

K&L GATES



France

Employer Guide

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# INTRODUCTION

When hiring an employee in France, an employer must comply with administrative and medical formalities, as well as legal obligations, before, at the time of recruitment and throughout the life of the contractual relationship between employer and employee.

Labor and employment laws are a particularly topical subject in France. Subjects such as paid leave, working time, pensions, and severance pay have undergone a number of changes in recent years.

In practice, French labor and employment laws mainly consist of the provisions of the French Labor Code, as well as numerous French and European legal texts (treaties, conventions, regulations, circulars, directives) and the applicable collective bargaining agreement (CBA), determined by the company's main activity in France. Caselaw of the French labor courts must also be taken into account in order to determine the scope of employers' obligations in practical terms.

This guide provides an overview of the main information and obligations to bear in mind for employers in France.

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# EMPLOYMENT RELATIONSHIP

## I. PRE-EMPLOYMENT

### Immigration/Visa Requirements

Employers must ensure that their employees are lawfully allowed to work in France.

In cases of noncompliance, there is the risk of a penalty of a maximum of €30,000 (updated in January 2024) if the foreign employee is not allowed to work in France.

Where an employee is seconded from a foreign country, a prior declaration must be completed on the labor authorities' website.

In cases of noncompliance, there is the risk of a penalty of €4,000 per seconded employee (€8,000 in case of a repeated offense within two years, up to a maximum of €500,000).

EU, European Economic Area (EEA), and Swiss citizens do not require visas or a work permit to live and work in France.

Other foreign workers must obtain a work permit from the labor authorities and a visa from the immigration authorities to live and work in France. Visas can be for a short duration (less than three months) or a long duration (more than three months).

Since the United Kingdom's exit from the European Union (known as Brexit), a French long-stay visa (equivalent to a work permit) is required for UK citizens to validly work in France. No visa or work permit is required for UK employees staying in France for less than 90 days.

### Reference/Background Checks

An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information.

Indirect collection of personal data relating to an applicant from third-party sources constitutes a personal data processing operation requiring individuals to be informed (see "Privacy Obligations" section below), notably on the sources of such information. In addition, all references and background checks must be limited to what is proportional for the purpose of the recruitment (known as the concept of "data minimization").

Where there is a direct link with the applied-for position and such a check is necessary, employers may, in limited circumstances, also check an extract of the criminal record database. However, there is a general prohibition on processing of criminal records and infractions data (See "Privacy Obligations" and "Attention to Sensitive Data" sections below).

### Police Checks

Police and other checks are allowed with the applicant's consent. Certain regulated positions (such as security agents, cash escorts, taxi drivers, or jobs undertaken at an airport) require the employer to obtain a copy of the employee's criminal record at the time of hiring.

### Medical Examinations

French labor laws allow different types of medical examination, as follows:

- An initial consultation of “information and prevention,” which must take place within three months of hiring, except if the employee was employed in the same position in his or her previous employment contract. After this first consultation, a personal medical record is created for the employee. Failing this obligation carries a penalty risk of €1,500 per employee and a risk of legal action by the employee.
- A periodic examination (every five years).
- A reinstatement examination after maternity leave or occupational disease or in case of sick leave of more than 30 days.

Additional examinations may be prescribed, depending on the circumstances. Some employees are subject to increased health surveillance. These include employees under 18 years old, pregnant employees, disabled employees, night workers, and employees subject to certain risks, such as asbestos, vibration, and noise.

The employee’s medical examination results are protected by doctor-patient confidentiality and are deemed sensitive data as health-related data under the General Data Protection Regulation (GDPR). The occupational health doctors are the only authorized entities allowed to access it, with the exception of the employer.

## II. TYPES OF RELATIONSHIPS

### Employee

Individuals can be employed on a full-time or part-time basis and on a fixed-term or permanent contract. Employees are entitled to different rights and obligations depending on the basis on which they are employed. However, generally, an employee qualifies for a wide range of legislative labor protections.

Nevertheless, independent contractors often claim for the reclassification of their contracts into employment contracts in order to obtain the associated protection.

Employers should be aware that this may create financial and criminal risks.

### Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually take on the individual through a service agreement with the individual or with the individual’s business. An independent contractor does not have the benefit of an employee’s statutory social security system and protection.

The Job Act (Loi Travail of 8 August 2016) created social responsibility for independent contractors working with electronic platforms (the so-called “Uber structure”). Since 2018, and subject to a turnover threshold being met by the worker on the platform, they have new social rights protection from work-related accidents and right to professional training. They also have the right to go on strike and to create or be affiliated with trade unions.

Since the French Mobility Orientation Act 2019 (Loi d’Orientation des Mobilités), the social rights of independent contractors working with electronic platforms have been strengthened: Electronic platforms are encouraged to set a policy (Charte sociale) providing for rules fixing relationships to regulate their status, i.e., the right to refuse an assignment without being subject to a penalty and the right to choose their period of work and time off.

