Labour Relationships
France

1. INTRODUCTION

In France, the labour relationship is governed by various sources such as statutory laws, collective bargaining agreements, customs and employment contracts. These sources have recently been amended in view of the economic slowdown, the spectre of unemployment and a less forceful opposition from trade unions.

Presently, France is facing a phenomenon of "contractualisation" of the labour relationship. This requires a higher precision when drafting an employment contract and the rewriting of some French statutory laws.

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

2.1 THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS

• THE OPEN-ENDED EMPLOYMENT CONTRACT

Work in France is carried out mainly and most commonly within the framework of **open-ended employment contracts *(contrat à durée indéterminée – CDI)***.

Although the open-ended employment contract need not necessarily be in writing, it must contain all the elements by which the parties are bound, since both parties' consent is required for any subsequent variation.

Consequently, if the employer wishes to alter one of the elements of the employment contract, the employee may refuse. Such refusal cannot be a ground for dismissal, unless the modification sought by the employer is based on economic grounds.

The idea behind the open-ended employment contract is that the quid pro quo for a lasting employment relationship, ensuring job security, lies in the fact that it may be severed at any time by any one of the parties.

• THE FIXED-TERM EMPLOYMENT CONTRACT

The other type of employment relationship is the **fixed-term employment contracts *(contrat de travail à durée déterminée – CDD)***, although this type of employment contract is rarer. This is mainly because the instances in which an employer may hire an employee under a fixed-term contract are exhaustively provided for in the French labour code, e.g. when an employee is absent and cover is needed.

Hiring an employee under a fixed-term employment contract is therefore subject to strict laws. In fact, a fixed-term employment contract must be formalized in writing and must necessarily

include specific elements. Failing this, the contract will be deemed to be an open-ended employment contract.

The date on which the employment contract expires must, in principle, be clearly set out (with the contract indicating the date of expiry or the contract term). By law, such contracts may not exceed 18 months. There are however exceptions: in some cases, the term of the employment contract may be for several years while in others, the term may not exceed one year.

In exceptional cases, the parties are allowed to enter into a fixed-term employment contract whose term is not clearly defined. Upon entering such a contract, the parties give details of the event which will bring the contractual relationship to an end. The occurrence of such an event must be certain and not dependent on the parties' will.

However, the parties to a contract whose term is not clearly defined are free to set a minimum term.

The fixed-term employment contract provides for a trial period for the employee, during which any one of the parties may terminate the contractual relationship forthwith.

The fixed-term employment contract may be extended under certain conditions and within the maximum legal term.

During the term of their contract, employees hired by way of a fixed-term employment contract enjoy the same rights as employees working for the employer under an open-ended employment contract.

- **TEMPORARY EMPLOYMENT CONTRACTS AND SPECIAL EMPLOYMENT CONTRACTS**

French law provides for a special kind of fixed-term employment contract: the **temporary employment contract *(contrat de travail temporaire)***. There are three parties to the contract: the employment agency, the user company, and the temporary worker. The employment agency hires a worker to place him/her at the disposal of another company, for a certain period of time. The employment contract entered into under these conditions is an "assignment" contract *(contrat de mission)*.

In the course of the last few decades, a vast number of **special employment contracts** combining employment and training have been set up to fight unemployment. They include the apprenticeship contract *(contrat d'apprentissage)* and the "rehabilitation" contract *(contrat d'avenir)*.

2.2 TERMINATION PROCESSES

An employment contract concluded for an indefinite term may be terminated by both parties, subject to compliance with the relevant rules of the Labour Code.

The decision by the employer to terminate the employment contract must be based on a **legitimate ground**, and must not be discriminatory.

The dismissal procedure to be carried out by the employer differs according to the nature of the dismissal (reasons connected with the employee concerned or economic reasons) and the number of employees involved (this is only relevant for redundancies).

The termination can only occur subject to compliance with a specific procedure and with specific rules, and will entail various financial consequences for the employer.

Any dismissal carried out by the employer without compliance with the legal rules will be either **unfair** or **irregular** and the employer will face civil and/or criminal penalties.

On the other side, an employee is entitled to resign his indefinite term contract and is under no obligation to provide a justification to the employer. The employee must however respect the notice period.

As far as the termination process of a fixed-term contract is concerned, it ends, in principle, at the end of the term.

