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The French job security act

Presentation of the latest employment law reforms

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Employment law / Paris

Chronology
Job security act

- 11 January 2013: A national multi-industry agreement (ANI) is entered into “for a new economic and employment model, enhancing company competitiveness and protecting employees’ jobs and career paths” and signed by the MEDEF, the CFDT, the CFTC and CFE-CGC.

- 14 May 2013: the job security act passes the French Senate after passing through a joint committee.

- 13 June 2013: the act is validated by the French Constitutional Council, but censure of Article L.912-1 of the French Social Security Code.

- 14 June 2013: the act is promulgated.

- 16 June 2013: the act is published in the French Official Journal.

Chronology
Act establishing the generation contract (*contrat de génération*)

- 19 October 2012: The ANI on the generation contract is entered into and unanimously signed by the MEDEF, the CGPME and UPA on the one hand and the CFDT, CFE-CGC, the CFTC, the CGT and CGT-FO on the other.

- 1 March 2013: the act establishing the generation contract is published.

- 15 March 2013: Decree no. 2013-222 is issued establishing the new mechanism's implementing provisions.

- 15 May 2013: circular on the generation contract.

Table of contents

I. Mainstreaming of supplemental health insurance and portability of rights

Article 1 of the act
New Articles L.911-7 and L.911-8 of the French Social Security Code

I. Mainstreaming of supplemental health insurance and portability of rights

Reminder of existing provisions
(Articles L.911-1 to L.914-4 of the French Social Security Code, FSSC)

The supplemental social protection could be **optional** for the company, subject to the provisions of the industry-wide / multi-industry agreement (cf. Metallurgy).

I.1- Health and disability and life insurance benefits

- ✓ The system could be created for all of a company's employees or only some of them (in such case, the categories of employee beneficiaries were specifically defined by the collective bargaining or other agreement).
- ✓ In principle and in order to benefit from social security exemptions on contributions, membership was mandatory (with exceptions exhaustively listed by law – cf. in particular circular of 30 January 2009 and Decree of 9 January 2012 – **Article R.242-16 of the FSSC**).
- ✓ The supplemental social protection system is financed by the employer, or the employees, or co-financed by them according to various scales depending on the coverage / objective categories (subject to case-law developments on the notion "equal pay for equal work").

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (1)

I.1- Health and disability and life insurance benefits

- **Article 1 of the act:**

  Companies must implement, no later than **1 January 2016**, mandatory supplemental coverage providing reimbursement of expenses incurred due to illness, maternity or an accident.

  To do this, a 3-stage mechanism is created, combining:

  - industry-level negotiation,
  - company-level negotiation,
  - and unilateral decision by the employer.

- This article also establishes an obligation to negotiate, on the professional sector level, the introduction of mandatory supplemental coverage in terms of disability and life insurance for all employees.

- Henceforth, new Article L.911-7 last par. of the FSSC provides that the employer finance **at least half** of the coverage.

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (2)

I.1.1 Health and disability and life insurance benefits - Complementary health insurance

Industry-level negotiation

As a first step, and before **1 July 2014**, industries are required to initiate negotiations. This applies to professional sectors in which employees do not enjoy minimum mandatory collective coverage*.

***NB**: Minimum coverage must be understood to mean full or partial payment of the following expenses:*

- *The insured's contribution to the rates serving as a basis for calculation of the social security institution's services (co-payment)*
- *Daily hospital charge*
- *Expenses incurred for prosthetic dental care / dento-facial orthopaedics and for some medical devices for individual use*

A Decree is expected to establish the level at which these expenses are covered as well as the list of medical devices for individual use falling within the scope of application of the minimum coverage.

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (3)

I.1.1 Health and disability and life insurance benefits - Complementary health insurance

- Subject of the negotiation:
  - ✓ The **content** and **level** of collective benefits
  - ✓ The **distribution** of the **contribution** expense between employer and employee
  - ✓ The provisions governing the **choice of insurer**

    The parties to the negotiation must examine the pricing conditions under which companies may select the insurer of their choice without overlooking the aim of actual coverage for all their employees. Management and labour organisations may for example decide to:
    - ➢ Leave each company free to make enquiries of the insurer of its choice
    - ➢ Recommend one or more insurers
    - ➢ Designate one or more insurers with which companies will be required to insure their employees.
  - ✓ Where applicable, the terms on which contributions may be allocated to financing the solidarity objective
  - ✓ The conditions for waiver of affiliation solely at the employee's request, in some special situations (employers may in no case rely on these affiliation waivers; the employee categories to which this applies will be established by Decree)
  - ✓ The period companies have in order to comply with the new obligations under the collective bargaining agreement.

    This period must at least be equal to 18 months from the collective bargaining/industry-wide agreement's entry into force and expire no later than 1 January 2016.

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (4)

I.1.1 Health and disability and life insurance benefits - Complementary health insurance

Company-level negotiation

Should the industry-level negotiations break down, companies not covered by minimum mandatory collective coverage on **1 July 2014** must in turn initiate negotiations (this obligation will apply until 1 January 2016).

- Companies to which this applies:
  - ✓ Companies in which a union representative has been appointed
  - ✓ Companies not covered by minimum mandatory collective coverage

- Subject and terms of the negotiation:
  - ✓ Defining a mandatory complementary healthcare cost reimbursement plan at least as favourable as the minimum coverage
  - ✓ As part of the mandatory annual negotiation at the company

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (5)

I.1.1 Health and disability and life insurance benefits - Complementary health insurance

Unilateral implementation

If the industry-level or company-level negotiations have been unsuccessful, the employer must unilaterally provide its employees with minimum healthcare coverage. Entry into force of this obligation: **1 January 2016**

- Companies to which this applies:
  Companies in which employees do not enjoy mandatory collective coverage of healthcare costs

- Minimum coverage: cf. ANI of 11 January 2013
  100% of the base rate for consultations, procedures and pharmacy expenses
  125% of the base for dental prosthesis reimbursement
  Vision benefit of €100 / year

- Implementation provisions:
  - ✓ Unilateral decision by the employer in compliance with the provisions of Article 11 of the Evin act: employees at the company prior to its implementation may not be forced to make contributions against their will (NB: but this seems counter to the aim of the act, which seeks to ensure a mainstreaming of coverage for the reimbursement of healthcare costs)
  - ✓ A Decree will determine the categories of employees who may waive affiliation at their initiative (not counting employees at the company when the system is implemented).
  - ✓ Informing the employees to whom this decision applies

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (6)

I.2- Portability of healthcare, disability and life insurance rights

The act significantly amends the disability and life insurance portability system and the continuation of healthcare coverage provided for by the Evin act => New obligations for which companies are responsible

- The act incorporates the provisions of Article 14 of the ANI of 11 January 2008, creating a mechanism for portability of healthcare, disability and life insurance benefits in favour of the unemployed, into the French Social Security Code.

