

The purpose of this Employment News publication is to inform you about (1) the recent legal changes, (2) the last developments relating to the telework abroad, and (3) the most significant case law of the last three months.

1. Recent legal changes

- **Common consent termination → the new social regim applicable since 1st, September 2023**

Article 4 of a law n° 2023-270 dated 14 April 2023 introduces a new social security regime for indemnities paid through a common consent termination agreement.

1.

Previously, the social security regime applicable to common consent termination depended on the employee's age on the date of termination of the employment contract. In other words, the compensation paid to the employee was subject to a different social security regime depending on whether or not the employee was entitled to a full-rate basic pension.

Thus :

- If the employee had not reached the legal retirement age → the common consent termination indemnity was subject to a flat-rate social security contribution of 20%, payable exclusively by the employer. Beyond the amount corresponding to the legal or conventional severance pay, it was also subject to CSG-CRDS. Then, above 2 annual social security ceilings (i.e. 87,984 euros for 2023), it was subject to employer and employee social security contributions.
- If the employee had reached the legal retirement age → the severance pay was subject to social security contributions and CSG-CRDS from the first euro.

In addition, the retirement indemnity was subject to a specific contribution amounting to 50% of the indemnity paid.

2.

As of 1st September, 2023, Article 4 of the aforementioned law :

- Eliminates the difference in social security regimes applicable to the common consent termination indemnity, depending on the age of the employee;
- Replaces the flat-rate social security contribution of 20% with a single employer's contribution of 30%, payable exclusively by the employer, without distinction between employees who are entitled to a retirement pension and those who are not.

At the same time, the law also changed the system for compensation paid to an employee on retirement, making it subject to the same 30% employer's contribution.

3.

When asked about the practical application of this new system, the French Ministry of Labor indicated that it would be applied on the date of payment of the indemnity, and not at the date of execution of the common consent termination.

As a result, any payment made as part of a common consent termination after 1st September, 2023 will be subject to the new system, even if the termination was agreed before that date.

2. Focus on telework abroad

On 30 June, 2023, France officially signed the new European framework agreement, which came into force on 1st July, 2023 against a backdrop of "changing practices in the professional world and the customary use of teleworking".

The multilateral agreement signed by France maintains the possibility for cross-border employees to practice a certain part of their work from home without changing the applicable social legislation, i.e. while retaining the social coverage of the state where the company in which they are employees is located.

The agreement thus offers greater flexibility, since it stipulates that cross-border teleworking must be less than 50% of total working time, with the remaining hours to be carried out from the employer's home state. According to the government's press release, the agreement would therefore enable cross-border workers "to telework up to two and a half days a week without any change in the applicable social legislation".

The agreement thus applies to cross-border workers whose place of residence is in France and whose employer or company has its registered office or place of business in another EU member state, provided that the latter is also a signatory of the European framework agreement. Many countries have already indicated that they will sign the agreement, including Switzerland, Germany, Belgium and Luxembourg. On the other hand, the United Kingdom will not be a signatory, given the absence of the possibility of derogating from European regulations in the bilateral agreement entered into after Brexit.

Entering into force on 1st July, 2023, this agreement has been concluded for an initial term of five years.

3. Significant case law of the last 3 months

- **Supreme Court, Employment Division, 13 September 2023, n°22-17.340**

From now on, employees suffering from an illness or accident of any kind (occupational or non-occupational) are entitled to claim paid vacation entitlements by including in their calculation the period during which they were unable to work.

Until this decision, an employee suffering from a non-work-related illness or accident could not acquire paid vacation days in respect of his/her absence from work. Many employees are now entitled to claim compensation for paid leave earned during non-work-related sick leave.

- **Supreme Court, Employment Division, 13 September 2023, n°22-17.638**

In the event of an accident at work or occupational illness, the compensatory indemnity for paid leave cannot be limited to one year.

