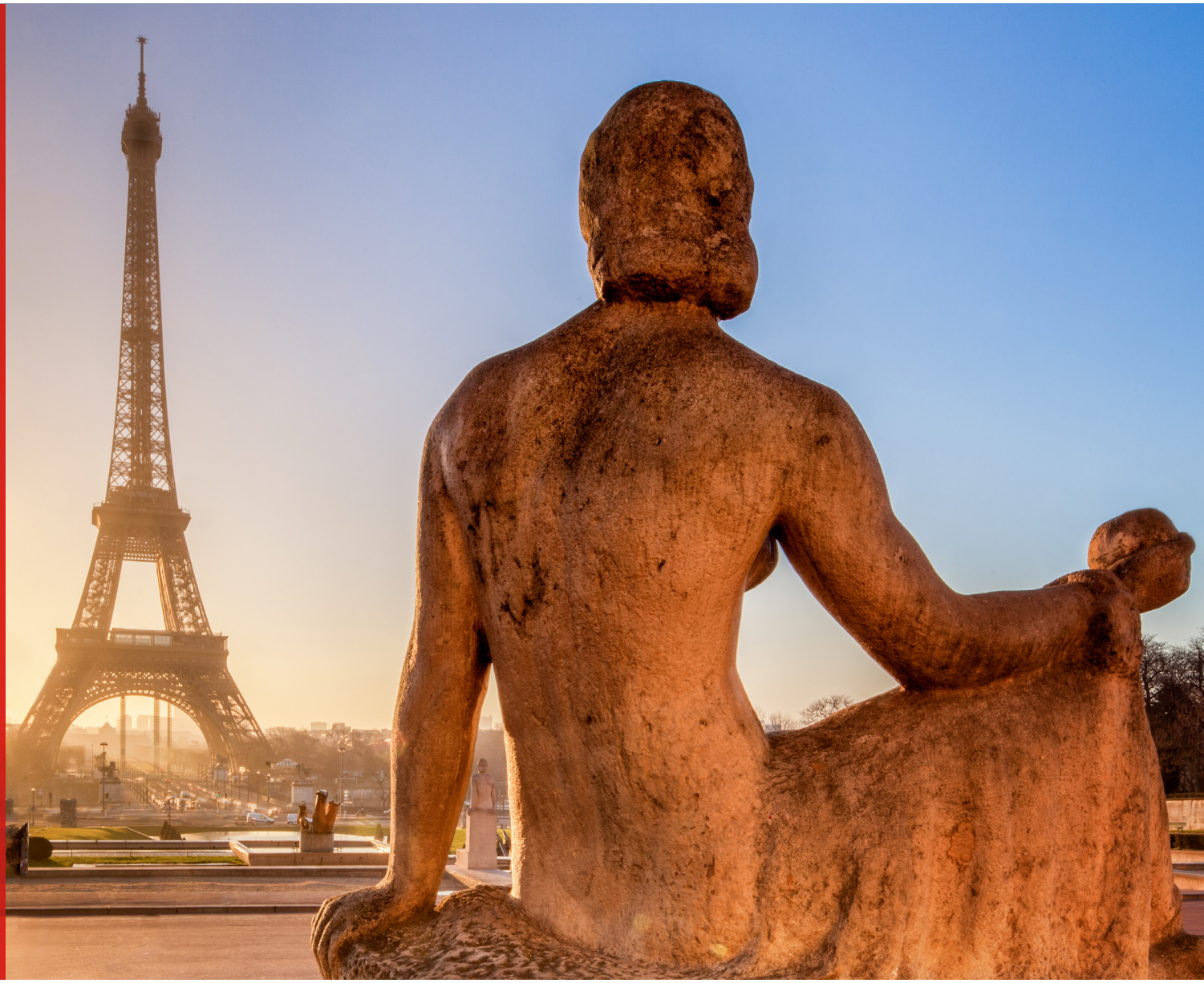
NORTON ROSE FULBRIGHT

10 Things to Know about Labour and Employment Law in France



01 | It's codified

Employer-employee relationships in France are governed by a complex set of laws and regulations which leaves little room for individual negotiation:

- The French Labour Code (Code du Travail) provides a comprehensive framework for both individual and collective relationships between employers and employees.
- Collective bargaining agreements (conventions collectives) may be negotiated between employers and trade unions covering a company or group of companies (accords d'entreprise), or between employers' associations and trade unions covering an industry as a whole at national level. In the latter case, the Government may decide that the collective agreement covers even those employers who are not members of the employers' association and is therefore mandatory throughout the industry sector.
- Individual employment contracts cover only those points that are not already dealt with in the Labour Code or in the relevant collective bargaining agreement.

There is a distinct hierarchy between these different sources:

- In the event of a conflict between the Labour Code and the relevant collective bargaining agreement, the provisions which are more favourable to the employee apply.
- In the event of a conflict between the individual employment agreement and either the Labour Code or the relevant collective bargaining agreement, the provisions which are more favourable to the employee apply.
- Until recently, in the event of a conflict between industry-wide collective bargaining agreements and company-wide collective bargaining agreements, the provisions more favourable to the employee applied. However, under new legislation, employers can enter into company-wide collective bargaining agreements that are less favourable than industry-wide collective bargaining agreements in relation to certain areas (e.g. working time rules and paid leave).

