

PANORAMIC NEXT

Labour & Employment

FRANCE

LEXOLOGY

Labour & Employment

2025

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In this *Panoramic Next* guide, leading employment law practitioners from across the globe discuss the most consequential recent trends and developments that employers should know about, while also sharing their insights into best practices and potential future developments.

Generated: November 11, 2025

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France

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ABOUT

Joëlle Hannelais is a partner at Vivien & Associés. She has recognised expertise in labour and social security law and is particularly well-suited to handle the social aspects of restructuring and business transfers, as well as all matters relating to employee and union representation within companies. Joëlle conducts outsourced internal investigations following reports of harassment, discrimination, unfair competition involving employees, breaches of internal ethics rules and, more broadly, disciplinary matters at every stage of the investigation. She also advises companies on how to communicate the investigation results to both whistleblowers and the employees implicated, and she has extensive experience in litigation, particularly in employment law. Joëlle is a member of the French Association of Corporate Lawyers in Employment Law (AVOSIAL), the European Employment Lawyers Association (EELA), and the American Bar Association (ABA).

Q&A

WHAT ARE THE MOST IMPORTANT NEW DEVELOPMENTS IN YOUR JURISDICTION OVER THE PAST YEAR IN EMPLOYMENT LAW?

Recent developments in French labour law aim to adapt the rules to contemporary realities, whether, for example, the protection of employee health and safety, which has become a major issue for companies, or the right of employees to access their personal data, as provided for by European legislation and clarified by the courts.

The Criminal Division of the Court of Cassation handed down a very important ruling in early 2025 on moral harassment. The case concerned an unprecedented wave of suicides and depression within a leading French company, which led a trade union to file a criminal complaint against the company and some of its executives. These tragic events took place in the context of a major reorganisation involving the loss of more than 20,000 jobs. The method used to achieve this objective was based on, among other things, forced transfers, high targets for employee departures imposed on managers and constant pressure to meet these targets, with the number of actual departures taken into account in the remuneration of these managers. After years of investigation and legal proceedings, the brutality of this downsizing policy was severely punished by the Court of Cassation on the grounds that it deliberately aimed to 'deteriorate working conditions in order to force employees to relocate or leave.' In the Court's view, these methods go far beyond the limits of the employer's management powers and constitute harassment affecting the entire workforce, which it describes as 'institutional harassment'. Thus, under French law, moral harassment is no longer solely individual or limited to a small group of clearly identified individuals; it can also be characterised by the implementation of management strategies targeting all employees with the aim of degrading their working conditions for a specific purpose, such as a drastic reduction in staff numbers, as was the case in the leading French company matter. This ruling also highlights the fact that the perpetrators of harassment may not have a direct link with the victims; it is sufficient that they are the instigators, those who decided on such a policy, namely the company's managers, who may therefore be held criminally liable even though they are not the direct perpetrators of the acts.

This ruling is in line with recent case law which, in an approach that is even more protective of employees' health, seeks to extend the concept of moral harassment to situations that it did not initially cover. In this sense, the Court of Cassation had already recognized (in 2021) the concept of 'managerial harassment', defined as 'an authoritarian management style that exceeds the limits of managerial authority' targeting 'all employees without distinction'. Companies must therefore be particularly attentive to the consideration of psychosocial risks when implementing policies aimed at establishing new operating or profitability rules. In this regard, it should be noted that they must involve the social and economic committees (ie, employee representative bodies), which play a central role in protecting the health of employees within the company.