Furthermore, independent contractors working with electronic platforms are able to elect their representatives. In addition, on 18 January 2023, a collective agreement between trade unions and

electronic platforms of private drivers provides drivers with a minimum remuneration of €7.65 per journey.

On 7 May 2024, a collective agreement against discrimination was signed between representatives of electronic platform drivers and representatives of electronic platforms. This collective agreement aims to “prevent, raise awareness of and fight against all forms of discrimination on matchmaking platforms” and to “involve all platform users and their representatives in this issue.”

## **Fixed Terms and Temporary Contracts**

Fixed-term employees (*contrat à durée déterminée*) are often engaged for short periods. A fixed-term contract can be renewed only twice, except in the case of replacement of an employee. The maximum duration of a fixed-term contract, renewals included, is 18 months (except some specific cases not exceeding 36 months). The hiring of temporary workers (*travailleurs intérimaires*) and employees under fixed-term contracts and the terms of such contracts are strictly regulated by the French Labor Code.

The hiring of temporary workers and fixed-term workers is only allowed in certain cases listed in the French Labor Code, and temporary and fixed-term contracts must contain a number of mandatory provisions; otherwise, the contract reclassifies as a permanent contract, and the employer may face civil and criminal sanctions.

Temporary workers and fixed-term contracts are permitted for the replacement of an employee on leave, where there is a temporary increase of activity, or for a specific and temporary mission where the tasks are not related to the standard activity of the company.

There are certain industries where it is considered a customary practice to hire fixed-term workers, including building and construction, broadcasting, and seasonal activities, such as crop harvesting. The limitations imposed by the French Labor Code do not apply to these industries.

Temporary and fixed-term workers are entitled to an indemnity, paid by the employer, which amounts to 10% of the total aggregate gross remuneration paid during the whole contract. This indemnity is not payable when the employer proposes a permanent contract at the end of the temporary or fixed-term contract or in the case of termination for serious misconduct.

Temporary workers remain employees of the temporary employment agency or labor hire firm. However, noncompliance with provisions concerning the reasons, length, terms, and renewals may create liability for the end-user company, including the risk of a judicial declaration of a permanent employment relationship.

## **Seconded Employees**

Since 30 July 2020, following the application of a EU directive on secondment (*détachement*), the general scheme of secondment applies for a limited period of 12 months, which can be extended (under exceptional circumstances) by six additional months with specific approval from the French labor authorities. Beyond 12 months, the seconded employee in France benefits from a new regime of “long-term secondment.” The seconded employees are subject to the provisions of the French Labor Code, with the exception of the execution of an employment contract and termination of the employment contract. In such cases, the seconded employee should benefit from all the mandatory benefits provided for by the French Labor Code, in particular the collective health insurance plan (*mutuelle*), death and disability collective plan (*prévoyance*), mandatory and voluntary profit-sharing schemes (*participation, intéressement*), etc.

### III. INSTRUMENTS OF EMPLOYMENT

#### Contracts

French law does not always require a formal written employment contract, except in certain cases, including temporary and fixed-term contracts, part-time contracts, apprenticeship contracts, and all contracts with foreign workers. However, EU regulations require that the employer confirm in writing the main elements of the contract within two months from the starting date.

Most collective bargaining agreements (CBAs) provide that the employee must be provided with a written agreement regardless of the type of contract. The use of a formal written contract is strongly advised for evidentiary reasons.

#### Codes or Rules

The French Labor Code is an organized collection of most of the laws and regulations applicable to labor law and mainly concerns employees under private law labor contracts. Public employees are generally subject to specific statutes.

#### Collective Bargaining Agreements

CBAs are agreements concluded by employees, unions, and employers' organizations that provide additional mandatory rules but are still compliant with the French Labor Code. The CBAs are concluded by sector of activities.

CBAs apply to all employees covered by the scope of the CBA and cover a broad range of topics, especially employment conditions such as minimum remuneration, notice periods, and vacation, as well as termination indemnities.

A company falling within the scope of a CBA (on industry or geographical grounds) is required to abide by the CBA's provisions as soon as the CBA is extended by the Ministry of Labor and published in the *Official Journal*.

Since 2020, the number of national CBAs has been reduced as a result of a process of grouping together of professional branches. The structure of unions and the scope of application of CBAs has changed.

#### Company Collective Agreements

Company collective agreements (CCAs) are concluded by the employer and the union representative appointed (if any) in order to collectively govern the employees of a company.

CCAs are subject to strict rules of disclosure to the labor authorities in order to be valid and enforceable.

