European Employment Law ALERT

Macron: The Winding Road to Labour Reforms

By Ming Henderson and Clothilde Verdier

On 14 May 2017, French President-elect Emmanuel Macron with a strong 66% majority officially started his five year mandate. His first duty was to appoint a Prime Minister, Edouard Philippe, a Conservative, who will now form a new government. Shortly thereafter, however, the Parliamentary elections of 11 and 18 June 2017 may lead to a government reshuffle to reflect the new composition of Parliament.

Employment and Labour is one of the three key focus areas for President Macron. He has pledged to simplify French laws, reform the labour market, and show France is open to business. Macron widely communicated his ambitious programme during his campaign. As he prepares to move into the Presidential Palace, what are the potential reforms that multinationals employing staff in France or companies considering opening for business in France should expect? The overview that follows is based on Macron's official programme, to which we added our comments for background purposes.

Employment reforms - Mixed messages to employers and employees

Macron has vowed to make French employment laws more business-friendly, and this is clearly apparent from the following proposals:

- Capping damages granted to employees for unfair dismissal claims. By introducing an upper and a lower limit for such damages, the cost of redundancies will be more predictable. Currently, damages are uncapped, and the published guidelines can go up to 24 months' salary on top of notice period and statutory indemnity.
- Cutting payroll taxes on overtime. A similar measure on voluntary overtime was put in place by Conservative President Sarkozy in 2007 under the slogan "Work More to Earn More", but removed by François Hollande as soon as he came into power. In practice, given the cost of payroll taxes, employees' net salary was not proportional to the number of hours worked. The reform would hopefully aim to correct this flaw and encourage productivity.
- Enabling employers to depart from the mandatory minimum protection under the applicable national collective agreement by signing a collective agreement at company or workplace level in areas such as working time, minimum wage, and overtime rates. This was already introduced by the 2016 Macron Law; however, employers still need to negotiate with employee representatives or unions, not just introduce new policies.
- Introduce a two-strike rule so employers who, on a single occasion, slip up on tax filings or payments are just reminded, not penalised.

There are, however, a number of reforms that will be less pleasing to employers, and are less obvious as to how they will make the French labour market more competitive, such as:

- Capping the duration of inbound international assignments to France to one year. Thereafter, employees will need to be on a local French contract. Macron also intends to renegotiate the EU Posted Workers Directive for France to reduce the number of employees working in France but remaining on their home payroll, and not being fully subject to French labour laws;
- Taxing employers who frequently use temporary contracts instead of permanent employment contracts through an additional levy at company level;
- Publishing on a "shame list" the name of companies who do not comply with equal pay. This will force companies to focus more actively on their data, and may in the short term increase salary costs, red tape and lead to a negative public image, but if properly managed could be positive long term;
- Reducing payroll taxes for employees on minimum wage (currently 1480 Euros per month), and providing for the payment of a 13th month bonus;
- Increasing employees' net salary by lowering the amount of employees' contributions, e.g. an employee currently earning a monthly salary of 2,200 Euros will earn an additional 500 Euros net a year. This measure will not reduce employment costs in France for employers. Typically total payroll taxes in France amount to around 70% of gross salary before income tax (compared with around 20% in the UK for a similar level of pay);
- Removing the tax credit for research programmes in France, which have in the past proved popular in the Pharmaceutical and Tech industries. This reform is to balance the books with the reduced taxes on low salaries;
- Extending unemployment benefits to all 'workers' such as independent contractors, entrepreneurs or employees who resign from their job. Such measures, which are likely to be very popular, may impact employee retention and ultimately push up the cost of employment for employers, though Macron also announced his intention to restrict both the duration and the conditions under which unemployment benefits are paid out.

What to expect next?

Employers should brace themselves for changes in the employment and labour law arena. However, at this stage nothing is set in stone, and the reforms may be slow and more modest than as described above. France does not have the equivalent of a US "Presidential Decree", so Macron and his government will need to get the Parliament's buy in. The famous "Article 49.3" process, which enables a government to force its programme through Parliament without lengthy debates, will be a valuable weapon; however, when triggered in the absence of a majority vote, the government would need to be dissolved, so it is a double-edged sword. Last but not least, two additional considerations are of significant importance in France: "the power of the street", i.e. strikes and demonstrations coordinated by unions that can bring France to a halt for weeks or months; and the Constitutional Council, which can annul any law deemed unconstitutional. Macron has already experienced the annulment of his "Macron law" on 23 articles including the capping of dismissal damages in August 2015.

If you have any questions or would like further information, please contact your Seyfarth attorney, Ming Henderson at mihenderson@seyfarth.com or Clothilde Verdier at cverdier@seyfarth.com, or any member of our International Employment Practice.

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