On another recent topic, there have recently been major developments in the management of paid leave. The first concerns the impact of illness occurring during this leave. Until recently, an employee who fell ill during paid leave was deemed to have taken it and was therefore not entitled to an extension or postponement of that leave. This solution was not in line with that adopted by the Court of Justice of the European Union. Now, following a ruling by the Court of Cassation on 10 September 2025, employees who are on sick leave during their vacation can have their vacation postponed for a period coinciding with the period of sick leave. This postponement is, of course, subject to the submission of a certificate of sick leave to the employer. The second change concerns the inclusion of paid leave in the threshold for triggering overtime. In a ruling dated 10 September 2025, the Court of Cassation ruled that periods of paid leave must be considered as actual working time for the purpose of calculating the overtime threshold. In other words, these periods must be taken into account to determine the number of overtime hours entitling employees to statutory overtime pay. Once again, the court has adopted a solution in line with European law. Human resources departments and payroll managers must be aware of these changes in order to adapt their leave management practices. In practice, the new rule could result in a substantial increase in the number of overtime hours to be paid or compensated by equivalent time off. Employers must therefore anticipate this additional cost. In addition, documentation enabling the traceability of working time and absences for paid leave is essential. In the event of a dispute, we recommend that employers provide a precise breakdown of hours worked, overtime worked and periods of paid leave in order to limit the risk of being ordered to pay back pay and related paid leave compensation. To this end, employers (particularly small and medium-sized enterprises) must put the appropriate management and control tools in place in advance.

With regard to employees' right of access to their personal data under the General Data Protection Regulation (GDPR), the Paris Court of Appeal recently reiterated that work emails constitute personal data within the meaning of the GDPR, to which employees have a right of access under Article 15 of the Regulation, subject to the protection of the rights and freedoms of others. In the case in question, an employee requested that his former employer communicate the contents of his work emails as part of a dispute over his dismissal. The ruling illustrates the scope of an employee's right to access their personal data and the use that can be made of it. The employer must communicate to the employee both the metadata (eg, time stamps and recipients) and the content of the emails. However, this right does not extend to attachments or appendices, as these may be covered by business secrecy when sent by or intended for customers. The Court adds an important clarification that these emails may only be used in the context of legal proceedings brought by the employee before the courts. The right of access based on Article 15 of the GDPR is

therefore an effective means for employees to obtain evidence in legal proceedings against their employers. However, this right is not absolute, as the employer may oppose it by demonstrating that the request is manifestly unfounded or excessive (ie, the request does not concern personal data, it concerns data concerning third parties, it is imprecise or its volume exceeds what is reasonable for the company's resources). Any total or partial refusal must be accompanied by a specific and individualised justification, avoiding overly general or purely administrative arguments. In practice, we recommend raising awareness among human resources teams and data controllers about how to handle these requests, which are becoming increasingly numerous and must not be ignored, as well as about the content of the responses provided and their traceability.

WHAT UPCOMING LEGISLATION OR REGULATION DO YOU ANTICIPATE WILL HAVE A SIGNIFICANT IMPACT ON EMPLOYMENT LAW IN YOUR JURISDICTION?

The French government is considering increasing the contribution payable by employers on compensation paid in connection with the mutual termination agreements of permanent employment contracts. This type of termination, introduced in 2008, allows the employee and employer to terminate the contract by mutual agreement. The use of termination by mutual agreement has substantially reduced the number of labour disputes. The possibilities for contesting such a termination are limited thanks to a strict procedural framework that requires the termination to be approved by the labour authorities. For employers, the mutual termination agreement is advantageous because, unlike dismissal, it does not have to be justified. For employees, it allows them to receive unemployment benefits. The employer must pay a 30 per cent tax on the amount of the specific severance pay paid to the employee in this context. There are plans to increase this to 40 per cent with a simple objective: (1) to encourage companies to accept fewer terminations by mutual agreement given the cost that this system represents for unemployment insurance; (2) to discourage the use of this method of termination particularly for older employees for whom it constitutes a kind of disguised early retirement; and (3) to encourage these employees to remain in employment until the legal retirement age. This reform is, however, not without risk, as it could encourage a return to past practices whereby employers worked with employees to arrange disguised dismissals followed by settlement agreements with similar benefits for both parties compared to mutual termination agreements. Dismissal entitles the employee to unemployment benefits, and the settlement aims to avoid any future disputes over the grounds for dismissal by means of a clause waiving any recourse by the employee in exchange for the payment of a settlement indemnity (in addition to the legal indemnities inherent in the termination of the contract).