- The act also incorporates the improvements resulting from the ANI of 11 January 2013 concerning:
  - ✓ Maximum term of portability (which goes from 9 months to 12 months)
  - ✓ The mechanism is free for its beneficiaries.

- The mechanism will enter into force:
  - ➢ For the reimbursement of healthcare costs, from **1 June 2014**
  - ➢ For disability and life insurance benefits (death, temporary and permanent disability), from **1 June 2015**

I. Mainstreaming of supplemental health insurance and portability of rights

New legal provisions (7)

I.2- Portability of healthcare, disability and life insurance rights

- Provisions of new Article L.911-8 FSSC:

  *"**Employees covered collectively**, under the conditions provided for in Article L. 911-1, against the risk of death, risks inflicting physical harm or relating to maternity or risks of temporary or permanent disability, shall enjoy the free continuation of this coverage **if their employment contract is terminated, other than as a result of serious and wilful misconduct, conferring the right to coverage by the unemployment insurance plan** […]"*

  Continuation of benefits is conditional on entitlement to the rights to complementary reimbursement having been with the most recent employer.

  Benefits are applicable under the same conditions to the employee's beneficiaries.

- Term of continuation of benefits:

  The continuation of benefits starts from the **termination date** of the employment contract. Its term is equal to the unemployment compensation period, limited to the term of the most recent employment contract or, where applicable, of the most recent employment contracts where they are consecutive at the same employer, capped at 12 months.

- Content:

  The benefits continued are those in force at the company. However, their continuation may not lead to the former employee enjoying compensation of an amount greater than the unemployment benefits he or she may have received over the same period.

  In other words:

  Social security sick pay (IJSS) + supplemental sick pay ≤ unemployment benefit amount

- Financing:

  Continuation of the healthcare, disability and life insurance coverage free of charge: financing of the benefits will be shared.

- Formalities:

  The continuation of benefits is pointed out by the employer in the employment certificate. The employer also informs the insurer of the employment contract's termination.

II - Consultation of the Works Council on the company's strategic directions and single database

Article 8 of the act enhances the informing and consulting of the Works Council on the company's strategic directions through the implementation of a single database and creates new obligations to consult it on these directions and on the use of the competitiveness and employment tax credit (CICE)
New Articles L.2323-7-1 et seq. of the French Labour Code

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.1 – Consultation on the company's strategic directions (1)

- **Reminder of existing provisions**

  ✓ Article L.2242-15 of the French Labour Code on triennial negotiation: obligation to negotiate an agreement on the provisions for informing and consulting the Works Council on the strategy of the company and its foreseeable effects on employment.

  ✓ Article L.2323-61 of the French Labour Code on consulting the Works Council: In companies with at least 300 employees (or belonging to a group with at least 300 employees) the employer may negotiate the conditions making it possible to adapt the provisions for informing the Works Council and the organisation of exchanges of views as part of a collective agreement (GPEC), in particular as concerns:

  - the operations and financial position of the company
  - the development of employment, training and qualifications

  => In the end, no binding obligation

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.1 – Consultation on the company's strategic directions (2)

- **New legal provisions: Article L. 2323-7-1 of the French Labour Code**

  "*Each year, the works council is consulted on the company's strategic directions defined by the body in charge of managing or supervising the company, and on their consequences on the operations, employment, career and skills development, work organisation, and use of subcontracting, temps, temporary contracts and internships.*

  The works council issues an opinion on these directions and may propose alternatives. This ***opinion is sent to the body in charge of managing or supervising*** *the company, which formulates a reasoned response. The council receives it and may respond to it.*

  The database referred to in Article L.2323-7-2 [new] *is the basis for preparing this consultation.*

  The Works Council may be assisted by a chartered accountant of its choosing with a view to examining the company's strategic directions. The option to use the services of a chartered accountant does not substitute for other expert opinions. (…) The council contributes up to 20% (limited to one-third) of its annual budget."

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.1 – Consultation on the company's strategic directions (3)

- **New legal provisions**

  – Mandatory annual consultation of the Works Council on the company's strategic directions and on their consequences on employment, career and skills development, work organisation, and the use of subcontracting, temps, temporary contracts and internships,

  – The single database (cf. II-2) will serve as a basis for this consultation: it is a collection of economic and employment data to which members of the Works Council, the Central Works Council and, failing that, the staff and union representatives, have permanent access.

  – Option for the Works Council to be assisted by un expert financed between 20% and 1/3 out of its operating budget.

  – Data for **the current year, the two previous years,** and incorporating the **outlook for the three years to come**.

  – Questions: when does the consultation take place? => Probably when the annual financial statements are sent (?)

  Entry into force of this new provision: not indicated. Undoubtedly linked with the entry into force of the provisions on the single database.

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.2 – Single database (1)

- Article L.2323-7-2 of the French Labour Code: tool for understanding and supporting basis for the consultation on the company's strategy.

- Information on the **following subjects**:
  1. Social, tangible and intangible investment,
  2. Equity capital and indebtedness,
  3. Pay awarded to employees and managers,
  4. Social and cultural activities,
  5. Remuneration of financiers,
  6. Financial flows to the company, in particular state aid and tax credits,
  7. Subcontracting,
  8. Where applicable, commercial and financial transfers between group entities.

