SPECIAL BULLETIN

LEGAL ALERT – JUNE 2016

Reform of French labour litigation

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Decree n°2016-660 of 20 May 2016 relating to labour justice and court treatment of labour litigation, implementing Law n°2015-990 of 6 August 2015 called "Macron", deeply reforms labour litigation proceedings before both the labour court and the court of appeal.

According to the labour ministry, these texts "*renew the procedure applicable before [the labour court] in order to increase its efficiency and reduce the time periods for judgment*".

How to bring a claim before the labour court

The act whereby to bring a claim

While it was possible to bring claims before the labour court through a mere request filed with the secretary of the court, the Labour Code henceforth provides that "*the claims are brought either by a request, or by the voluntary presentation of the parties before the conciliation and orientation office*" *(art. R.1452-1 of the Labour Code)*.

On top of the regular information (names and contact details of the parties, purpose of the claims…) and under penalty of nullity, the request must contain a brief summary of the grounds, together with each head of claim.

Moreover, the request must be supported by the evidence as listed by the claimant, which they wish to submit in support of their claims *(art. R.1452-2 of the Labour Code)*.

Being summoned to the hearing

The claimant is notified of the date of the hearing by the secretary of the court through any and all means. Such notification invites them to submit their evidence to the defendant prior to the hearing and indicates that, in case they do not appear in court without any valid ground, the court will be able to rule upon the case based on the evidence and pleas communicated to the other party.

The defendant is then summoned by the secretary of the court by registered letter with acknowledgement of receipt. A copy of the request and the list of evidence submitted by the claimant are attached to the summons. The defendant is invited to lodge his evidence with the secretary of the court and to communicate them to the claimant *(art. R. 1452-4 of the Labour Code)*.

Assistance and representation of the parties before the labour court

Assistance and representation remain free before the labour court, to the extent that the parties can also defend themselves.

The union defensor

A new status of "union defensor" is created, with missions of assistance or representation before the labour court and the court of appeal with respect to labour law matters.

Such union defensor, who aims at replacing the union delegate to exercise defense rights, is registered on a list drawn up by the labour authority upon proposal of employers' and employees' representative trade unions.

Assistance or representation by a lawyer

Contrary to other representatives, lawyers do not need to prove any specific power to represent their clients at hearings.

When all the parties present in court are assisted or represented by a lawyer and bring their claims in writing, their briefs must clearly state their claims and the pleas on which they are based.

Moreover, the Labour Code henceforth provides that "*the claims are recapped in the form of a summary. The judgment office or the summary judges only rule upon the claims stated in the summary. The parties must include in their last briefs the claims and pleas presented or put forward in their prior briefs. Failing this, they are deemed to have relinquished such claims and only the last briefs will be taken into consideration*" *(art. R.1453-5 of the Labour Code)*.

Conciliation and judgment

The conciliation and orientation office (COO)

In case of failure of the conciliation, the case is no longer systematically referred to the judgment office. The COO now ensures that the case is ready to be pleaded until the date that it sets for the judgment hearing.

After consulting with the parties, the COO sets the deadlines and conditions for the communication of the claims, pleas and evidence; in case the procedure schedule is not observed, the COO can delete the case or refer the same before the judgment office on the first available date.

It can also appoint one or two judges in charge of making a report so that the case will be ready for pleadings.

In the event that the claimant is absent upon the hearing of conciliation and orientation without any legitimate ground, the COO is entitled to:

- Refer the case before the judgment office;
- Declare that the request and the summons are void;
- Judge the case immediately if the defendant so requests based upon the evidence and pleas communicated between the parties.

In the event that the absence of the claimant is justified by a legitimate ground, the case is referred to a new COO.

In the event that the absence of the defendant is not justified by a legitimate ground, the COO can decide to judge the case immediately, provided the evidence and pleas have been communicated between the parties. The COO can refer the case to the judgment office only to ensure proper communication of the evidence and pleas to the defendant *(art. R. 1454-1 et seq. of the Labour Code)*.