Specifically, with regard to the employment of older workers, a recent law has created a new permanent employment contract reserved for job seekers over the age of 60. The aim is to combat the low employment rate among older workers in France, facilitate the transition to retirement and promote professional experience. This new contract may be terminated when the employee reaches full retirement age, at which point the employer is authorised to terminate it. This is an exception to current law. Under a traditional permanent employment contract, employers are required to wait until employees reach the age of 70 before they can decide to retire them automatically. Another advantage of the new contract for employers is that they will be exempt from paying the specific 30 per cent contribution on retirement severance pay. Designed to overcome companies' reluctance to hire older workers, this measure is being introduced for five years on a trial basis.

Moreover, European Directive 2023/970 on pay transparency, dated 10 May 2023, must be transposed into French law by 7 June 2026, at the latest. It aims to strengthen equal pay between women and men for the same work or work of equal value, through new transparency requirements accompanied by new penalties. French legislation already enshrines the principle of equal pay between women and men, with any provision contravening this principle being null and void. French law also requires companies with at least 50 employees to publish annual indicators on the pay gap between women and men, and the actions taken to eliminate it. In the event of non-compliance with these obligations, the law provides for a penalty of up to 1 per cent of the total payroll after prior formal notice by the labour inspectorate has gone unanswered. All companies will be affected by the principle of transparency imposed by the European Directive, with obligations varying according to their workforce size. However, many companies do not have the necessary internal tools to collect, verify, and publish the information required to meet the transparency requirement. The practical challenges are therefore considerable in terms of logistics and organisation. The European legislator's desire to facilitate employee access to data on remuneration within the company is likely to increase litigation, as each employee will be able to more easily compare their individual situation with that of their colleagues. Consequently, in practice, companies will more than ever need to be able to justify, with objective and documented reasons, differences in remuneration between employees in identical situations, at the risk of being ordered to pay back pay and damages.

Finally, artificial intelligence will profoundly disrupt the world of work by transforming jobs and introducing new tools for managing, evaluating and monitoring employees. French labour law already includes provisions governing the introduction of new technologies in the workplace, including AI. The social and economic committee must be informed and consulted prior to introduction. Also, employees must be informed in advance of the use of AI as a method of professional evaluation. In addition, as a personnel management tool, the use of AI involves the automated processing of personal data. In line with the General Data Protection Regulation (GDPR), French law strictly regulates this processing. Furthermore, case law has recently ruled that the introduction of an AI system in a company involving job cuts may constitute an economic reason for dismissal if it is part of a reorganisation 'necessary to safeguard the company's competitiveness'. The introduction of an AI system may therefore be a valid reason of dismissal, provided that all legal requirements relating to the reality and relevance of the economic reason are met. Then, the procedure of economic dismissal, including the employer's obligation to redeploy or reclassify employees in order to avoid their dismissal as far as possible, must be followed.

It is impossible to detail further the multiple impacts of AI, but it should be noted that French labour law, through its texts and case law, strictly regulates the use of this technology in terms of personal data protection, transparency and respect for the fundamental rights of employees.

HOW HAS THE #METOO MOVEMENT IMPACTED THE INVESTIGATION OR SETTLEMENT OF HARASSMENT OR DISCRIMINATION CLAIMS IN YOUR JURISDICTION?

First, on the legislative front, the influence of the #MeToo movement has resulted in broadening the definition of sexual harassment, which now includes sexist comments or behaviour as well as collective harassment by a group of perpetrators acting in concert or otherwise. The #MeToo movement has also profoundly changed the way sexual

harassment reports are handled in companies, leading them to strengthen their internal systems for collecting and processing such reports. In this regard, it should be noted that Article L. 1153-5 of the Labour Code requires employers to 'take all necessary measures to prevent, put an end to and punish acts of sexual harassment'. This obligation to prevent harassment involves, in particular, the appointment of harassment officers in companies with more than 250 employees and within employee representative bodies (ie, social and economic committees) for all companies that have them.

The increase in complaints and litigation has also led to an adaptation of the rules of evidence in order to facilitate victims' access to justice. Employees who consider themselves victims of sexual harassment or sexist behaviour only need to present facts suggesting the existence of such behaviour. In light of these facts, the employer must prove that the behaviour does not constitute harassment or sexist behaviour and that its decision is justified by objective factors unrelated to any harassment. Again, with a view to lightening the burden of proof on the victim, the Court of Cassation (ie, French Supreme Court) has reiterated that a single incident may be sufficient to constitute sexual harassment.