The reform of the French Labor Code of September 2017 has established a principle of superiority of the CCA that is now the prevailing agreement in collective negotiation. However, in relation to some specific topics, CBAs still prevail, including minimum wages, classifications, social protection, working time, and fixed-term contracts.

Companies are required to negotiate once every four years, when they have set up a trade union section, on certain specific matters of public order, including:

- Wages, working time, and distribution of added-value plans.
- Gender-equal pay, quality of working life, and, as of 31 March 2022, working conditions.
- Job management and a professional pathway for companies with over 300 employees.

## Internal Rules and Regulations

The Internal Rules and Regulations (Règlement Intérieur) is a written document governing the duties and rights of employees within the company.

The Internal Rules and Regulations are mandatory for companies with at least 50 employees but optional for small businesses. They must be drafted in French and must specify the effective date.

The employer draws up this document unilaterally, although it must be subject to prior consultation with staff representatives, notified to employees, and filed with the labor authorities.

There are mandatory subjects that must be covered by the Internal Rules and Regulations, such as prohibition of moral or sexual harassment, acts of sexism, smoking, disciplinary procedures, the hierarchy of sanctions, the employee's right of defense, and health and safety rules.

French courts have accepted the possibility for the employer to provide for a “zero alcohol tolerance” for certain workstations. The internal regulations may prohibit not only the consumption of alcohol in the workplace but may also prevent an employee from attending work with alcohol in his or her system. This specific prohibition must be justified by the nature of the tasks to be performed and proportionate to the intended purpose of the prohibition.

## IV. ENTITLEMENTS

### Minimum Employment Rights

French legislation provides for rights that apply mandatorily to every employee working in France.

#### Working Time

The legal weekly working hours consist of 35 hours. Rules apply with respect to maximum daily and weekly rest hours.

For managerial employees with autonomy in their work organization, it is possible to consider a global remuneration for a maximum of 218 days worked per year (convention de forfait annuel en jours) within limits required by the CBA and the French Labor Code.

#### Annual Leave

Employees are entitled to paid holidays corresponding to two and one-half days per month of work, up to a total of five weeks' paid holidays per year. The period of reference for accruing and taking paid leave is not the calendar year but from 1 June to 31 May of the following year.

At the end of the employment contract, any accrued but untaken vacation days are to be paid out.

#### Maternity and Parental Leave

The length of maternity leave depends on the number of children, the minimum duration being a total of 16 weeks of leave for the first two children (at least six weeks prior and 10 weeks following the birth). Women with two or more children are entitled to 26 weeks' maternity leave (at least eight weeks prior and 18 weeks following the birth). Women are protected from dismissal and from changes to their duties during the whole pregnancy, the maternity leave, and during a period of 10 weeks after the end of the maternity leave, with the strongest protection during maternity leave. Effectively, until the end of the protection period, the only possible basis for dismissal is serious misconduct.

The father is protected under the same conditions against dismissal during a period of 10 weeks following the birth of his child.

Longer periods may apply due to medical reasons related to the pregnancy, such as cases of twin or multiple pregnancies or if the applicable CBA provides a longer period of maternity leave.

Paternity leave can be taken, subject to a prior notice of one month, after the birth of a child and lasts no more than 25 calendar days (Saturdays, Sundays, and public holidays included).

Paternity leave includes two periods:

- A first mandatory period of four consecutive calendar days following the birth.
- A second voluntary period of 21 calendar days (or 28 in case of multiple births), which must be taken following the first period of four calendar days or within six months. In addition, after maternity or paternity leave, an employee with at least one year of service may request a further period of parental leave. Employees have the option to not work during this period or return to work on a part-time basis (up to a maximum of 80% of their full-time hours) with a minimum of 16 hours per week.

Parental leave has an initial duration of one year and may be extended two more times but not beyond the third birthday of the child.

### Sick Leave

The period in which an employee is paid sick leave varies according to the employee's length of service within the company and the duration of absence.

During a period of sick leave, the employment contract is suspended and the national health body (Caisse Primaire d'Assurance Maladie), which covers a certain percentage of the employee's salary (around 70%), pays the employee. A CBA may provide for a system of salary maintenance that is more generous to the employee.

An employee having at least one year of employment with the company who is on sick leave is entitled to additional payment by the employer and may also be entitled to a top-up payment by an insurer (Régime de Prévoyance).

An employee on sick leave must receive at least 90% of the remuneration he or she would have received if he or she had worked during the first 30 days of his or her sickness absence and then up to 66% thereafter.

In order to comply with EU legislation, since 24 April 2024, the French Labor Code (Loi portant adaptation du droit de l'Union Européenne, dated 22 April 2024) now guarantees the acquisition of paid leave during work stoppage whether it is work-related or not. In case of sickness absence, employees are entitled to:

- Two working days (i.e., from Monday to Saturday, excluding Sunday and bank holidays) of paid leave per month in case of non-work-related illness or accident.
- Two and one-half working days (i.e., from Monday to Saturday, excluding Sunday and bank holidays) of paid leave per month in case of work-related illness or accident.