Nonetheless, under exceptional circumstances, the contract can be breached before the arrival of the term in the following cases: ***force majeure***; **gross** or **serious misconduct**; **mutual agreement of the parties**; and at the request of the employee if he is hired under an indefinite term contract. However a notice period must still be complied with.

Apart from the abovementioned cases, an employer who terminates a fixed-term employment contract before the expiry date must pay the employee compensation amounting to the employee's remuneration for the remainder of the term.

Finally, a new French Law has recently (June 2008) set up a way of mutual termination of an employment contract ("***Mutual termination agreement***").This new procedure deals with the ability for both employer and employee to terminate the employment contract without going through a dismissal procedure for the employer or a resignation notification for the employee.

Both parties must consent to this termination. Indeed the mutual termination of the contract is based on discussion and negotiation between employer and employee.

Despite the fact French Labour provides with a specific procedure, the employee will be entitled to get his remaining salary and a special allowance (the amount of this allowance must be no less than the amount of the severance pay received by the employee in case of dismissal). As a result, a convention must be signed by the employer and the employee.

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN FRANCE

3.1 PRESENTATION OF THE FRENCH SOCIAL SECURITY SYSTEM

There is no taxation at source in France. The salary paid to the employee simply corresponds to the sum left after the social contributions which the employee is liable for have been deducted. In fact, the French social security system is financed by compulsory payments from employers and employees alike.

Employee payments represent 20% of their gross salary (i.e. when an employee earns EUR 100 gross, he or she is actually paid EUR 80), whereas employer payments represent 50% of the employees' gross salary (i.e. when an employee earns EUR 100 gross, the total cost for the employer is of EUR 150).

The purpose of social contributions is to finance three different categories of insurance, which correspond to the three different types of risks covered by the French social security system:

The **health insurance scheme** covers non-professional risks (namely illness, maternity, disability and death), as well as professional risks (accidents at work, commuting accidents and work-related illnesses). Professional risks-related contributions are exclusively borne by employers.

The **old-age and widowhood insurance scheme**: contributions therefore finance the state pension schemes.

The **family allowances scheme**: contributions are borne by employers exclusively.

3.2 THE STATE PENSION SCHEME

The **French state pension scheme** is a pay-as-you-go, or unfunded, pension scheme *(système par répartition)*. The old-age insurance scheme includes two types of pension benefits: benefits dependent on contributions *(prestations contributives)*, i.e. benefits paid to beneficiaries according to their own vested rights, and benefits independent of contributions *(prestations non contributives)*, whose purpose is to guarantee a minimum income to persons having made no or small contributions to the old-age insurance scheme.

As a general rule, employees are entitled to state pension benefits at the full rate (50%):

- at the age of 60 if they are born before july 1951
- at the age of 62 if they are born after 1955.

They have also pay contributions during a certain time, counted up in quarters.

In 2010 the state pension scheme was the subject of a reform: since the entry into force of the Act n°2010-1330 of 9 November 2010, relating to the reform of pensions schemes, employees of the first will have to have paid contributions during 163 quarters in the first case and 174 for the second case in order to benefit from full-rate pension benefits.
To date, a transition system has been set up, whereby the number of quarters necessary for an employee to be awarded full-rate pension benefits will vary according to the employee's date of birth. The amount of pension benefits which the employee is entitled to is calculated as follows:

Pension benefits = D/M * S * T

D: number of quarters worked, with a maximum equal to M
M: maximum of quarters taken into account
S: average yearly salary
T: applicable rate

3.3 THE UNEMPLOYMENT BENEFITS SYSTEM

In France, unemployment does not belong to the risks covered by the social security system; unemployment indemnification was therefore developed as an aside. These indemnifications are divided into two different systems: an unemployment insurance scheme, with benefits dependent on contribution, for those employees who have paid contributions prior to and a state-financed solidarity system for other unemployed persons.

To be entitled to unemployment benefits under the unemployment insurance scheme, unemployed persons must fulfil three requirements: firstly, be unemployed; secondly, be fit for work; and thirdly be looking for a job (i.e. they must be registered as such with the Pôle Emploi, the French unemployment agency). This third requirement is that unemployed persons comply with more and more stringent obligations, notably with respect to the amount of effort they put in their search for a job.

All employees and employers must pay contributions to the unemployment insurance scheme.

