March 2016

FLASH INFO

1. Analysis of the future Labor Law Bill

After its presentation in a revised version, before the Council of Ministers, on March 24th, the bill is being examined by the National Assembly; it will then be discussed by the Senate for final adoption this summer.

Beyond debates raised by the text, it is useful to focus on the upcoming changes.

❖ ***Organization of working time:***

- By collective agreement, it would be possible to arrange working time over a period exceeding the year, within the limit of 3 years. In the absence of collective agreement, working time could be organized over a period of 4 weeks, or 16 weeks in companies with less than 50 employees.

❖ ***Collective bargaining:***

- The majority agreement becomes the rule for collective agreements on working time. Therefore to be valid, either an agreement is signed by one or more unions representing at least 50% of the votes in the first round of the last professional elections (1); or an agreement is signed by one or more unions representing at least 30% of the vote and approved by a referendum of employees (2).

- The duration of collective agreements would be set at 5 years, unless they are set for another term (fixed or indefinite).

- The concept of "maintenance of individual advantage acquired" provided in case of denunciation or reconsideration of the collective agreement would be replaced by "maintenance of remuneration". Employees would keep remuneration, which the annual amount for a period of equivalent work provided by their contracts cannot be lower than the remuneration paid during the last 12 months.

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❖ ***Termination:***

- In case of termination without a real and serious cause, the damages could be awarded according to a simple indicative scale that would be limited to a maximum of 3, 6, 9, 12 or 15 months' salary depending on seniority of the employee.

- The concept of "economic difficulties" should be clarified in the new definition of redundancy. According to the draft law, they should be characterized by either a decrease in orders or booking for several quarters, with operating losses for several months, or by a significant deterioration in cash. According to the Prime Minister, the judge will verify if multinationals do not artificially structure their economic difficulties on the French territory.

- The economic difficulties should be determined only at the company level if the latter does not belong to a group, or at the common business sector established in the national territory if the company belongs to a group.

❖ ***Working time:***

- Extension of the company/establishment agreement primacy's rule over the branch agreement for adapting the rules on working time. Possibility of negotiating at the company's level towards working hours on expanded themes (on-call system, equivalence ...)

- The increase rate for overtime remains unchanged. However, in the future, it would be possible to derogate from the branch to increase overtime to 10%.

- The average maximum weekly working time remains of 44 hours, but is appreciated over a period of 16 consecutive weeks instead of 12. This maximum may be increased to 46 hours by administrative authorization or collective agreement

In the current status of the text, it is stated that the legal weekly working hours remains 35 hours, and the maximum daily work is still 10 hours with the possibility in some cases to go up to 12 hours by collective agreement or administrative authorization. In addition, the maximum working hours on a secluded week would remain of 48 hours, with the possibility of up to 60 hours if authorized in exceptional situations. As for the minimum daily rest period, it would remain fixed at 11 hours. Amended by the Macron Act of 2015, provisions on weekly rest periods and Sunday work would not be affected. Finally, the minimum period of 24 hours would be maintained for part-time employees, with the present exceptions.

2. Ministerial details on employee savings

By a ministerial instruction consisting of 58 questions/answers, the administration clarifies the modification in employee savings provided by Macron Act and its implementing decrees of 2015 November and December.

This instruction precises in particular the reduction of the "forfait social" applying to voluntary and mandatory profit sharing in companies having less than 50 employees, the lowering of the rate applicable to the "forfait social" from voluntary and mandatory profit sharing, and from the employer's contribution paid into a Perco. This instruction also goes back on the default mechanism for allocating sums from profit sharing.

Interministerial Instruction No. DGT/RT3/DSS/DGTRESOR/201645 of February 18, 2016

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3. Entry into force of the addendum to the unemployment insurance agreement

Social partners, by the addendum of December 18th 2015 to the UNEDIC agreement of May 14th 2014, agreed to amend the UNEDIC regulation to take account of the decision of the French Council of State of October 5th 2015 that had canceled the agreement for unlawful measures.

Main change: the allowances resulting from the termination of the employment contract, when awarded by the court are not taken into account for the calculation of specific unemployment compensation deferred.

Decree of February 19th 2016 approving the addendum of December 18th 2015 to the UNEDIC convention.

4. Grouping of staff representative bodies: publication of the decrees

The decree on the new "delegation unique du personnel" (DUP) made pursuant to the Rebsamen law of August 17th 2015 is finally released. Any company with less than 300 employees can set up a DUP involving aso the health and safety committee , when setting up or renewing the work council, employees delegates or health and safety committee. The Decree of March 23rd 2016 determines the composition and operation of the body.

The decree on the single instance is released. As a reminder, company with less than 300 employees, as well as, regardless of the size, belonging to economic and social unit involving at least 300 employees have the option, subject to a majority agreement to combine in a single instance work council, employees delegates and health and safety committee, or only two of these institutions. The decree determines the composition of the body and the hours of training and delegation members of the body.

Decree No 2016-345 of 23 March 2016 and Decree No 2016-346 of 23 March 2016

5. Equality of treatment: employees working in alternating teams

The principle of "equal work, equal pay" comes from equality of treatment. Therefore, it is prohibited for employers to make differences in the payment of employees placed in an identical situation.

In this case, an employee had filed a lawsuit the French Labor Court before asking for the payment of a premium "meal time" by taking advantage of a break of equal treatment. The premium "meal time" was under the company agreement, granted only to employees working in 2x8 or 3x8, and excluded employees working in overnight fixed post.
For the French Supreme Court, the employer may only grant to employees working in alternating team a premium to compensate the special subjection resulting from the variability of the meal time. This advantage is explained by objective reasons justifying different treatment between these employees and those working in a fixed position, be it day or night. Therefore the Court rejects the employee's claim.

French Supreme Court, Employment Section, dated March 2, 2016 No. 14-11.991

6. Individual advantage acquired and compensation

It is settled by cases law that the compensation resulting from a denounced collective agreement becomes by the end of a determined period of time, an individual advantage acquired incorporated in employment contract. The employer cannot change it without the employees consent, even if the new terms are more favorable.

In the judgment of March 2, 2016, the French Supreme Court completes its case law holding that a unilateral commitment of the employer which is contrary to this principle cannot be binding.

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In this case, the employees had vacation bonuses as an individual advantage acquired following the denunciation of an collective agreement. To oppose the freezing of premiums, several employees have filed a lawsuit based on the unilateral commitment of the employer to incorporate the disputed bonuses in the increasing wage base. If the Court of Appeal ruled for the employees, the French Supreme Court reversed the reasoning adopted. Employees could not oppose the freezing of their premiums on the basis of a unilateral commitment to the employer, because it is not binding.

French Supreme Court, Employment Section, dated March 2, 2016 No. 14-16.414

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