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# INTERNATIONAL EMPLOYMENT CONFERENCE

FRANCE: OVERVIEW OF MACRON REFORM LAW

# Speaker



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# Helicopter overview of the Macron Labour Reform Bill

1. When is it coming into force?
2. Collective negotiation: new boundaries
3. Strengthening company collective agreements
4. Minimum level and cap for damages granted by court
5. Merger of staff representative bodies (social and economic committee: SEC)
6. Simplification of dismissal procedure
7. Redundancies
8. Collective voluntary departure plan
9. Remote working
10. Digital labour code

# 1. Is it in force yet?

- The Bill authorising the labour code reforms was adopted by the French Parliament on 2 August 2017 and the drafts of 5 *ordonnances* were made public on 31 August 2017
- Fully Validated by the Conseil Constitutionnel on 7 September
- Demonstration and strike/CGT Union?
- The reform, possibly slightly adapted, should be published by the **end of September 2017**
- Unless otherwise specified (exc: minimum and cap for damages, applicable when the *ordonnances* are published), the application of the new regulations will be subject to the publication of related Decrees (in principle issued during the last quarter of 2017 exc: staff rep. elections) with necessary details on various topics.
- Hence only a general overview of some major points is possible today.
- **Global Spirit: SIMPLIFICATION - CLARIFICATION - SECURITY**

## 2. Collective negotiation

### Scope for negotiation

- Wider scope for negotiation of industry-wide collective agreements
  - Derogation to the labour code's provisions relating in particular to fixed-term contracts, temporary contracts, "construction site" contracts allowing for time flexibility.
- Focus on small and medium-sized companies
  - specific provisions will be required to extend industry-wide agreements to companies with less than 50 employees.

## 2. Collective negotiation

- Company collective agreements to take precedence (regardless of when entered into force) over all subjects (incl. annual negotiation, staff representation rules etc.)
- With the notable exception of limited specific topics, company level agreements should generally prevail over industry-wide agreements.
- Industry-wide agreements will prevail, either:
  - On a mandatory basis (e.g.: minimum wage, classification, professional training funds, contingency and health care plan, various measures on working time /part-time contract, night work, fix-term contract, temp, trial period, gender equality)
  - When the industry-wide agreements provide that they prevail over company level agreements (e.g.: prof risks/manual labour, disabled workers, union delegate designation rules, premium for dangerous work)
- Some company level agreements on working time (+ other topics), e.g. aimed at safeguarding jobs and adapting rules to the company's operational constraints, will automatically modify the related employment contract stipulations (valid sui generi termination if refused by the employee).

## 2. Collective negotiation

### Validity of company level agreements

- Extension of the principle of the majority (50%) for the validity of company level agreements as from 1 May 2018 (broader scope = more signatures needed)
- In companies with union delegates, also possible to have valid minority agreements provided they are:
  - ✓ signed by unions having secured more than 30% of the votes at the last elections.
  - ✓ accepted by the majority of employees (referendum) at the initiative of the unions who signed it or, if they do not proceed within a month and do not oppose, at the initiative of the employer.

## 2. Collective negotiation

### Validity of company level agreements

- In companies without unions delegates, depending on their size:
  - ✓ fewer than 20 employees (and no employee reps), possible to propose a draft agreement that will need to be ratified by two-third majority of the workforce (referendum).
  - ✓ In other companies, possible to negotiate, conclude or modify company level agreements:
    - Between 11 to 50 employees: with employee(s) empowered by a union, (with two-third referendum) or with employee representative(s) (signed by the members of SEC/ majority at last elections).
    - At least 50 employees: with employee representative(s) empowered or not by a union. Or with employee(s) empowered by a union.



### 3. Strengthening of collective agreements

- 2 deadline to challenge a collective agreement
- Collective agreements are deemed to have been validly negotiated and concluded
- If the collective agreement is declared null and void, possibility for the judge, in certain conditions, to decide that the effects of his/her decision:
  - ✓ will not be retroactive
  - ✓ will be amended in time.

## 4. Minimum level and cap for damages awarded by court

### Mandatory scale:

- Aimed at helping to anticipate the potential costs of termination
  - to favour recruitment?
  - to align situation regardless of which court handles the case / fairness
- Minimum and maximum damages granted for unfair dismissals
- The judge may take into account the severance pay (but limits to the judge's power)
- This scale will **not be applicable**, and damages won't be **less than 6 months' salary** if the judge declares the dismissal null and void notably because of:
  - ✓ A breach of a fundamental right, or acts of discrimination or moral or sexual harassment,
  - ✓ A dismissal linked to a protection (staff delegate mandate, work accident, prof disease, maternity), to the declaration of a criminal offence or to claims of lack of equality between men and women,

**= litigation likely to increase in these areas to remove the cap...**

## 4. Minimum level and cap granted by court

### Severance pay

- On the other hand:
  - ✓ Length of service required to benefit from severance pay will be reduced from 12 to 8 months
  - ✓ The amount of severance pay should increase by 25%