Unemployed workers are paid benefits under the unemployment insurance scheme during a period of time which varies according to the length of time they have contributed to the scheme. The unemployment benefits amount to 57.4% of the reference salary, subject to a statutory upper limit.

3.4 SUPPLEMENTARY SOCIAL PROTECTION

The French social protection system leaves room for insurance institutions, among which are the provident institutions *(institution de prévoyance)* and mutual-benefit associations *(mutuelle)*. The aim of such institutions is to provide employees with increased social protection. Indeed, provident institutions offer, collective contracts to cover all person-related risks. The purpose of such supplementary protection, which is often provided for under a collective bargaining agreement, is to supplement the social security.

Mutual-benefit associations are managed directly by the persons insured, which are the only beneficiaries of their contributions. Their purpose is the same as that of provident institutions.

4. FOREIGNERS WORKING IN FRANCE – TRANSFERS OF UNDERTAKINGS

4.1 FOREIGNERS WORKING IN FRANCE

In order to work in France, a foreigner needs a residence and a work permit, except if he/she is an EEA or Swiss national.

EEA (European Union, Iceland, Lichtenstein and Norway) and Swiss nationals do not need work permits nor residence permits to work and live in the EEA (according to the article 45 of the Treaty on the Functioning of the European Union).
However nationals of the Member States that joined the EU in January 2007 (Bulgaria and Romania) must apply for work and residence permits during a transitional period of seven years.

Non-EEA nationals need both a work and a residency permit. However, the process will be different whether the foreigner, before coming in France, has already found a French employer willing to hire him/her or not.

The company wishing to employ a foreigner must show that there is not a suitably qualified EEA candidate interested in the position. The company should first publish the position at Pôle emploi, the national agency for employment. If no suitably qualified French residents apply, the company should then submit the foreigner application file to the DDTEFP (*Direction départementale du travail, de l'emploi et de la formation professionnelle*), the Department Directorate of Work, Employment and Training.

If the DDTEPF agrees to issue a work permit, they will forward their approval to the OFII (formerly ANAEM), the administration responsible for foreigners.

The OFII will forward the file to the French consulate nearest to the place of residence of the foreigner to issue a visa if necessary. The foreigner can then move to France, where he/she will have to apply for a residence permit.

A work permit issued under this procedure will normally be valid for a particular job and does not entitle its beneficiary to change jobs in France or remain in France.

High-paid skilled workers, such as executives, follow a special fast track procedure (for *cadres dirigeants ou de haut niveau*) that allows them to deal only with the OFII instead of all the administrative bodies. Their employer should file their request directly with the OFII. The family members of these executives may be entitled to work also.

In the case where a foreigner is already living in France and he/she would like to work, he/she will need to ask for a work permit according to the type of residence permit he/she is holding. For example, the permanent resident permit (*carte de résident*) and the temporary resident permit (*carte de séjour temporaire*) with the status 'private or family purposes' (*vie privée et familiale)* usually give, the right to work in France without limitations. Some other types of temporary residency permit such as 'scientific' (*scientifique*) or 'cultural and artistic profession' *(profession artistique et culturelle*) specify the type of work permitted and others do not entitle the permit-holder to work at all. In that case, the foreigner will need to apply for a work permit.

However, some bilateral agreements, as for instance the Franco-Algerian agreement and other agreements with the Former French colonies, implement simplified regimes from the ones described above.

Effective from 1 January 2004, an attractive tax system was set up in favour of employees or managers of foreign groups on secondment within an undertaking set up in France, provided that they have not been domiciled in France for tax purposes in the previous ten calendar years. This tax system grants these employees a 5-year tax exemption in relation to contractual supplemental remuneration, provided that the amount of the remuneration subject to income tax is at least equal to that paid for similar duties carried out within the same undertaking.

4.2 TRANSFERS OF UNDERTAKINGS

The principle, according to which employment contracts remain in force in case of the transfer of an undertaking, was established very early on by French law. Indeed, the Act of 18 July 1928 provides that the employment contract remains effective should the employer transfer its undertaking. The purpose thereof was to prevent employees from losing their jobs every time an undertaking is transferred.

This rule is reaffirmed in Article L. 1224-1 (former L. 122-12 §2) of the French labour code, which provides that *"should the legal situation of the employer change, notably by way of succession, sale, merger, incorporation, all current employment contracts shall remain in force between the new owner of the undertaking and said undertaking's staff."*

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