Client Alert

February 2013

Employment Law

January 11, 2013 Nationwide Multi-Industry Collective Agreement (ANI)

Highlights

The employers' organization MEDEF and a majority of trade unions at the national level recently signed a nationwide multi-industry collective agreement "for a new economic and social model" (the "Agreement"), whose ambitious objectives are the protection of business competitiveness as well as jobs and professional careers.

Even though it seems that these changes to the current French labor and employment legislation (or most of them) cannot become effective unless and until they are written into a law scheduled to be adopted by the French Parliament in May 2013, and even though there is a significant degree of uncertainty as to whether these changes can be implemented as agreed between the MEDEF and the signatory trade unions, we want to draw your attention to these soon-to-come changes, which could bring more flexibility to employers in exchange for a more efficient protection of employees against unemployment.

Among the many changes to come, we have selected some of the provisions of the Agreement that we feel bear more relevance to your activities and that you will find discussed in a preliminary manner hereafter.

We want to stress that the purpose of the explanations below is to give the reader a succinct overview of the provisions selected. They are not exhaustive and we are available to provide any additional information as well as a translation in English of the Agreement should you wish to read it. We will also continue alerting you on a regular basis as to the status of the implementation of the various provisions of the Agreement.

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Protection of business competitiveness

Company collective agreements for the preservation of employment (*Article 18 of the Agreement*)

A company experiencing "serious cyclical difficulties" will have the possibility to enter into a company collective agreement with trade unions whereby, in exchange for the company's commitment not to reduce the workforce for a period of time at least equal to the term of such agreement, the trade unions will accept a reduction in the employees' salary and/or working hours for a set period of time that may not exceed two years.

Should an employee refuse to give his or her individual written consent to the ensuing modifications to his or her employment contract, the company will have the right to lay him or her off, based on the economic grounds set forth in the company collective agreement in support of the proposed contract modifications. Such economic grounds will be deemed lawful *per se*, thereby eliminating a prominent cause for litigation in relation to employee terminations. However, the employer will need to offer "accompanying measures" aimed at helping the employee find a new job and the company collective agreement will have to provide such measures.

Should several employees refuse to give their written consent to the modifications, the company will be under no obligation to initiate the very constraining procedure applicable to collective dismissals on economic grounds. The employer's obligations will only consist in doing its utmost to redeploy the refusing employees internally, and offering them "accompanying measures" aimed at helping them find another job if the internal redeployment efforts prove unsuccessful. In this situation also, the economic grounds raised in support of such lay-offs will be deemed lawful *per se*.

Setting of absolute timelines applicable to the consultation of the works council in relation to the collective layoff of 10 or more employees over a 30-day period in a company with a workforce of at least 50 employees (*Article 20 of the Agreement*)

Under the current legislation, a collective layoff process of this size triggers two major legal obligations for the employer, which must (i) go through a lengthy works council consultation process, without any possibility to impose any maximum time frame on the works council, and (ii) set up a costly "social plan" – i.e. a set of measures aimed at facilitating the redeployment of the employees to be laid off, with a potential risk that it might subsequently be held null and void.

The Agreement now provides that the works council consultation process, as well as the provisions of the social plan, may (or will have to, this point being unclear) be agreed upon with the trade unions or, alternatively, may be unilaterally drawn up by the company in a written document, which would then be submitted to the labor authorities for approval.

Provided that an agreement can be reached either with the trade unions or with the labor authorities, the works council consultation process will have to be carried out within the timelines of the agreement –timelines that will be absolute.

In the event that no agreement is reached with the trade unions on the process and the provisions of the social plan, but that they are set forth instead in a document drafted by the employer and approved by the labor authorities, the absolute timeline of the works council consultation process will be set by the Agreement to range between 2 and 4 months depending on the number of collective layoffs.

At this stage, it is uncertain whether the objectives advocated by the Agreement in terms of the consultation process and the guarantee of the social plan's validity, will be met. For instance, the negotiation of the agreement with the trade unions in the preliminary phase will lengthen the process.

Coordination of the consultation procedure involving the local health, safety and working conditions committees existing in the various establishments of a company, aimed at reducing the length and costs associated with the consultation of such committees (*Article 12 para. 7 of the Agreement*)

The Agreement provides that in the event that the various local health, safety and working conditions committees of a same company must be consulted on a particular project, it will be possible to set up an "ad hoc" health, safety and working conditions committee representing, at the company level, each one of the local committees. Such "ad hoc" committee will be consulted, in lieu of each local committee. The consultation process will need to be carried out within a specific time frame, which will be an absolute time frame, and the "ad hoc" committee will not be entitled to appoint more than one expert paid for by the company.

Restriction on an employee's ability to refuse internal mobility (*Article 15 of the Agreement*)

The Agreement provides that within all companies in which trade union delegates have been appointed, a negotiation will have to be carried out between management and the trade union delegates every three years, regarding the terms and conditions under which employees can be asked to take up a new job internally or move to another workplace.

Provided that a company collective agreement on "internal mobility" can be entered into with the trade unions, an employee will not be entitled to refuse a new job offer or a new workplace, within the limits set forth in the agreement in question. Such refusal will qualify as a valid reason for the concerned employee's dismissal *per se*.

Shorter statutes of limitations (*Article 26 of the Agreement*)

As a general rule, the statute of limitations for any legal action –save for legal actions based on discrimination– in relation to the performance or termination of an employment contract, will be 2 years (instead of 5).

Exceptions to this general rule will apply to:

- claims for back pay (36 months or 2 years depending on the circumstances);
- claims challenging the validity of the company collective agreements entered into with the trade unions or of the document approved by the labor authorities in accordance with the new rules set forth by the Agreement (3 months from the filing of the collective agreement or of its approval by the labor authorities);
- claims initiated by an employee to challenge the economic grounds invoked to terminate him or her (12 months); and
- claims initiated by employees whereby the employer breached the agreement entered into with the trade unions or the document approved by the labor authorities (12 months).

Reinforced rights for employee representation bodies (e.g. works council) as well as new individual employee rights aimed at either protecting their job or their career or at further protecting the unemployed

Reinforced rights for employee representation bodies

- Obligation for employers to draw up and submit to the employee representatives, on an annual basis, a single document comprising all of the mandatory economic and social information to be provided to employee representatives periodically as well as economic and social forecasts for the three years to come. Companies with fewer than 300 employees are granted two years to comply with this new legal requirement (*Article 12 of the Agreement*).
- Participation of employees, with voting rights, in the corporate governance bodies, which determine a company's strategy (e.g., board of directors, supervisory board, etc.) within companies with a workforce of 10,000 or more worldwide or 5,000 or more in France (*Article 13 of the Agreement*).
- Obligation for a company planning to close a site, a plant, or the entire company to seek a potential buyer before a decision can be made, and to inform and consult its works council about its search for a potential buyer (*Article 12 para. 6 of the Agreement*).

New individual employee rights aimed at protecting their job or career or at further protecting the unemployed, and other new measures aimed at protecting jobs or employees

- Right for employees to carry over the unused portion of their eligibility to unemployment benefits and to combine such unused portion with the unemployment benefits to which they would become eligible after a new period of employment (*Article 3 of the Agreement*), in the event that they are again unemployed.
- Extended right to continued healthcare and/or welfare coverage for a maximum period of 12 months (as opposed to 9 months currently) after the termination of the employment contract (*Article 2 of the Agreement*).
- Increased share of the employer's social security contributions to be paid to the unemployment fund in relation to fixed-term employment contracts –the aim being to discourage employers from resorting to such forms of contracts, which are less protective of employees rights (*Article 4 of the Agreement*).

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