## Discretionary Benefits

### Minimum Remuneration

Employees are often solely paid a fixed salary. However, many employers choose to additionally grant employees variable remuneration elements, which must be defined in a written document (drafted in French) signed by the employee.

Since 1 January 2024, the minimum wage for an adult worker is €11.65 gross per hour, which is €1,766.92 gross per month, on the basis of the legal standard of 35 working hours per week.

Employers in France must be equal opportunity employers, which includes equal remuneration for work of the same level regardless of gender.

The French Labor Code promotes gender pay equality in the workplace through an index (Index Égalité Homme-Femme). The index is calculated on the basis of five indicators, including the gender pay gap, out of a total score of 100 points.

Since 2022, companies with at least 50 employees must publish annually the index score and also the results for all indicators on the company's website.

The employer must provide the indicators and level of results to the labor inspector and the Social and Economic Committee (Comité Social et Économique (CSE)) (the new works council).

Penalties of up to 1% of the total payroll are provided if the minimum score of 75 points is not achieved after three years from the publication of the first score or if the company does not publish its index.

### Pension

In France, employees are automatically eligible to participate in a national mandatory pension scheme. The basic pension of employees is calculated according to three parameters:

- The total duration of the career.
- The reference wage.
- The duration of activity as a salaried employee.

The pension reform was finalized during the summer of 2023 and provides for a universal system of calculating social security contributions for all categories of employee (a fixed system of points and the free choice for the employee to retire upon reaching the age of 62). The statutory retirement age is gradually being raised from 62 to 64. The age of 64 will apply to people born on or after 1 January 1968.

### Public Holiday

Employees are entitled to paid leave for each day that is proclaimed a public holiday in the country, except in certain industries, such as restaurants and bars. If an employer requests an employee to work on a public holiday, he or she is usually entitled to additional pay, as well as compensatory rest for work on 1 May (Labor Day).

### Value Sharing Bonus

Employers can pay their employees an exceptional bonus to support their purchasing power. This bonus is free of income tax and social security contributions, up to a limit of €3,000 per beneficiary. This amount is increased up to €6,000 within companies having implemented a voluntary profit-sharing agreement (accord d'intéressement).

Since 1 December 2023, a company can now pay two value-sharing bonuses per year (prime de partage de la valeur), according to a law dated 29 November 2023 (loi portant transposition de l'accord national interprofessionnel relatif au partage de la valeur au sein de l'entreprise).

On an experimental basis, from 1 January 2025, companies with between 11 and 49 employees will be required to set up a profit-sharing scheme, an employee savings plan (plan d'épargne salariale), or



pay a value-sharing bonus if they achieve a net profit for tax purposes of at least 1% of sales during the last three consecutive financial years.

Moreover, in order to foster the development of voluntary profit-sharing scheme in companies, companies with fewer than 50 employees (not required to implement a profit-sharing scheme) are able to negotiate through a company-wide agreement a profit-sharing formula other than that provided for in the French Labor Code.

# TERMINATION OF EMPLOYMENT

## I. GROUNDS

Termination can be by mutual agreement, upon expiry of a fixed-term contract, at the employer's initiative, by resignation of the employee, or by judicial resolution as follows:

- If it is based on real grounds that are serious enough to justify the employee's dismissal, such grounds are either "personal" or "economic."
- After following the proper dismissal procedure (in particular, a preliminary meeting and minimum waiting periods).

## II. MINIMUM ENTITLEMENTS

### Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than gross or willful misconduct, it must comply with a minimum notice period.

The same notice period must be complied with by the employee in case of resignation.

The minimum duration of the notice period is one month for employees having between six months' and two years' seniority and two months for employees with more than two years' seniority. CBAs usually provide for longer notice periods, especially for white-collar workers who usually benefit from a three-month notice period.

Notice does not need to be provided when an employer terminates an employee for gross or willful misconduct.

If an employee resigns, he or she must comply with the notice period provided in the contract or CBA. The employer can exempt the employee from working out the notice period, which should nevertheless be paid.

### Entitlements

As a general principle, severance payment includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken paid holiday (indemnité de congés payés).
- Indemnity in lieu of notice (if applicable) (indemnité de préavis).
- Dismissal indemnity in case of dismissal and termination through a mutual termination agreement (indemnité de licenciement).

By law, the statutory minimum dismissal indemnity is based on the employee's length of service, as follows:

- For service of less than 10 years, indemnity cannot be less than one-fourth of monthly gross salary per year of seniority.
- For service of more than 10 years, the additional indemnity cannot be lower than the following amounts:
  - One-fourth of monthly gross salary per year of service for the first 10 years.
  - One-third of monthly gross salary per year of service from the 11th year.