Furthermore, the parties can challenge the section of the court's jurisdiction exclusively before the COO, unless the case is directly heard before the hearing office *(art. R. 1423-7 of the Labour Code)*.

In case the case is ready to be judged immediately, the judgment hearing can be held "on

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the spot" (art. R. 1454-18 of the Labour Code).

Lastly, since the Macron law, the COO is entitled to directly refer the case before the court composed of labour court judges and a professional judge ("*départage*"), provided they so request or where the nature of the dispute so justifies *(article L. 1454-1-1 of the Labour Code).*

Judgment office

Like the COO, the judgment office is also entitled to ensure that the case is ready to be heard, notably when such case is directly brought before the judgment office or when it turns out that it is not ready to be judged.

In the event that the proceedings schedule is not observed by the parties, the judgment office can call the case at the hearing with a view to judge or delete the same.

The claims, pleas and evidence communicated after the date set for the exchanges without any legitimate ground will be rejected where their late communication is in breach of the other party's rights to defend themselves.

In the event that the defendant does not appear before the judgment office without any legitimate ground, the judges can rule on the merits of the case.

In the event that the claimant does not appear before the judgment office without any legitimate ground, the defendant is entitled to claim that the case be judged on the merits. The judgment office can also judge that the case is void. The claimant is entitled to have such decision cancelled within fifteen days provided they prove a legitimate ground.

In the event of a legitimate absence of both the claimant and the defendant, the case is postponed to a later date *(art. R. 1454-18 et seq. of the Labour Code).*

The Macron law created the possibility to limit the composition of the judgment office to one judge representing employers and one judge representing employees. The case can be referred to the judgment office in its limited composition in the following cases:

- With the consent of the parties, where the case relates to a dismissal or a claim for court-ordered termination of the employment contract (the judgment office must rule upon the case within three months);
- Where the defendant does not appear in court without justifying in due course of a legitimate ground before the COO.

Proceedings in appeal

Henceforth, representation is mandatory before the court of appeal with respect to labour law matters. Notably, the appeal proceedings are subject to the payment of a stamp tax of 225 €.

Therefore, the parties must be represented either by a lawyer registered in the jurisdiction of the competent court of appeal or by a union defensor *(art. R. 1461-1 of the Labour Code).*

The pace of proceedings is significantly accelerated:

- Under penalty of voidance of the appeal, the appellant must communicate their written briefs within three months as from the appeal *(article 908 of the Code of Civil Procedure).*
- The appellee must communicate their written briefs and, as the case may be, bring a cross-appeal ("appel incident") within two months as from notification of the appellant's written briefs, under penalty of automatic inadmissibility *(article 909 of the Civil Procedure Code).*

Any and all procedure acts between lawyers are communicated by electronic means.

The union defensor shall draw up proceedure acts on paper.

The parties must include in their last briefs the claims and pleas presented or put forward in their prior briefs. Failing this, they are deemed to have relinquished such claims and only their last briefs will be taken into consideration *(art. 954 the Code of Civil Procedure).*

Amicable dispute resolution

The COO is entitled to approve and certify the agreement resulting from amicable dispute resolution.

Besides, whatever the stage of the proceedings, the COO and the judgment office are entitled to:

- Appoint a mediator subject to the parties' consent, so as to hear the parties and confront their positions to find a solution to their dispute ;
- Order the parties to meet a mediator, who informs them on the purpose and unfolding of the mediation process (art. R. 1471-2 of the Labour Code).

Warning: this decree came into force on the day following its publication, that is on May 26, 2016, except its provisions relating to the following points, which will come into force on August 1, 2016 :

- How to bring a claim before the labour court (art. 8 of the decree) ;
- The possibility for the parties to be represented or assisted by a union defensor (art. 10 1° of the decree) ;
- The obligation to recap all the claims in the form of a summary (art. 12 of the decree) ;
- The new appeal procedure applicable to labour law matters (art. 28 to 30 of the decree).

SAVE THE DATE:
we will be happy to welcome you to the event we will organize on this topic on October 4th.

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