The Legal 500 & The In-House Lawyer
Comparative Legal Guide
France: Employment & Labour Law (3rd edition)

This country-specific Q&A provides an overview to employment laws and regulations that may occur in France.

This Q&A is part of the global guide to Employment & Labour Law. For a full list of jurisdictional Q&As visit http://www.inhouselawyer.co.uk/practice-areas/employment-and-labour-law-3rd-edition/

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The Legal 500

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The Legal 500

1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful in your jurisdiction?**

   Unilateral termination of an open-ended contract must be justified by “real and serious grounds”. In the absence of such grounds, the employee is entitled to damages for unfair termination in case of litigation (please refer to question 21 regarding the potential amount of damages the employer may be ordered to pay in case of unfair dismissal).

   This requirement applies to all types of dismissal, e.g. based on:

   - disciplinary reasons (the misconduct must be serious enough);

- professional incompetence (the incompetence must be stated objectively and over a sufficient period of time);
- physical unfitness (the company must follow the unfitness procedure and attempt to redeploy the employee within the company or the group in France);
- economic grounds (the job elimination must rely on, for example, economic difficulties which are assessed at the level of the group or of the sector of activity of the group to which the company belongs, but only on the French territory, and the employer must also do his/her utmost to redeploy the employee).

From a formal perspective, in order to help companies to secure the dismissal procedures they may enforce, the "Macron laws" (ordonnances Macron) dated September 22, 2017 and corresponding decrees have published various templates of dismissal letters that employers can use.

Moreover, the Macron laws provide that, following the notification of termination, the employer has 15 days to provide further details to the concerned employee on the grounds of dismissal, while the employee also has 15 days to ask the employer for additional explanations.

The potential pitfalls surrounding dismissal have triggered the implementation and the success of a mutually agreed termination called *"rupture conventionnelle"*, which requires the employee's agreement and validation by the labour administration but eliminates the necessity to provide justification.

Trial periods also offer a timeframe (of one to four months, potentially renewable depending on applicable terms) where unilateral termination may occur without justification.

Fixed-term contracts may only be unilaterally terminated by the employer on grounds of gross misconduct or physical unfitness. In the absence of such justification, the employer is bound to pay the salaries owed until the end of contract.

What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?

Redundancies must comply with additional requirements including the necessity to chose the potentially dismissed employees via application of selection criteria which in essence tend to protect the most fragile individuals.

Besides, employers must carry out consultation procedures whose content is determined by the number of layoffs and the size of the company. The timeframe typically ranges from one to four months. An interesting feature is that consultation deadlines (ranging from one to four months, depending on the number of dismissed employees) give employers better planning capacities.

Finally, if a company of 50+ employees contemplates laying off 10+ employees, it must set up a redundancy plan (negotiated with unions and/or discussed with the Works Council) containing inplacement and outplacement measures and have this plan approved by the Labour Authorities. This administrative process tends to secure the redundancy plans, as the latter will only be implemented once the Labour Authorities have issued their authorization.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

Whenever a sale of assets entailing a transfer of undertaking occurs (TUPE transfer), the seller may not, except under a very limited derogation, carry out redundancies prior to the transfer. Failure to respect this prohibition causes dismissals to be null and void. Redundancies, if any, must be carried out once the transfer has taken place.

4. What, if any, is the minimum notice period to terminate employment?

Notice periods are determined by the applicable branch collective bargaining agreement (CBA) depending on the employee's categories and length of service. The notice period would typically amount to one or two months for blue-collar and administrative employees, and three months for employees of managerial status

(“*cadres*”). Some CBA’s provide for shorter or longer notice periods.

Concerning the trial period, the notice depends upon the length of service and amounts to a maximum of one month.

Finally, in certain circumstances, no notice period applies, especially in case of dismissal for gross misconduct, or for physical unfitness not caused by an accident at work or an occupational disease.

5. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

   The employer may decide to put the dismissed employee on garden leave, with maintained pay and benefits in kind (e.g., company car), until the end of the notice period.

6. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to say at home and not participate in any work?**

   Yes, please refer to question 5.

7. **Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

   In any event, the grounds of dismissal must be precisely set out in the notification letter. As mentioned in question 1, the grounds of dismissal must be contained in the

dismissal letter, but additional details can be provided within 15 days following the notification.

In addition, except in the event of a large layoff procedure, dismissal must be preceded by the invitation of the employee to a preliminary meeting, where he may be assisted by staff representatives for example. A minimum of five business days must elapse between the invitation and the meeting, and at least two business days must elapse between invitation and notification of dismissal.

Depending on the grounds for dismissal, further requirements may have to be complied with, e.g.:

- dismissals on grounds of physical unfitness require prior consultation of staff delegates, medical examination and redeployment searches in order to find an alternative to dismissal.
- disciplinary dismissals must comply with specific requirements, among which the necessity to start the procedure no later than two months after the facts were committed or discovered, and the dismissal must be notified no later than one month after the preliminary meeting;
- Economic redundancies must be preceded by various steps (please refer to question 2).

8. **If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?**

Failure to set out the dismissal grounds has the same effect as an absence of “real and serious cause” and entitles the employee to damages for unfair dismissal. The same applies to non-compliance with the timeframes applicable to disciplinary procedures. Other violations of the procedure (e.g. non-compliance with the required five business days’ timeframe between invitation and preliminary meetings) result in damages of a maximum of one-month’s salary.

9. **How, if at all, are collective agreements relevant to the termination of employment?**

Essentially with respect to the definition of notice periods (see question 4) and severance indemnities (see question 15).