## 4. Minimum level and cap granted by court

Employee seniority (full years)	Minimum damages (gross months' salary)	Minimum damages (gross months' salary) companies of fewer than 11 employees	Maximum damages (gross months' salary)
0	Non applicable	Non applicable	1
1	1	0.5	2
2	3	0.5	3
3	3	1	4
4	3	1	5
5	3	1.5	6
6	3	1.5	7
7	3	2	8
8	3	2	8
9	3	2.5	9
10	3	2.5	10
11	3		10.5
12	3		11
13	3		11.5
14	3		12

## 4. Minimum level and cap granted by court

Employee seniority (full years)	Minimum damages (gross months' salary)	Maximum damages (gross months' salary)
15	3	13
16	3	13.5
17	3	14
18	3	14.5
19	3	15
20	3	15.5
21	3	16
22	3	16.5
23	3	17
24	3	17.5
25	3	18
26	3	18.5
27	3	19
28	3	19.5
29	3	20
30 and more	3	20

# 5. Merger of staff representative bodies

## Social and economic committee ("comité économique et social")

- **Currently:** too many different bodies with some overlap of powers
- **Reform:** One representative body instead of 3, compulsory in companies with at least 11 employees
- Its rights/ responsibilities differ depending on the size of the company:
  - ✓ 11 to 49 employees: competencies currently held by the staff delegates
  - ✓ 50+ employees: competencies currently held by the employee delegates, the works council and the health and safety committee. Merged body endowed with the legal personality and budget of the current works council
  - ✓ 300+ employees: setting-up of a health and safety commission within the SEC (decision of the labor inspectorate when less than 300 employees depending specific situation)
- No consultation of the SEC before signing company level agreement
- Expert cost: the SEC would pay 20% of the costs EXCEPT
  - notably on social plan and imminent danger issues: cost 100% for the employer as before the reform

## 5. Merger of staff representative bodies

### Company council ("conseil d'entreprise")

- Possible to replace the SEC by the "company council" if provided for by a company level agreement or industry-wide agreement (such agreements should provide for some employer decisions to be agreed in advance by the company council and at least on professional equality and training)
- Entitled to negotiate agreements at group, company or establishment levels, like union representatives (agreements pertaining to redundancy plans and elections are excluded).
- To be valid, agreements concluded with the company council will need to be ratified either by:
  - ✓ the majority of its members, or
  - ✓ members who secured the majority of votes cast at the last elections

# 5. Merger of staff representative bodies

## Employee representatives

- Current employee representative mandates due to expire on 31 December 2019 at the latest. Transition period issues depending on the date of the elections (with the possibility to extend current mandates by one year max in certain conditions)
- New mandates:
  - ✓ In principle, duration of 4 years
  - ✓ Successively renewable 3 times maximum (exception: companies of less than 50 employees)
- Delegation hours of employee representatives depending on the company's size:
  - ✓ Fewer than 50 employees: Minimum of 10 hours per month
  - ✓ More than 50 employees: Minimum of 16 hours per month
- **Number of employee representatives to be defined by Decree. +/-?**



## 6. Dismissal procedure simplification

- A Decree will establish a model dismissal letter
- Possible to clarify or complete the reasons contained in the dismissal letter, after notification + to complete the reasons before court unless the employee already (unsuccessfully) asked for it to the employer (they probably systematically will) = **Risk: unfair dismissal**
- Indemnity when the procedure is not fully compliant: max 1 month of damages
- When one of the reasons for dismissal breaches a fundamental right (null and void = uncap damages then with a 6-month minimum), the judge should take the valid ones when deciding the amount of damages to award
- The general deadline to challenge the termination will be reduced from 24 to 12 months (as long as mentioned in the dismissal letter)

## 7. Redundancies

- Aim = encourage foreign companies to invest in France.
- Scope to assess the economic reasons for economic redundancies will be limited to the sector of activity of the group on the French territory (currently appreciated at the worldwide level). *Pros and cons...*
- Simplification of the redeployment obligation:
  - ✓ Possible to set-up lists of available jobs to be provided to employees by any means (email, intranet etc.).
  - ✓ Geographical scope France only ? (same would go for medical unfitness)
- When the dismissal is null and void (by lack or insufficiency of a social plan), minimum damages of 6 months (instead of 12 months today); damages/rehiring priority: decrease from 2 to 1 month.
- **New:** damages for employees (with less than 2 years of service or in company with less than 11 employees) when consultation of staff rep or information of the administration is not compliant (but only to compensate proven loss)
- Regret: the threshold of 10 terminations over a 30-day period triggering social plan procedure has not been increased.

