement.

Employees may however claim their pension later if they so wish.

Under certain conditions, retirees who have already claimed their pension can combine it with an employment contract. The performance of this employment contract will allow them to claim a second pension.

The employer cannot require an employee to take retirement before the age of 70.

Retirees are entitled to a specific retirement indemnity payable by the employer on retirement. The amount is prescribed by Legislation, or the applicable collective bargaining agreement.

11. LAW AND JURISDICTION

Employees working habitually in France will be automatically subject to French employment and health and safety laws; the exclusive jurisdiction of the local French employment tribunal ("*Conseil de Prud'Hommes*"); and supervision of the government employment inspectorate.

The procedure in the "*Conseil de Prud'hommes*" is comprised of two distinct stages: a conciliation process and a hearing.

The decision of the "*Conseil de Prud'hommes*" may be appealed within one month of the judgement. The appeal is heard by the Regional Court of Appeal ("*Chambre sociale de la Cour d'appel*").

A further appeal from the Court of Appeal on points of law may be made to the French Supreme Court ("*Cour de cassation*"), which is the highest court in France. The appeal must be brought within two months.

EMPLOYMENT LAW DEPARTMENT & CONTACTS

Florence DRAPIER FAURE

Partner

@ fdrapierfaure@lexcase.com

David LACHASSAGNE

Of counsel

@ dlachassagne@lexcase.com

Marina CHASSANY

Of counsel

@ mchassany@lexcase.com

Christelle NICOLAS

Associate

@ cnicolas@lexcase.com

of this note. Legal advice must be taken on all specific matters.

LexCase

www.lexcase.com

MAQUETTE & ILLUSTRATIONS : Véronique Girot | PHOTOS : Célia Marjolet - iStock

PARIS

17, rue de la Paix
75002 Paris
+33 (0)1 40 20 22 22

LYON

2, rue P^dt Carnot
69002 Lyon
+33 (0)4 37 23 11 11

MARSEILLE

38, rue Grignan
13001 Marseille
+33 (0)4 91 33 22 22