PRINCIPAL ASPECTS OF EMPLOYMENT LAW IN FRANCE

by
Olivier MEYER
Avocat à la Cour
Specialist in Employment law
omeyer@dmd-avocats.com

1. INTRODUCTION

The economic strength of a country depends largely on its workforce. There are very few countries which derive their wealth from their natural resources, and all the world's most powerful nations depend on created wealth.

A country depends for its economic success on its employment laws: overprotective of the workforce, and its businesses will be weak, particularly in the face of competition from the third world; but laws which are not protective enough will result in low morale and poor performance. A balance needs to be struck.

The interests of the employer and the employee are complementary, as both will profit from a successful business and a strong economy. Again, it is a question of balance. It is the role of the legislative, executive and judicial process to help find this balance.

In France, conditions of employment are regulated principally by the contract of employment and by legislation. However, in some cases, there may also be a collective agreement or an established custom or practice in the particular workplace or industry.

Finally, there is the growing effect of international law, and in particular the application of European Community Law which will be felt more and more within the member states of the European Union.

This note examines the principal aspects of employment law in France, from the formation of the relationship of employer and employee through to the regulation of disputes arising from the termination of that relationship.

2. THE FORMATION OF THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE

2.1. DEFINITION

By the contract of employment (« *le contrat de travail* ») an employee (« *l'employé* » or « *le salarié* ») agrees to undertake a certain activity for and under the orders of the employer (« *l'employeur* » or « *le patron* »). In return, the employee receives a salary or wages (« *le salaire* »).

2.2. THE TERM OF THE CONTRACT

Under French law an employment contract may not, except in exceptional circumstances, be for a fixed term.

2.3. THE TRIAL PERIOD

The employer may require an initial probationary period, the length of which is determined by the contract of employment, the terms of any collective agreement, or any established practice or custom.

2.4. THE FORM OF THE CONTRACT

Since 1st July 1993, as a result of the implementation of a European Community directive, the employee must be given a written contract within two months of the beginning of the employment, containing specified terms and conditions.

In practice, it is advisable to have a written contract detailing all the terms and conditions of the employment.

2.5. THE TERMS OF THE CONTRACT

The French working week has been fixed at 35 hours. Any additional hours over the 35 hour per week limit are treated as overtime and the first eight hours of overtime must be paid at time plus one quarter, and any excess at time plus one half.

The freedom of the parties to negotiate the contract is restricted by law, and any terms which seek to modify the law, or to exclude the jurisdiction of the appropriate courts will be treated as null and void.

3. WORKFORCE AND UNION REPRESENTATION IN THE WORKPLACE

There are three separate forms of representation :

3.1. WORKER'S REPRESENTATIVES (« LES DELEGUES DU PERSONNEL »)

Workers representatives are elected by the workforce in all businesses employing at least 11 employees. Their function is to present individual or collective grievances or representations about salaries, conditions, etc.

3.2. THE WORKPLACE COMMITTEE (« LE COMITE D'ENTREPRISE »)

A committee must be established in every case where there are 50 or more employees.

The committee is chaired by the employer and the employees' representatives are elected. There may also be Union representatives, who have a consultative role.

The committee takes part in the decision making process of the company and organises social and cultural activities for the employees.

3.3. UNION REPRESENTATIVES (« LES DELEGUES SYNDICAUX »)

Union representatives, who are nominated by the Unions themselves, are found in businesses or establishments with at least 50 employees. These representatives carry out the usual Union functions within the workplace.

3.4. PROTECTION OF WORKFORCE AND UNION REPRESENTATIVES

The members of the Workplace Committee and the Workers' Representatives have a special protected status during their term as committee members or representatives. The Union representatives have the same status from the date the employer receives notice of their appointment from the Union.

Such protected employees can only be dismissed after a special procedure has been followed, and the employer must obtain the agreement of the « *Inspecteur du Travail* » (a civil servant) to the dismissal.

4. THE TERMINATION OF THE EMPLOYMENT CONTRACT

4.1. FIXED TERM CONTRACTS (CONTRATS A DUREE DETERMINEE)

Such contracts normally come to an end at the expiration of the fixed term.

The « *Code du Travail* » (that part of the French Code relating to employment law) does, however, provide for the contract to be brought to an end before the expiration of the term in a number of circumstances, namely agreement between the parties, serious wrongdoing, or « *force majeure.* »

4.2. UNLIMITED TERM CONTRACTS (CONTRATS A DUREE INDETERMINEE)

Termination of an unlimited term contract can be the result of a mutual agreement between the parties, or it can be imposed

on one party by the other, subject to certain conditions.

4.2.1. Mutual agreement

The employer and employee made decide to terminate the contract at any time.

4.2.2. Resignation

Resignation (« *démission* ») is the ending of the contract by the employee. The resignation is only valid if the employee resigns of his own free will and not, for example, because the employer puts pressure on him to resign.