## 8. Collective voluntary departure plan

- Via a majority company level agreement providing for:
  - ✓ The maximum number of voluntary departures, the number of jobs that are removed, the duration of such plan.
  - ✓ The criteria to be met by the employees / rules to choose between various candidates.
  - ✓ The calculation of the related compensation (which at least equal the economic dismissal severance). **Needs to be attractive**
  - ✓ The process for providing the CSE information (no consultation)
  - ✓ Measure to help with external redeployment. **Needs to be secure**
  - ✓ How the SEC will monitor the plan (which will be consulted upon on a regular basis)
- No economic reasons are needed / revitalisation costs could apply
- Will basically constitute a "collective amicable termination" (not a redundancy).
- Need to be validated by the Labour administration (to be involved from day 1 and until the end of the plan): within 15 days (silence=validation).

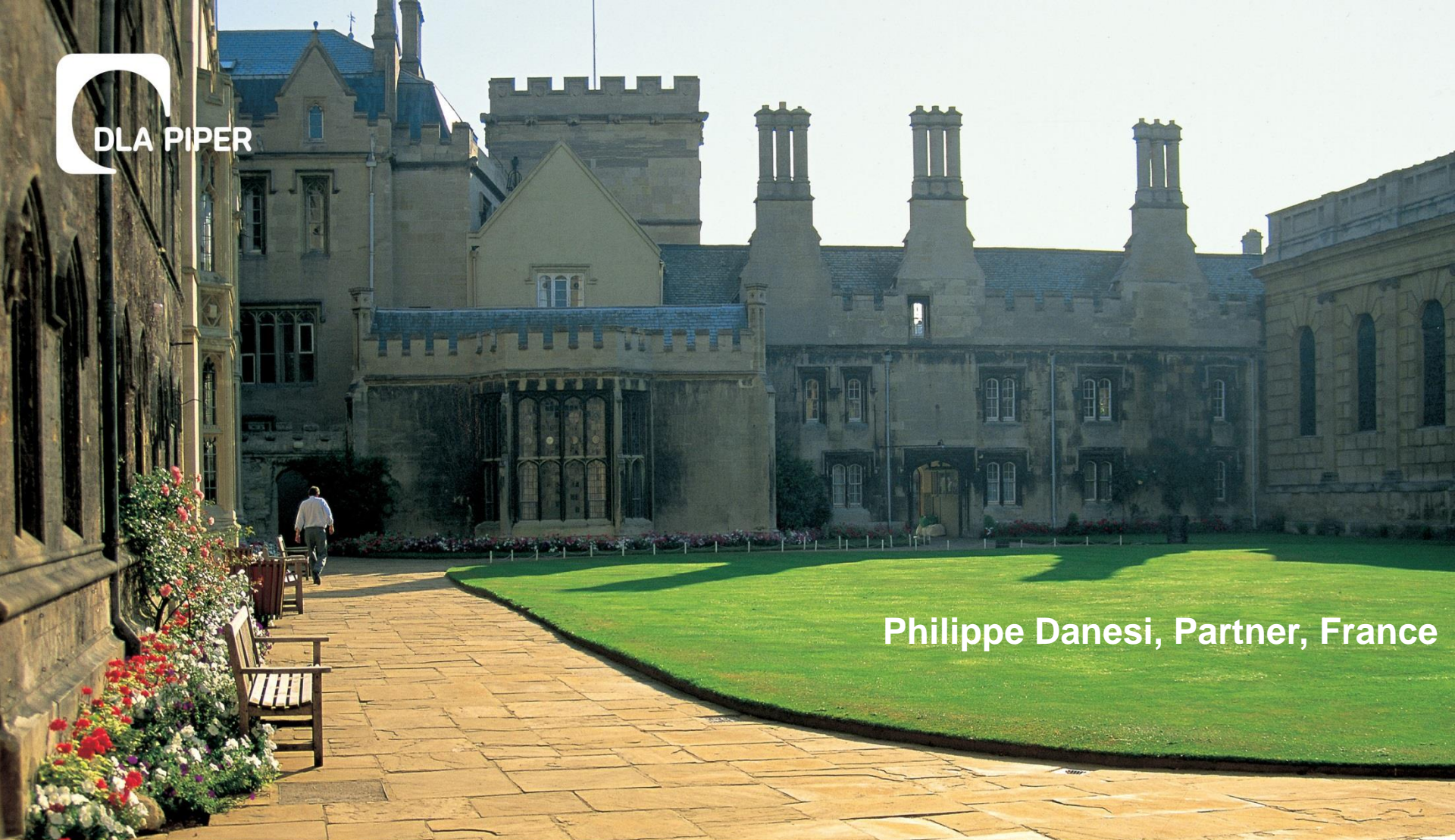
## 9. Remote work

### NEW:

- Setting up by a collective agreement or a by policy after SEC's consultation.
- On occasional basis: agreement between the employer and the employee, is sufficient.
- Accidents occurring during remote working hours are presumed to be occupational accidents.

## 10. Digital labour code

- Implementation of a digital labour code by 1 January 2020 at the latest, to make labour law user-friendly
- Free internet access
- In case of a legal dispute, the employer or the employee who rely on the provisions of the digital code will be presumed to do so in good faith



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