  ⇒ For Mr Pierre-André Imbert (who drafted the act and is an advisor on companies and economic change), the idea is to assemble all the information regularly communicated to the Works Council into a single database and not to create new documents meeting the requirements of Article L.2323-7-1.

  ⇒ Pb: Article L.2323-7-2 does not refer to periodically consulting and/or informing the Works Council. Commentary has called it a tool to "*enhance employee participation*". Furthermore, the data are for the current year, the 2 previous years and the 3 following years.

  ⇒ It must be updated regularly.

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.2 – Single database (2)

- **To whom does this obligation apply?**: seems to apply to all companies that have a Works Council (not limited to companies with 300 or more employees) but a Decree is expected to specify the scope of the obligation depending on the number of employees.

- The content may be **expanded** by industry-wide or company-wide agreement => it is impossible to depart from it in a less favourable manner (more restrictive than the ANI).

- **When must this obligation enter into force?**
  - In companies with fewer than 300 employees: 2 years from the act's promulgation => i.e. on 13 June 2015
  - In companies with 300 or more employees: 1 year from the act's promulgation => i.e. on 13 June 2014

- **Conjunction with existing obligations to inform (L.2323-7-3 of the French Labour Code):** awaiting a Decree planned at the latest for application on 31 December 2016.

- **Questions raised:** compliance with confidentiality and practical management of this mass of information.

II - Consultation of the Works Council on the company's strategic directions, single database and CICE

II.3 – Consultation on the competitiveness and employment tax credit (CICE)

- Measure introduced by the government when the ANI was transposed,
- Referred to in Articles L.2323-26-1 to L.2323-26-3 of the French Labour Code,
- The amounts the company receives under the CICE and their use are recorded in the economic and employment database (cf. above II.2),
- Consultation of the Works Council (or staff representatives) before every 1 July on use of the CICE,
- **Oversight** over the CICE's use: request for explanations from the employer, drawing up of a report, alerting the public authorities, alerting the management body.

1. III - Amendment of the rules on how Works Councils operate

Article 8 of the act enhances the Works Council's information and consultation on strategic directions (see III) in consideration for which the act grants new flexibility and guarantees to employers:

- *Framework of the periods for consulting the Works Council (amended Articles L.2323-3 and L.2323-4),*
- *Framework of the periods for expert opinions (new Article L.2325-42-1),*

III - Amendment of rules on Works Councils

- **Reminder of existing provisions on consulting the Works Council**
  - ✓ L.2323-4 of the French Labour Code: In order to enable the Works Council to form an opinion, it shall have precise, written information sent by the employer and a sufficient period to examine it.
  - ✓ L.2325-16 of the French Labour Code: a minimum of 3 days' meeting notice (extended to 8 days for the Central Works Council)
  - ✓ Few periods set out for consultation procedures and the periods allotted to the Works Council to give an opinion (collective redundancies for economic reasons, training, incentive plan, etc.)

=> A procedure with little framework

III - Amendment of rules on Works Councils

- **Option of organising consultation procedures within periods set by labour and management:**

  ✓ Agreement by a majority of the Works Council's members or, failing that, a Decree, sets the maximum consultation periods, which may be no less than 15 days (Article L.2323-3 par. 4)

  ✓ Consultations to which this applies:
  - All the consultations referred to in Articles L.2323-6 to L.2323-60 of the French Labour Code: general running of the company, working conditions, professional training/apprenticeship, in case of insolvency proceedings and periodic consultations,
  - Employees' right of expression (Article L.2281-12),
  - Social balance sheet (Article L.2323-72),
  - Overtime allowance (Article L.3121-11).

  ✓ At expiry of the period, a negative opinion is deemed to have been given.

  ✓ Option for the Works Council's members to refer the matter to the chief judge of the French Regional Court (TGI) to obtain additional information. The judge rules within eight days.

  ✓ Entry into force: Need for a Decree in order to know the procedural timelines failing a majority agreement. Nevertheless, option to negotiate an agreement with a majority of the Works Council's members once the act is promulgated.

III - Amendment of rules on Works Councils

- **Framework of the periods for expert opinions (L.2325-35 et seq. of the French Labour Code)**

  - ✓ Setting of the periods for expert opinions by agreement by a majority of the Works Council's members or, failing that, by Decree,
  - ✓ Setting of the periods for exchanging information between the expert and the employer,
  - ✓ Entry into force: the new framework implies a Decree, but management and labour may negotiate an agreement.

IV - Workforce and Competency Planning and Development (GPEC)

Article 14 of the act
Amended Articles L.2242-15 and L.2242-16
Amended Articles L.2323-33 and L.2323-35

IV - Workforce and Competency Planning and Development (GPEC)

- **Reminder of existing provisions**:

  – Triennial obligation to negotiate in companies (or groups) of 300 or more employees on the following subjects (Article L.2242-15):

    - The provisions for informing and consulting the works council on the company's strategy and its foreseeable effects on employment and salaries;
    - The implementation of a workforce and competency planning and development mechanism, about which the Works Council is informed, and about its likely supporting measures, in particular in terms of training, recognition of prior experience, skills audit and support of employee professional and geographic mobility;
    - The conditions for the return to work and continued employment of older employees and their access to professional training (Art. L.2242-19 of the French Labour Code);
    - The career development of employees carrying out union responsibilities and the performance of their duties (Art. L.2242-20 of the French Labour Code).

  - At this time, negotiations may also be on (Article L.2242-16):

    - The content appearing in principle in an agreement on methodology in case of redundancy for economic reasons of ten or more employees within a given thirty-day period, in accordance with the provisions of Articles L.1233-21 and L.1233-22 of the French Labour Code;
    - The definition of job categories jeopardised by economic or technological developments.

