

May 2018

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Spotlight on France Rebranding Strategy: Macron Ordinances Reshape the Rules of Termination

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One of the aims of the business-friendly Macron job reform (September–December 2017) is to ensure more legal and thus financial security for employers when dismissing employees by setting forth more restrictive rules to the detriment of employees' rights.

I. New Rules Restricting the Amounts of Damage Awards in Case of Wrongful Termination

Former rules: Employees having at least two years of service and who were employed by a company with more than 10 employees were granted minimum damages of six months of salary in case of wrongful dismissal. Other employees were eligible for damages awarded at the discretion of the judge. In both cases, damage awards were not capped.

New rules: The Macron Ordinances have created a precise scale of damages providing very low minimum amounts such as detailed below:

Years of service of the employee at the company	Minimum indemnity (gross monthly salary)		Maximum indemnity (gross monthly salary)
	Companies having more than 11 employees	Companies having less than 11 employees	
0	Not applicable		1 month
1	1 month	0.5 month	2 months
2	3 months	0.5 month	3.5 months
3		1 month	4 months
4		1 month	5 months
5		1.5 months	6 months
6		1.5 months	7 months
7		2 months	8 months
8		2 months	8 months
9		2.5 months	9 months
10		2.5 months	10 months
11		3 months	
12			11 months
13			11.5 months
14			12 months
15			13 months
16			13.5 months



Years of service of the employee at the company	Minimum indemnity (gross monthly salary)		Maximum indemnity (gross monthly salary)
	Companies having more than 11 employees	Companies having less than 11 employees	
17	3 months		14 months
18			14.5 months
19			15 months
20			15.5 months
21			16 months
22			16.5 months
23			17 months
24			17.5 months
25			18 months
26			18.5 months
27			19 months
28			19.5 months
29			20 months
30			20 months

It is worth noting that this scale is not applicable to damages granted by the judge in case of sexual or moral harassment, discrimination or violation of any fundamental right (e.g., right to strike, to take legal action, to join a union, etc., being noted that French law does not provide any fixed list of the said fundamental rights). It must therefore be anticipated that, in order to elude the enforcement of this scale, employees will be likely to claim that they have been harassed, discriminated or that a fundamental right has been violated.

II. Shorter Length of the Statute of Limitations Applicable to Claims for Wrongful Termination

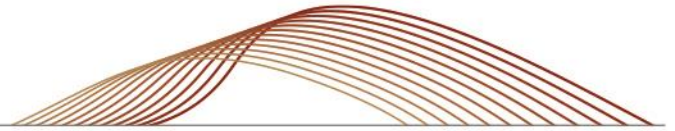
Former rules: Employees who intended to challenge their termination were required to bring legal action within the 24 months following the termination of the employment agreement.

New rules: The statute of limitations has been reduced from 24 to 12 months.

This new statute of limitations is applicable to any type of termination whatever the type of employment agreement (indefinite- or fixed-term, etc.) and whatever the ground for termination except in case of discrimination or sexual/moral harassment (five years).

The statutes of limitations applicable to the payment of remuneration (three years) and the performance of the employment agreement (two years) remain unchanged.

One of the goals of this decrease is to free up French employment tribunals. It should be put into perspective with the previous Macron Act dated August 6, 2015 (Act n°2015-990). Before the latter, plaintiffs could make a claim to the employment tribunal quite easily by filling out a one-page administrative form. Since this 2015 reform, plaintiffs provide a detailed summary of their demands and the supporting exhibits to initiate the litigation procedure.



III. Some More Flexible Rules on Redundancy

A. *Reduced Scope of Assessment of the Economic Difficulties Supporting the Redundancy*

Former rules: If the French employer was an affiliated company of an international group and was facing economic difficulties, the economic rationale supporting any redundancy was to be assessed at the level of the business division of the group. Should the economic situation of the business division be profitable, any redundancy based on the sole economic situation of the French entity would have to be deemed wrongful.

New rules: The scope of assessment of the economic rationale is limited only to the France-based affiliated companies belonging to the same business division.

B. *Reduction in the Scope of the Redeployment Search*

Prior to terminating an employment agreement for economic rationale, employers are required to seek any vacant redeployment position for employees likely to be made redundant.

Former rules: The scope of the redeployment search applicable to a company belonging to an international group could include the affiliated companies located abroad when the employee concerned had agreed to receive redeployment offers based abroad.

New rules: The scope of the redeployment search is limited to France.

One may expect that these new rules relating to termination will support less complex dismissals and reduce the risk of litigation attached thereto. The quid pro quo for this increased flexibility is to facilitate recruitment of employees under indefinite-term employment agreements at a time where France—as opposed to most EU countries—shows strong signs of economic and political recovery as well as stability.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Paris lawyers:

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