DECEMBER 2019

Employment Law

NEWSLETTER

1. IMPLEMENTATION OF A SOCIAL AND ECONOMIC COMMITTEE STARTING 31ST DECEMBER: THE MINISTER OF LABOUR REJECTS ANY EXTENSION OF THE DEADLINE

Order n 2017-1386 dated September 22nd, 2017, JO September 23rd; Decree 2017-1819 December 29th, 2017

Companies employing more than 11 employees, that did not implement already their social and economic committee, will soon be in breach. The deadline of 31st December will not be postponed despite the request from several unions.

➢ **Starting December 31st, 2020**

- The social and economic committee will replace the representative bodies previously in place (Works Council, staff delegates, health, safety and working conditions committee).

- In order to comply with this date, the social and economic committee's election should begin no later than October.

➢ **The request to extend the deadline rejected**

- On October 24th, 2020, the unions requested the Minister of Labour to extend this deadline, since most of the companies with over 11 employees did not start the implementation of the social and economic committee.

➢ **The risks incurred by compagnies in breach starting January 1st, 2020**

- Infringement of the constitution of the CSE is a criminal offence ("*délit d'entrave*") punished by a EUR 7,500 fine and 1-year imprisonment.

- Payment of damages to the unions requesting the payment of a compensation for damages from the employers being opposed to implementation of social and economic committee (*French Supreme Court, May 7th, 2002. n 00-60.282*).

- Payment of compensations for damages to the employees, provided that the failure to set up the social and economic committee necessarily caused them prejudice based on the deprivation of any representation and defence of their interests (*French supreme court May 17th, 2011 n 10-12.852; French supreme court May 15th, 2019, n 17-22.224*).

- Suspension of ongoing projects requiring prior consultation of the social and economic committee.

2. DISABLED WORKERS: WHAT CHANGES STARTING JANUARY 1ST, 2020

➢ Declaration of employment of disabled workers

All compagnies will be required to record the number of their disabled workers. The statement will be completed via the Nominative Social Declaration (DSN).

Accordingly, the reporting obligation will apply as well to employers not being subject to the requirement to employ disabled workers.

➢ Requirement to employ disabled workers

Maintaining the 20-employee threshold: All companies employing at least 20 employees should count in their staff at least 6% of beneficiaries of the obligation to employ disabled workers.

20-employees threshold assessed at company level instead of establishment level: The threshold for liability will no longer be the establishment but the company. Consequently, new compagnies will now enter the scope of the OEDW.

➢ 6% rate subject to review every 5 years

The employment rate remains at 6%. However, it may be revised every 5 years without falling below 6%.

➢ Recovery of the contribution

The recovery of the contribution will be carried out by the URSSAF and the AMM funds instead of the AGEFIPH.

➢ Removal of discounts

Previously, the amount of the contribution could be reduced by taking into account the effort made by the company to recruit or requalify disabled workers. From this point forward, the discounts are removed in favour of a specific valuation of the beneficiaries of the employment requirement of 50 years and above.

3. TEAM BUILDING: BEWARE EXTREME ACTIVITIES!

French Supreme Court, October 23rd, 2019, n 18-14.260 D

The organisation by a manager of a team building for his management team, provided by a service provider, comprising a test that consisted in "*breaking a glass bottle wrapped in a napkin with a hammer, placing the broken glass on a piece of cloth lying on the floor and taking a few steps barefoot on the glass thus broken*", was considered a breach of its obligation to ensure a safe result.

Therefore, the dismissal for serious misconduct of the manager is justified.

4. LUMP SUM: THE MECHANISM FOR SECURING THE LABOUR LAW DOES NOT APPLY TO AGREEMENTS REVISED BEFORE THE LABOUR LAW DATED AUGUST 8TH, 2016

French Supreme Court, October 16th, 2019, n 18-16.539 FSPBRI

A lump-sum collective agreement, concluded in 2011, was based on an amendment to the hotels, cafés and restaurants' CBA dated July 13th, 2004.

However, as the French Supreme Court reached out the conclusion that this collective agreement was invalid (*French Supreme Court July 7th, 2015, n 13-26.044*), a new amendment was concluded December 16th, 2014.

The employer argued that the provisions of this new amendment substituted to the previous amendment, concluding that the lump sum agreement in days in the employment contract was valid.

According to the latter, the new amendment automatically secured the lump-sum agreement in days concluded under the July 13th,2004 amendment, without the requirement of obtaining the employee's prior consent in this respect.

The judges did not follow this reasoning. According to the Court, the employer could not defer to the new collective agreement, as he should have submitted an amendment to the employee's employment contract. Therefore, the lump sum agreement was declared invalid.

- **Mechanism for securing the Labour law dated August 8th, 2016 applies only to revision amendments concluded subsequently to the Labour law**

In the current case, the amendment was extended several months prior to the publication of the Labour Act, establishing a mechanism for securing lump sum agreements: if these agreements were to be revised in order to comply with the law, the implementation of the individual annual contract in hours or days would continue without requesting the employee's prior consent.

Nevertheless, the security mechanism only applies to revision amendments concluded following the publication of the Labour Law.

Therefore, the only two following options incur:

- Either the revision amendment was entered into after August 9th, 2016 and the employer is not required to obtain the employee's agreement.

- Either the revision amendment was concluded before that date, the security mechanism does not apply, and the employer therefore requires the employee's prior consent.

5. SANCTION OF THE ABSENCE OF AN ASSESSMENT CLAUSE IN THE AGREEMENTS ESTABLISHING A PROVIDENT SCHEME AND/OR A HEALTH CARE PLAN

French Supreme Court, October 9th, 2019, n°18-13.314

Professional or interprofessional agreements establishing collective guarantees may include recommendation clauses from one or more insurance companies.

The agreement, thus derogating from the requirement of free competition and freedom to undertake, must provide the conditions, the frequency (maximum 5 years), and the arrangements for organising the assessment of the recommendation clause.

Lack of conformity, the agreement is illicit in its entirety.

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