AXIPITER
AVOCATS D'AFFAIRES

EMPLOYMENT NEWS

January 2025

The purpose of this Employment News publication is to inform you about (**1.**) the recent legal changes of the last months, (**2.**) the new experimental obligation to set up a value-sharing mechanism, and (**3.**) the most significant case law of the last months.

1. Recent legal changes of the last months

- **Extension of the Professional Redeployment Agreement (CSP)**

  By two decrees dated December 23, 2024, published in the Journal Officiel on December 24, 2024, the Professional Redeployment Agreement has been extended by one year, i.e. until December 31, 2025.

  In addition, the system has been modified to include a new case of extension of the duration of the CSP: parental presence leave, up to the maximum duration of payment of the daily parental presence allowance.

- **Regulations governing the international mobility for work-study students**

  A decree dated December 4, 2024, published in the Journal Officiel on December 5, 2024, sets out the terms and conditions for the mobility abroad of employees who have signed an apprenticeship or professionalization contract.

  The work-study period abroad is governed by a mobility agreement, and can take two forms: the work-study student's contract with his/her home company in France is put on hold, or the work-study student is seconded to a host company. The decree specifies the obligatory terms of the mobility agreement.

  The decree also lists the guarantees to be provided to the alternant in the event of the contract being put on standby without the mobility agreement being signed by the host company.

  Finally, the decree contains provisions that apply in the event of the mobility agreement being signed without the organization of host training abroad.

- **Repeal of new models for aptitude / inaptitude notices and follow-up certificates**

  An order dated September 26, 2024, published in the Journal Officiel on October 10, 2024, had modified the templates of aptitude/unfitness notices and follow-up certificates issued by occupational health services.

  However, an order dated November 5, 2024, published in the Journal Officiel on November 21, 2024, repeals the order dated September 26, 2024. According to the Direction Générale du Travail (DGT), this decision was taken in order to prepare for the deployment of the new notices, whose entry into force has been postponed by 6 months.

  Until the entry into force of the new documents, applicable templates are therefore those from the order of October 16, 2017.

2. Focus on experimentation in value sharing

On an experimental basis, from January 1st, 2025, companies that meet certain conditions will be required to set up a value-sharing scheme.

The companies concerned are those that meet the following cumulative criteria:

- employing between 11 and 49 employees;
- constituted as commercial companies (excepted individual companies);
- not required to set up a profit-sharing scheme ("dispositif de participation");
- have made a net profit for tax purposes equal to or greater than 1% of sales in each of the last three financial years;
- not covered by a mandatory or optional profit-sharing agreement (accord de participation ou d'intéressement);
- if the company is a limited companies with worker participation ("société anonyme à participation ouvrière"), it must not have paid a dividend in respect of the to the share capital to shareholders in capital.

Companies subject to this obligation must set up :

- either a mandatory or an option profit-sharing agreement;
- a value-sharing bonus; or
- a contribution to an employee's savings plan plan.

This new obligation is being introduced on an experimental basis for a period of five years, ending on November 29, 2028.

3. Significant case law of the last months

- **Administrative Supreme Court, December 18, 2024, n ° 473640, n° 473680, n° 474392, n° 475097, n° 475100 and n° 475194**
  In the context of the presumption of resignation in the event of voluntary abandonment of position by the employee, the employer's formal notice to return to work or to justify the absence must necessarily inform the employee of the consequences of a failure to get back to work unless there is a legitimate reason for the absence.

  A number of appeals had been lodged before the Administrative Supreme Court, seeking the nullity of the provisions relating to the presumption of resignation. On top of its position to consider such provisions as legal, the Administrative Supreme Court also added a new obligation regarding the content of the formal notice, which was not provided for in the challenged decree.

- **Supreme Court, Employment Division, December 11, 2024, n° 23-16.249**
  The disciplinary layoff of a protected employee, which does not suspend the execution of the employee representative's mandate and does not entail either a modification of the employment contract or a change in working conditions, is not subject to the employee's agreement.

  For the first time, the Supreme Court clarifies the nature of this sanction, and removes the uncertainty which, as a precaution, led many employers to inform protected employees of their right to refuse a sanction affecting their working hours and remuneration.

- **Administrative Supreme Court, December 2, 2024, n°487954**
  To dismiss a protected employee for professional insufficiency, the employer must have taken the appropriate measures to satisfy its obligation to adapt the employee to his job position, but has no obligation to redeploy him/her within the company.

  Reversal case law: initially, the Administrative Supreme Court required the labor inspector to check that the employer had indeed carried out a search for a redeployment before dismissing an employee for professional insufficiency. However, this obligation was not provided for in the French Labor Code and had been imposed by case law.

  From now on, the labor inspector must ensure that the employer has fulfilled its obligation to adapt the employee's job position and, if necessary, considered assigning him/her other tasks likely to be better suited to his/her professional abilities.

- **Supreme Court, Employment Division, October 23, 2024, n°23-18.381**
  The fact that an employee uses the services of one of its employer's competitors and mentions this on social networks, in the context of his/her personal life, does not constitute a breach of the obligations arising from his/her employment contract.

  In this case, an employee working as sports manager for a fitness club was dismissed for gross misconduct for having taken part in a training session with a company's competitor and for having posted a positive report of it on social networks.

- **Supreme Court, Employment Division, October 9, 2024, n° 23-11.360**
  A claim for termination of an employment contract, based on moral harassment, is subject to a five-year statute of limitations.

  In this case, an employee had reported harassment to his employer. Following an investigation, the employee was dismissed for real and serious cause, although the letter of dismissal did not mention the complaint of moral harassment.

  More than 2 years after notification of the dismissal, the employee took his case to court, considering his dismissal was the consequence of a denunciation of moral harassment. The court of appeal ruled that the claim made by the employee more than 12 months after his dismissal was statute-barred.

  This decision has been overturned by the Supreme Court, which considered that the twelve-month limitation period applicable to the termination of an employment contract was not applicable and applied the five-year limitation period.

- **Supreme Court, Employment Division, October 2, 2024, 23-11.582**
  An employee forced to work when his/her employment contract is suspended (sick leave and maternity leave in the case) **cannot claim back salary for the working hours, and can only claim damages to compensate the harm suffered.**

- **Supreme Court, Employment Division, September 25, 2024, n° 23-11.860**
  The dismissal notified on the basis of e-mails having sexual connotations sent and received through professional IT devices/equipment is not justified and constitutes an infringement of the employee's right to privacy, leading to nullity.

  Note: the disputed emails did not constitute sexual harassment, but rather sexist jokes, it being specified that the incrimination of sexist behavior was not in force at the time of the events.

- **Supreme Court, Employment Division, September 4, 2024, n° 23-15.944**
  Non-compliance with the rules relating to daily breaks entitles the employee to compensation.

  Reversal case law: prior to this decision, the Supreme Court required proof of the existence of a prejudice due to the non-compliance with daily breaks. From now on, the violation of this rule will give rise to an automatic right to compensation.

For any question, you can liaise with
Eva KOPELMAN / Ségolène COX
AXIPITER
ek@axipiter.fr
Mob. +33 (0)6 46 72 26 70