

# IMPORTANT CHANGES TO RULES ON AGREED COLLECTIVE TERMINATIONS (RUPTURE CONVENTIONNELLE COLLECTIVE)

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Legal Briefings - By **Emma Röhsler and Sophie Brézin**

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## **ORDONNANCE ON THE PREDICABILITY OF WORKING RELATIONS AND SECURING THESE WORKING RELATIONS**

This briefing summarises the Macron reforms in relation to the introduction of a new codified right to make collective terminations by agreement (outside of a social plan).

This is a change from the current situation, permitted by case law, where an employer can ask for volunteers for redundancy, but only within the scope of voluntary redundancy plan (*plan de departs volontaires*), which generally accompanies a social plan.

### **TERMINATIONS ENVISAGED**

French law currently permits an employer to enter into an agreement with an employee for the agreed termination of the employment - which is not considered to be a resignation or a dismissal - and which enables the employee to leave with a payment and yet still claim unemployment benefits. Up until now however, such agreed terminations have been limited to individual exits or voluntary redundancies within the context of a social plan.

The Macron reforms will permit employers to enter into a collective agreement (with either the trade unions or elected employee representatives for example) providing for **collective agreed terminations** with volunteer employees, without having to put in place a social plan or satisfy any of the conditions for redundancies (e.g. no requirement to demonstrate economic difficulties or other reasons satisfying the test for redundancies etc.).

## **HOW THIS WILL WORK?**

Employers will be able to negotiate a collective agreement which sets out the terms and arrangements for employees, who so wish, to exit the business with a payment.

The exits are purely on the basis of volunteers - the employer cannot impose a termination. In other words, the collective agreement will set the maximum number of departures permitted and if the limit is not reached as there are insufficient volunteers, the employer will not be able to "top-up" the list with dismissals (this would require a social plan). Similarly, the employer will not be required to show an economic reason for the agreed terminations.

The employer will not however be required to suppress the role of the volunteer departing employees - and can recruit a new employee or change the scope of the role. The reform is in fact designed to assist employers who need to reposition their workforce to adapt to new requirements, new skill sets, etc.

## **WHAT MUST BE INCLUDED IN THE PLAN**

The plan must include the following :

- The maximum number of departures envisaged
- The conditions each voluntary exit employee must satisfy
- The criteria to determine which employee may leave in the event of too many candidates
- How the termination payments will be calculated (NB the sum must not be less than the termination payment which would be due under law or the applicable collective bargaining agreement in the event of a dismissal for redundancy). The payments are not subject to income tax for the employee.
- The process for candidates for exit - how consent will be communicated and what happens if the employee changes his or her mind
- Measures to facilitate redeployment outside of the employer's group
- How the voluntary departure plan will be supervised and followed up.

## **INFORMATION TO BE GIVEN TO THE SOCIAL AND ECONOMIC COMMITTEE (FORMERLY THE WORKS COUNCIL AND HEALTH AND SAFETY COMMITTEE)**

The collective agreement sets out the procedure and conditions for the information to be provided to the social and economic committee.

The social and economic committee is informed and consulted on the follow up of the agreement – the opinions are sent to the French Authorities.

## **THE CONTROLS**

- The agreed collective terminations should not be used as a precursor to a social plan (e.g. shortly before a planned social plan).
- The agreed collective termination plan must be submitted to the French Authorities for validation. They will verify that the agreement includes all of the minimum required information and does not include any elements of discrimination (e.g. does not target older employees specifically).
- Any "protected" employees ( e.g. elected representatives, trade union representatives etc.) volunteering cannot be terminated until the Labour Inspector has given his or her authorisation.

## **REVITALISATION OF JOBS IN THE REGION**

If the number of exits could impact on the equilibrium of the local job market, the employer will be required to negotiate with the local Authorities a sum to pay to contribute to encouraging the development of other jobs. Such negotiations take place within six months of the terminations.

## **APPLICABLE DATE**

These measures will be in force from the date following publication of the ordonnance in the Official Journal, subject to the prior publication of the decrees setting out the detail of the application of the measures.

## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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