Companies now have a different perception of the risk inherent in harassment situations. They have understood that this risk is not only legal, but also reputational, due to the media impact of a harassment case that is not dealt with diligently. They have therefore accelerated the implementation of internal investigation procedures detailing the various steps required and the guarantees offered to whistleblowers, whether they are direct victims or witnesses. Under French law, there is no general legislation that comprehensively defines the procedure applicable to internal investigations. Nevertheless, general principles and best practices have been established by case law or through initiatives by the Defender of Rights with the publication of recommendations for conducting investigations, or by the Paris Bar Association with the distribution of a guide for investigating lawyers. A set of best practices has thus been established, including respect for the fundamental rights of the persons concerned, fairness and impartiality of the investigation, proportionality of investigative measures, confidentiality and professional secrecy (when the investigation is outsourced to a lawyer), and traceability of investigative actions.

Thus, even though there is no legal provision making it mandatory, internal investigations tend to become a quasi-systematic practice as soon as a report is received by the employer. Internal investigations have thus become an essential tool for managing situations of harassment or discrimination. In certain situations where the technical nature of the facts, independence, or neutrality are at stake, for example, in cases involving members of management or employee representatives, we strongly recommend outsourcing the investigation to ensure its objectivity and credibility. In particular, outsourcing the investigation to lawyers, who should not be the company's usual advisers, allows the work carried out to be protected by the profession's ethical rules, namely independence, confidentiality, and professional secrecy.

WHAT ARE THE KEY FACTORS FOR COMPANIES TO CONSIDER REGARDING THE ENFORCEMENT OF RESTRICTIVE COVENANTS AGAINST DEPARTING EMPLOYEES?

Restrictive covenants mainly relate to non-competition clauses. Because it infringes on the employee's fundamental freedom to engage in professional activity, a non-competition clause is only lawful if it complies with strict and cumulative conditions. The absence of even one of these conditions is sufficient for the employee to consider it null and void.

If the clause is invalidated, the employee may claim damages from the employer for having imposed an unlawful clause on them. In this case, the employer will not be able to claim reimbursement of the financial compensation already paid, unless it can be shown that the employee violated the non-competition clause during the period in question. We recommend that companies use non-competition clauses with caution and only in cases where they are strictly necessary to protect their legitimate interests. The clause must be limited in time (generally it does not exceed one or two years) and in space, with the geographical limitation not exceeding what is strictly necessary to protect the company's interests. The field of activity covered by the non-competition clause must also be precisely defined, avoiding any overly broad or excessive wording.

The non-competition clause must provide for the payment of financial compensation to the employee, the amount and terms of payment of which must be expressly mentioned in the clause. This amount must not be too low; it must be proportionate to the restrictions imposed on the employee in terms of duration and geographical scope, otherwise the clause will be null and void. Finally, the non-competition clause must consider the specific characteristics of the employee's job (ie, the duties performed, training and professional experience). It must not have the effect of preventing the employee from finding a job that matches their experience and training.

We recommend that non-competition clauses be reserved for specific employee profiles, namely those in strategic positions that have given them access to confidential information, customers or specific manufacturing processes or commercial methods. The clause must specify in the preamble the reasons why the position held by the employee justifies the restriction imposed. In other words, non-competition clauses will rarely be justified for simple execution functions, it being specified that in the event of a dispute, the employer must be able to demonstrate the essential nature of the clause (due to the nature of the position held, the employee's position in the company's organisational chart, the importance of the clients managed, the technical knowledge used, and the potential impact of the departure on the company's competitiveness).

Finally, it is necessary to systematically check the national collective agreement applicable to the company to check if it contains any specific provisions applicable to non-competition clauses, which would then need to be taken into account when drafting the clause. Some collective agreements contain provisions concerning, in particular, financial compensation (eg, the national collective agreement for the metalworking industry).

