

REFORM OF THE FRENCH CIVIL PROCEDURE : LABOUR LITIGATION IMPACTED?

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French Labor, Employment and Workplace Safety Alert

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In recent years, the French labour procedure has been extensively modified, in particular by the Act of 8 August 2016 on the industrial tribunal procedure (n°2016-1088) and several decrees. This development continues with the entry into force of new provisions on 1 January 2020.

French civil procedure has recently been reformed. Announced as one of the major legal innovations of 2020, this reform is the culmination of a far-reaching transformation of the justice system, initiated by the "2018 - 2022 Act for the justice system", of 23 March 2019 (n°2019-222) and the publication of the Decree of 11 December 2019 (n°2019-333).

Applicable to disputes brought as of 1 January 2020, this reform aims in particular to rethink the organisation chart of the French courts, to develop methods of alternative dispute resolution and to extend compulsory legal representation by an attorney before French courts. In short, the French legislators wished to improve and simplify French civil procedure in order to make justice more accessible and more efficient for the litigant.

However, despite a clear desire for clarification, the reform of the French civil procedure leaves many practical questions unanswered, particularly in French labour matters.

CREATION OF THE JUDICIAL COURT: MERGER OF THE DISTRICT COURTS ("TRIBUNAUX D'INSTANCE") AND THE HIGH COURTS ("TRIBUNAUX DE GRANDE INSTANCE")

The Judicial Court ("Tribunal Judiciaire") is now the only first instance court for civil, criminal, and commercial matters for disputes that have not been assigned to another court.

The Labour Courts ("Conseils du Prud'hommes") remain the jurisdiction for individual disputes relating to the performance and termination of employment contracts, but the Judicial Court has jurisdiction in particular over disputes relating to professional elections, social security disputes, and the application or interpretation of collective agreements.

THE BEGINNING OF A SIMPLIFIED REFERRAL TO THE JUDGE IN SOCIAL MATTERS: WHAT ARE THE RESULTS?

The reform of the French civil procedure has simplified bringing cases before the courts (Art. 750 of the French Civil Procedure Code). However, the procedure for bringing a case before the Labour Court is not currently impacted insofar as the French Labour Code still provides for a single mode of bringing cases, being the request ("requête").

INTRODUCTION OF NEW CASES OF NULLITY OF THE REFERRAL: BE CAREFUL!

As of 1 January 2020, the application brought before the Labour Court must contain two mandatory entries (Art. R.1452-2 of the French Labour Code, Art.54, and 57 of the French Civil Procedure Code), failing which the application will be null and void:

- a reference to the documents on which the application is based; and
- the procedures for appearing before the court and the stipulation that if the defendant fails to appear, he may be liable to have a judgment handed down against him solely on the basis of the information provided by his opponent.

Furthermore, the reform of the French civil procedure requires that the application must include, , details of the steps taken to reach an amicable resolution of the dispute failing which the application will be null and void.

However, before the Labour Court, the procedure has not changed. Indeed, the first step of the Labour Court procedure already provides for a conciliation phase.

As a reminder, the main competence of the Labour Court is to settle by conciliation disputes arising from an employment relationship. It is only in the absence of an agreement following the conciliation phase ("Bureau de Conciliation et Orientation") that the Labour Court will conduct a pleading on the merits hearing ("Bureau de jugement").

PRINCIPLE OF PROVISIONAL ENFORCEMENT OF COURT DECISIONS: WHAT ABOUT THE LABOUR COURT'S DECISIONS?

The reform of the French civil procedure provides for a provisional enforcement ("exécution provisoire") of court decisions. From now, the French Civil Procedure Code lays down the following principle: "First instance decisions are provisionally enforceable unless the Law or the decision provides otherwise."

However, in practice, there are no major changes to Labour Court decisions. Thus, the French Labour Code

already provides, as a matter of principle, that the decisions of the Labour Courts are not enforceable as of right on a provisional basis. Nevertheless, it should be kept in mind that provisional execution applies as of right for salary components.

The French Labour Code therefore constitutes an exception to the principle laid down in the French Civil Procedure Code concerning provisional enforcement.

We wait to see with interest the extent to which the civil procedure reforms impact on the labour court system.

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