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Working time reform

Law n°2008-789 dated August 20, 2008 know as the *Law for the renovation of the social democracy and modification of the legal working time*
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Enacted to achieve government's objective to soften working time regulations, the Law of August 20, 2008 (the "Law") amended the rules governing overtime hours and working time organization. It mainly aims at simplifying existing provisions, making it easier for employees to work overtime, notably by privileging negotiations within companies. You will find below an outline of the main provisions of the Law.

1. Overtime hours:

1.1 Annual quota of overtime

The Law amended the very concept of quota of overtime. "Quota of overtime" used to mean the number of overtime hours which employers could require their employees to work without obtaining local labor authorities' prior approval. The employer was only to inform such authorities of the overtime hours worked within the limit of the annual quota of overtime. But employers had to request an authorization for all overtime hours worked in excess of the quota of overtime. Such requests had to be duly justified and employers had to explain the reasons why they would prefer to have their employees work overtime rather than to recruit new employees. The local labor authorities had full discretion to grant – or refuse to grant – employers' requests.

The annual quota of overtime had already been increased from 130 hours to 220 hours per year and per employee but many collective bargaining agreements provide for a lower annual quota, usually 130 hours.

Since the adoption of the Law, employers no longer have the obligation to inform the local labor authorities of the overtime hours worked by their employees and to request authorization for overtime hours to be worked in excess of the applicable annual quota set forth in the law or in the applicable collective agreements.

Now, working overtime hours within the limit of the annual quota of overtime only requires the prior information of the works council (or, if there is no works council, of the employees' representatives). In addition, the works council or the employees' representatives must be consulted prior to the performance of overtime in excess of the annual quota.

1.2 Compensation for overtime

The Law did not amend the rate of extra payment for overtime: 25% premium for the first eight overtime hours and 50% premium for the overtime hours in excess of eight hours, unless otherwise stipulated in a collective agreement (with a 10% premium minimum).

The compulsory time off in lieu is replaced by a "compulsory rest compensation" which is due for any overtime hour worked in excess of the annual quota. The Law therefore suppressed time off in lieu previously due for any overtime hours made in excess of 41 hours per week within the quota of overtime.

The compulsory rest compensation due for overtime hours worked in excess of the annual quota of overtime is equal to 50% for companies with a maximum of 20 employees and 100% for companies with more than 20 employees. The specific rules governing the granting of compulsory rest compensation must be set forth in an establishment- or company-specific agreement (or in the absence of such agreements, in an industry-wide collective bargaining agreement). If there is no such agreement, such specific rules shall be set forth in a decree.

2. A single system for working time organization

The Law imposed a single system simplifying the various existing rules. Before the Law, working time could be organized according to work cycles, modulation and the granting of additional rest days over four-week periods or annual periods. Collective agreements entered into before August 21, 2008 and providing for such working time organizations, however, remain applicable.

Pursuant to the Law, the working time organization can now be freely negotiated in an establishment- or company-specific agreement (or in the absence of such agreement, in an industry-wide collective agreement) setting forth the conditions of the working time organization for a period between a week and a year.

3. Employment agreements for a fixed number of working hours/days

Employment agreements for a fixed number of working hours or days – already recognized by French case-law – are now addressed in Article L.3121-38 of the French Labor Code ("FLC").

There exist two types of such agreements:

- Employment agreements for a fixed number of working hours per week or per month in excess of the legal duration of working time (e.g., 37 hours per week or 160 hours per month) can be entered into between any employer and any employee.

Such agreements must be in writing (Art. L.3121-40 of the FLC) and mention the number of hours to be

worked. The remuneration includes the payment of overtime hours at increased pay rates.

- Employment agreements for a fixed number of working hours or working days per year can only be entered into if authorized by a collective or company-specific agreement.

Employment agreements for a fixed number of working hours per year can be entered into with (i) executives whose functions makes it impossible for them to work according to the collective working time applicable within the department, workshop or team to which they belong and (ii) to employees who enjoy a real autonomy in the organization of their agenda.

Employment agreements for a fixed number of working days per year can be entered into with (i) executives enjoying an autonomy in the organization of their work and whose functions makes it impossible for them to work according to the collective working time applicable within the department, workshop or team to which they belong and (ii) to employees whose working time cannot be predetermined and who have real autonomy in the organization of their agenda.

Employees who have entered into agreements for a fixed number of working days per year have the possibility to waive certain rest days, in which case worked rest days must be paid with a 10% premium minimum.

The number of working days per year determined the collective agreement cannot theoretically exceed 218 days but said agreement must also specify the maximal number of working days in the case employees waive some of their rest days. In the latter case, the collective agreement can provide for up to 282 working days per year. If the collective agreement, however, does not include specific provisions in this respect, the maximum number of working days per year set forth by law is 235.

4. New obligations for employers

Employers must schedule an **individual annual interview with each employee** having entered into a global remuneration agreement for a fixed number of working days per year in order to discuss the employee's workload, the work organization within the company, the connections between the employee's professional and family life, as well as the remuneration. A certain number of collective bargaining agreements already imposed such obligation on employers but it has now become a legal obligation. If employers do not comply therewith, the concerned employees can go to court and undoubtedly obtain damages.

In addition, the Law stipulates that the works council must be consulted every year on the use of global remuneration agreements and the follow-up of the workload of the employees having entered into such agreements (Article L.2323-29 of the FLC).

5. Paid vacations

Before the Law, the minimum period of employment required to be entitled to paid vacation was one month. Article L.3141-3 of the FLC now stipulates that an employee starts being entitled to paid vacation as soon as

he/she has worked 10 days for the same employer.

Do not hesitate to contact our Labor and Employment Department should you have any question on the above.