It should also be noted that certain clauses entitled 'non-solicitation clauses' may in fact conceal a non-competition clause. Unlike the latter clause, the non-solicitation clause does not in theory prohibit the employee from engaging in a competing professional activity. It could be considered that it simply requires the employee, for a specified period, not to solicit or approach the customers of their former employer on their own behalf. However, the courts, which are not bound by the title of the clause, consider that it is a non-competition clause as the prohibition on contacting customers has the effect of restricting the employee's professional activity and effectively preventing them from engaging in a competing activity. Therefore, they rule that the non-solicitation clause must meet the conditions of validity of a non-competition clause. Otherwise, it can be declared null and void.

IN WHICH INDUSTRY SECTORS HAS EMPLOYMENT LAW BEEN A HOT TOPIC RECENTLY? WHY?

The latest legislative developments applicable to the digital platform sector for the use of self-employed workers reflect a desire to ensure a fair balance between the flexibility inherent in this economic model and the protection of workers using this form of professional activity. The French legislator has not created an intermediate status between salaried employees and self-employed workers, applicable to workers using digital platforms to carry out their activities. However, a specific regime has gradually been put in place, enshrining the social responsibility of platforms. These platforms are required to take out insurance against workplace accidents, finance professional training and guarantee certain collective rights (eg, freedom of association, right to participate in collective movements, right to collective representation and negotiation of collective agreements for the sector). The law also provides for greater autonomy for these workers in the performance of their services, particularly in the transport sector with regard to the choice of working hours, periods of inactivity, routes and the materials and equipment used (subject to compliance with legal health and safety obligations).

Recent case law has clarified the criteria for determining the existence of a relationship of subordination between a platform and a self-employed worker, which is an essential condition for reclassifying the relationship as an employment contract. In several recent cases involving delivery drivers and Deliveroo, the Paris Court of Appeal found that a relationship of subordination existed on the basis of the following findings: strict rules governing the organisation of work imposed by the platform, a lack of freedom in setting rates and working conditions (choice of route, imposed working hours) and the exercise of a power of sanction similar to that of a traditional employer, characterised by the possibility of temporarily or permanently disconnecting the worker's account in the event of observed breaches. Conversely, a relationship of subordination is ruled out when the worker has real autonomy in the organisation of their activity: freedom to choose working hours and areas of operation, possibility of working for several platforms. In any case, it should be noted that the courts are not bound by the independence claimed by the worker if their analysis of the facts shows that the worker is in fact in a situation of permanent dependence on the platform. Case law in this area is therefore based on detailed case-by-case analysis.

In a completely different field, the implementation of the new job classification grid resulting from the new national collective agreement for the metalworking industry, which came into force on 1 January 2024, is a major challenge for all companies in this sector. This new agreement has profoundly changed the way jobs are classified, based on new criteria common to all jobs. This new classification, which also affects the minimum remuneration of employees, applies to all jobs without repeating the old distinctions that were applicable in the metalworking industry between workers, technicians, supervisors, executives and engineers. Job classification is now based on a single distinction between executive and non-executive employees. In the interests of transparency, the new collective agreement requires employers to communicate the new classification of each employee's job individually and in writing. The implementation of this new agreement exposes employers to the risk of individual disputes, particularly regarding the assessment of classification criteria, as employees may feel that the classifications used do not correspond to the reality of their duties, to their level of responsibility. However, the burden of proof lies with them to demonstrate that the duties actually performed correspond to a higher classification than that used by the employer.

WHAT ARE THE KEY POLITICAL DEBATES ABOUT EMPLOYMENT CURRENTLY PLAYING OUT IN YOUR JURISDICTION? WHAT EFFECTS ARE THEY HAVING?

Current political debates are focused on the suspension of the latest pension reform, which was enacted by a law on 14 April 2023. This reform was in line with previous reforms aimed at raising the effective retirement age for French citizens and bringing it closer to the European average. It also made it possible to adapt the French pension system to a relatively static demographic trend and the country's economic imperatives. The legal retirement age was raised from 62 to 64 (gradually over time, with a target of 64 to be reached in 2030), and the number of contribution quarters required to be eligible for retirement benefits was increased (to 172 quarters, or 43 years, starting in 2027). In addition, the early retirement and phased retirement schemes were adjusted.

