MEASURES OF THE LABOUR LAW COMING INTO FORCE IMMEDIATELY

Some measures of the Labor Law, decreed on 9th of August after approval of the constitutional council will only be applicable after the publication of the decrees. However, the following measures are already applicable:

I. Flat-rate in working hours or days

Two new provisions have to be included in collective agreements about the annual flat rate of working hours or days, when it is concluded after the 10th of August 2016:

1. A provision defining the period of the flat-rate (12 consecutive months which may coincide with the calendar year or any other period)

2. A clause determining the conditions under which absences, arrivals and departures during the period are evaluated in view of the employees’ remuneration (Labor Code, art. L.3121-64, new).

When the employee with a working day-based flat-rate does not sue his days off against an increase of salary, the duration of the validity of the amendment determining the rate of this increase is from now on limited at one year, and this amendment cannot be subject to an automatic renewal.

According to the terms of article 8 of the Law, the employer is from now on required to ensure regularly that the workload of the employee concerned by an agreement of a day-based flat-rate is manageable and that it enables a good distribution in his working time.

For this purpose, the employer and the employee have to exchange regularly concerning the workload of the latter, the work-life balance, his remuneration, as well as on the organization of his work in the company.

(Art. L.3121-64, II new of the Labour Code)

II. Half-time employees

The term « Family Life » in the Labour Code is replaced by the term « Personal Life »

III. Seasonal employees

The provision stipulating that public holidays, during which the employee does not work, cannot lead to a loss of wages for employees with at least 3 months of seniority in the company is extended to seasonal employees who, due to diverse contracts, successive or not, accumulated seniority up to 3 months in the company.

IV. Road Transport

Every employer who does not respect the following concerns may be imposed to fines.

1. Provisions relating to the driving and rest times of the drivers;

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2. Regulatory provisions or collective agreements concerning the maximum working time, the maximum driving time, the rest time and working time recording.

V. Paid leave

From now on, an employee can take paid leave as soon as they are hired (and not as before only when the rights are opened – under the condition that the period of paid leave is open and under condition that the holiday period, which is fixed by the employer, is respected)

Example: Until now, an employee hired on 1st of April should, in principal wait for the opening of his rights for paid leave, which is the 1st of June in general. Thus, these employee can take days off from the next 1st of May on when the company’s period of paid leave is fixed from 1st May to 31st of October.

The right to additional paid leave, which was reserved until now to mothers with children of less than 15 years, is extended to all employees (and also fathers) taking care of dependent children not older than 15 years and/ or a handicapped child, regardless of his age.

VI. Paid leave for family events

✓ The leave due to the death of children is increased from 2 to 5 days (since the 10th of August 2016)
✓ The right of leave due to the death of a spouse (PACS included) is increased from 2 to 3 days and it includes from now on the death of a partner (also 3 days, and not anymore only 1 day), in case of death of the father, the mother, the parents-in-law or brothers and sisters.)
✓ It is entered in force the right of 2 days of leave in case of announcement of an occurred handicap of a child.

VII. Leave of family caregiver

The minimum period of service required to beneficiate of leave of family caregiver has changed from 2 to only 1 year.

The delay of consideration that the employee will have to respect will be deleted (instead of so far 2 weeks) in case of:

✓ Sudden degradation of heath state of the person who will be cared;
✓ Abrupt cessation of accommodation of the cared person;
✓ Critical situation that requires an urgent action of the family caregiver.
✓ Protection of the mother or father of a new-born child against contract breach
An employee who returns from maternity leave cannot be fired during a period of 10 weeks (instead of so far 4 weeks) and her re-entry may be shifted if she had leave immediately at the termination of her maternity leave (except if there are big mistakes without relation to maternity or pregnancy, or as a result of impossibility to maintain her contract).

To conclude, this period of protection of 10 weeks now also includes fathers of a new-born child and it starts with the day of birth of his child.

VIII. The fight against sexism and moral or sexual harassment

The employee will not anymore have to build up facts, but he will simply present to the lawyer the facts that lead to the suppose of the existence of harassment.

The obligations of the employer are from now on:

- The prevention of sexual harassments in his company
- The internal regulation has to recall the legal measures of moral or sexual harassment.

Finally, the article 122 of the Labour Law now includes the obligation of the lawyer to condemn the employer to pay compensation to Pôle Emploi in favour of the employee in the following cases:

- Every wrongful contract breach relied to discrimination;
- If the invalid notice is given despite of unconsidered moral harassment;
- In case of invalid notice of an employee who was concerned by, has refused or reported of acts of sexual harassment.

Besides, this obligation will also concern the notices of employees with less than 2 years of service in companies that used to employ less than 11 employees.

New article in Labour Law

If a contract breach has been considered discriminating, or in case of an employee who was concerned by, has refused or reported of acts of sexual harassment or if the notice is related to the maternity, if the employee does not demand the prosecution of his contract or if his reintegration is impossible, he can claim compensation of at least 6 month.

This compensation will be paid without any reduction of his salary.

Ecovis France, the 5th of September 2016