Most CBAs provide for higher dismissal indemnities, particularly for white-collar workers.

### III. REDUNDANCY

#### Genuine Redundancy

In the case of redundancy, there are external circumstances (e.g., economic, financial, evolution of information technology, or equipment) that can result in a position no longer being needed. Note that economic grounds for dismissals have changed and cover additional grounds that were already retained by caselaw: The company's reorganization is necessary to safeguard its competitiveness and the termination of the company's activities. These grounds have been added in the new definition of "redundancy" in the French Labor Code.

Since these reforms, parameters for economic dismissals are more precise. Termination by way of redundancy is subject to very specific rules. The procedure is complex and varies according to whether the company has more than 50 employees and if the dismissal concerns at least 10 employees.

#### Consultation

Informing and consulting staff representatives is mandatory. Staff representatives must give their opinion on the contemplated redundancy before it can be decided and implemented by the company.

The opinion of the staff representatives is not binding.

The labor authorities must be informed when a redundancy is implemented.

In a case where at least 10 employees are dismissed in a company having at least 50 employees, an Employment Protection Plan (PSE) must be negotiated with the union representative, and the PSE must be subject to the staff representatives' opinion and approved by the labor authorities.

#### Payment

Usually, a severance payment in case of redundancy includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken holiday.
- Redundancy indemnity (generally higher than the mere dismissal indemnity).
- Indemnity in lieu of notice (if applicable).
- A one-year specific state training program (Contrat de Sécurisation Professionnelle) or redeployment leave if the group has at least 1,000 employees in Europe, by which the French company must pay for a retraining and redeployment leave (Congé de Reclassement) that triggers important financial costs, notably because the dismissed employees do not receive state unemployment benefits but keep being paid by the company during a period (between four and 12 months) and benefit from training programs.

In addition, where a PSE applies, companies will also pay additional amounts, such as costs associated with training measures, outplacement counseling, indemnity to help employees setting up a new company, relocation assistance, or a reindustrialization indemnity to the local administration.

### IV. REMEDIES

#### Dismissal Action

Employees may challenge any dismissals in court on the grounds or the procedure of the dismissal, as well as the amount of severance payment provided or overtime hours.

According to the specific procedural labor rules, conciliation is always possible and encouraged before and during the labor court action.

The grounds stated in the dismissal letter should be sufficiently specific to be verifiable.

In order to secure and minimize the risks associated with a labor dispute, since the labor reform of 2017, the amount of damages that can be awarded to an employee by a court are predetermined by the so-called “Macron scale” (barème Macron) on the basis of length of service.

Indeed, a specific amount of indemnity, based on a monthly gross salary, is fixed for each year of service.

The French Labor Code specifies minimum and maximum amounts for each year of service as follows:

- For companies with 11 or fewer employees, the damages are calculated as follows:
  - From a minimum of 0.5 months to a maximum of 20 months.
- For companies with more than 11 employees, the damages are calculated as follows:
  - From a minimum of one month to a maximum of 20 months.

Many labor courts had rejected the legitimacy of the Macron scale. However, on 11 May 2022, the French Supreme Court (Cour de Cassation) stated that the scale was valid and in accordance with Article 10 of Convention No. 158 of the International Labor Organization (Organisation Internationale du Travail).

# BUSINESS TRANSFER AND RESTRUCTURING

## I. LEGAL REQUIREMENTS

### Transfer of Business

In case of transfer of an ongoing business that is economically autonomous, all employment contracts in progress are automatically transferred to the new employer, who must maintain all employment contracts with the same terms and conditions. Suspended contracts (e.g., maternity leave, sick leave for injury or occupational illness, training) are also transferred.

In case of a partial transfer of ongoing business or activity, only the contracts assigned to the transferred activity are transferred with it. If staff representatives are concerned by the potential transfer, a prior authorization from the labor inspector is required.

This transfer is automatic. That means it is binding on the employer and to employees, who do not have to agree or comment on the transfer.

All collective agreements remain applicable for a period of 15 months, except where new collective agreements are signed with union representatives in order to replace them.

However, dismissals can be carried out before the transfer under specific conditions when a PSE has been adopted.

## II. RESTRUCTURING

### Notification

Information can be provided to employees after consultation with staff representatives.

### Consultation

Informing and consulting staff representatives regarding the contemplated restructure and the likely effects of the restructure on the personnel is required. The staff representatives must give their opinion before the company is entitled to any definitive decision.

The opinion of the staff representatives is not binding.

# PROTECTION OF ASSETS

## I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and trade secrets as defined in articles L.151-1 to L.151-9 of the French Commercial Code.

If those provisions are breached, an employee might face penalties, along with damages to the legitimate holder of the trade secret. However, these obligations should not restrict the employees' rights to earn a living.