Over 95% of employees in France are covered by collective bargaining agreements (even in non-unionised industries), so the rules in the Labour Code are generally supplemented by more generous rules in areas such as paid leave, maternity leave, medical cover, termination of employment and working time.

02 | Employee representatives play a very important role

Depending on the size of a company, the "Comité social et économique" (CSE) made up of employee representatives will have a different role.

The CSE has an important say on significant business issues such as redundancies. For companies with at least 50 employees, the CSE must also be consulted on a variety of aspects such as the strategy of the company, its financial and economic situation and before making important changes in the business such as the acquisition or sale of part of the business or of the company itself.

The opinion of the CSE (whether favourable or not) must be obtained prior to any final decision by the employer (and so prior to signing a binding document).

03 | The 35-hour working week you may have heard about is not all it is cracked up to be

Under the original "Aubry Law" of 19 January 2000, a standard 35-hour working week was established. However, this is not a maximum working week – employees working beyond that amount are entitled to overtime.

This has proved to be quite unworkable in practice, particularly for senior executive and management level employees. As a result, subject to the company being covered by a collective bargaining agreement providing for such possibility, such employees can agree to calculate their working time in days rather than in hours (forfaits-jours). Working time cannot exceed 48 hours a week or a maximum average weekly working time of 46 hours over 12 consecutive weeks Additional time worked is either remunerated by overtime or can be compensated by extra days off ("RTT days").

04 | Specialist employment tribunals

Employment disputes are brought before dedicated labour tribunals consisting of representatives of employers and employees.

- Employment tribunals are staffed by representatives of employees and employers appointed by the Ministry of Justice and the Ministry of Labour.
- Bringing an action in the tribunal requires production of evidence supporting the claim (previously a simple filing of a claim was sufficient).
- The time to obtain a decision can be very long depending on the location and capacity of the court.

05 | The "right to disconnect"

In companies with at least 50 employees, the annual negotiation on equality between female and male employees and the employee work/life balance must include the conditions of the employee's right to exercise the right to disconnect from all devices. It must also provide the application of rules to regulate the use of digital devices and to ensure that the right for employees to take annual leave and to find a balance between their personal and professional life is actually observed.

Failing any agreement, it is incumbent upon the employer to implement a policy to this effect.

06 | The use of French language is mandatory

Any documents setting out the rights and obligations for employees must be drafted in French. Exceptions to this are extremely limited and courts are very strict when scrutinising compliance with this principle. In practice, this has particular impact on the employee's right to participate in a bonus scheme in a French company which is part of an international group in which bonus policies are often in English. This has resulted in a number of employees being entitled to claim a full target bonus because the bonus rules were not in French.

This principle also needs to be taken into account with respect to communications with employee representatives. Any document provided to them should be written in French or accompanied by a French translation.

07 | Monitoring of emails is quite regulated

A number of formalities must be complied with prior to implementing any monitoring of employee emails (even if the emails are saved on the company's servers and are business-related). Amongst other things, the employee representatives must be consulted, and the employees must be informed of the monitoring. If such monitoring may result in disciplinary sanctions being taken against employees, the "internal regulations" (règlement intérieur) of the company should also be checked to ensure that it contains provisions covering this possibility.

Further, employees' emails identified as "private" or "personal" may not be opened by the employer as this would constitute a breach of the secrecy of correspondence, which is a penal offence. Only a court order can override this prohibition.

08 | Dismissing employees in France is not as difficult as you may think

Any dismissal must be notified to the employee in writing and based on a "real and serious" cause.

A specific procedure must be followed, including inviting the employee to a pre-dismissal meeting, holding the meeting with the employee, and notifying the employee of the dismissal by registered letter with an acknowledgement of receipt.

Dismissals for economic reasons (especially mass redundancy dismissals) and dismissals of certain "protected" employees (e.g. employee representatives) are subject to additional formalities and requirements, particularly involvement (or even approval) of the labour authorities and consultation with employee representatives. In the context of economic dismissals, amongst other things, selection criteria must be implemented to identify the employees to be dismissed (the employer cannot chose the employees to be made redundant on a discretionary basis).

09 | But a dismissal can prove quite costly in France

On termination, employees are entitled to a number of payments: including a severance payment (the law provides for 1/4th month' salary per year of service); the right to a paid notice and payment for their holidays not taken.

More importantly, if the dismissal is deemed unfair, employees are entitled to damages depending on the loss suffered. Recent legislation has set a maximum level for the amount of damages for unfair dismissal which depends on the size of the company and the employee's length of service.

However, lawyers representing employees are quite imaginative seeking to circumvent this maximum, for example by claiming breach of a fundamental right, or relying on breach by the employer of working time regulations or of the rules on bonuses in order to increase the sums claimed.

Some courts simply refuse to abide by the maximum amount set by law.

10 | Garden leave does not exist

Employees may either be asked to work during their notice period, or be released from working. If released from the requirement to work, they should receive their full remuneration, under the same conditions as if they had continued working (including any benefits in kind such as the use of a company car where it is authorised to be used for personal reasons). Employees can work for another employer during this period if they are not bound by a contractual non-compete obligation.

During the performance of the employment contract (i.e. prior to any notification of termination), employees cannot be asked to remain in employment but without being provided with work. This would violate the essential principle that it is the employer's responsibility to provide work to the employee, and this could entitle the employee to claim the equivalent of constructive dismissal, having the same consequences as a claim for unfair dismissal.

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