



# GUIDE TO GOING GLOBAL EMPLOYMENT

*France*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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## FRANCE



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is French.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in France with payroll registrations subject to business and corporate tax planning considerations. Registration as an employer with labor authorities and *Pôle Emploi* via the Declaration Prior to Hiring (DPAE) to be made within 8 days before the effective starting date.

The employee share of social contributions amounts to approximately 25 to 28 percent of their gross monthly compensation.

The employer share amounts to approximately 45 percent of each employee's gross compensation in companies with fewer than 10 employees, and approximately 50 percent in companies with 10 employees or more.

### PRE-HIRE CHECKS

#### Required

If the individual to be employed is a foreigner, the employer is required to check the validity of their work permit. Except in some specific cases, employers must set up a preventive and informative medical assessment to take place within 3 months of the commencement of employment, unless the employee has been subject to such visit during the previous 5 years.

#### Permissible

Pre-hire checks may be permissible subject to data privacy laws and if the information is related to the job position. Reference checks are permissible, provided the applicant is informed. A criminal record check is permissible for specific job positions only (eg, those involving the handling of cash).

## IMMIGRATION

Nationals of the EU, the European Economic Area (EEA), and Switzerland have the right to work in France provided they have a valid ID.

Citizens of other countries need a valid work permit.

## HIRING OPTIONS

### Employee

Indefinite-term employment contract (CDI), which is the rule, or fixed-term contract (CDD), which is only permissible in limited circumstances.

The employment contract may be full-time or part-time.

Part-time and fixed-term employees enjoy the same rights as regular employees.

### Independent contractor

Independent contractor relationships are permissible. There is a risk of reclassification into an employment contract and a finding of "concealed" work if a relationship of subordination is demonstrated.

### Agency worker

Agency workers are strictly regulated by the French Labor Code.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

Written employment agreements are highly recommended.

Certain types of employment contracts must be established in writing (eg, fixed-term, agency and part-time employment contracts).

### Probationary periods

Legal probationary periods for indefinite term employment contracts are 2 months for blue-collar employees and standard employees; 3 months for supervisors and technicians; and 4 months for management-level employees.

Collective Bargaining Agreements (CBAs) may provide for shortest terms.

Such probationary periods are renewable once for 2, 3 and 4 months, respectively, if a CBA and the employment contract expressly provide for it.

### Policies

Since January 1, 2020, internal rules (*Règlement intérieur*) are mandatory in companies or establishments with at least 50 employees.

## Third-party approval

Implementation of the internal rules is subject to consultation of staff representatives (if any); submission to the labor inspector and the clerk's office of the labor court in the jurisdiction of the company or establishment; and communication to employees by any means.

## LANGUAGE REQUIREMENTS

All employment documents must be drafted in French in order to be binding.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All.

### Working hours

Legal working time is 35 hours per week. Other working-time schemes available depending upon the terms of the CBA.

Employees may be entitled to RTT or resting days to compensate for days worked above the legal working time, under the conditions set by CBAs.

### Overtime

Overtime is compensated with increased rest or by an equivalent rate. Annual threshold of 220 hours, unless otherwise provided by an applicable company agreement or CBAs.

### Wages

The minimum wage for 2021 is EUR1,709.28 gross per month for a 35-hour week. In addition, minimum (higher) salaries may be provided by applicable CBAs.

### Vacation

Subject to more favorable terms specified in a CBA, employees are entitled to 5 weeks paid holiday per year (ie, 25 working days, if working Monday through Friday, or 30 working days, if working Monday through Saturday).

Additional RTT or resting days may apply (see above).

### Sick leave & pay

Subject to more favorable terms specified in a CBA, daily indemnity is paid by the Social Security Authorities as of the 4th day of absence. In case of sick leave due to an occupational accident or a professional sickness, the payment will begin on the first day of absence.

