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The French “Law Macron” Has Taken Effect: Much Ado About Nothing?

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This LawFlash focuses on dismissals and mass redundancies.

After months of tense discussions in the French Parliament, the law for the Growth, the Activity and the Equality of Economic Opportunities (Law Macron), which is intended to simplify and make the French system more flexible, has been voted by the French Parliament on 10 July and published in the legal Gazette on 7 August. This law brings adjustments to several aspects of the French labor law that will be analyzed in following LawFlashes.

The Protection of the Procedures of Mass Redundancies

The law on Protection of Employment took effect on 14 June 2013, with the aim to simplify the procedures of mass redundancies. The new Law Macron has added more flexibility to three aspects.

1. Perimeter of application of the criteria to determine the employees to be dismissed.

Before beginning a collective redundancy exercise, an employer must select the criteria it will use to determine the employees who will be dismissed by professional categories. The criteria are those set out in the applicable collective bargaining agreement, or, if none are provided, the criteria provided by the French Labor Code. These include, among others, the age, the length of service, and the family situation of an employee (although varying importance can be placed on the different criteria).

Before the Law Macron, the criteria were applied at the company level, even though they have several establishments that are not relevant to the redundancies. Now, with the Law Macron, an employer will be able to unilaterally fix the criteria’s geographical level of application. However, if no agreement is reached on this subject with staff representatives, the perimeter cannot be lower than an “employment zone” within which one or several establishments concerned by the workforce reductions are located. A decree is expected to define what an “employment zone” is.

2. Redeployment offers abroad.

When an employer deems it necessary to make an employee redundant for economic reasons, the employer must attempt to find the employee alternative employment in another position in the same company or in any other company of the group to which it belongs (in France or abroad, in any sector of activity), even if the employer has to provide the employee with further professional training.

The employer must be able to demonstrate that it has complied with its legal obligations in this respect. For that, it must ask each relevant employee about his or her wish to receive offers from a foreign company of the group and under which conditions (salaries, working time, etc.).

Effective immediately, the obligation to search a position abroad will only take place if an employee has required such a search. The employee will have to indicate his or her restrictions in terms of remuneration or place of work. A decree is expected to indicate the modalities of information of the employee on the employee's possibility to ask for reemployment offers from abroad.

3. Sanctions of the lack of motivation of the administration decision.

There are two different methods of carrying out a collective redundancy exercise and negotiating an Employment Protection Plan: (i) negotiating a collective agreement or (ii) drawing up a "unilateral document". An employer is free to choose the method, depending on the relations with the trade unions'/works council's members and the social climate in the company.

In any option, the Labor Administration will be involved from the outset and may intervene at any point in the procedure to provide comments and/or suggestions concerning the procedure or the content of the collective redundancy plan. The time periods given to the administration for validating the collective agreement or approving the unilateral document when finalized are relatively short (15 and 21 days, respectively).

Any claim concerning the collective agreement or the unilateral document must be brought before the administrative tribunal within two months of the Labor Administration's validation or approbation decision's notification date.

If the tribunal cancels the approval or validation decision, employees may be reintegrated or claim payment of damages, depending on the grounds for cancellation.

The Law Macron includes provisions for when the administration's decision is nullified because of a lack of motivation. In this particular case, it now obliges the administration to motivate its decision again within 15 days from the tribunal decision to cancel the approval or validation decision. As from the new precisions from the administration the tribunal decision to nullify the redundancy plan because of a lack of motivation, will not affect the dismissals already notified and the employees will not be awarded damages in this respect.

Damages Awarded for Unfair Dismissal: Toward an Indicative Scale

If an employee's dismissal is considered unfair (e.g., the judges consider that the economic or personal reasons of the dismissal are not sufficient), the Labor Court will order the employer to the employee (who must have at least two years of seniority) an indemnity that cannot be less than the amount of his or her last six months of gross salary.

The French Labor Code does not provide a maximum amount of damages. However, from a practical standpoint, damages in excess of 24 months is rare, although there are court decisions that have

ordered the payment of damages in the range of 36 months of gross salary in extreme cases.

Moreover, in the event that a dismissal is found to be unfair by a court, the employer could also be ordered to reimburse to the French unemployment authorities (Pôle Emploi) the benefits paid to the dismissed employee between the date of the dismissal and the date of the judgment, up to a maximum of six month of benefits.

The Law Macron tried to put in place a scale of damages with a ceiling that depended on the length of services of an employee and the number of employees in a company. By a decision rendered on 5 August 2015, the Constitutional Court censored this provision because it was a breach of equality among employees based on the number of employees of their employing company and not on their own loss.

Therefore, the Law Macron has only introduced an indicative scale that could be used by Labor Courts, but with no obligation for them to apply it.

Conclusion

The Law Macron has brought interesting adaptations but no real modifications for the current laws concerning dismissals and redundancies. Several aspects still need to be defined, for example, the “employment zones”.

The new law appears to be an evolution, but not a revolution.

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