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France: Effects of non-compliance with dismissal regulations

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France

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Last modified: 10 October, 2019

Native name:

Code du travail

English name:

Labour code

Article

L.1235-1 to L.1235-5, L.1235-10 to L.1235-17, L. 1238-2, L.1238-4, R.1238-5

Description

Void dismissal

Collective redundancies can be void by an administrative court, if the latter recognises shortfalls in the employment protection plan or if an administrative authority did not validate or approve the employment protection plan at all. In case the administrative authority validated or approved the employment protection plan without stating sufficient reasons, its decision might be invalidated by the court. According to article L. 1235-16, the administrative authority has the possibility to disclose a clear statement of reasons for the validation of the plan within 15 days following the court decision, making collective redundancies not void.

In the two conditions above, where collective redundancies are void, the judge can order the employment contract's continuation and the employee's reinstatement, which the employer cannot oppose, except if the reinstatement is impossible (for instance, when the company is closed).

In case of reinstatement in the company, the employee is entitled to the payment of a compensation corresponding to the salary lost during the period between the dismissal and the reinstatement. However, the compensation cannot be higher than the remuneration that the employee would have been paid for during the period.

If the reinstatement is impossible, the employee is entitled to:

- legal severance pay, compensation in lieu of notice and holiday pay; and
- specific compensation paid by the employer which corresponds to at least six months of salary if the employee has two years of service in the company and if the company has more than 11 employees.

If the employer does not meet these two criteria, the employee will receive a compensation corresponding to the damage suffered.

Unjustified dismissal

Individual and collective dismissals are deemed unjustified, that is without a fair or serious reason, if the judge declares economic grounds for the dismissal to be non-existent. In this case, the judge can propose the employee's reintegration, if neither the employer nor the employee are opposed to the measures. Otherwise, the employee is entitled to a specific compensation.

Article L. 1235-3 sets both minimum and maximum amounts of compensation in case of unfair dismissals. These amounts are set depending on both the employee's years of seniority and the size of the company's workforce. The underlying principle are the following: given an equal level of seniority, an employee working in a company with a bigger workforce benefits from a higher minimum compensation level that the one working in a company with a smaller workforce; given an equal size of the workforce, an employee with more years of seniority benefits from a higher minimum compensation level that the one with less years of seniority. The minimum and maximum compensation levels refer to the employee's monthly gross remuneration.

Employees can challenge their dismissals before a tribunal within a year following the termination of their employment contract.

Irregular dismissal

Individual and collective dismissals are considered irregular, if the procedure has not been respected. The lack of compliance does not prompt the withdrawal of the dismissal. Indeed, the law does not provide for reinstatement in case of a mere irregularity in the procedure

but it recognises employees a compensation for damages that is equal to a month's salary. According to article L. 1235-2, the compensation applies to all employees, irrespective of the size of the workforce and the years of seniority.

Criminal sanctions

According to article L. 1238-2, failure to consult with the works council for collective redundancies of at least 10 employees is subject to a fine up to €3,750 times the number of employees affected by the offense. Pursuant to article L. 1238-4, failure to notify collective dismissals to the administration is subject to a fine equal to €3,750 times the number of employees affected by the offense.

Comments

In the past, compensation for unjustified dismissals corresponded to at least six months of remuneration, if the employee had two years of seniority in the company and if the company had a workforce of 11 employees or more. With a view to increase predictability for employers, previous amendments to the labour code introduced indicative standards for the evaluation of damages in case of unfair or irregular dismissals. Judges needed to refer to these standards in case of judicial dispute. Compensation in these cases varied between a month of salary for employees with less than a year of seniority and 21.5 months of salary for employees with over 43 years of seniority. The latest amendments to the labour code introduce the current minimum and maximum amounts of compensation.

According to the government and employer associations, this set-up aims at further increasing predictability and at reducing costs for employers, who might have been ordered to a consistent compensation. In turn, the current arrangement increases the flexibility of the labour market and incentivises employers to hire without facing the risk of penalty in case of unjustified dismissal.

The amendments raised a huge debate in connection with legal disputes resulting in several labour court rulings. One legal issue raised relates to the conformity of the new legal formulation with international conventions, namely article 10 of the ILO Convention 158 and article 24 of the European Social Charter. Positions from labour courts varied: some found article L. 1235-3 to violate the relevant international conventions, while others did not. In this matter, the Court of Cassation released its opinion, whereby it considers the reform to be compliant with relevant international conventions.

Cost covered by

Employer

Involved actors other than national government

Works council

Other






Involvement others

Tribunals, labour inspectorate

Thresholds

No, applicable in all circumstances

Sources

-  [Labour code](#)
-  [Governmental website on the labour law legislation 'Licenciement économique nul, injustifié ou irrégulier', in French](#)
-  [WK RH , le barème Macron est-il contraire au droit international et européen ?, February 2019](#)
-  [Court de Cassation, Avis n°15013 17th July 2019](#)
-  [Article L. 1235-3 labour code \(legal scale of compensation in case of unfair dismissal\)](#)

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