## II. CONFIDENTIAL RESTRAINTS AND NONCOMPETES

As a general principle, an employer can potentially enforce clauses preventing the employee from working for a competitor or from soliciting the employer's employees and customers. Such a clause must be in the employment contract.

A noncompete duty arising for the period the employee is employed must be included in the contract.

Any noncompete duty after termination of the employment contract must meet the following conditions in order to be valid:

- Be limited in time and space.
- Be limited as to the nature of the prohibited activities.
- Be required to protect the interests of the company.
- Provide for financial compensation to be paid to the employee (no statutory minimum, but caselaw generally considers 33% of the average remuneration as a minimum), which is a salary item (subject as such to both employee's approximately 23% and employer's approximately 45% social security contributions).

All of the above conditions must be met. In case of noncompliance with any of the above conditions, the noncompete clause is void, and the employee can claim damages from the employer. An employee who does not comply with the noncompete may be ordered to pay damages to the employer, subject to evidence of such a breach and related prejudice.

An employer may waive a noncompete clause if a waiver is provided in an employment contract clause or with the employee's consent. The CBAs can provide noncompete regulations.

## III. PRIVACY OBLIGATIONS

The GDPR is a comprehensive data protection regulation that was introduced by the European Union to strengthen the rights of individuals regarding the collection and processing of their personal data.

In France, the GDPR was implemented into national law through the preexisting Information Technology and Liberties Law (Loi Informatique et Libertés) of 6 January 1978.

Both statutes are enforced through the French data protection authority (Commission Nationale de l'Informatique et des Libertés (CNIL)), which is responsible for overseeing data protection and enforcing compliance with the GDPR within France.

## Establishment of Legal Basis

Under the GDPR, the most relevant legal basis for processing must be selected from the following six options:

- Consent of the individual.
- Necessity for the performance of a contract to which the data subject is party.
- Necessity for compliance with a legal obligation.
- Protection of the vital interests of the data subject or another natural person.
- Public interest.
- Legitimate interest pursued by the controller or by a third party.

## Attention to Consent

Although an employee's consent may seem a viable option, the hierarchical imbalance between employees and employers could challenge the "freely given" requirement for consent to be valid in human resources relations.

Moreover, consent may be freely revoked, which can also prove challenging for business process continuity.

## Attention to Sensitive Data

The processing of sensitive personal data (i.e., ethnic origin, political opinions, religious beliefs, union membership, genetic or (certain) biometric data, or data relating to health or sexual orientation) is prohibited in principle, but there are some limited exceptions under the GDPR (e.g., processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or the data subject in the field of employment and social security and social protection law, or data processing necessary to protect the vital interests of the employee, or if the information is manifestly made public by the person concerned).

## Records of Personal Data Processing Activities

Employers are required to maintain records of their personal data processing activities (ROPA). In the context of labor law, this includes documenting what, how, why, for how long, and by whom employee data is collected and processed; details of transfers to third countries (if any); and information about technical and organizational security measures.

The ROPA must be provided to the CNIL upon request, and failure to establish or maintain an up-to-date ROPA would in and of itself be a breach of the GDPR's accountability requirement.

## Data Protection Impact Assessment

When processing operations are likely to result in high risks to data subjects (e.g., when involving new technologies such as artificial intelligence), employers will need to conduct a specific Data Protection Impact Assessment (DPIA), detailing, in addition to the information required under the ROPA, the risks and ways to remedy such risks, prior to implementing the relevant processing operations.

The CNIL published a nonexhaustive list of types of processing that mandate a DPIA, including processing pertaining to (a) the permanent monitoring of employees' activities, (b) the management of professional whistleblowing reporting, or (c) the profiling of individuals for the purpose of human resources.

## Information of Employees

An employer is obliged to inform individuals in detail about the collection and processing of their personal data, including data sharing and international transfers, and legal rights in this regard. Such information should generally be provided through various privacy notices for each category of individuals (e.g., employees, applicants), in order to only convey the information relevant to that category.

The individuals should be notified of any substantial changes to the privacy notice.

## Training of Employees on Data Protection Policies

As part of the accountability tenet of the GDPR, the employer is responsible for ensuring that its employees comply with GDPR requirements and for providing evidence for compliance with the GDPR, which can be achieved through staff training.

## Data Sharing Group-Wide Consolidation

Data sharing with third parties (including service providers such as payroll providers and marketing partners) must be thoroughly assessed and framed within a data sharing agreement to ensure that GDPR requirements are complied with all through the data life cycle. Additionally, both disclosure of data to and receipt of data from third parties must be indicated in the ROPA.

There are no intragroup exemptions, so group companies have to be treated as third parties and any data flows among group companies need to be carefully assessed.