  – Reminder of case-law developments relating to the GPEC negotiation undertaking

IV - Workforce and Competency Planning and Development (GPEC)

- **New legal provisions**
  - ✓ **New mandatory subjects of negotiation (L.2242-15)**
    - **The implementation of a GPEC mechanism about which the Works Council is informed** and about its likely supporting measures, in particular in terms of training, recognition of prior experience, skills audit and support of professional and geographic mobility (other than that referred to in Articles L.2242-21 to L.2242-23 of the French Labour Code)
    - **Where applicable, the company's internal professional or geographic mobility conditions**, which must, in case of agreement, be the subject of a specific chapter *(cf. below, internal mobility agreements)*,
    - **Major three-year directions for professional training** at the company and the aims of the training plan,
    - **Outlook on the employer's use of various employment contracts**, in particular indefinite term contracts, fixed term contracts, temp contracts, part-time work and internships, and the **means implemented to decrease the use of short-term employment** within the company in favour of indefinite term contracts.
  - ✓ **New optional subjects of negotiation (L.2242-16)**
    - Conditions under which **subcontractor companies** are informed of the company's strategic directions having an effect on their careers, employment and skills, and on the terms and conditions of their involvement in the GPEC mechanism,
    - Conditions under which the company participates in **GPEC actions implemented on the scale of the territories** where it is set up,
    - Implementation provisions of the generation contract within the company.

IV - Workforce and Competency Planning and Development (GPEC)

- **New legal provisions**

  ✓ **Conjunction with the Works Council consultation**

  - Triennial negotiations are in particular initiated on the basis of the **company's strategic directions** on which the Works Council is henceforth consulted annually => this provision substitutes for the current wording, which provides that negotiations also be on the provisions for informing and consulting the Works Council on the company's strategy (amended Article L.2242-15).

  - **The professional training directions** on which the Works Council is consulted annually are drawn up for consistency with the content of the GPEC agreement, in particular with the major three-year directions for professional training within the company that it set out (amended Article L.2323-33).

  - **The draft training plan** on which the Works Council is also consulted takes into account the professional training directions the Works Council deliberated on, the major three-year directions for professional training within the company and the aims of the training plan set out, where applicable, by the agreement resulting from the triennial negotiation of the GPEC (amended Article L.2323-35).

  ✓ **Stocktaking at the agreement's expiry**

  ✓ **Entry into force at the act's promulgation?:** provisions not subject to an implementing decree

V – Internal mobility agreements

Article 15 of the act
New Articles L.2242-21 et seq. of the French Labour Code

V - Internal mobility agreements

- **Reminder of existing mobility provisions**

  – Notion of amendment of the employment contract versus change in working conditions (duties / workplace) => right of the employee to refuse an amendment of the employment contract. The refusal is not wrongful unless:
    - The change is a change in working conditions.
    - A clause of the employment contract provided for the change being considered: mobility clauses (see lawfulness conditions).

    ⇒ The employee's refusal may then entail disciplinary action that could include dismissal (personal).

  – Economic redundancy procedure in case of non-wrongful refusal / as part of a general reorganisation of the company => procedure of Article L.1222-6 of the French Labour Code

    ⇒ Should 10 or more employees refuse: obligation to implement a statutory job protection plan (PSE) for companies with 50 or more employees.

V - Internal mobility agreements

- **New legal provisions**
  - Conjunction with the GPEC
    - Negotiation referred to in Articles L.2242-5 (1° and 2°) and L.2242-21 to be conducted: obligation to negotiate?
    - Mandatory “cold” negotiation at the time of the GPEC negotiations
    - Negotiation possible outside the context of the GPEC

  - Content of the agreement:
    - The agreement resulting from the negotiation is on **the company’s internal** professional or geographic **mobility** as part of day-to-day collective organisational measures **with no plans to reduce the workforce**.

    - The agreement must contain:

      ✓ **Limits imposed on this mobility beyond the employee’s geographic employment zone**, itself specified by the agreement, in compliance with the employee’s personal and family life in accordance with Article L.1121-1;

      => Do judges no longer define the geographic mobility sector?

      ✓ **Protective measures seeking to reconcile the employee’s professional life with their personal and family life** and to take into account situations relating to disability and health constraints;

      ✓ **Mobility support measures**, in particular training as well as relocation aid, including in particular the employer’s contribution to making up for any loss in purchasing power and to transportation expenses.

V - Internal mobility agreements

- The agreement must be brought to the attention of all affected employees:
  - obligation to inform employees individually versus collectively,
  - the bill's provisions were amended to specify this point.
- The agreement entered into is applicable to current contracts:
  - the clauses of employment contracts contrary to the agreement are therefore suspended,
  - implementation of individual mobility by applying the procedure of Article L.1222-6 of the French Labour Code => need to obtain the employee's consent.
  - **Therefore the employee may refuse**.
- If the employee refuses to accept the individual mobility:
  - The employee's dismissal is based on economic reasons:
    - ✓ The ANI provided that the employee's refusal would entail his or her dismissal for personal reasons but provision considered contrary to the ILO convention.
    - ✓ Prior redeployment obligation, which must be provided for as part of the agreement.
    - ✓ The economic reasons defined according to the same rules as those currently in force => Dispute possible?
  - However many employees refuse, the dismissals are announced according to the provisions of individual dismissals:
    - ✓ No obligation to implement a statutory job protection plan (PSE)
    - ✓ Even if 10 or more employees refuse the change
  - Dismissed employees are entitled to the support and redeployment measures provided for by the agreement.

V - Internal mobility agreements

- Entry into force: this provision is not subject to the entry into force of a Decree => from the act's promulgation. The Government will submit a report taking stock of the agreements before 31 December 2015.

- Issues on hold:

  - ✓ **Conjunction with the option of requiring mobility within the same geographic sector** and the consequences in case of refusal: moving from personal reasons for refusing a change in working conditions to economic reasons?

  - ✓ Conjunction of the agreement with **more favourable contractual provisions**.

  - ✓ **Nature of the redeployment measures** provided for in the agreement: is it possible to depart from redeployment leave?

  - ✓ The reason's definition as economic is automatic, but **can its real and serious nature still be disputed** before the courts?

