

# Summary of labour law changes

September 2023



# Preamble

In this back-to-school month, we offer you a summary of the changes in labour legislation that took place this summer as well as the upcoming draft / proposed laws.

## **1. Adoption of legislative amendments**

### **1.1. Protection for employees suffering from miscarriage**

The law of 7 July 2023 provides two measures, namely the abolition of the waiting period for compensation for sick leave following a spontaneous termination of pregnancy and protection against dismissal.

### **1.2. Protection of families of children suffering from illness or disability or victims of an accident of particular gravity**

This law of 19 July 2023 notably guarantees protection against dismissal of employees during parental presence leave and gives a leave for the death of a child of 12 or 14 days, depending on the age of the child. Finally, the law also simplifies the procedures for parents receiving the daily parental presence allowance (AJPP).

### **1.3. New social regime for contractual terminations**

The law of 14 April 2023 on the amending of financing of social security for 2023 unified the regime of the indemnity of individual contractual termination, by a single employer contribution of 30% (against a social lump sum of 20% before). The BOSS specified that this new social regime will apply to terminations of employment contracts that occur from 1 September 2023.

### **1.4. Professional elections in companies with less than 20 employees**

The question arose as to whether when no employee stood as a candidate in the professional elections of a company with 11 to 20 employees, the employer was obliged to organize the elections. The Ministry of Labour confirms that the employer must hold both rounds of professional elections.

## **1.5. Trial period: the end of the derogation from the maximum durations**

From 9 September 2023, it will no longer be possible to set trial periods for permanent contracts longer than the law.

As a reminder, the law provides that the maximum duration of a trial period for permanent contracts is:

- 2 months (renewable 2 months) for workers and employees;
- 3 months (renewable 3 months) for supervisors and technicians;
- 4 months (renewable 4 months) for executives

## **1.6. Signature of the framework agreement on teleworking for border and cross-border workers**

The framework agreement makes it possible to maintain the social security coverage **of the employer's State** and not that of the employee's State of residence when the latter teleworks in his country of residence less than 50% of his working time. In this sense, if the working time in his country of residence exceeds this threshold, the social security cover will be transferred to the country of residence. As France signed this European Framework Agreement, it has been applicable since 1 July 2023.

# **2. Case law**

## **2.1. Paid sick leave**

In a **judgment of 13 September 2023**, the Court of Cassation complies with European law on paid leave and allows a better effectiveness of employees' rights.

Employees suffering from an illness or accident (**professional or non-professional**) have the right to claim paid leave rights by including **the period of absence in their calculation**.

In addition, the Court of Cassation provides that in the event **of an accident at work**, the calculation of paid leave rights will no longer be limited to the **first year of** the stoppage of work.

Finally, the Court of Cassation accepts that **the prescription** of the right to paid leave begins to run only when the employer has put his employee in **a position to exercise** it in good time.

## **2.2. Nullity of the flat-rate annual working days contract: CCN automobile and CCN service provider in the tertiary sector**

In 3 judgments delivered on 5 July 2023, the Court of Cassation ruled on the validity of three sectoral collective agreements setting up an annual flat-rate working days scheme.

While it considers that **the collective agreement for building** for **ETAM** allows effective and regular monitoring of the workload, the same is not true of those of the **automotive** and **service providers in the tertiary sector**. In this sense, for these two branches, it will no longer be possible to offer flat-rate working days contracts for new hires and flat-rate working days agreements for employees already present will no longer be valid.

## **2.3. Annual flat-rate working days package**

In a judgment of 7 June 2023, the Court of Cassation considers that an employee subject to an obligation to clock his hours, giving rise to computer statements showing the number of hours worked each day, and who must perform 6 hours of work to see a validated working day, does **not have real autonomy** in the organization of his schedule, so **he is not eligible for a flat-rate working days agreement**.

With this judgment, the Court of Cassation recalls the requirement of the criterion of autonomy in the validity of the flat-rate working days contract, and the non-follow-up in hours of employees in days.

# **3. Upcoming bills/proposals**

## **3.1. Draft law transposing the ANI on value-sharing**

The ANI of 10 February 2023 was transposed by the National Assembly on 29 June and must now be examined by the Senate. This bill provides in particular for the creation of new value-sharing obligations for companies with more than 11 employees making significant profits, as well as changes on participation, profit-sharing, value-sharing bonuses. For example, this ANI introduces, on an experimental basis, under certain conditions, an obligation for companies with 11 to 50 employees to set up a value-sharing scheme (participation, profit-sharing, PPV,...)

## **3.2. "Full employment" bill**

This project aims in particular to reorganize the public employment service around the operator France Travail, which would replace "Pôle Emploi" on 1 January 2024.

### **3.3. Proposal for the introduction of menstrual leave**

Deputies have tabled a bill in the National Assembly in favour of menstrual leave of up to 13 working days per year.

### **3.4. Budget 2024: more controlled sick leave**

In its 2024 budget, which will be voted in Parliament in the autumn, the government wants to fight against the increase in costs related to daily social security allowances. Thus, the government provides for the establishment of a day of absence "of public order" that cannot be compensated by either the State or the employer. In addition, an increase in the number of waiting days for the payment of daily social security allowances is to be expected.

*This fact sheet contains summary information. Please contact us for advice tailored to your situation. We cannot be held responsible for any misinterpretation.*

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