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**HR & EMPLOYMENT LAW E-ALERT**

**1. Unemployment benefits**

- **1 July 2014 : Entry into force of the new length of the delay before the employee can receive unemployment benefits for supra-legal indemnities**

The new Agreement on unemployment benefits (i.e. “*Convention d’assurance chômage*”) dated 14 May 2014, provides that employees who receive termination payment in excess of legally required payments may have to wait an additional period of time before they can receive unemployment benefits (except in cases of collective redundancy). The length of the delay before the employee can receive unemployment benefits is extended to 180 days (6 months) instead of 75 days.

The extension of this length of delay might directly impact the negotiations between employer and employee in the framework of the discussions on the conclusion of a termination by mutual agreement (i.e. ‘*rupture conventionnelle*’) or a settlement agreement.

**2. Supplementary social protection**

- **1 June 2014 : Entry into force of the new mechanism regarding the continuation of coverage for the reimbursement of healthcare costs and daily allowance of the French Social Security for maternity (i.e. ‘*IJSS*’)**

All companies (including companies that do not belong to a branch-sector of activity represented by the Medef, the CGPME or the UPA) must ensure the continuation of coverage for the reimbursement of healthcare costs to their former employees as provided for by new Article L. 911-8 of the French Social Security Code.

The maximum term of portability is extended to 12 months (instead of the 9 months period previously applicable) and consecutive contracts concluded with the same employer are taken into account. As a result, the continuation of benefits starts from the termination date of the employment contract. Its term is equal to the unemployment compensation period, limited to the term of the most recent employment contract or, where applicable, of the most recent employment contracts where they are consecutive contracts concluded with the same employer, capped at 12 months.

The maintaining of coverage for the reimbursement of healthcare insurance coverage is now free of charge for the former employees.

The employer has the obligation to inform the employee on the continuation of benefits in the employment certificate. The employer must also inform the insurer of the employment contract's termination.

- **1 July 2014 : Mandatory negotiation (at the company level) for the implementation of a complementary health insurance for the reimbursement of healthcare costs**

As from 1 July 2014, companies which are not covered by a minimum mandatory collective coverage must initiate negotiations on the implementation of a complementary health insurance related to the reimbursement of healthcare costs. This applies to companies in which a union representative has been appointed (*Article L. 2242-11 of the French Labour Code*).

- **1 July 2015: Entry into force of the new mechanism regarding continuation and portability of rights for disability and life insurance benefits (i.e. death, temporary and permanent disability)**

The mechanism regarding continuation and portability of rights for disability and life insurance benefits is postponed to 1 June 2015.

### **3. Implementation of the new single database (i.e. 'Base de Données Economiques et Sociales or 'BDES')**

- **14 June 2014 : All companies with 300 or more employees must have set up a single database for economic and employment information ("BDES")**

This single database must be set up at the company level (or at the economic and social unit) in print or electronic form (*article R. 2323-1-7 of the French Labour Code*). The single database must be permanently available to the members of the Works Council (or Employee delegates, in the absence of a Works Council) as well as to the Central Works Council members, the members of the Hygiene, Safety and Working Condition Committee (i.e. "CHSCT") and the Trade Union delegates (*Article L. 2323-7-2 of the French Labour Code*).

This database must contain a minimum of economic and financial information which are necessary to the consultation of the Works Council on the company's strategic direction. The content of this information is described in *Article R. 2323-1-3 of the French Labour Code* for companies with 300 or more employees, as follows:

- Investments ;
- Equity capital, indebtedness and taxes;
- Remuneration of employees and managers;
- Social and cultural activities;
- Financial remuneration not included in equity capital, indebtedness and taxes;
- Financial flows to the company;
- Subcontracting;
- For the companies belonging to a group, commercial and financial transfers between group entities.

The database also includes all reports and documentation which must be communicated to the Works Council on a periodic basis. The single database must contain information for the current year, and the two previous years and will incorporate the outlook for the next three years.

The modalities for access, consultation and use of this single database must be laid down by a collective agreement signed with trade union organizations, or otherwise set up by the employer.

- **14 June 2015 : Companies with more than 50 employees but fewer than 300 employees must have set up a single database for economic and employment information (i.e. “BDES”)**

In companies with more than 50 employees but fewer than 300 employees the obligation to set up a single database is postponed to 14 June 2015.

Failure from the employer to set up a single database within the time limit set for this purpose is a criminal offence that may be punished for the company’s legal representative by a maximum fine of € 3,750 and/or a maximum of one year of imprisonment. The legal entity could also be punished by a maximum fine of € 18,750.

The single database aims at increasing the social dialogue by allowing a consultation every year of the Works Council on the company’s strategic direction with an outlook for the next three years.