10. **Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

The labour inspector’s authorization is required to terminate the employment of protected employees, e.g., current elected or appointed employee representatives, former representatives (who remain protected over a period of 6 or 12 months depending on the nature of their mandate) and candidates to staff elections. Failure to request said authorization, or annulment of said authorization by a court, results in an obligation to reinstate the dismissed employee or, if the employee waives reinstatement, payment of damages up until the end of protection within the limit of 30 months.

11. **What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

In addition to the risk of annulment of dismissal, the employer is exposed to paying specific civil damages to compensate harassment or discrimination. Besides, discrimination and harassment (of a sexual or moral nature) constitute a criminal offence (up to 3 years imprisonment and a fine of up to €45,000 for discrimination, and up to 2 years imprisonment and a fine of up to €30,000 for harassment).

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

In addition to the risk of annulment of dismissal, the employer is exposed to paying specific civil damages to compensate harassment or discrimination. Besides, discrimination and harassment (of a sexual or moral nature) constitute a criminal offence (up to 3 years imprisonment and a fine of up to €45,000 for discrimination, and up to 2 years imprisonment and a fine of up to €30,000 for harassment).

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Pregnant employees, or employees under sick leave following a work accident or occupational disease, benefit from a protection consisting of the employer's prohibition to terminate the contract except for gross misconduct or "impossibility to maintain the contract". Employees on strike may not be dismissed on the basis of facts committed during the strike, except in case of willful misconduct. The non-respect of this prohibition entitles the employee to reinstatement and/or high damages. For fixed-term contracts, please refer to question 1 above.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Pursuant to a law of 9th December 2016, whistleblowers enjoy a protection consisting of the prohibition of discriminatory measures (resulting in annulment of said measures if any) and immunity from criminal prosecution whenever whistleblowing is performed in compliance with the law. The legal whistleblowing procedure entails, *inter alia*, a principle of *bona fide* and disinterested reporting, and an obligation to first disclose

illegal acts to the employee's supervisor. The scope of facts subject to whistleblowing is extremely broad (including but not limited to, any criminal offence of medium or high range). If the supervisor abstains to take reporting into consideration, the employee is free to report the fact to judicial or administrative authorities, and if these remain inactive for three months, he may report the facts to the press.

15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

In the event of dismissal, the severance indemnity is defined by the collective bargaining agreement. For all employees having at least eight months of seniority, it amounts to a minimum of 1/4 of a monthly salary per year of service up to 10 years of seniority, and 1/3 of a monthly salary for each year over 10 years.

In the event of a mutually agreed termination, the same indemnity applies and may be topped-up to reach a consensus.

16. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.**

A mutually agreed termination (*"rupture conventionnelle"*) permits to end the contract while avoiding any legal challenge about the justification of termination (unless the employer fraudulently resorts to said termination to avoid a legally mandatory procedure such as redundancy). Yet such termination does not bar the employee from claiming amounts pertaining not to the termination, but to the employment relationship itself (salary or overtime back pay, damages for harassment, etc.).

As an alternative, the employee and the employer may enter into a settlement

agreement subsequently to dismissal, in which case the employee may validly waive his rights to sue the employer. Said settlement implies the payment of a settlement indemnity.

17. **Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

Non-compete covenants are enforceable under French law as long as they are justified by the company's legitimate interests, limited in time and space, financially compensated, and do not make it impossible for the employee to find another employment. The covenant may allow the possibility to waive the non-compete covenant upon termination, hence avoiding payment of the compensation.

18. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Confidentiality covenants are admitted under French law. Based on existing case law, the only potential matter for discussion relates to the necessity to limit the duty in time.

19. **Are employers obliged to provide references to new employers if these are requested?**

No. Yet settlement agreements often stipulate non-disparagement obligations, or even a commitment to provide positive references.

20. **What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

The main difficulty consists in assessing the existence of a proper cause for dismissal in a context where statistically, nearly one third of terminations end up in labour courts. Mitigating the judicial risk requires a thorough verification of the file. Here are the questions that one may ask in the event of an intended disciplinary dismissal:

- are we still within the applicable timeframe (no later than two months after discovery of the facts)?
- is there proper evidence of the misconduct (e.g., via a valid affidavit)?
- how can we convince a judge that it is serious enough to justify dismissal (because of the damage suffered, or the risk for the company, etc.)?
- were there any prior sanctions?
- is the employee likely to invoke credible justifications (mismanagement, unclear instructions, etc.)?

An additional step consists in assessing, in the event of an unfavourable court ruling, the level of the risk, leading to the following questions:

- what are the employee's age and length of service?
- is this employee likely to remain unemployed for a long time?
- would the employee be likely to make, upon occasion of a court case, additional claims related to the contractual relationship (e.g., bonus or overtime back pay)?

Depending on the results of this analysis, the company may consider resorting to mutually agreed termination, or to a settlement negotiation following dismissal.

- **Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers**

can prepare for them?

The Macron laws provide for minimum and maximum damages that the judge may award the employee in case of unfair dismissal, depending on the employee's seniority and the company's headcount.

This minimum and maximum amounts are currently challenged by employees before French labor courts, and some of them have already considered these rules as unenforceable. Only a French Supreme Court decision, that could take place in the following months or years, will confirm or not the validity of such rules.

Note that on top of this amount, employees may be entitled to additional damages in specific circumstances (dismissal in vexatious circumstances, violation of safety at work, etc.) and may also make salary claims (overtime, bonus, etc.).

The minimum and maximum amounts are as follows. These thresholds and caps apply except if nullity of dismissal is incurred (which is the case in the event of very serious violations such as harassment or discrimination for example).