Employment Law Newsletter – March 2019

12 March 2019
Paris office

Our Paris office is pleased to present its monthly newsletter on employment matters.

1. Case Law

1.1 Professional elections

(a) **Conventionality of the balanced representation scheme**

The gender balance representation system is declared conventional by the French Supreme Court (French Supreme Court, 13 February 2019, n°18-17.042 FS-PBRI).

(b) **Implementation of the social and economic committee: clarification of the electoral and eligibility conditions for the employees seconded**

- Pursuant to a legal text now repealed, seconded employees had a right of option which allowed them to vote and to stand as a candidate in elections for employee representatives (*délégués du personnel*) in their host company. The Court of cassation specified that this right of option cannot be opposed to a seconded employee in order to refuse his eligibility to the social and economic committee set up within his home company since the entry into force of the ordinance n°2017-1386 of 22 September 2017 no longer allows him to be eligible in his host company (*French Supreme Court, 13 February 2019,n°18-60.149, F-PB*).

1.2 Collective bargaining: validation of the bargaining system for companies with 11 to 49 employees without a trade union delegate

- The French Council of State validated the system whereby companies with 11 to 49 employees without a trade union delegate can negotiate a collective agreement with the full members of the social and economic committee on all topics that can be negotiated by company or establishment agreement (*French Council of State, 18 February 2019 n° 417209*).

2. The social security court system reform: impacts related to investigations carried out by social security agencies (URSSAF)

- Law n° 2016-1547 dated 18 November 2016, which was completed by two ordinances issued on 16 May 2018 and by the Decree n° 2018-928 dated 29 October 2018, has radically reformed the social security judicial system, in particular by suppressing the specialized courts for social security cases and also by generalizing the amicable settlement prior procedure .

- Law n° 2018-1203 dated 22 December 2018 amended the sanctions applicable in the event of an Urssaf adjustment based on a situation of undeclared work.
- Thus, the procedure and sanctions applicable to Urssaf adjustments have been completely overhauled.

2.1 Social security court system reform

(a) **Jurisdiction of the High Courts (*Tribunal de Grande Instance*)**

As from 1 January 2019, the 116 High Courts (*Tribunal de Grande Instance*) designated by the Decree n° 2018-772 dated 4 September 2018 have jurisdiction over:

- Social Security general disputes and therefore litigations specifically related to Urssaf adjustments;
- Social Security technical disputes (except for disputes related to the pricing of work accidents and occupational diseases);
- Disputes related to the admission to Social Assistance;
- Decisions in relation to professional prevention accounts (*compte professionnel de prévention*).

Therefore, the 115 Social security tribunals (*tribunaux des affaires de sécurité sociale*) and the 26 Incapacity tribunals (*tribunaux de l'incapacité*) have been abolished in order to form the social hub of the 116 designated High courts.

Moreover, the appeal will now be lodged only before the courts of appeal expressly designated by the above-mentioned decree.

The main procedural changes following the abolition of Social security tribunals affect:

- The procedure for bringing a case before the court
- The pre-trial phase
- The end of the principle of free access

(i) **Procedure for bringing a case before the court**

In order to take a legal action in front of the High Court which has jurisdiction over the case, a request must be delivered or addressed by registered post with acknowledgement of receipt to the Registry of the Court.

The request must contain the following information:

- The compulsory provisions of article 58 of the Civil Procedure Code;
- The object of the request;
- A summary statement of the grounds for the request;

- A copy of the contested decision or, in the event of an implicit decision, a copy of the initial decision of the social security agency and the applicant's prior amicable settlement appeal;
- The supporting documents listed on an attached form;
- The name and address of the doctor designated to receive the medical documents.

(ii) **The pre-trial phase before the social pole of the High Court**

The social pole of the High Court is still composed of professional judges and non-professional judges.

The principle of oral debates is maintained as well.

However, as from 1 September 2019, the President of the formation of the High Court will not have the power to rule alone as it was authorized before the Social security tribunal. However, the President already has increased powers during the pre-trial phase of the case.

(iii) **The end of the principle of free access**

If the proceedings before the Social security tribunals were free of charge, the social hub of the High Court now has to rule on the costs of the proceedings in accordance with the rules provided by the Code of Civil Procedure.

(b) **Modification of the time limits applicable before the Arbitration Committee (*commission de recours amiable*)**

In the context of an Urssaf adjustment, the time limit to refer the matter to the Amicable Board of appeal (*commission de recours amiable*) remains of two months from the reception of the Urssaf formal notice, provided that it mentions the applicable time limits and appeal procedures.

However, the Amicable Settlement Board (*commission de recours amiable*) has now an additional month to review the appeal. Indeed, the applicant may consider his application as rejected by the Amicable Board of appeal when the Commission's decision has not been brought to his attention within two months, and not only one month, following the receipt of the complaint by the social security organism.

3. Modulation of sanctions applicable in the event of hidden work

In the event of an Urssaf adjustment based on a hidden work situation, the Company may be sanctioned by a total or partial cancellation of the measures of reduction and exemption from social security contributions from which the Company could have benefited up to the limit of the prescription applicable to the infraction.

Law n° 2018-1203 dated 22 December 2018 amended the penalties applicable to the Company by extending the list of benefits being challenged and introducing a modulation of the penalties applicable according to the seriousness of the offence committed by the Company.

3.1 Extension of the list of benefits being challenged

Law n° 2018-1203 dated 22 December 2018 has extended the general reduction in social contributions to new contributions . As a counterpart, this law has also extended the social contributions[1] concerned by the cancellation of the reduction or exemption in case of undeclared work.

Therefore the cancellation of the exemption or reduction of contributions now involves contributions due under legally mandatory supplementary pension schemes, unemployment insurance contributions, the Fnal contribution and the solidarity and autonomy contribution.

3.2 Modulation of sanctions according to the seriousness of the infraction observed

Law n°2018-1203 dated 22 December 2018 introduces the possibility of pronouncing a partial cancellation when the hidden work:

- Results from the re-characterization of a client's contract as an employment contract,
- Represents a limited proportion of the activity[2].

In the event of partial cancellation, the proportion of exemptions cancelled is equal to the ratio between twice the evaded remuneration and the amount of remuneration, subject to social security contributions, paid to all employees by the employer, over the period concerned, up to a maximum of 100%.

---

1. For more information on this subject, please consult our article regarding the extension of the general reduction in social contributions published in our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for December 2018 / January 2019.

2. A new Decree will specify the threshold above which the activity is considered limited.

> Read the full article online