

European (& the GCC) Employment Law Update

Jurisdiction: France
Date: May 2019

Impact date	Development	Impact
5 September 2018	Law n° 2018-771 of September 5, "Freedom to choose our professional future"	<p>The law of the 5th September 2018 has introduced a chapter concerning "The equal remuneration for women and men and fight against sexual violence and gender-based behaviour at work":</p> <p>All the employers, irrespective of the headcount of the company shall pursue an objective of elimination of all the wages disparities between women and men.</p> <p>Furthermore, companies employing more than 50 employees shall publish indicators, every year, concerning wages differentials between women and men, actions put in place in order to rectify these variations, and if nothing is done, the company may be subject to financial penalties.</p> <p>Finally, the law has introduced an obligation for the companies having more than 250 employees, to appoint a specific referent for sexual harassment and gender-based behaviour.</p>
12 September 2018	Can an employer dismiss for serious misconduct an employee who denigrates him on Facebook?	An employee had written an insulting comment concerning his employer on a Facebook group. The <i>Cour de Cassation</i> has considered that the comment was only viewable for the members of the specific group (14 persons); it then results that the conversation was private between the members, so the insulting comment cannot justify a dismissal for serious misconduct.
13 December 2018	Is the scale introduced in the French Labour Code regarding the damages amount a Court can grant for unfair dismissal legally enforceable?	Since the <i>Ordonnance</i> 2017-1387 of 22 September 2017 a scale has been introduced in the French labour Code for damages judges may award for unfair dismissal. Depending on the employee's length of

		<p>service and the company's headcount, the judges will have to grant damages ranging between a minimum and maximum amount.</p> <p>However, first instance tribunals such as Troyes, Amiens and Lyon have ruled that the scale is "unconventional" (not enforceable) in view of (i) article 10 of the N° 158 Convention of the International Labour Organization and (ii) article 24 of the European Social Charter which provide for an adequate compensation in case of unfair dismissal.</p> <p>Several subsequent court decisions have approved this reasoning considering that the scale introduced does not allow judges to determine an appropriate compensation for damages. On the contrary, other decisions of first instance Courts have considered that the scale is enforceable.</p> <p>The <i>Cour de Cassation</i> (French Supreme Court) shall now settle the debate within the next few years.</p>
10 January 2019	Is the contract concluded between a driver and a digital platform (UBER) an employment contract?	<p>A driver was working with the Uber platform since October 2016, when Uber has decided to deactivate his account without any explanation, making it impossible for the driver to have new customers. The driver decided to challenge the "termination" of the contract in court and claimed that he was bound to UBER with an employment contract.</p> <p>The driver argued that the platform controls the activity of the driver, gives directives, and if he does not comply with those, his account can be deactivated.</p> <p>In view of those facts, the Paris Court of Appeal determined that the existence of a real "subordinate"/employment relationship between the driver and the platform was demonstrated and has considered that the contract binding the two parties was an employment contract.</p>
11 April 2019	Law "PACTE" relating to the growth and the transformation of the companies	<p>This law deals with several topics concerning Labour Law :</p> <ul style="list-style-type: none"> - An harmonization of the calculation method of the headcount in the companies and a reduction of the thresholds (actually the French labour Code counts more than 88 thresholds);

		<ul style="list-style-type: none">- Measures to facilitate the employee's savings plan: incentive bonuses and profit-sharing;- Measures to promote employees' shareholdings;- Changes concerning the night-work hours: before the law, an employee was considered as having a night-work job if he/she was working from 9 pm to 7 am. As of now, an employee has a night working-time if he/she works from 12 am to 5 am.
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