

Towards a more flexible Labor Code

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The French government recently confirmed that it intended to rewrite the French Labor Code in its entirety, since the current legislation has received such criticism from businesses for its lack of flexibility and its inadequacy for the demands they face. We have set out below the principal provisions of the “El Khomri” draft law submitted on 17 February as the text that will form the basis of the rewritten Labor Code:

Greater flexibility for working hours

Without amending statutory working hours, which are to remain fixed at 35 hours per week, a number of new provisions aim to relax the current rules concerning the way in which working time is organized:

- Businesses with fewer than 50 employees may agree flat-rate pay agreements directly with their employees covering the number of days or hours worked over a year, without needing to enter into a collective agreement. By allowing small and medium-sized businesses to easily access flexible working-

time arrangements, these provisions are a major step towards greater legal flexibility and security for businesses.

- The maximum number of working hours per week would remain fixed at 48, but would be reduced to 44 hours over any period of 16 consecutive weeks (instead of a maximum of 44 hours over 12 consecutive weeks). In addition, a simple business-level agreement (or, failing that, a branch-level agreement) may increase this second limit to 46 hours.

- The increased rate of pay for additional hours would be set primarily by a business-level agreement (and no longer primarily by a branch-level agreement), with the aim of encouraging businesses to enter into business-level agreements on working hours. As at present, the rate may not be lower than 10%.

- A collective agreement (at the level of the business or, failing that, the branch) may organize working time over a period of 3 years (compared to one year, currently).

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- In the absence of a collective agreement, businesses with fewer than 50 employees may organize their working time over 16 consecutive weeks (compared to the current maximum of 4 weeks).

Compensation framework for termination of employment without just and proper grounds

While current legislation does not impose a maximum amount of damages and interest that labor court judges may award where employment is terminated without just and proper grounds, the future Labor Code intends to provide judges with a framework in this area. This measure has been keenly awaited by employers, as it gives them greater visibility over termination costs:

- The judge should be bound by a maximum that varies according to the employee's length of service with the business (irrespective of the size of the business), ranging from 3 months' salary (if the length of service is less than 2 years) to 15 months (where the length of service exceeds 20 years). There will, however, be certain circumstances where the scale does not apply, including psychological or sexual harassment or where the termination was discriminatory.

- The minimum amount of compensation due where termination is null and void on the basis that no job protection plan, or an inadequate job protection plan, has been implemented, shall be reduced from 12 to 6 months' salary and, moreover, this minimum shall be abolished for employees with less than 2 years' service.

- Similarly, the minimum amount of compensation awarded in the event of

terminations made in breach of the provisions on incapacity to work shall be reduced from 12 to 6 months' salary.

Greater legal protection for dismissals made for economic reasons

A number of new provisions give greater legal protection to reorganizations undertaken for economic reasons:

- The definition of termination for economic reasons will cover, for example, a decline in orders or revenue, observed over a certain period of time, as a means of assessing economic difficulties.

- In order to better reflect French market conditions, where the business belongs to a group, difficulties will be assessed by reference to the business sector common to the businesses in the group that operate in France (and not, as before, at an international level). This new provision, which would see an end to the unique way in which France approaches this subject, has long been requested by large groups. It would allow businesses experiencing economic difficulties in France to reorganize on French soil, even if their international situation is satisfactory. This would be a major development that would reassure foreign investors.

In conclusion, these measures aim to place greater emphasis on collective bargaining. In particular, they are undoubtedly moving towards greater recognition in French Labor law of the pressures affecting businesses operating in France, yet still provide the appropriate protections for employees.