



European Monitoring Centre on Change

## France: Obligation to consider alternatives to collective dismissals

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France

Phase:

Management

Type:

Obligation to consider alternatives to collective dismissals

Last modified: 10 October, 2019

Native name:	Code du travail
English name:	Labour code

### Article

L.1233-4, D.1233-2-1, R.1233-15, L. 1233-19, L. 1233-33 to L. 1233-35, L. 1233-46, L. 1233-57, L. 1233-57-1, L.1233-57-14 to L.1233-57-22, L. 1233-61 to L. 1233-64, L. 2254-2

### Description

The labour code provides for several alternative solutions that an employer needs to consider before implementing a redundancy plan

#### Obligation to offer training prior to redundancies

According to article L. 1233-4, before a redundancy plan can be implemented, an employer is obliged to offer either individual or collective training to affected employees to ensure redeployment within the company or the group which it belongs to. If the employer fails to provide training, the employee may ask for compensation in court.

#### Redeployment obligation

If redeployment within the company or the group which it belongs to cannot be accomplished, the employer can resolve to redundancies. If the employer fails to provide redeployment where possible, the employee may ask for compensation in court.

The obligation to provide redeployment opportunities is limited to establishments located in France within the company or other undertakings of the groups which the company belongs to.

The employer can choose to transmit individual and personalised redeployment offers to single employees or a list of available positions within the company (or the group which it belongs to) to all affected employees

Regardless of the modality, the redeployment offer must be written and specific. According to article D. 1233-2-1, it must indicate the following:

- the job position and description;
- the name of the new employer;
- the nature of the employment contract;
- the work location;
- the level of compensation;
- the classification of the job.

Each offer must specify the time limit for the employee to apply for the job. The limit cannot be less than 15 days from the publication of the offer. In case the employee does not apply for the job offers proposed within the planned time limit, she is deemed to reject the offers.

These rules are applicable to dismissal procedures on economic grounds initiated since 23 December 2017. Non-compliance with these rules makes the redundancy unfair, meaning that the employee can claim compensation for damages.

#### Collective performance agreements

The collective performance agreements are an internal instrument of flexibility. It allows employers to negotiate working time arrangements, wages, terms and conditions for internal professional and geographical mobility of employees directly with trade unions (or other employee representatives at the company level), in order to meet the operational needs of the company or to safeguard and develop employment.

Even if not compulsory, this instrument is in force since 1 January 2018. It covers all private companies independently of their size and it replaces the former internal mobility agreements and agreements to maintain employment.

### Employment security plan

According to article L. 1233-61 through L. 1233-64, an employer needs to first inform and consult with employee representatives and to then draft an employment security plan (*Plan de sauvegarde de l'emploi*). The latter can be either negotiated as a company-level agreement with trade unions or unilaterally drafted with the information and consultation of employee representatives throughout the restructuring process.

The plan aims at avoiding forced dismissals and/or at reducing their numbers to a minimum. It has to include measures like internal mobility, creation of new activities by the company, external redeployment with a support scheme to help employees for business start-ups or business acquisitions, training, validation of professional experience, implementation of redeployment leave (*congé de reclassement*), access to the publicly-funded professional employability agreement (*Contrat de Sécurisation Professionnelle*) that combines unemployment benefits with training and individual coaching, and measures aiming at working time reduction.

In both cases, where deemed necessary, the works council may call in an outside expert of its choice, at the employer's expense, to gather advice on collective redundancies involving 10 employees or more. The law defines the role of the expert with some details in articles L. 1233-34 and L. 1233-35.

According to article L. 1233-46, the employer needs to inform the labour inspectorate of its employment security plan at most the day following the first information meeting with employee representatives. Pursuant to article L. 1233-57, the labour inspectorate assesses the compliance with the information and consultation requirements and suggests improvements to the employment security plan, where needed. The labour inspectorate needs to approve the employment security plan for the latter to be considered valid.

The works council may propose alternative measures to the restructuring process. In this case, the employer is obliged to provide the works council with a detailed reply on the reasons to choose their restructuring plan over the one suggested by employee representatives.

### Obligations of employers seeking external redeployment in case of redundancies

In companies that are not insolvent, not under judicial redress and with a workforce of more than 1,000 employees, the employer is obliged to attempt to find an investor before closing an establishment that would result in collective redundancies. This obligation does not apply in case of bankruptcy. According to article L. 1233-57-14, The employer is obliged to inform potential buyers of the intention to sell the establishment by any appropriate means. If the employer fails to seek a buyer, the labour inspectorate may refuse to approve the employment security plan. The works council is informed about the business transfer offers received by the employer. Additionally, the works council might issue an opinion, participate in the search for a buyer and make proposals.

## Comments

### Redeployment obligation

In case redeployment is possible with the employee benefitting from training, the state may financially support the training and adaptation initiatives of employees in order to ensure they remain in employment.

Prior to the labour code reform in 2017, alternative working arrangements needed to be assessed not only within the company but also throughout the entire corporate group. As the obligation was not restricted to vacancies in France or in the EU, the affected employee could ask the employer to look for options globally within the group. Employees could as well define their restrictions on the potential job offers in terms of wage and geographical location. The employer then needed to provide a corresponding job offer. The amended labour code aims at simplifying the regulation formerly in place, as the latter was a source of legal litigation and uncertainty for employers.

### Collective performance agreements

According to government sources, 170 agreements were concluded by 1 June 2019, signalling the attraction for this measure. According to a [qualitative analysis carried out by consultancy firm Sextant Expertise](#), around 18 agreements were concluded in companies with more than 300 employees and 33% of the agreements analysed aim at developing geographical and professional mobility with a view to adapting the company with flexibility to its environment.

### Employment security plan

According to an [assessment of the Ministry of Labour](#) (launched in April 2015), 1,141 employment security plans were registered from July 2013 to December 2014. After the peak in 2009 (2,245), the figure decreased to 1,195 in 2019 and ranged on average between 950 and 975 in 2011, 2012 and 2013. According to DARES (2017), 742 employment security plans were implemented in 2015. 44% of these plans resulted from the approval of an agreement between the employer and trade unions.

#### Cost covered by

Employer

#### Involved actors other than national government

Trade union

Works council

Other

#### Involvement others

Labour inspectorate

#### Thresholds

No, applicable in all circumstances

## Sources

- 📖 Labour code
- 📖 Governmental website, Contrat de sécurisation professionnelle
- 📖 Governmental website on labour law (Licenciement économique : plan de sauvegarde de l'emploi - PSE), in French
- 📖 Governmental website, Congé de reclassement
- 📖 Governmental website, Fermeture d'un établissement : obligation de rechercher un repreneur
- 📖 Governmental website, Accord de performance collective
- 📖 DARES (2016) Les dispositifs publics d'accompagnement des restructurations en 2014
- 📖 Bilan de la loi de sécurisation de l'emploi du 14 juin 2013
- 📖 Eurofound, 2010, New law on employee relocation, EIROnline Articles
- 📖 ERM database on restructuring supports instruments: Collective performance agreement
- 📖 Flash report
- 📖 Thomson Reuters
- 📖 DARES (2017), les dispositifs publics d'accompagnement des restructurations en 2015, DARES résultats n°067, octobre 2017
- 📖 Sextant Expertise (2019), 1ers accords de performance collective : quels usages du nouveau couteau suisse de la négociation ?
- 📖 Article L.1233-4 labour code

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## Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: [information@eurofound.europa.eu](mailto:information@eurofound.europa.eu)

Press: [media@eurofound.europa.eu](mailto:media@eurofound.europa.eu)



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