

Labor & Employment Client Service Group

From Bryan Cave, Paris

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French Economic Dismissal: Pre-Dismissal Obligation to Attempt to Relocate Employee Abroad

One of the obligations prior to dismissing an employee for economic grounds in France is to attempt to relocate the employee within the company or group, even abroad. A French Circular dated March 15, 2011¹ sets forth in detail the procedure to follow in the event of relocations abroad.

Relocation Obligation

Prior to any dismissal for economic (as opposed to personal) grounds, the employer must review all possible job openings in all the companies and offices of its group, wherever they are located, even abroad, and the possibility of relocating the envisaged employees to these jobs (Article L.1233-4 of the French Labor Code and relevant case law). The employer must propose transfers to available group positions corresponding to the employee's professional qualifications or any other position compatible with the employee's capacities with an equivalent remuneration or, with the employee's approval, in a lower professional category, before any dismissals, even if this would involve a modification of the employment agreement, an adaptation to a new work environment and/or a relocation to another country. Relocation offers must be made in writing and must precisely describe the available positions in light of the personal situation of the employee.

Failure to comply with this obligation may render the employer liable for damages for dismissal without legitimate grounds.

Offers to be Made for Jobs with an Equivalent Remuneration

Article L.1233-4 was modified by French law n°2010-499 of May 18, 2010 to specify that the remuneration for alternative positions offered must be equivalent to the pre-dismissal remuneration. Previously, offers could be made for equivalent positions within the employer's group but for a salary much lower than the employee's salary at the time of the dismissal, even

¹ French Circular of the French Direction of Labor (DGT circular n°3 relating to the conditions of application of French law n°2010-499 regarding fair compensation to dismissed employees ("Circular"). A Circular is an administrative interpretation of the law, binding on the issuing agency.

below the French minimum wage: in one highly publicized case, an employer offered positions in India for a monthly salary of €69. Nevertheless, prior to the May 18, 2010 law, failure to propose such alternative group positions, even with low salaries, would expose an employer to damages for having failed to comply with the relocation attempt obligation.

Alternative job offers do not need to be made unless they provide for remuneration which is equivalent to the employee's aggregate pre-dismissal remuneration, including base salary, variable components and all other benefits granted directly or indirectly to the employee, as clarified by the Circular.

Specific Procedure for Offers of Relocation Abroad

As a result of problems arising from the obligation to propose alternative jobs abroad (language spoken, possible need for work permits, low wages), the May 18, 2010 law also introduced a new article, Article L.1233-4-1, the purpose of which was to rationalize the procedure applicable to offers of relocation abroad. The employer must first ask the employee whether s/he would be interested in relocation offers abroad, and under what possible conditions and restrictions as regards the jobs offered, in particular in terms of remuneration and location (*e.g.*, nature of the employment, duration of work, contractual benefits, paid vacation, health and safety rules).

The Circular specifies that the employer must indicate the list of countries in which the company or its group has activities and where transfers may be possible. The employer may also give general information on the local working conditions (*e.g.*, place of work, working time, paid vacation). The Circular also provides an example of the questionnaire the employer may send.

The information sent should also specify that the acceptance of a relocation offer will lead to the termination of the former employment agreement.

Response of Employee and Follow-up

The employee must respond and indicate whether s/he would be interested in relocation abroad within 6 working days, failing which the lack of response will be deemed a refusal.

If the employee has accepted to receive relocation offers abroad, written and precise offers taking into account his or her restrictions should be sent to him/her. If no such offers exist, the employer should so state. Employees are free to refuse such offers.

Timing of Relocation Offer

As specified by the Circular, the relocation attempt (including time for the employee to respond to any relocation offers, even those in France) must be carried out before notification of the dismissal. The information letter and questionnaire may be sent when the employee is convened to the preliminary pre-dismissal meeting or after the last personnel representative meeting for dismissals for more than 10 employees, or even at an earlier date after the first consultation meeting of the personnel representatives.

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