

## European (& the GCC) Employment Law Update

Jurisdiction: France  
Date: November 2017

Impact date	Development	Impact
Immediate	Decision of the French Supreme Court dated 23 May 2017	<p>As a general principle, the severance indemnity owed to a dismissed employee is calculated on the basis of reference salary, corresponding to the remuneration paid to the employee over the 12 months or the 3 months (depending on the most favourable basis) preceding the termination of the employment contract.</p> <p>In a decision dated 23 May 2017, the Supreme Court ruled that if the dismissed employee was on sick leave before the termination of his/her employment contract, the reference salary to take into account to calculate the severance indemnity must be based on the 12 or 3 months preceding the sick leave (instead of the termination).</p> <p>Accordingly, the period corresponding to the sick leave is neutralized/ignored to calculate the severance indemnity.</p>
Immediate	Decision of the French Supreme Court dated 29 June 2017	<p>If an employee claims that he/she did not get paid for the performance of overtime and asks for specific damages in this respect (on top of the payment of overtime), he/she must demonstrate that he/she suffered prejudice resulting from the performance of unpaid overtime.</p> <p>Asking for damages on the sole basis of an alleged prejudice is not sufficient to be granted damages.</p> <p>This decision is part of the Supreme Court's willingness, since 2016 decisions, to give up the concept of "<i>automatic prejudice</i>" which was not requiring to demonstrate the reality of the prejudice alleged in order to get damages.</p>

<p>Immediate</p>	<p>Decision of the Constitutional Council dated 13 October 2017</p>	<p>Since the Act no 2015-994 dated 17 August 2015 modified the status of the united staff representation (i.e. gathering the employees' representation bodies – staff delegates, Works Council, Health and Safety Committee – in a joint body), service providers' employees working within the host (client) company can vote (subject to a certain duration of presence) but can no longer be elected as staff representatives* (whereas it was previously admitted by case law before this Act).</p> <p>This provision has been challenged before the French jurisdictions. The Constitutional Council ruled that this exclusion was justified by the necessity to avoid that employees from an external company have access to strategic information of the host (client) company.</p> <p>However, these employees are not deprived of the possibility to hold an elective mandate since they can vote and be elected within their own employer's company.</p> <p><i>* The same rules shall apply to the Social and Economic Committee (new single staff representation body from the Ordinance no 2017-1386 Ordonnances dated 22 September 2017 – please see below).</i></p>
<p>Depending on the provisions: the impact can be immediate or take effect in a few years.</p>	<p>5 Executive orders dated 22 September 2017 (also called "Macron")</p>	<p>The 5 "Macron Ordonnances" provide for significant changes, some of which are summarised below:</p> <p><u>Dismissals</u></p> <ul style="list-style-type: none"> <li>– The grounds mentioned in the dismissal letter can be specified/completed by the employer or at the employee's request after the notification of this dismissal letter;</li> <li>– The conditions to get the severance indemnity provided by law as well as its amount have been modified;</li> <li>– In case of unfair dismissal, the amount of maximum/minimum damages granted by the judge is set on the basis of the following provisions:</li> </ul>

- Up to 10 years length of service: around 1 month's salary maximum per year of service ;
  - Over 10 years length of service: 0.5 month's salary maximum per year of service ;
  - 29 years length of service and more: 20 months' salary maximum ;
  - Depending on the size of the company (i.e. employing less than or at least 11 employees), the minimum amount of damages has been set between 0.5 and 3 months of salary.
- These above mentioned provisions regarding the maximum amount of damages are not applicable to dismissals held null and void (e.g. discrimination/bullying).

#### Economic redundancies

- When the company belongs to a group, the economic ground is analysed on the basis of the national territory, even if the group also operates abroad;
- The statutory provisions provide for a definition of the concept of “sector of activity” (“*secteur d’activité*”) which was until then only defined by case law;
- Voluntary departures in collective redundancy plans are now facilitated.

#### Fixed-term employment contract (FTC)

If the fixed-term employment contract is not transmitted to the employee within a 48-hour period following the employee's start date, this employee is entitled to the payment of an indemnity equal to max. 1 month's salary in case of litigation (instead of having the FTC requalified into an indefinite-term employment contract).

#### Statute of limitation

		<p>Any legal action relating to the termination of the employment contract is subject to a 12-month statute of limitation as of the notification of the termination (the statute of limitation until then was equal to 2 years) or as of the last Social and Economic Committee's meeting (in case of economic redundancy).</p> <p><u>Staff representation</u></p> <p>The Social and Economic Committee is a new staff representative body that will gather the staff delegates, the Works Council and the Health &amp; Safety Committee; it must be implemented within companies employing more than 11 employees over a period of 12 consecutive months.</p> <p><u>Collective bargaining</u></p> <ul style="list-style-type: none"><li>- The role of the collective bargaining at the company-wide level has been reinforced;</li><li>- Companies employing less than 11 employees can propose to their employees by way of referendum, the adoption of provisions covering all the matters open to bargaining at the company-wide level (subject to their approval).</li></ul>
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