VI - Secure voluntary mobility period

Article 6 of the act
Articles L.1222-12 to L.1222-16 of the French Labour Code

VI - Secure voluntary mobility period

- **Reminder of existing provisions**

✓ Sabbatical leave:
- For employees who have 6 years' professional experience, 3 of which were spent at the company
- Minimum term of 6 months and maximum term of 11 months

✓ Leave to start a business:
- For employees with a plan to create a business who have at least 24 months' service in the company
- Maximum term of one year, extended by one year at most
- Full or partial suspension of the contract (possibility of part-time work arrangements)

✓ The suspension of employment contracts to facilitate external redeployments in case of collective redundancies for economic reasons: practices developed as part of statutory job protection plans (Orange, Renault, etc.)
- In the context of economic difficulties
- Negotiation of the conditions and term of the suspension with management and labour

VI - Secure voluntary mobility period

- **New legal provisions**

A period of external mobility is implemented and organised by the act in favour of employees in order to enable them to enrich their professional development by discovering another company:

✓ **Scope of application**

- Companies and groups of more than 300 employees,
- Employees with a minimum length of service of 24 months (more flexible than the conditions required for sabbatical leave)

✓ **Principle**

- Possibility, with the employer's consent, to benefit from a secure voluntary external mobility period in order to work in another company

=> **Does not require negotiating and entering into a company-wide agreement**

✓ The Works Council is informed on a semi-annual basis of the list of applications for secure voluntary mobility periods, indicating how they were followed up**.**

VI - Secure voluntary mobility period

- ✓ **Implementation provisions**
  - **If agreement: suspension of the employment contract**
  - **Entering into of an amendment to the employment contract**, which determines: the (i) purpose, (ii) term, (iii) effective date, (iv) term of the mobility period, (v) period within which the employee must inform the employer in writing of his or her possible choice not to be reinstated at the company, and (vi) conditions of the employee's early return, possible at any time with the employer's consent.
  - **At the employee's return**, he or she is reinstated in his or her previous job or a similar job (with at least the same description, remuneration, and classification).
  - **If the employee decides not to be reinstated at the company**, his or her contract is terminated. This termination constitutes a **resignation** according to new Article L.1222-15 of the French Labour Code without notice other than that provided for in the amendment (Must the employee submit this in writing? As a reminder, case law requires that resignation be express, clear and unequivocal.)
  - If the employee is refused two times in a row, he or she is guaranteed access to individual training leave (CIF), without his or her departure on CIF leave being subject to postponement when the number of employees simultaneously absent exceeds 2% of the establishment's total workforce, or to the minimum length of service condition.

- ✓ **Many issues on hold**, in particular concerning relations with the host company (competitor, nature of relations, etc.) and the practical implementation provisions (formal requirements, managing the end of the mobility period, employee's length of service, etc.).
- ✓ NB: the provisions on making personnel available (*mise à disposition*) seem to be ruled out in this scenario.

VII – Professional training

Article 5 of the act
Amended Article L.6111-1 of the French Labour Code
New Article L.6314-3 of the French Labour Code

VII - Professional training

- **Aim of the act:**

To promote access to professional training by creating two new mechanisms.

– **Personal training account**

Throughout their lives, all people, regardless of their status, **from their entry** onto the job market, will have a personal training account that is **individual** and **entirely transferable** in case of a change in or loss of job.

- ✓ Intended to replace the individual right to training (DIF).
- ✓ Counted in hours.
- ✓ May not be debited without the holder's consent.
- ✓ Added to each year under the conditions provided for the DIF (20 hours per year).

Timetable:

A consultation must be launched before **1 July 2013** between the State, the regions and management and labour in order to determine its implementation provisions.

Management and labour have until **1 January 2014** to negotiate the multi-industry provisions necessary.

VII - Professional training

– Professional development advice

Option for employees to receive **professional development advice**, implemented on the local level, the primary aim of which is **to improve their qualifications**.

Under the provisions of new Article L.6314-3 of the French Labour Code, this professional development advice enables employees:

- ✓ to be informed about their professional environments and career development in the field;
- ✓ to have a better idea of their skills, develop them and identify skills worth acquiring in order to promote their professional development;
- ✓ to identify jobs corresponding to the skills they have acquired;
- ✓ to be informed about the various mechanisms they can use to carry out a professional development project.

This Article also provides that:

*”All employees are informed, **in particular by their employers**, of the possibility of availing themselves of this support."*

➢ New obligation for which the employer is responsible: what about the timing / form of the information?

VIII – Part-time work

Article 12 of the act
New Article L.2241-13 of the French Labour Code
New Articles L.3123-14-1 et seq. of the French Labour Code
New Article L.3123-25 of the French Labour Code
Amended Articles L.3123-8, L.3123-16, L.3123-17 and L.3123-19 of the French Labour Code

VIII - Part-time work

- **Reminder of existing provisions**

  - ✓ Subject to the provisions of the collective bargaining agreement, no minimum weekly legal term.
  - ✓ Priority for a shift to full-time work in a job of the same professional category or equivalent level job.
  - ✓ No overtime supplement for hours worked within the limit of one-tenth of the term provided for in the contract. 25% supplement for hours worked in excess of the one-tenth limit.
  - ✓ Any hour worked in excess of the term defined in the collective bargaining agreement is considered overtime.
  - ✓ The amount of monthly overtime may not exceed one-tenth of the term provided for in the contract. This limit may be increased to one-third of the contractual term if an extended industry-wide agreement or a collective company-wide agreement so provides.
  - ✓ Regular use of overtime over a period of at least 12 consecutive weeks or during twelve weeks over the course of a 15-week period entails the possibility for the employee to request that the workweek under the collective bargaining agreement be increased for up to the average hours actually worked (L.3123-15).

VIII - Part-time work

- **New legal provisions (1)**

✓ **Minimum of 24 weekly hours**

- While working hours are distributed over the month or year, the minimum hours are set on this basis at the equivalent of 24 hours per week.
- Exceptions:
  - For students younger than 26 years old, who are entitled to fewer hours compatible with their studies.
  - At the employee's written, reasoned request, in order to:
    - handle personal issues,
    - hold several concurrent positions enabling him or her to have total working hours at least equal to 24 hours.
    - in case of exception, need to group the employee's working hours on regular or full days or half-days.
  - If provided for by extended industry-wide agreement and as long as it provides for guarantees (implementation of regular hours, option for the employee to hold several concurrent positions).
- Entry into force:
  - new contracts → 1 January 2014.
  - contracts current as at 1 January 2014 → transitional period until 1 January 2016: the employee may request to benefit from the minimum term. The employer may refuse if the economic situation so justifies. On 1 January 2016, automatic application to all employees.