For employees with at least 1 year of seniority within the company, social security indemnity is to be supplemented with an employer-paid indemnity, depending on certain conditions and within certain limits, as of the 8th day of absence (the 1st day in case of occupational accident or sickness). In the absence of any more favorable provisions of the CBA, the legal amount of the employer-paid-indemnity is:

- 90 percent of the employee's gross compensation for the first 30 days of absence
- 2/3 of such compensation for the next 30 days, with each 30-day period increased by 10 days per full period of 5 additional years' seniority, up to 90 days for each compensation period

## Maternity/parental leave & pay

The following provisions apply in the absence of more favorable provisions of the CBA.

- Maternity leave: The duration differs in function of the number of children expected during the pregnancy and the number of children already being taken care of by the employee. The duration of maternity leave is 16 weeks for an employee expecting a single birth and provided that she does not have another child.
- Maternity insurance: Daily indemnity paid by the Social Security Authorities under certain conditions.

The employer must ensure that the employee takes at least 2 weeks of leave before the birth and 6 weeks after the birth. The employer is not required by law to maintain the employee's salary in whole or in part but is often required to do so by the applicable CBA or common practice

- Paternity leave: up to 25 consecutive days (32 days in case of multiple births) to be taken in principle within 6 months of the birthdate and 3 days as a birth leave. The employer must ensure that the employee takes at least 4 days of leave.
- Parental leave: upon the expiry of the maternity leave. 1 year to be extended up to 3 years. Full-time leave or part-time work permissible during the leave period. Employees who have adopted a child under the age of 16 years old are eligible.

## Other leave/time off work

A variety of specific leave are provided for under French Law. Thus, specific days of leave are granted to the employee in case of extraordinary family circumstances, as, for example, his wedding (4 days), the announcement of his child's disability (2 days) or the bereavement of his child (7 days if he is under 25 years old, otherwise 5 days). French law also provides for a family solidarity leave if an employee wants to support a family member who suffers from a life-threatening illness (3 months).

Sabbatical leave, from 6 months to 11 months can also be taken by an employee. He can also take a one-year leave extended by up to one year if he wants to create a business. Finally, for employees between 18 and 25 years old, a paid day leave is granted to them to ensure their participation to the defense and citizenship day.

## DISCRIMINATION & HARASSMENT

Protected characteristics include origin; sex; customs; sexual orientation; age; family situation; pregnancy; genetic characteristics; affiliation or non-affiliation, whether actual or assumed, to an ethnic group, a nation or a (perceived) race; political opinions; activities linked to a union or a mutual benefit company; religious beliefs; physical appearance; family name; health; disability and loss of independence; ability to speak another language than French; place of residence and location or domicile of bank account; and vulnerability resulting from an obvious or known economic situation.

## WHISTLEBLOWING

French law protects whistleblowers from any penalty, sanction, or dismissal. Indeed, any decision pronounced by the employer because of the whistleblower's reports are prohibited. Additionally, their dismissal is null and void.

To benefit from this protection, whistleblowers shall respect a process establishing different stages of alert.

Additionally, companies employing at least 50 employees must implement an appropriate internal procedure to collect whistleblowing reports, through internal regulation.

Impeaching an employee from doing an alert is punishable by up to one year of imprisonment and a fine up to EUR 15,000 for the company's legal representative and EUR75,000 for the company as a legal entity

## BENEFITS & PENSIONS

State social system provides for social security, welfare and pension coverage. In addition, since January 1, 2016, employers must offer healthcare insurance coverage to all employees. All employers, regardless of the size of the company, including small and medium enterprises (SMEs) and associations, are covered (with some rare exceptions).

CBAs and/or employment contracts may provide for additional mandatory benefits (eg, complimentary welfare coverage for all employees and a supra-complimentary pension plan). CBAs may also provide for minimum benefits entitlements (eg, minimum welfare contribution rates and affiliation with insurance bodies).

Retirement upon the employee's initiative: initial entitlement to base retirement set at the age of 62 for employees born January 1st, 1955, or later; for those born between July 1st, 1951 and December 31st, 1954, the legal retirement age is gradually increased. Recently a project of law (adopted but not promulgated) sets the age of 64 years old for employees born on September 1st 1961 or later.

Retirement upon the employer's initiative: restricted under 70 years old. "Clause couperet," (i.e., clauses under which the employment relationship will automatically terminate at a specific age limit) are prohibited under French labor law.