Companies must therefore anticipate from a practical standpoint, all the issues arising from this reform and in particular: (i) the approach (minimalist or maximalist), (ii) the database support (paper or electronic database) and its implications with regard to the IT Charter of the company and/or its internal regulation, (iii) the sensitive issue of confidentiality related to the information, (iv), the appointment of a person responsible for the single database and its implications in terms of power of attorney.

#### **4. Professional training**

- **1 January 2015 : Entry into force of the reform on professional training (*Law no 2014-288 of 5 March 2014*)**

The Law no 2014-288 of 5 March 2014 includes several provisions that amend the current Individual Right to Training (i.e. “*Droit Individuel à la Formation*” or “*DIF*”) and impose new obligations on companies with regard to career development review meeting.

As from 1 January 2015, the current Individual Right to Training (“*DIF*”) will be replaced by the Personal Training Account (“*Compte Personnel de Formation*” or “*CPF*”). The hours accrued under the Individual Right to Training (“*DIF*”) and not used as of 31 December 2014, will be transferred to the Personal Training Account (“*CPF*”).

The holder of a Personal Training Account (“*CPF*”) will keep it throughout his/her professional life, until retirement, regardless his/her status (i.e. employee or job seeker).

Each employee will acquire 24 hours per year (for a full-time employment), up to a maximum of 150 hours , and then 12 hours per year, until a 150 hours ceiling (*Article L. 6323-11 of the French Labour Code*). For part-time employees, the training hours will accrue in proportion to the time effectively worked. Additional hours may be allocated to the Personal Training Account (“*CPF*”) pursuant to a collective agreement.

In all companies, each employee must benefit from a career development review meeting every two years (or after a long-term illness or sick leave) that shall be held by the employer. This review will address the employee’s career development prospects, in particular in terms of professional qualifications and employment within the company.

Every six years, the career development review meeting shall include a status report on then employee’s career path within the company. In companies with at least 50 employees, if the employee has not had these formalized career development review meetings, the employer must credit his/her Personal Training Account (“*CPF*”) by 100 hours, increased to 130 hours for part-time employees as financial sanction (*Article L. 6323-13 of the French Labour Code*).

In companies with at least 50 employees, the consultation of the Works Council on the professional training plan (*Article L. 2323-34 of the French Labour Code*) must now include a consultation on the implementation of the plan in the previous year, and the current year, and on the draft action plan for the coming year.

All companies will have to pay a single contribution as per the training costs to their OPCA (i.e. the “*Organisme Paritaires Collecteurs Agréés*” which is the French social partners’ bodies collecting and regulating funds for training). The amount of this training costs contribution is equal to 1% of the remunerations to the financing of in companies with less than 10 employees, and to 0.55% of the remuneration in companies with at least 10 employees.

As from 1 January 2015, all Works Council must have appointed a treasurer (*Article L. 2325-1 of the French Labour Code*) keep a specific account and set up an internal regulation pursuant to the professional training reform.

## **5. Professional Elections**

- **Professional elections : The Law no 2014-288 of 5 March 2014 clarifies the rules governing the validity of the different clauses related to the Pre-electoral Protocol**

The Law no 2014-288 of 5 March 2014 provides that the double majority rule governing the validity of the Pre-electoral Protocol shall apply, except where otherwise provided by law and specifies the subject areas in which the double majority is required. Articles L. 2314-3-1 (for Employee Delegates) and L. 2324-4-1 (for the Works Council) of the French Labour Code have been amended to this effect.

In addition, where unanimity is required, the new provisions of the French Labour Code provide that the rule of majority relates only to the representative trade unions within the company. Therefore, a trade union of the company which is representative at the branch level and/or at the national or interprofessional level but which is not representative within the company could no longer prevent the signing of the Pre-electoral Protocol.

The unanimity rule applies to:

- the possible modification of the number and composition of the colleges for the election of Employee Delegates (*Article L. 2314-10 of the French Labour Code*) and the members of the Works Council (*Article L. 2324-12 of the French Labour Code*) ;
- the organization of the voting outside the working hours for the election of Employee Delegates (*Article L. 2314-22 of the French Labour Code*) and the members of the Works Council (*Article L. 2324-20 of the French Labour Code*).

## **6. Annual day packages (i.e. ‘forfait-jours’)**

- **Working time : the SYNTEC branch secures annual working day**

Further to the decision of the French Supreme Court rendered on 24 April 2013 that invalidated the annual working day system (“*forfait-jours*”) provided for by the national collective bargaining agreement (NCBA) applicable within engineering offices and consulting companies industry (“SYNTEC” NCBA), the social partners of the SYNTEC branch have entered into an agreement at the industry-wide level to amend the current provisions in order to secure for the recourse to annual working day system (“*forfait-jours*”) provided for in the National Agreement of 22 June 1999 related to working time.

The amendment was signed on 1 April 2014 by the three following trade unions (the CFDT, the CGC, the SYNTEC Federation) and completes the Agreement of 19 February 2013 related to health and psychosocial risks in the workplace.

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