✓ **Priority access to full-time work (L.3123-8)**

- The act provides for the option of providing by national collective bargaining agreement (CCN) or extended industry-wide agreement that the employer may offer a position in another professional category or a position on a different level.

VIII - Part-time work

- **New legal provisions (2)**

  - ✓ **Increase in overtime remuneration**

    - o From 1 January 2014, automatic 10% supplement for overtime.

    - o For overtime worked in excess of the one-tenth limit of the term provided for in the contract, which in the current system are subject to a 25% increase, the new act makes it possible, from its promulgation, to enter into an extended industry-wide agreement providing for a different supplement rate, which may not be lower than 10%.

  - ✓ **Mandatory negotiation in industries in which more than one-third of the workforce works part-time**

    - o A*d hoc*, non-periodic negotiation, initiated within 3 months following the act's promulgation.

    - o This applies to 31 professional industries.

    - o Negotiations relate to the organisational provisions of part-time work, in particular to the minimum working hours, the number and length of periods during which work is suspended, the notice period prior to changes in hours and the remuneration of overtime.

VIII - Part-time work

- **New legal provisions (3)**

✓ **Extra hours by amendment**

o Possibility of entering into an amendment with a part-time employee, providing for a temporary increase in working hours if a collective agreement provides for it.

o Provisions set by extended industry-wide agreement:
- Maximum number of amendments that may be entered into, within the limit of 8 per year,
- Terms of part-time employees' priority access to extra hours,
- Supplemental remuneration of hours worked as part of the amendment (no mandatory increase, except for hours in excess of those set in the amendment, which are increased by at least 25%).

o Content of the amendment to the contract:
- Term of the amendment;
- Number of hours in question (according to the French National Assembly's rapporteur, may bring the working hours up to full-time; opposite position of the French Senate's rapporteur);
- Where applicable, new distribution of hours over the week or month.

o Entry into force from the act's publication.

IX - Higher taxation of short-term contracts

Article 4 of the ANI
Article 11 of the act
Amended Article L.5422-12 of the French Labour Code

IX - Higher taxation of short-term contracts

- **Heavier taxation on short-term contracts**

  - ✓ **Currently**, the rate of the employer's contribution to unemployment insurance is set at 4%, within the limit of 4 PASS (social security ceiling).

  - ✓ **The heavier taxation must pass through negotiations between management and labour on unemployment insurance. The ANI recommends:**

    - o Increase in the employer's unemployment insurance contribution for fixed-term contracts of less than 3 months, depending on the reason for resorting to such a contract.

    - o **Rates proposed by Article 4 of the ANI:**
      - 7% for contracts of a term of less than 1 month,
      - 5.5% for contracts of a term of between 1 and 3 months,
      - 4.5% for contracts of a term of less than 3 months, entered into in some sectors of operations listed by Decree or extended collective agreement, due to the nature of the operations carried out and the intrinsic temporary nature of these jobs (customary fixed-term contract).

    These rates do not apply to fixed-term substitution contracts (L.1242-2, 1°, 4°, 5°), or if the employee is hired under an indefinite term contract following the fixed-term contract.

  - ✓ **Temporary exemption** from employer unemployment insurance contributions for the hire (under an indefinite term contract) of a person under 26 for a 3-month period if the contract continues beyond the trial period. Period increased to 4 months in companies with fewer than 50 employees.

  - ✓ The ANI provides for an **entry into force** on 1 July 2013, but a renegotiation of the unemployment insurance agreement is necessary.

X - Partial activity

Article 16 of the act
Amended Articles L.5122-1 et seq. of the French Labour Code
Amended Article L.5428-1 of the French Labour Code
Preliminary draft decree of 22 April 2013

X - Partial activity

- **Former partial unemployment mechanism (1)**

  ✓ Principle: situation in which employees are placed, after administrative authorisation, if they suffer a loss of remuneration linked to:
  - The temporary closure of their establishment,
  - The reduction of their working hours below the legal term (Article L.5122-1).

  ✓ The contracts of employees placed on partial activity are suspended, not terminated.

  ✓ Compensation provisions:
  - Specific partial unemployment allowance at the State's expense (€4.84 per hour for companies with fewer than 250 employees, €4.33 per hour above that),

    This compensation may be transferred and attached under the same conditions as for salaries. It is exempt from payroll tax and social security contributions.
  - Or allowance under the collective bargaining agreement financed by the employer and reimbursed by the State if the company signed a partial unemployment agreement with the State (ANI of 21 February 1968, available only in exceptional circumstances);
  - Or additional allowance if the company signed a Long-Term Partial Activity (APLD) agreement, financed by the employer, the State and the UNEDIC (unemployment insurance programme).

X - Partial activity

- **Former partial unemployment mechanism (2)**

  ✓ Minimum Monthly Remuneration (RMM): if the remuneration of employees on partial activity falls below the minimum growth wage (SMIC), the employer must make up the difference. The employer could until now request the State to reimburse this additional allowance.

  ✓ The employer consults the employee representative bodies (IRPs) and submits an application for authorisation to the Préfet, citing the reasons for the partial activity, its foreseeable term and the number of employees affected by the partial activity.

X - Partial activity

- **New partial activity mechanism (1)**

  - ✓ The expression “partial activity” replaces that of “partial unemployment”.
  - ✓ The principle and cases in which partial activity are resorted to remain unchanged.
  - ✓ Preliminary draft decree of 22 April 2013: provides for the implementation provisions of the new unified partial activity mechanism.
  - ✓ Consultations are underway and negotiations are expected to be held on the new rules applicable. A new ANI should be entered into on this subject.
  - ✓ Entry into force conditional on publication of the final Decree establishing the application conditions.

X - Partial activity

- **New partial activity mechanism (2)**

  ✓ Compensation provisions:
  - Compensation paid by the employer corresponding to a percentage of the usual remuneration. The preliminary draft decree sets this percentage at 70% of the gross remuneration.