## DATA PRIVACY



The General Data Protection Regulation (GDPR) came into force on May 25, 2018. It applies to any processing of personal data within the EU. The GDPR implements new rights for data subjects, such as right to access, data erasure, data portability and consent.

Where data processors/controllers process operations which require regular and systematic monitoring of data subjects on a large scale or of special categories of data, a Data Protection Officer (DPO) must be appointed.

Data transfers outside of the EU are subject to additional requirements. Significant restriction on monitoring internet and e-mail use even when on company's IT device.

## **RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer of the employment contract under the EU Acquired Rights Directive/Article L. 1224-1 of the French Labor Code in case of a modification of the employer's legal situation (eg, a sale or merger) and provided the criteria set by case law are met, meaning that it is a transfer of a standalone business that maintains its identity within the transferee.

In case of a partial transfer of undertaking, the transfer of protected employees will require the labor inspector's prior approval.

In share or asset deals, it is required for the impacted companies to consult with their Social and Economic Committee (*Comité Social et Economique* or CSE). Between 15 days and 2 months (3 months in rare situations) of consultation may be required depending on the circumstances.

Under certain circumstances, employees of SMEs must be informed of a proposed sale of the business or of shares to give them the opportunity to make an offer, although there is no obligation on the employer's part to accept any such offer.

## **EMPLOYEE REPRESENTATION**

The Macron reforms have merged the employee delegates, the works council and the Health and Safety Committee into a single employee representative body referred to as Social and Economic Committee (*Comité Social et Economique* or CSE). A CSE must be put in place in all companies that reach a threshold of 11 employees for 12 consecutive months. The CSE's rights differ depending on the company's headcount.

Additionally, the Health and Safety Commission, which is incorporated into the CSE, must be implemented in companies with 300 or more employees, or in other companies if required by the labour inspection. This Commission deals with health and safety related questions.

Union representatives may be appointed in establishments with at least 50 employees. In companies with fewer than 50 employees, a member of the CSE may be appointed as a union representative.

Virtually all companies are subject to industrywide CBAs.

## **TERMINATION**

## Grounds

Termination of an indefinite-term employment contract is permissible on personal grounds (eg, misconduct or poor performance) and economic grounds (eg, economic difficulties, technological changes, activity closure or reorganization to safeguard competitiveness). Economic grounds are assessed at the group level in France in the relevant business sector. French Labor Code provides for a specific definition of "economic difficulties."

Early termination of a fixed-term employment contract is permissible only in limited circumstances as stated by the French Labor Code.

## Employees subject to termination laws

All employees.

## Restricted or prohibited terminations

Restrictions on terminations and specific procedures required for termination of protected employees:

- Termination of workers' representatives (workers' delegates, members of the works council or the CSE, union delegates and union section representatives)
- Termination while the employment contract is suspended as a result of an occupational disease or accident, save on the grounds of serious misconduct or the inability to maintain the contract for a reason unrelated to the occupational disease or accident
- Termination during pregnancy, maternity/adoption leave and for 10 weeks following maternity leave, save on the grounds of serious misconduct or the inability to maintain the contract for a reason unrelated to the pregnancy, childbirth or adoption.
- Employees holding a specific mandate in towns are protected.

Termination on discriminatory or illicit grounds is prohibited.

## Third-party approval for termination

The Labor Inspector's authorization is needed in case of termination of a protected employee.

## Mass layoff rules

Applicable rules differ depending on the number of employees made redundant over 30 days and the number of employees within the company.

If fewer than 10 employees are made redundant over 30 days in a company with at least 50 employees, informing or consulting the CSE is required.

If at least 10 employees are made redundant over 30 days in a company with at least 50 employees, the employer must implement an employment safeguard plan (PSE), inform/consult with the CSE and follow the procedure under the control of the Labor Administration.

In companies with fewer than 50 employees, informing or consulting with the CSE, when in place, is required.

## Notice

Under 6 months' seniority: as determined by law, the CBA or geographical and professional common practice.

Between 6 months' and 2 years' seniority: 1 month.