Against a backdrop of significant political instability, the new government has proposed temporarily suspending this reform until January 2028 (ie, after the next presidential election in 2027). This suspension concerns two key parameters: the legal retirement age, which would be frozen at 62 years and 9 months, and the contribution period, which would be frozen at 170 quarters. At this stage, however, no effective measures have been adopted. The suspension proposal still has to be debated in Parliament, a debate that promises to be particularly difficult given how divisive the issue has been for years. There is therefore no certainty that this suspension will be successful. It should be noted that in France, mandatory pension schemes (pay-as-you-go pension systems in which workers contribute to finance the pensions of retirees) account for the vast majority of retirement pensions paid (98 per cent). Private supplementary pension schemes (funded pension schemes) are very underdeveloped compared to other OECD countries.

The Inside Track

WHAT ARE THE PARTICULAR SKILLS THAT CLIENTS ARE LOOKING FOR IN AN EFFECTIVE LABOUR & EMPLOYMENT LAWYER?

The practice of labour law requires a combination of technical and interpersonal skills, as the human factor is often at the heart of this field. A lawyer specialising in labour law must obviously have solid and up-to-date knowledge of the Labour Code, collective agreements and employment case law, but they must also be attentive to the human factor. Furthermore, as reforms are frequent in this area, clients expect their labour law attorney to be able to anticipate legislative changes and adapt their legal strategies accordingly.

A relationship of trust is also essential. It is built over time and is based on the ability to listen to clients, understand their expectations and their business and educate companies on a complex subject that has historically been very protective of employees. In litigation matters, clients appreciate it when their lawyer clearly explains the strategy adopted, the risks and the chances of success so that they can assess the advisability of seeking an amicable solution rather than pursuing litigation with an uncertain outcome.

In short, experience shows that clients look for a combination of specialised legal expertise, strong interpersonal skills and the ability to translate the complexity of the law into concrete and accessible solutions.

WHAT ARE THE KEY CONSIDERATIONS FOR CLIENTS AND THEIR LAWYERS WHEN HANDLING EMPLOYMENT DISPUTES?

As mentioned above, French labour law has historically been very protective of employees, which means that the courts often take a very strict stance towards companies. In this regard, it is important to have a good understanding of how the relevant courts work, particularly the labour courts, which rule on employment disputes. This understanding is obviously the result of many years of experience in labour court litigation.

When a dispute arises, it is essential to consider all possible resolution strategies, often giving priority to seeking amicable solutions. Our approach in this regard is almost systematic, and we often advise our clients to negotiate settlements whenever possible, allowing disputes to be resolved within a reasonable time frame and securing the end of the relationship with employees through mutual waiver clauses for any future action concerning both the termination and the performance of the employment contract. We assist our clients throughout the negotiation process, then in drafting settlement agreements and implementing them.

WHAT ARE THE MOST INTERESTING AND CHALLENGING CASES YOU HAVE DEALT WITH IN THE PAST YEAR?

Over the past few years, we have developed specific expertise in conducting internal investigations into harassment, discrimination, corruption and, more broadly, disciplinary matters. In this context, we have recently intervened on several occasions, either to support those in charge of the investigation within the company, or as investigators on behalf of companies wishing to outsource the investigation for reasons of confidentiality and neutrality, given the positions held by those involved in reported incidents.

As external investigators, we have been involved in all stages of the investigation: from the initial verification of allegations and the conduct of interviews to the drafting of the final report and its release, accompanied by recommendations in the event of internal procedural malfunctions revealed by the investigation. We also advised the companies concerned on how to communicate the results of the investigation to both the whistleblowers and the employees involved.

The practice we have developed in this area incorporates the following observation: courts require internal investigations to be conducted with rigour, impartiality, confidentiality, respect for the adversarial process, and within a reasonable time frame, in order to ensure a balance between the protection of employees and the need for companies to verify the truth and materiality of the reported facts.

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