    The compensation's tax and social regime remain unchanged.
  - Partial activity allowance received by the employer, financed by the State and unemployment insurance. The preliminary draft decree plans to establish the hourly allowance rate at €7.74 for companies with fewer than 250 employees, and €7.23 above that.

    An agreement between the State and the UNEDIC will establish this allowance's financing provisions.

  ✓ Minimum Monthly Remuneration (RMM): the employer no longer has the option of requesting that this additional allowance be reimbursed by the State.

  ✓ Option for employees on partial activity to receive training, in which case the compensation paid by the employer is increased. The preliminary draft plans to increase the compensation to 100% of the employee's net remuneration.

X - Partial activity

- **New partial activity mechanism (3)**

  ✓ In consideration for the allowance allocated to the employer, the administration may require it to make undertakings if it has already resorted to partial activity within the 36 months preceding its new request.

  ✓ According to the preliminary draft decree, these undertakings may relate in particular to:
  - training;
  - actions in terms of workforce and competency planning and development;
  - implementation of a recovery plan;
  - ensuring the employees' continued employment for a term as long as twice the authorisation period.

XI – Court action

Article 21 of the act
Conciliation: amended Article L.1235-1 of the French Labour Code
New time bars: new Article L.1471-1 of the French Labour Code

XI – Court action

XI.1 – The conciliation procedure

- In case of dispute, possibility of reaching an agreement through conciliation, at the initiative of either the employer and employee, or the conciliation board.

- The agreement provides for the payment of lump-sum compensation by the employer to the employee.

- The compensation's amount is determined without prejudice to the legal or contractual compensation or compensation under the collective bargaining agreement (severance pay, pay in lieu of notice, holiday pay, consideration for any non-compete clause, etc.).

- The compensation's amount, depending on the employee's length of service, will be determined by decree.
  - ✓ The ANI of 11 January 2013 provided for 2 months' salary for 0 to 2 years' service, 4 months for 2 to 8 years' service, 8 months for 8 to 15 years' service, 10 months for 15 to 25 years' service, and 14 months for more than 15 years' service.
  - ✓ The compensation's amount is only for information; the parties may agree to another amount.

- The Statement recording the agreement is tantamount to waiver by the parties of all claims and compensation provided for relating to the employment contract's termination.

XI – Court action

XI.2 – Time bar

- Any action relating to **the performance or termination of the employment contract has a <u>two-year</u> time bar** from the day when the person lodging the action learned or should have learned of the facts enabling him or her to exercise his or her right.

  Exclusions:
  - ✓ Claims for personal injury sustained during the course of the employment contract's performance (10 years),
  - ✓ Actions for payment or restitution of salary (3 years – see below),
  - ✓ Discrimination, victimisation/sexual harassment (5 years),
  - ✓ Dispute of the CSP (1 year),
  - ✓ Denunciation of the statement of termination pay (6 months),
  - ✓ Action relating to the validity of the redundancy procedure for economic reasons due to a lack of or insufficient statutory job protection plan (PSE) (1 year),
  - ✓ Dispute of confirmed contractual termination (1 year).

- **Actions for payment or restitution of salary have a <u>three-year</u> time bar** from the day when the person lodging the action learned or should have learned of the facts enabling him or her to lodge it.
  - ✓ The application may relate to the amounts owed for the last three years from that day or, when the employment contract is terminated, to the amounts owed for the three years preceding the contract's termination.

XII – The generation contract

Act no. 2013-185 of 1 March 2013 and implementing decree no. 2013-222 of 15 March 2013
Articles L.5121-6 et seq. of the French Labour Code
Articles R.5121-26 to R.5121-49 of the French Labour Code

XII – The generation contract

General presentation of the mechanism

The act of 1 March 2013 repealed the mechanism of the former senior plans.
Inclusion of most of the provisions of the ANI of 19 October 2012.
Operational since publication of the Decree of 15 March 2013.

- **Aims:**

  To facilitate access by young people to indefinite term contracts, while promoting the hire and continued employment of older employees and ensuring the transmission of knowledge and skills.

- **A flexible mechanism, depending on the company's size*:**
  - ✓ **Companies and Groups with at least 300 employees** must negotiate an inter-generational collective agreement or, failing that, an action plan by 30 September 2013, if not to be subject to financial penalties;
  - ✓ **Companies or Groups with 50 to 300 employees** enjoy financial aid when they link a young person's hire with an older employee's continued employment, provided that they are covered by an inter-generational collective agreement or action plan;
  - ✓ **Companies or Groups with fewer than 50 employees** enjoy financial aid when they set up two-person teams between young and senior employees, with no prior negotiation condition.

**NB: headcounts are conducted at Group level, including all establishments, as at 31 December (calculation of the average workforce over the course of the calendar year, determined each month).*

XII – The generation contract

Terms for implementing agreements / action plans

- **Need to draw up a prior assessment**:

  ✓ Prior to any negotiation, the company must carry out an internal assessment, which will be scheduled to the agreement / action plan (Article L.5121-10 of the French Labour Code).

  ✓ This assessment includes the following information (Article D.5121-27 of the French Labour Code):

  - The age composition;
  - The characteristics of young and senior employees, their respective places within the company, Group or branch over the past 3 years;
  - The expected retirements;
  - The recruitment outlook;
  - The company's key skills (retention of which is considered essential);
  - The working conditions of older employee and identified strenuous situations (in agreements on preventing strenuous conditions, where applicable).

XII – The generation contract

- **Content of the agreement or action plan (1):**

  The agreement / action plan is applicable for a maximum term of 3 years and includes:

  ✓ **The provisional timeframe** for implementing these commitments and the follow-up and evaluation procedures for their completion;

  ✓ **The conditions for announcing** the agreement, in particular to employees;

  ✓ **Commitments made for the sustainable employment of young people:**

  - The company's quantified targets for recruiting young people under indefinite term contracts;
  - Integration / training / support procedures for young people at the company (welcome programme, appointment of a contact person);
  - Procedures for implementing interview-based follow-up between young people, their managers and their contact persons (mastery of skills);
  - Outlook for developing alternating work-study programmes and conditions for the use of internships;
  - Use of existing tools making it possible to remove physical barriers to access to employment.