At least 2 years' seniority: 2 months.

Subject to differentiating provisions in the CBA, employment contract or common practice, whichever is more agreeable to the employee.

No notice period in case of dismissal for gross or willful misconduct.

## Statutory right to pay in lieu of notice or garden leave

Employees may be paid in lieu of notice. Alternatively, an employee can be paid their usual salary for the duration of the notice period even if not performed.

## Severance

An employee with at least 8 months of seniority is entitled to a severance of 1/4 of their average monthly salary per year of seniority for the first 10 years and 1/3 of their average monthly salary per year of seniority for each following year, subject to more agreeable provisions in the applicable CBA, which are frequent.

## POST-TERMINATION RESTRAINTS

Restrictive covenants are allowed if justified by the company's business and employee's role.

### Non-competes

Allowed under 5 conditions. It must:

- Be essential to the protection of the company's legitimate interests
- Be limited in time
- Be limited in space
- Take into account the specificities of the employee's duties
- Provide for a financial compensation – commonly at least 33 percent of the employee's compensation for the duration of the non-compete, but depends on the applicable CBA. CBAs may provide for specific terms.

### Customer non-solicits

No legal requirement for a financial compensation, although their validity is currently challenged by the courts, which often consider that they in fact constitute a non-compete restriction and as such should be duly compensated.

## Employee non-solicits

Allowed.

## WAIVERS

An employee may waive their rights in a settlement agreement concluded with their employer after termination of their employment contract. Criminal claims are not covered. A settlement indemnity is always paid on top of mandatory severance. A settlement agreement cannot effect a termination (as opposed to, for example, a resignation, dismissal or retirement leave) and is simply a way to obtain a waiver of claims or disputes.

A mutual termination (*rupture conventionnelle*) does not result in a settlement agreement or waiver.

## REMEDIES

### Discrimination

Any measure taken on discriminatory grounds would be held null and void and entail criminal sanctions (up to 3 years' imprisonment, a fine of up to EUR45,000 for the company's legal representative and EUR225,000 for the company as a legal entity), in addition to potential damages for the harm sustained.

### Unfair dismissal

Dismissal without "real and serious" cause: The court may order the employee's reinstatement in their former position; if either party disagrees, the employee will be awarded damages pursuant to the Macron scale provided in article L. 1235-3 of the Labor Code.

The Macron orders set a mandatory scale of minimum and maximum damages to be granted in case of unfair dismissal, from which courts cannot depart. The minimum and maximum amounts depend on the company's headcount and on the length of service of the employee. The Macron orders also make it possible for the court to consider the dismissal indemnity paid to the employee (as the case may be) to determine the amount of damages to be granted, should the dismissal be considered unfair.

Note that this framework does not apply where the dismissal is null and void. In such cases, the employee may either be reinstated or obtain an indemnity which cannot be less than 6 months' salary.

Additional claims are often raised by dismissed employees along with unfair dismissal, which will be taken into consideration for compensation purposes.

### Failure to inform & consult

Offense of obstruction, which entails criminal liability (a fine of up to EUR7,500 for the company's legal representative and EUR37,500 for the company as a legal entity).

## Failure to set up a CSE

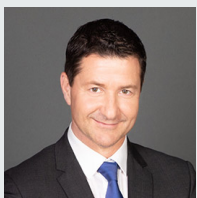
Offense of obstruction concerning the setting up of a CSE or the free designation of its members is punished by up to one year of imprisonment and a fine by up to EUR7,500 for the company's legal representative and EUR37,500 for the company as a legal entity.

## CRIMINAL SANCTIONS

Yes (eg, for discrimination, harassment, offense of obstruction, or where an employee is discovered undertaking "concealed" work).

Both the company's representative and the company as a legal entity can be held criminally liable. The company's representative can through a delegation of authority transfer his powers and liability to another employee competent notably in health and safety matters. It ensures that the employee actually in charge of these questions is the one accountable.

## KEY CONTACTS



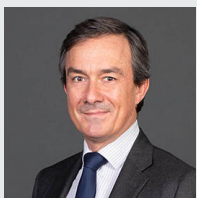
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