Ordinances reforming the labour law

The five ordinances intended to reform the labour law were **published in the Official Journal on 23 September**. They deal with (i) strengthening collective bargaining and its framework, (ii) the new organisation of social and economic dialogue within the company and trade union responsibilities, (iii) foreseeability and securing of labour relations, (iv) prevention and taking into account of the effects of exposure to certain occupational risk factors and of the occupational prevention account. Here are the main provisions of these ordinances.

Strengthening and framework of collective bargaining

- **Links between industry-wide agreements and company agreements**
  - **primacy of the industry-wide agreement in eleven areas** for which the industry-wide agreement prevails over the prior or subsequent company agreement, unless the latter confers guarantees that are at least equivalent. The areas in question include in particular hierarchical minimum wages, classifications, various measures relating to working time, to fixed-term contracts, gender equality in the workplace, and social welfare. These provisions have been in force since 24 September 2017;
  - **lock-in clauses**: the industry-wide agreement may stipulate that the company agreement cannot contain different provisions, unless the latter confers guarantees that are at least equivalent, and this in four areas: prevention of the effects of exposure to occupational risk factors, integration into the labour market and keeping disabled workers in employment, staff from which trade union representatives can be appointed, the number of representatives and development of their trade union experience, bonuses for hazardous or insalubrious work.
  - **primacy of company agreements for all other areas**: in the areas not listed, the stipulations of the company agreement entered into before or after the industry-wide agreement prevail over those on the same subject in the said agreement. This primacy will be effective as of **1st January 2018**.

- **Securing collective agreements**

The agreements benefit from a **simple presumption of compliance with the law**. Anyone contesting the legality of the agreement will have to provide proof of his allegations, with the lime limit for bringing an action to annul the agreement now being **two months**. The starting point of this time limit is specified and adapted depending on whether the agreement contested is a company agreement or an industry-wide agreement. These provisions will be applicable to collective agreements **entered into after the date of publication of the ordinance.**

- **Bringing majority agreements into widespread use**

The rule making company agreements conditional upon their signature by representative trade unions having **obtained more than 50% of the vote** in the first round of staff elections, will be brought into widespread use as of **1st May 2018.**

- **Negotiations in very small, small and medium-sized businesses without union representatives**
  - **Companies with fewer than 11 employees**: possibility of offering employees a draft agreement on all topics open to negotiation. The agreement will be **validated if two thirds of the employees approve it**. This possibility will also be open to companies with fewer than 20 employees that have not elected staff. This mechanism will be specified by implementing decree;
  - **Companies with between 11 and 50 employees**: possibility of negotiating an agreement involving all subjects open to negotiation with employees appointed by the trade union organisations or with the elected members of the Social and Economic Committee (the latter now bringing together the former staff representative bodies). **This measure has been in effect since 24 September 2017**;
  - **Companies with more than 50 employees**: in the absence of trade union representatives, it is now possible to negotiate with a member of the Social and Economic Committee appointed by a trade union, or failing this, a non-appointed member, or failing this, with an appointed employee. **This measure has been in effect since 24 September 2017.**

Simplification and overhaul of the staff representative bodies

- **Merging of the staff representative bodies: Social and Economic Committee (CSE)**

In companies having had a work force **of at least 11 employees for 12 consecutive months**, the CSE replaces staff representatives. In companies **of 50 employees and more**, the CSE **will bring together** the current functions of **staff representatives**, the **works council and the Health, Safety and Working Conditions Committee**.

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- **Health, Safety and Working Conditions Committee:**

A health, safety and working conditions-type committee will have to remain in:

- separate companies or establishments with **at least 300 employees**;
- separate companies or establishments with **fewer than 300 employees if the labour inspectorate requires it.**

- **Operation of the CSE**

The members of the CSE will be **elected for four years** and will not be able to complete **more than three successive terms of office**, except for companies with fewer than 50 employees under conditions determined by decree. Their number and time credit will also be fixed by decree. The CSE will have to meet at least once a month in companies with at least 300 employees and once every two months for companies smaller than this. A system of co-financing expert's reports (80% for the employer, 20% for the CSE) is stipulated for certain types of consultation.

The aforementioned provisions will enter into effect, essentially, on the **date of publication of the necessary decrees and on 1st January 2018 at the latest.**

For companies **with representative bodies** on the date of publication of the ordinance, **the CSE will be set up at the end of the terms of office in progress and on 31 December 2019 at the latest**.

Foreseeability and securing of labour relations

- **Economic redundancy**

When the company planning to carry out economic redundancies **belongs to an international group**, the geographical scope of assessment of the economic difficulties will now be **limited to the situation of the group in France**, except in cases of fraud (insolvency of the French subsidiary organised by the group).

- **Obligation of redeployment abroad**

The obligation of redeployment abroad is **removed** in the following two situations: in the event of setting up a job-saving plan and in the event of an employee being declared unfit. Redeployment will then only be sought within the company or the companies of the group to which it belongs, **situated on French territory**.

- **Unfair dismissal (without due cause): scale of damages**

Any unfair dismissal will now be penalised by granting damages, the amount of which will be based on a **mandatory scale.**

The **minimum** indemnity is fixed at one month's salary for a length of service at least equal to one year, and increases to **three months' salary from a length of service of two years**. In companies with fewer than 11 employees, this minimum is 15 days for a length of service of one or two years.

The **maximum** indemnity is fixed at one month's salary for a length of service of less than one year. This maximum increases by one month up to ten years, then by half a month per additional year, **without exceeding 20 months' salary beyond a length of service of 28 years.** In companies with fewer than 11 employees, this maximum reaches 2.5 months' salary for a length of service of ten years.

The above scale does not apply in the event of invalidity of the dismissal (harassment, breach of a fundamental freedom). The damages cannot then be less than six months' salary.

The legal indemnity for dismissal is **revalued at a quarter of a month** per year of length of service up to a length of service of ten years. Beyond this, the indemnity is equal to a third of a month per year of length of service, which was already the case beforehand.

- **Time limits for objection**

The time limits for objecting to the termination of the employment contract for personal reasons and for economic reasons have been standardised. Legal action will now be time-barred by **12 months**.

- **Failure to satisfy requirements of procedure and penalties**

An insufficient statement of reasons in the dismissal letter is no longer penalised as unfair dismissal. Failure to satisfy formal requirements ascertained in the dismissal procedure will give rise to a **maximum indemnity of one month's salary**.

It will now be possible to notify a dismissal via a standard model, the latter stating in particular the rights and obligations of each party in the matter of dismissal.

Automatic requalification of fixed-term contracts into permanent contracts in the event of failure to transfer the contract within two days from hiring the employee has also been ended.

The aforementioned provisions apply to terminations of the employment contract pronounced as of 24 September 2017.

Collective contractual termination

A new system of collective contractual termination **negotiated by collective agreement**, excluding any dismissal, will be set up. Its system is modelled on that of the contractual termination introduced since 2008. In fact, the agreement will have to be subject to the validation of management. Acceptance by the employer of an application to leave from an employee will entail termination by mutual agreement of the employment contract.

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