## Data Transfers

There are limited ways in which data can be transferred to third parties outside the EEA. Where the recipient is not located in a country benefiting from an “adequacy decision” or all involved parties have implemented binding corporate rules, a data transfer agreement will generally need to be implemented to ensure that GDPR requirements are complied with all through the data life cycle.

## Data Subjects Rights and Data Subject Access Requests

Employees also have several statutory rights under the GDPR with regard to their personal data, namely:

- Right to access, rectify, or delete their data.
- Right to restrict the processing.
- Right to data portability.
- Right to object.
- Right to freely withdraw consent.

Upon receiving such data subject access request, the employer will need to address the request within one month of its receipt, but an additional two months’ time extension may be applied to complex requests.

## Data Protection Officers

Employers, especially larger organizations, may be required to designate a data protection officer (DPO) responsible for monitoring GDPR compliance and engaging with data subjects and supervisory authorities.

Among the requirements to properly perform his or her activities, the DPO must have expert knowledge of data protection, a good understanding of the organization’s operations, independence,

material and organizational means, resources, and appropriate positioning when performing his or her tasks.

The DPO is a protected employee who may not be dismissed for performing his or her tasks.

## **Fines**

Noncompliance with the GDPR might result in fines of up to €20 million or up to 4% of the global annual turnover, whichever is higher.

## **Notable Recent Developments**

The CNIL published a frame of reference for recruitment on 30 January 2023. The frame of reference is a nonbinding framework dedicated to the hiring of new employees. It is a comprehensive guide that provides employers with clear and concise information on the data protection requirements they must comply with when recruiting new personnel. This detailed document is structured as a series of guidance sheets, each addressing a specific aspect of the hiring process and addressing frequently asked questions from employers.

## **IV. WORKPLACE SURVEILLANCE**

An employer has the right to monitor an employee's activity during work time if the monitoring meets the following obligations:

- It is not permanent.
- It demonstrates a legitimate interest for the company.
- It is strictly related to a specific task.
- The employer consults the works council prior to the implementation of a monitoring system.
- The employer individually informs each employee before the implementation of the monitoring system (see "Privacy Obligations" section above).

Information obtained in violation of these rules is null and void, will not constitute evidence, and cannot justify either sanction or dismissal.

French law prohibits employee monitoring in areas such as toilets, bathrooms, and changing rooms or on a permanent and continuous basis, such as for workstations (except in specific circumstances, e.g., an employee handling money).

Since 2016, noncompliance with protective rules applicable to the collection of personal data is sanctioned by the French Penal Code and may lead to a maximum of five years' imprisonment and a fine of €300,000 for legal representatives and €1,500,000 for the company (as provided by the Digital Republic Act), and there is also a risk of a GDPR fine of up to €20 million or 4% of annual global turnover.

## **V. WORKPLACE INVESTIGATIONS**

Employers may conduct a workplace investigation to determine policy breaches, misconduct, or misuse of confidential information. However, the investigation has to be open, and evidence must be shared with the employee in question to allow him or her to defend himself or herself. The searching of personal belongings is allowed only by complying with the conditions and methods specified by internal regulations.

The employer is entitled to inspect the employee's professional computers, emails, and telephone and to copy the data. However, files, folders, and emails identified by the employee as "personal" may only be accessed where the employee has been invited to be present during such access.

# WORKPLACE BEHAVIOR

## I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, rules and regulations, and agreements provide procedures for the management of employees' performance and conduct.

Unfair dismissal provisions require an employer to warn an employee before terminating his or her employment due to poor performance.

Misconduct may also lead to a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive all of their usual entitlements on termination of employment.

## II. BULLYING AND HARASSMENT

### Bullying

Bullying is prohibited by law.

### Harassment

Sexual and moral harassment and sexist acts are prohibited by French legislation and subject to civil and criminal sanctions.

Companies who have at least 50 employees must appoint a special supervisor for cases of sexual harassment. The supervisor's report can be used in case of any legal dispute.

### Whistleblowing Policy

French legislation has recently evolved with regard to internal whistleblowing procedures. Under French labor law, a "whistleblower" is "an employee who discloses or reports, in a disinterested manner and in good faith, a serious risk to public health or the environment in the company." An employee who complies with the reporting procedure is protected against any sanction, dismissal, or discrimination. Since 1 September 2022, the implementation of a written internal reporting policy is mandatory for companies with more than 50 employees.

In addition, the law of 21 March 2022 (loi visant à améliorer la protection des lanceurs d'alerte) expressly allows for the possibility of anonymous reporting. However, if the identity of the whistleblower is revealed, he or she must benefit from the same protection as any other whistleblower.

Finally, the implementation of a whistleblowing hotline would include the processing of personal data that may also be potentially sensitive. Information on the processing and rights of the data subjects should be provided to employees. Where the service is provided by a third party, a data processing agreement must be implemented to guarantee GDPR compliance and, where such provider is located outside of the EEA, a data transfer mechanism must be implemented. A DPIA will need to be conducted prior to such implementation as well.

