

THE LOI TRAVAIL - FUNDAMENTAL LABOUR LAW REFORMS IN FRANCE MOVING FRENCH LABOUR LAW TOWARDS THE REALITIES OF THE MODERN MARKET? - CAPS ON TRIBUNAL DAMAGES

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

This is the first of our detailed briefings in relation to the Macron labour law reforms and will cover the subject of caps on tribunal damages.

BUDGETING FOR A DISMISSAL?

This is one of the reforms which has generated the most press interest and challenges by the trade union representatives. The key points to note are as follows:

- Once the ordonnances are in force, for dismissals notified after such date (i.e. after, as currently scheduled, 21 September 2017), the tribunal awards for damages for unfair dismissal will be capped at a number of months' remuneration based on the employee's service.
- The caps range as follows:

- A maximum of 1 month's remuneration for an employee with less than 1 year's service
- A minimum of 1 month and maximum of 2 months' remuneration for an employee with 1 year's service
- Thereafter a minimum of 3 months (currently the minimum is 6 months for companies with more than 11 employees) and maximum of 3 months + 1 month for each full year of service over 3 years up to 6 years' service and thereafter increasingly at a slightly reduced rate (e.g. 10 years' service = a maximum of 10 months)
- From 11 years' service, the damages cap increases by 0.5 months for each additional full year of service - being 20 months for 29 + years
- For service of 30 years or more, the damages remain capped at 20 months.
- The tribunal can take into account other sums paid by the employer on termination - e.g. this may potentially include contractual termination payments (golden parachutes etc.)
- The cap does not however apply to any other claims: e.g. for overtime, unpaid bonus etc.
- It also does not apply in cases where the dismissal is held to be null and void or held to have breached a fundamental liberty - e.g. this would cover cases of discrimination, harassment etc. - where there would be a minimum of 6 months' remuneration (and obviously no cap - damages awarded at the discretion of the tribunal)
- A slightly reduced table of capped damages applies for smaller companies (with under 11 employees) - up to a maximum of 3 months
- The termination payments due under French law (based on service and seniority) are however increased by 25%

How does this differ from the current position? In short, this is a significant reform and will provide more legal certainty for employers, but could also expose companies to an increased risk of claims e.g. of discrimination and harassment etc.

- The tribunals currently apply an "indicative" table of damages - which refers to similar

levels of awards – but this is purely indicative and in no way binding on the tribunals

- The reforms should therefore assist employers in settlement discussions (i.e. to contain expectations) – providing more certainty which is one of the key aims of Macron's reforms
- However, it is clear that the fact that claims based on alleged discrimination, harassment of a violation of other fundamental liberties are exonerated from the cap, is likely to increase the likelihood of claimants adding these aspects to their claims

The importance of procedural irregularities in the dismissal procedure will reduce – as the damages awarded for these irregularities are reduced.

The time period for bringing a dismissal claim will reduce from 2 years from the notification of dismissal to one year, but will be increased from 12 to 18 months for challenges to a social plan.

TABLE OF DAMAGES CAPS

Length of service (complete years)	Minimum indemnity (number of gross month's salary)	Maximum indemnity (number of gross month's salary)
0	-	1
1	1	2
2	3	3
3	3	4
4	3	5
5	3	6
6	3	7
7	3	8
8	3	8
9	3	9
10	3	10
11	3	10.5
12	3	11
13	3	11.5
14	3	12
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 over	3	20

TABLE APPLYING TO SMALLER COMPANIES (WITH FEWER THAN 11 EMPLOYEES)

The following apply by derogation to the above table in terms of the first 10 years in terms of the minimum damages payments:

Length of service (complete years)	Minimum indemnity (number of gross month's salary)
0	-
1	0.5
2	0.5
3	1
4	1
5	1.5
6	1.5
7	2
8	2
9	2.5
10	2.5

LEARN MORE

- [See our introductory briefing on the subject here >](#)

KEY CONTACTS

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



EMMA ROHSLER
REGIONAL HEAD OF
PRACTICE (EMEA) -
EMPLOYMENT
PENSIONS AND
INCENTIVES, PARIS
+33 1 53 57 72 35
Emma.Rohsler@hsf.com



SOPHIE BRÉZIN
PARTNER, PARIS

+33 1 53 57 70 89
Sophie.Brezin@hsf.com

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