An employee who wishes to resign must respect any period of notice imposed by law, contained in his contract or in a collective agreement, or customarily applied in his particular industry.

If the employee does not give the required period of notice, the employer may be entitled to damages and interest for any resulting loss.

4.2.3. Redundancy and Dismissal

If the employer choses to end the relationship, then it is a case of « *licenciement.* » This may take one of two forms :

4.2.3.1. Redundancy

In French, redundancy is known as « *licenciement pour motif économique* », literally, dismissal for an economic reason. There are detailed rules regarding how redundancies should be made, and in particular how candidates for redundancy should be chosen.

4.2.3.2. Dismissal

The employer may dismiss the employee because of poor performance, as a disciplinary measure, because of a poor attendance record, because of the employee's state of health, or for any other reason making it impossible to continue the working relationship.

Whatever the reason, however long (or short) the employment has been, and whatever the size of the business, the employer must follow the preliminary procedure (« *la procédure préliminaire* »).

Firstly, the employer must send the employee a letter, sent by recorded delivery or delivered personally, inviting him to attend a meeting with the employer at a given place, date and time. The letter must state the reason for the meeting.

At the meeting, the reasons for the proposed dismissal will be put to the employee, who will have the opportunity to put his point of view.

After the meeting, at least one clear working day must elapse before the employer sends the dismissal notice. This must be sent by recorded post with notice of delivery, and in the notice the employer must state the reason for the dismissal.

If the reason for the dismissal is very serious wrongdoing on the part of the employee (« *la faute lourde* »), the employee will not be entitled to any notice period (or payment in lieu of notice), nor to any payment for untaken holiday, nor any compensation payment for loss of employment.

To constitute « *la faute lourde* », the employee's conduct must be exceptionally serious and show that the employee intended to damage the employer or his business.

« *La faute grave* » is sufficiently serious misconduct to justify immediate dismissal. In such a case the employee is not entitled to any notice period, nor to any compensation for loss of employment.

Less serious wrongdoing is known as « *la faute simple.* » In this case, the employee is entitled to work his notice period (or to

receive a payment in lieu of notice), to receive compensation for holidays owing to him, and a payment (*« une indemnité de licenciement »*) to compensate him for the loss of his employment. The size of such payment will depend on the length of the employee's service, and on any collective agreement. The basic level of compensation is 10 % of the monthly salary for each complete year of employment.

In each case, although the seriousness of the conduct may vary, there must be real and serious wrongdoing : the fault must be both objective and sufficiently serious to make it impossible to continue the employment.

5. THE CONSEQUENCES OF THE TERMINATION OF EMPLOYMENT

5.1. THE « CONSEIL DE PRUD'HOMMES »

Disputes arising from the termination of employment fall within the jurisdiction of the *« Conseil de Prud'hommes. »* This consists of four lay assessors, two of whom are Union representatives and two of whom represent Employers' Organisations. It is, very broadly, the equivalent of the English Industrial Tribunal.

The procedure in the *«Conseil de Prud'hommes»* is comprised of two distinct stages : a conciliation process and a hearing. Cases may be referred by either of the parties to a dispute, or the parties may make a joint application for conciliation.

If the conciliation process does not result in an agreement between the parties, the case is sent for hearing. The conciliation service may at this stage make an interim order for the payment of compensation. It also has power to order the production of documents and preservation of evidence.

The hearing is in public, and the procedure is entirely oral, although it is possible for either side to present written submissions, known as *« conclusions. »*

Judgment is almost invariably given some time after the hearing, allowing the assessors to consider their decision. If they cannot reach a decision the matter is referred to a single judge for his casting vote. The parties are notified of the decision in writing.

5.2. THE APPEAL COURT

The decision of the *« Conseil de Prud'hommes »* may be appealed within one month of the judgment. The appeal is heard by the *«Chambre Sociale de la Cour d'Appel.»*

5.3. THE « COUR DE CASSATION »

A further appeal from the Appeal court may be made to the *« Cour de Cassation »*, which is the highest court in France, with a similar role to the House of Lords. The appeal must be brought within two months of receipt of the judgment of the *« Cour d'Appel. »*

The *« Cour de Cassation »* can only judge questions of law, and not fact.

Decisions of the *« Cour de Cassation »* are an important source of law, and are published in the French law reports.

6. CONCLUSION

Employment law is constantly evolving. The *« Code du Travail »* is frequently amended, and new judgments of the *« Cour de Cassation »* provide further precedents.

Far from being an exact science, it is an changing, often unpredictable area of law, and has became a complex, specialist subject. Human factors can play a large part in its application. The parties need not be legally represented, and the members of the *« Conseil de Prud'hommes »* are not legally qualified.

For these reasons, employers and personnel officers should attempt, wherever possible, to prevent disputes arising and to settle grievances by means of negotiation with a view to avoiding disputes being referred to the Courts. □