Reform of French Labour Laws:
A summary of the 5 draft labour law orders in Council

The French government has asked parliament to legislate in order to empower it to amend the Labour Code by orders in council (or statutory instruments as they might be called in the UK), thus avoiding lengthy parliamentary debate on a series of separate bills (the parliamentary timetable for "ordinary" legislation usually delays adoption of new laws by up to 12 months, and sometimes more).

On 31st August the government presented a series of 5 drafts orders which should be adopted and put into force later on in September which mainly affecting small to medium sized businesses (NB: the Labour Code does not apply to civil servants, teachers, the police or the military or to permanent employees of local, county or regional authorities).

The orders relate to 60 separate topics, but the main items of interest are:

1. **Compensation available through the labour tribunals ("conseils de Prud'hommes") for unfair dismissal**

   There is (in general) currently no upper or lower limit on the amount a labour tribunal may award to an employee it finds to have been unfairly dismissed. In order to reduce uncertainty in the matter (there are considered to be major discrepancies in practice between labour tribunals and regional appeal courts), the ceiling on awards will be one month's gross salary per year's service up to 10 years' service, increasing thereafter by 50% of a month's gross salary per additional year of service, up to an absolute maximum equivalent to 20 months' gross salary after 30 years' service.

   The ceiling will apply in all cases of "unfair" dismissal, except in cases of discrimination, harassment or "breach of a fundamental freedom" (to be defined).

   A lower limit on awards will also be introduced, which in small businesses (< 10 employees) will be from 50% of a month's average gross salary after one year's service to 2.5 times average gross after 9 years service.

2. Time bar on applications to labour tribunal after dismissal

The time bar on applications to the labour tribunal where any dismissal (including redundancy) is contested, is to be reduced from 2 to 1 year from date of termination.

3. Statutory minimum compensation for dismissal (including redundancy)

The statutory minimum payment due to an employee on dismissal (including redundancy, but not applicable to dismissal for serious misconduct) is calculated by reference to the average gross monthly salary of the redundant employee over his/her last 12 months of service. The minimum is currently 20% of the average gross monthly salary multiplied by the number of whole years of service. This is to be increased to 25% per year's service. (NB: this statutory minimum may be increased by the relevant collective bargaining agreement, by an individual's terms of employment or by the terms of a redundancy package negotiated at the time in the context of a "social plan").

4. Collective bargaining in small businesses

Small businesses (< 50 employees) in France represent around 95% of all businesses (in number) and over 55% of all permanent employees. There are only however some 4% of such small businesses which have union representatives. This means that most small business owners are unable to negotiate in-house labour agreements as they are currently restricted to union/employer negotiation. In future, employers will be able to negotiate an extended variety of in-house agreements (relating eg: to bonuses, working time, even in some cases reductions in basic pay) directly with an unelected non-union member of staff in very small businesses (< 20 employees) and in businesses having between 20 and 50 staff, with an elected but still non-union member of staff.

The employer will also be allowed on certain questions to ask staff to vote directly on a proposed in-house agreement, without any prior negotiation of any type, by "referendum" and if adopted by at least 2//3 of staff, its terms would override existing terms of employment and/or collective bargaining agreements. Individual members of staff who refuse to accept such amended terms of employment could then be dismissed and could no longer claim unfair dismissal (contrary to the current position, where an amendment to terms of employment negotiated with a union, must still be accepted individually be each and every employee).

5. Merger of the various existing types of staff representation

According to the number of staff in a business, staff representation is currently divided between staff delegates (empowered to assist and represent staff in matters of individual concern), the works committee ("comité d'entreprise" – empowered to represent staff in general in matters of collective interest) and the health and safety committee. All three of these means of representation exist in businesses employing 50+ staff and all have to be elected separately, meet separately and receive allowances in terms of time off work in order to perform their duties, which in some large companies means that they no longer work at all.

They will in future be merged into a single representative council ("comité social et économique") and the rules on who may be a candidate (previously reserved to persons approved by a "representative" union, will be relaxed.

6. Local" agreements to outrank national collective bargaining agreements

The current "hierarchy of norms" in Labour law is (i) the law, (ii) national or regional collective bargaining agreements, (iii) individual terms of employment and (iv) local or in-house arrangements or agreements, where allowed.

The scope for making individual in-house agreements is to be widened and their content will in future out-rank any other provisions except compulsory statutory rules, the number of which the government intends to reduce (it is however unclear by how much, as the Labour Code currently contains over 3,000 sections).

7. Negotiated collective redundancy

The law already allows employers and employees to agree to terminate individual contracts of employment by agreement ("rupture conventionnelle") which not only avoids litigation, but also allows the employee to retain his/her rights to unemployment benefits which would not be available if he/she resigned.

In the event of multiple redundancies, employers and unions (or according to size of business, non-union staff representatives) will in future be allowed to make "multiple termination" agreements, which will also avoid litigation and preserve unemployment benefits.

8. "New" type of contract of employment

The current distinction between permanent contracts of employment ("CDI") and temporary contracts of employment (CDD") will be slightly blurred. Employers may currently in principle only use temporary employment contracts where (i) a permanent member of staff is away from work; (ii) the business experiences an "unusual" and temporary increase in workload; or (iii) for seasonal employment. These rules have recently been relaxed in the building and construction industry to allow temporary employment contracts on a project by project basis ("contrat de chantier").

The availability of the latter type of contract will be extended to other industries and sectors of business on a hybrid basis somewhere between a CDD and a CDI. The employee will be regarded as a full and permanent member of staff for the duration of the project (whatever that may be), but his contract of service will terminate automatically when the project is completed; care will clearly have to be taken in drafting the relevant contracts, in order to avoid disputes, but local in-house agreements (op cit) will in future be allowed to determine in general terms in what circumstances the employer may use such agreements.

The main benefits to employers from this new type of CDI is that the 10% termination payment due to employees at the end of a CDD, will not be payable and the other criteria allowing recourse to CDDs will become irrelevant.

The relevant employees will retain full entitlement to unemployment benefits.

9. Criteria for determining whether a business may down-size in the event of economic difficulties

In order for a business to make staff redundant whether with (10+ redundancies over a 30 day period) or without (< 10 redundancies) a "social plan", it must be able to demonstrate that (amongst other matters) it is in "serious economic difficulty". Whether or not the financial well-being of a business is under threat is currently assessed on a business-wide basis, which for international groups, means a world-wide basis. This means that if a group is in difficulty in France but making profits elsewhere and/or in other subsidiaries, it will in general not be allowed to make French staff redundant.

In future, the "perimeter of assessment" will in such contexts, be limited to the group's French business(es), and its position elsewhere will thus no longer be considered relevant to its position in France, thus avoiding it being required to subsidize French losses out of unrelated foreign earnings.

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