

French employment law newsletter



LEGAL UPDATE

- A decree sets out the methods for calculating and publishing any differences in the representation of women and men among senior executives and members of management bodies in companies with at least 1000 employees.
Decree n°2022-680, 26 April 2022
- A decree specifies the content of the environmental section of the economic, social and environmental database (BDESE). It is reminded the BDESE is mandatory in any company of at least 50 employee with a social and economic committee.
Decree n°2022-678, 26 April 2022
- The medical sick leave form has been amended. The sick leave notice, the medical certificate of extension of work accident/occupational disease and the initial certificate of work accident/occupational disease established by health professionals are merged in part. This change is being implemented progressively, as health professionals, who prescribe sick leave certificate, use the new forms.
[Medical health release](#)



CASE LAW UDAPTE

- **The unfair dismissal scale is validated:** The French Judicial High Court (Cour de Cassation) approves the unfair dismissal damages scale which sets out the amount of damages that an employee may be awarded when his or her dismissal is deemed to be without real and serious cause (article L. 1235-3 of the French Labor Code). More specifically, the Court of Cassation specifies that:
 - ✓ The damages scale for employees dismissed without real and serious cause is not contrary to Article 10 of Convention No. 158 of the International Labor Organization.
 - ✓ The French judge cannot reject, even on a case-by-case basis, the application of the scale with respect to this international convention.
 - ✓ French law cannot be reviewed for compliance with Article 24 of the European Social Charter, which does not have direct effect.**Cass. Soc. 11 May 2022 n°21-14. 490 and 21-15.247**
- **Non-Compete clause:** A clause that applies only during the employment relationship is not a non-compete clause. Therefore, the employee cannot claim damages in relation with such a clause. The reader is reminded that a post-contractual non-compete clause requires to be financially compensated in France for an employee.
Cass. Soc. 30 March 2022 n°20-19.899
- **Fixe term contract:** Many fixed-term contracts concluded with the same employee does not automatically lead to the reclassification of the employment relationship into a permanent contract. Such reclassification would have been entailed here if the ground to recourse to the fixed-term contracts did not comply with the law or if it appeared the employer had a structural need for manpower.
Cass. Soc. 13 April 2022 n°21-12.538
- **Amicable termination of the employment contract:** It is mandatory to provide the employee with one original of the amicable termination form. Therefore, employers should keep evidence this document has been provided to the employee. If not, amicable termination of the employment contract can be reclassified into unfair dismissal.
Cass. Soc. 16 March 2022 n°20-22.265
- **Social plan negotiated with trade unions:** A social plan must be elaborated and approved by the Labor administration notably in case of a collective redundancy of at least 10 employees over a period of 30 days in a company with at least 50 employees. One available option consists in negotiating the social with trade unions. In such a case, it is important to check that the trade unions that have signed the social plan have published their financial accounts. If not, the social plan cannot be approved by the Labor administration.
Conseil d'Etat 6 April 2022 n°444460
- **Strike:** A work stoppage in support of an employee who has been dismissed for strictly personal reasons does not fall under the right to strike.
Cass. Soc. 6 April 2022 n° 20-21.586



NEWS

- Coblence avocats has received the Qualiopi certification for its [training actions](#)
- Our Labor Law team received two silver trophies at the Law Summit 2022, in "Collective Bargaining and Labor Relations" and in "Occupational Safety and Health".
- The conscience of the perpetrator in moral harassment - Martine Riou analyzed for ActuEI-RH the decision of the criminal chamber of the Cour de Cassation of 22 February 2022