On 31 August 2017 the French government published draft administrative orders setting out details of the labour law reforms on which consultation has been under way since the election of Emmanuel Macron as president in May.

The changes are intended to tackle unemployment, and stimulate France’s economy by providing a simpler and more secure set of rules for employers and investors. The most important reforms relate to rules on termination of employment, employee representation and collective negotiation.

We summarise the main changes below:

**Termination of employment**

A cap set on damages for unfair dismissal

Currently the amount of damages that a labour court can award for unfair dismissal is unlimited, and the minimum for an employee with at least two years’ service is six months’ pay.

The reforms provide that both minima and maxima will apply. The minimum (again after two years’ service) will be reduced to three months, and lower minima will apply in companies with fewer than 11 employees. The maximum will range from one to 20 months’ gross pay, depending upon length of service: for service up to seven years, the maximum award will be one month’s pay per year plus an extra month, and thereafter the maximum increases more slowly (e.g. 10 months’ pay for 10 years’ service, 15.5 months’ pay for 20 years).

It should be assumed that for these purposes “gross pay” means total remuneration including variable pay and benefits in kind, though this remains to be confirmed.

The new maxima will not apply in certain circumstances (e.g. where the employee was dismissed in breach of a fundamental civil liberty or in circumstances of discrimination, whistleblowing (in respect of criminal activity), sexual harassment or bullying).

Introduction of measures to avoid procedural errors

The government proposes to introduce template dismissal letters which will include a reminder of the parties’ rights and obligations. In addition, if the dismissal grounds stated in the letter are unclear or incomplete, the employer will have the right to rectify this either at its own initiative or at the request of the employee. The aim is that the employer should not have to pay more than one month’s pay in damages if it commits procedural errors but the dismissal is justified.

The changes listed above are to apply to dismissals notified after publication of the relevant administrative order at the end of September.

A new framework for the grounds justifying economic dismissals

At present the question of whether a dismissal on economic grounds was fair is assessed by reference to the economic situation of the group to which the employer belongs, or at least that of the relevant division of the group on a worldwide basis. This means if a French subsidiary consistently makes losses but belongs to a group that is profitable worldwide, economic dismissals challenged in court are likely to be judged unfair, resulting in awards of damages.
In future, if the employer belongs to a group, the economic grounds will be assessed by reference solely to group companies that are established in France and operate in the same business sector. This change is to apply to economic dismissal procedures launched after publication of the relevant administrative order at the end of September.

**Suppression of redeployment obligation outside France**
Currently the employer has to ask redundant employees whether they are willing to receive details of vacancies located outside France within the group; if so, any suitable positions must be offered to them. This obligation is to be abolished.

**Introduction of new time limit for redundancy consultation**
At present employee representative consultation procedures on collective dismissals are only subject to a time limit (between two and four months depending on the number of employees impacted) if at least 10 dismissals are planned. A new time limit of one month will apply to smaller collective dismissals.

**A simplified legal framework for voluntary redundancies**
The reforms will introduce a new statutory procedure for voluntary redundancy programmes. Currently no such procedure exists, so employers have to carry out works council consultations as if they were planning a collective dismissal. The new procedure will involve negotiating a collective agreement with the union delegates setting out the maximum number of departures, candidacy and selection processes and external redeployment measures. The employer will then need to obtain permission from the labour authorities to implement the plan.

**Reduction of the limitation period for termination-related claims**
This is to be reduced from two years to twelve months in all cases.

**Employee representation**

**Simplification of existing employee representative bodies**
The reforms aim to simplify employee representation by merging the works council, the employee delegates and the health and safety committee into a single body called the social and economic council. The new body is to be elected when existing employee representatives’ mandates expire, and by 31 December 2019 at latest. If current employee representatives’ mandates expire before the end of 2018, the employer will have the right to extend them by up to 12 months before setting up the new body.

In companies with at least 50 employees, members of the social and economic council will be subject to a limit of three consecutive four-year mandates.

In companies with at least 300 employees, the social and economic council will elect a health and safety commission.

**Collective negotiations**

**Greater scope for negotiation at company level**
The reforms aim to increase the range of matters on which a company-level collective agreement can derogate from the provisions of a sector-wide agreement. The approach is to define a limited number of subjects on which sector-wide agreements either override company-level agreements as a matter of course or are allowed to provide that they do so (examples include minimum wages and working time rules); company-level agreements on any other subject will override the provisions of the applicable sector-wide agreement.

Negotiation in small companies is facilitated
Currently, collective agreements may only be entered into with union delegates which are only mandatory in companies employing more than 50 employees. The reform provides that companies with a headcount below 11 (or up to 20 if there is no social and economic council) will now be able to enter into collective agreements on all negotiable subjects by obtaining ratification from two thirds of the workforce. Further, companies with 11-50 employees that have no union delegates will be able to enter into collective agreements with employees mandated by a union or with one or more members of the social and economic council.

More flexibility on fixed-term and temporary employment
The reforms provide that certain statutory rules on the use of such employment contracts (e.g. maximum duration, maximum number of renewals, minimum waiting period between two successive contracts relating to the same role) will only apply where there is no sector-wide collective bargaining agreement determining the applicable rules.

A widened scope for project-based employment contracts
In the construction sector, it is possible to hire staff under project-based employment contracts (*contrats de chantier*). These are indefinite-term contracts expressly linked to the completion of an identified building project, which can fairly be terminated when work on the relevant site/project is completed (without carrying out redundancy consultation procedures). The reforms provide that sector-wide collective agreements can authorise the use of such contracts in any business sector; such an agreement would need to define the circumstances in which such contracts can be used, and would have to be “extended” to mandatory sector-wide application by administrative decree.
**What’s next?**

Reactions to the reforms from the national trade unions have been negative, but not as much as expected. Public demonstrations are taking place, but it seems likely that most or all of the changes will come into force in the coming weeks.

The legislation authorising the French government to implement these reforms was unsuccessfully challenged by left-wing members of parliament in the French constitutional court. The administrative orders are now expected to be finalised and officially published by the end of September. Most of the changes should come then into force on publication, although the government will need to submit further legislation to parliament in order for the administrative orders to be ratified.

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