- **Supreme Court, Employment Division, 13 September 2023, n°22-10.529**
The limitation period for paid vacation pay can only begin to run if the employer has taken the necessary measures to enable the employee to effectively exercise his/her right to paid vacation.
- **Supreme Court, Employment Division, 13 September 2023, n°22-14.043**
When the employee is unable to take his/her annual paid leave during the reference year due to the exercise of his/her right to parental leave, the paid leave earned at the date of commencement of the parental leave must be carried forward to the date of resumption of work.
- **Supreme Court, Employment Division, 5 July 2023, n°21-24.122**
The professional interview is separate from the appraisal interview, but can be held on the same date. Although the appraisal interview and the performance review must be organized separately, and give rise to separate reports, there is nothing to prevent them from taking place one after the other on the same day.
- **Supreme Court, Employment Division, 5 July 2023, n°22-10.424**
The employee may require application of the collective bargaining agreement mentioned in his/her employment contract, irrespective of the one applied by the company. In application of this principle, the French Supreme Court has ruled that in individual relations, employees can always rely on the collective bargaining agreement mentioned in their employment contract.
- **Supreme Court, Civil Division, 1st June 2023, n° 21-17.804**
A work-related suicide attempt is an accident at work if it was caused by the imminent dismissal of the employee, and therefore a work-related accident.
- **Supreme Court, Employment Division, 6 September 2023, n° 22-11.661**
The starting point for the 5-day period between the invitation to the preliminary meeting and the meeting itself is the presentation of the registered letter to the employee's home address (and not the collection of the letter from the post office).
- **Supreme Court, Employment Division, 17 May 2023, n° 21-17.315**
An action to have a dismissal declared null and void on the grounds of discrimination is time-barred after 5 years from the date on which the discrimination was revealed.
- **Supreme Court, Employment Division, 28 June 2023, n°22-10.586**
Article L. 2315-30 of the French Labor Code stipulates that the agenda for CSE meetings must be sent to committee members by the chairman at least 3 days before the meeting. The employer is not entitled to rely on the minimum deadline for sending the agenda. In the Court's view, only members of the CSE can take advantage of this requirement, which was introduced in their interests.
- **Supreme Court, Employment Division, 28 June 2023, n°22-10.293**
Following the analysis adopted by the court of appeal, the supreme Court ruled that the expert does not have an automatic right to interview employees. It specifies that while it is possible to interview certain employees, three conditions must be met: (1) the interview must be useful for the accomplishment of the expert's mission; (2) the expert must obtain the express agreement of the employer; (3) and the employees concerned.
- **Supreme Court, Civil Division, 22 June 2023, n°21-18.363**
The French Supreme Court has ruled that to exempt from social security contributions the sums paid under a profit-sharing agreement, the agreement must have been filed with the administrative authorities. It also points out that this exemption only applies from the date of filing of the profit-sharing agreement, so that sums paid out prior to filing are subject to contributions.

- **Supreme Court, Employment Division, 21 June 2023, n°21-21.572**
In this decision, the Employment Division of the French Supreme Court ruled that a Court of Appeal could not consider that, by signing an amendment to his/her employment contract that did not mention his/her bonus, the employee had accepted the elimination of the latter, without characterizing a clear and unequivocal acceptance.

Consequently, in order to cancel an employee's contractual bonus, it is not sufficient for the employee to sign an amendment to his/her contract establishing a new remuneration system that no longer mentions the bonus.
- **Court of appeal of La Réunion, 4 May 2023, n° 22/00884**
If a teleworker is the victim of an accident outside the workplace, he/she must demonstrate, as any other employee, the link between the accident and work in order for it to be considered work-related. The legal presumption does not apply if the accident occurs outside the workplace.
- **Supreme Court, Employment Division, 7 June 2023, n°22-10.196**
In this decision, the French Supreme Court declared the fixed-rate agreement null and void. In the Court's view, forcing an employee to sign in for each half-day of attendance, and then print out daily computer records summarizing the volume of time worked, in addition to his/her entry and exit times, is incompatible with the genuine autonomy the employee should have in organizing his/her working hours.
- **Supreme Court, Employment Division, 20 September 2023, n° 22-13.485**
An economic dismissal may occur prior to the cessation of the company's activity if it was irremediably committed on the date of dismissal.
- **Supreme Court, Employment Division, 4 October 2023, n°21-21.059**
The adherence of a pregnant employee to the professional security contract does not exempt the employer from having to justify both an economic reason and the impossibility of maintaining the employment contract for a reason unrelated to the pregnancy. The employer to justify both an economic reason and an impossibility of maintaining the employment contract for a reason unrelated to the pregnancy.

For any question, you can liaise with
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