

More flexibility in reducing workforce through collective termination agreement

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Dr. Aymeric Le Goff, Avocat à la Cour | Partner
Almut Weise, Rechtsanwältin

The recent reform of French labour law provides a number of simplifications for companies to reduce their workforce.

One of these reforms consists of a so-called collective termination agreement, without any justification for economic reasons within the meaning of the provisions on termination for economic reasons.

In particular, the collective agreement is not subject to economic reasons. This also enables economically sound companies to use this mechanism.

1. Conditions and scope of application of the collective termination agreement

The terms of such termination must be regulated in a collective agreement, validated by the administration.

The use of this scheme is excluded if the employer intends to lay off employees if the number of applicants is not sufficient in relation to the job cuts envisaged. This must be expressly regulated in the collective labour agreement.

According to the Ministry of Labour, otherwise there would be a risk that a social plan drawn up shortly after an unsuccessful

collective bargaining agreement (absence of sufficient numbers of candidates) would not be approved by the administration.

It should remain possible, even in the above-mentioned case and once the scheme has failed, to dismiss certain employees under the rules on dismissal for economic reasons after a sufficient time.

2. Contents and procedure of the collective labour agreement

The collective agreement must:

- schedule the maximum number of planned departures;
- determine the conditions that the employee must meet in order to benefit from it and the criteria for the division of labour;

These criteria can be freely chosen, such as seniority in the company, family situation, professional qualifications, personal or professional projects, etc.

However, it is necessary to ensure that non-discriminatory criteria are

in place. In particular, it is important not to set criteria that favor the exit of older employees.

- define the calculation of termination indemnities, which cannot be lower than the legal severance pay. Termination indemnities are exempt from income tax, notwithstanding their amount. Termination indemnities will be exonerated from social security contributions within the limit of 2 annual social security thresholds (2018: 79.464€);
- include measures to facilitate the external reclassification of employees to equivalent jobs (training, validation of prior experience or retraining or support for the creation of new activities, etc.);
- determine the terms and conditions for informing the Social and Economic Committee.

However, this Committee is not consulted on the draft agreement or on the proposed downsizing of the workforce brought about by this agreement. It is consulted regularly and in detail on the monitoring of the implementation of the downsizing project.

The collective termination agreement is a majority agreement and must as such be signed by representative unions having obtained more than 50% of the votes in the first round of the last elections. If these prerequisites are not met, the agreement can nevertheless be adopted by the majority of the company's employees, by referendum.

3. An agreement validated by the administration

Once concluded, the collective agreement must be notified to the French administration (Direccte) for validation.

The latter has a period of 15 days from receipt of the agreement to validate the agreement. The Direccte will notably take into account the following elements:

- compliance with Article L 1237-19 of the labour Code (absence of dismissal to achieve the objectives set by the agreement in terms of job losses);
- respect of the legal requirements towards the intent of the agreement;
- regularity of the information procedure of the Social and Economic Committee (SEC);
- non-discrimination of potential candidates to collective termination agreement, specifically because of their age.

4. Procedure after validation

Employees interested in a contractual termination may apply.

The acceptance by the employer of the employee's application entails termination of the employment contract by mutual agreement between the parties. However, the definitive termination of the employment contract of a protected employee who has accepted the termination of the agreement remains subject to the authorization of the labour inspector.

This rupture is neither a dismissal nor a resignation. Consequently, the provisions

on dismissal for economic reasons do not apply. The employee is not entitled to the priority of re-hiring, nor is he or she entitled to a security agreement (contrat de sécurisation professionnelle) or a reclassification leave.

Finally, as in the case of an individual contract breakup, the employee is entitled to unemployment insurance.

5. Specificities for companies with at least 1000 employees

If, because of its size, the workforce reduction measure in the context of the collective bargaining breakdown has a negative impact on the balance of the local labour market, the company is generally obliged to pay a compensation for the creation of local jobs.

This compensation represents at least twice the monthly wage of the minimum wage for each job lost.

This provision concerns companies with at least 1000 employees or companies belonging to a group with at least 1000 employees.

This provision does not apply to firms in insolvency proceedings.

6. Entry into force

This new collective termination agreement mechanism entered into force on 23 December 2017.

Nevertheless, the overall regime of the collective termination agreement is prone to evolve within the framework of the Macron ordinance ratification act, which is expected to pass in March 2018.