## III. DISCRIMINATION

France has very strict regulations prohibiting certain types of employment discrimination.

The French Labor Code provides that no candidate may be turned down from a recruitment process, nor may any employee be punished, dismissed, or subjected to a discriminatory measure (directly or

indirectly) with regard to remuneration, training, relocation, appointment, classification, qualification, or promotion on the grounds of his or her origin, gender, morals, sexual orientation, age (unless the difference of treatment based on age can be justified by a legal purpose), marital status, ethnicity, nationality, race, political or religious beliefs, union involvement, physical appearance, surname, state of health, disability, pregnancy, maternity, or negative discrimination due to the economic situation of a poor person.

Indirect discrimination is also prohibited.

However, some discrimination can be justified either by the need to protect the economic interests of the company or by the desire to protect certain categories of people.

## IV. UNIONS

### Representation

Within a business, the interests of employees are represented by staff representatives, including works councils, employee delegates, health and safety committees, and union representatives. This has been completely changed by the labor reform in 2017, creating the CSE, a unique employee representative body, mandatory since January 2020.

The general duties of these representatives include:

- Ensuring that laws are complied with.
- Working together with the employer in good faith.
- Ensuring that men and women are treated equally.

In addition, representatives are entitled to be involved in many of the employer's decisions, such as employee issues, dismissals, economic matters, and operational changes. They are also the interlocutors of the labor inspector and can inform them of any problem with law enforcement.

Trade and labor unions are employee representation coalitions that are not bound to a single employer or business. The main purpose of unions is the conclusion of CBAs, either with employer associations or with individual employers.

Intended to unify the various representative bodies (staff representatives, CSE, Health and Safety Committee), the CSE entails reduced or extended functions, depending on the size of the company.

The role of the CSE with reduced functions (for companies with less than 50 employees) is to present individual or collective claims relating to wages and social protection. The CSE is also competent in matters of health and safety and working conditions, investigations following work accidents, or occupational illnesses.

The role of the CSE with extended functions (for companies with at least 50 employees) is to primarily provide a mandatory consultation on matters relating to the organization, management, and general operations of the undertaking in general on every measure able to affect the volume or structure of the workforce and for every change affecting economic or legal organization.

The CSE is also competent to deal with a health and safety analysis of professional risks, wage equality, and right of alert in case of infringement of individual rights, physical and mental health, or individual freedoms in the company.

The CSE also has the right to participate in the company's board meetings twice per year.

## Industrial Disputes

It is lawful to take industrial action (e.g., strikes) as long as, collectively, employees' claims are of a professional nature. In the public sector, employees must give notice of at least five days before going on strike.

## V. REMOTE/HYBRID WORK

### Remote Work

The use of remote work is no longer mandatory but remains recommended and is carried out under the provisions of the French Labor Code. In principle, remote work can be implemented within companies by collective agreement. Specific provisions in the employment contract are required.

## VI. PARTIAL ACTIVITY SCHEMES

### “Classic” Partial Activity Regime

Partial activity (activité partielle) is a tool for preventing economic redundancies for a limited period of time.

The purpose of partial activity is to avoid economic redundancies by reducing the working time of employees. During the period of partial activity:

- The employer receives an allowance from the state equivalent to part of the hourly pay of the employee impacted by partial activity.
- The employee receives a partial activity indemnity from the employer in lieu of pay for the period during the partial activity period.

The hours covered by the state allowance are usually limited to 1,000 hours per year.

In principle, the company must apply for partial activity before the French Labor Administration after informing and consulting with the CSE.

This scheme can be set up for a maximum period of 12 months.

### Long-Term Partial Activity Regime

The long-term partial activity regime (Activité Partielle De Longue Durée (APLD)) is an economic support mechanism for companies facing long-term economic difficulties. This was a temporary scheme set up either by collective agreement or by employers unilaterally up to 31 December 2022. However, from 1 January 2023, existing collective agreements or documents continue to apply until they expire (maximum to 31 December 2026), and they may be modified by addendum.

With APLD, companies can reduce their employees' working hours, maintain the employees' remuneration at 84%, and receive from the state an allowance for hours not worked but paid.

The collective agreement or the unilateral document must contain specific information, such as the economic situation diagnosis, activities and employees affected, training, and the maximum reduction of working hours below the legal working time.

When the APLD is implemented:

- Employees' working time can be reduced by up to 40%.
- For hours not worked, employees receive an indemnity from the employer corresponding to 84% of their net hourly pay.
- The company receives an allowance from the French government, the amount of which varies.



The APLD may be implemented for a maximum of 36 months (consecutive or cumulative) over a period of 48 consecutive months.

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