XII – The generation contract

- **Content of the agreement or action plan (2):**

  ✓ **Commitments to employ older employees:**

  - The company's quantified targets for hiring and continuing to employ older employees;
  - Measures intended to promote the improvement of working conditions and the prevention of strenuous conditions;
  - 2 actions to be implemented among the following 5 action areas: recruiting older employees / anticipation of professional development and age management / organising cooperation between generations / developing skills, qualifications and access to training / end of career planning and transition from work to retirement.

  ✓ **The transmission of knowledge and skills:**

  Ensuring the transmission of key skills as identified by the assessment. This transmission can in particular be achieved by:

  - Setting up **two-person teams to exchange** of skills between experienced employees and young employees having had their first professional experience at the company;
  - Organising **age diversity** on work teams.

XII – The generation contract

Administrative supervision

- **Filing of the agreement / action plan:**

  Filing with the Direccte in accordance with ordinary law provisions (in duplicate: paper / electronic) of:

  - ✓ The agreement / action plan (copy of statement of disagreement signed by the Works Council or staff representatives);
  - ✓ The prior assessment;
  - ✓ A description of the content of the agreement / plan and of the assessment.

- **Initial compliance verification:**

  Verification by the Direccte of the agreement's / action plan's and assessment's compliance with legal requirements within a **3-week period for an agreement, 6 weeks for an action plan**.

  Starting point of the period: date the documents are filed.

  Failing notice of a compliance decision within these periods, the agreement or plan is deemed **compliant** for application of the penalty to companies with at least 300 employees.

- **Annual evaluation:**

  Submission of an annual evaluation document to the Direccte on the agreement's implementation (updating of assessment data, follow-up on indicators set up for young and older employee actions, follow-up on skills transfer actions).

  If it is not sent: formal notice by the Direccte then application of a **penalty of €1,500 per full month of delay** (until the Direccte receives the evaluation).

XII – The generation contract

Financial penalty (1)

- **Application**:

  Companies with more than 300 employees having failed to file an agreement / action plan compliant with legal requirements by **30 September 2013** will be subject to a penalty (Article L.5121-14 of the French Labour Code).

- **Procedure:**

  If the Direccte finds that there is no agreement for a company subject to the requirement: formal notice to the employer to remedy the situation (within a period of 1 to 4 months).

  The employer must then send the agreement / action plan or provide justification of why the company failed to do so.

XII – The generation contract

Financial penalty (2)

- **Establishing the penalty:**

  If the formal notice has remained to no avail: the Direccte notifies the employer of its decision to penalise it (reasoned decision, by registered letter with return receipt requested, within the month following expiry of the formal notice).

  ✓ **Determining the rate**

  Set by the Direccte depending on information provided to it by the company.

  Takes into account the company's economic situation and efforts made to arrive at the agreement's implementation (assessment conducted, initiation of negotiations, etc.).

  ✓ **Penalty capped**

  - Either at 1% of the remuneration or gains paid to employees over the periods when the company is not covered by a compliant agreement.
  - Or, if the amount is higher, at 10% of the amount of the Fillon reduction applied to the remuneration paid over the periods when the company is not covered by a compliant agreement.

  ✓ **Calculation and payment**

  Penalty calculated by the employer, due for each full month that the company was not covered by a compliant agreement and until the situation is remedied. Declared and paid by the employer to the URSSAF or the MSA.

XIII – Employee representation on Boards of Directors

French Commercial Code – Articles L. 225-27-1

XIII – Employee representation on Boards of Directors

General presentation of the mechanism

- **Objective:**
  - ✓ To enable employee representation on the management bodies of major companies;
  - ✓ Need to amend the bylaws of companies in order to provide for one of the methods of appointment provided for by the act (direct election by employees, or appointment by the works council or unions);
  - ✓ Candidates from union organisations represented
  - ✓ Companies subject to the requirement, number of candidates
    - French SA and SCA company forms having their registered offices in France;
    - Employing at least 5,000 employees in France or 10,000 employees worldwide;
    - The bylaws of which do not provide for the presence of a number of personnel representatives on the management bodies at least equal to that provided for by the act.
  - ✓ Number of directors
    - 1 for companies with 1 to 2 directors;
    - 2 in all other companies,
  - ✓ Conditions to be a director
    - Employed for more than two years;
    - Employed in France.

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Jean-Marc Albiol is a partner on the employment law team of Hogan Lovells in Paris. He has 17 years' experience and works in particular in advisory operations on restructurings of national and international groups.

He regularly advises on issues relating to Works Council consultations, collective redundancies for economic reasons, personnel transfers, and is also a specialist in implementing remuneration policies. He is accustomed to coordinating international transactions involving expertise from several local jurisdictions.

The Paris employment law team

Our employment law team is one of the largest on the Paris market both in terms of its size and the number of years' experience its members have, but above all by the complexity and scale of the matters it handles.

Composition of the team

The team, under the leadership of Dominique Mendy, is composed of:

5 partners - Jean-Marc Albiol, Loreleï Gannat, Dominique Mendy, Thierry Meillat and Muriel Pariente, who have between **12** and **31** years' experience each,

2 counsels - Laure Calice and Marie-Charlotte Diriart, with **15** and **13** years' experience respectively, and

9 associates – Alexandre Abitbol**,** Christelle Bastide, Pierre Chevillard, Naomi Cohen, Christophe Cougnaud, Géraldine Debort, Marion Guertault, Barbara Lanternier and Emilie Lesne, who have between **1** and **9** years' experience each.

The size of our team, the breadth of its experience both in advising and litigation, as well as its members' specialisations, enable us to provide our clients with a dedicated team for a specific project, able to handle all aspects of complex and technical matters.

Our areas of activity

- Restructurings (mergers, acquisitions and closures)
- Redundancy plans
- Works Councils and unions
- Collective bargaining agreements
- Secondment and expatriation
- Remuneration and incentive plans
- Employee data and privacy protection

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