LABOUR & EMPLOYMENT 2022

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LEGISLATION AND AGENCIES

Primary and secondary legislation

1 What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to employment are the Labour Code, the Social Security Code, administrative regulations and collective bargaining agreements, either at a field-of-activity level or at a company level. International treaties, EU legislation, the French Constitution of 1958, and associated sources and the Civil Code, which contain provisions that apply to employment, also apply.

Protected employee categories

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Labour Code protects employees against harassment and discrimination, either direct or indirect, at work. According to article L1132–1 of the Labour Code, in deciding to hire, sanction, dismiss, promote or reward an employee, an employer must not take into account an employee's:

- origin;
- gender;
- morals;
- sexual orientation or identity;
- age;
- family situation or pregnancy;
- genetic characteristics;
- vulnerability resulting from the employee's economic situation, real or assumed;
- belonging or not belonging to an ethnic group, nation or race, real or assumed;
- political opinions;
- union or mutual activities;
- elective mandate;
- religious beliefs;
- physical appearance;
- family name;
- place of residence or bank domiciliation;
- state of health, loss of independence or disability; or
- ability to speak in a language other than French.

Regarding harassment, the Labour Code punishes the perpetrators of moral and or sexual harassment with imprisonment and a fine. Also, the employer must take all necessary measures to prevent, stop and punish harassment.

Moral harassment can be defined as repeated verbal or physical harassment that has the purpose or effect of degrading working conditions that are likely to affect an employee's rights and dignity, impair his or her physical or mental health or compromise his or her professional future.

Sexual harassment can be defined as repeated or unspoken sexual comments or behaviour that either violates the dignity of the employee because of its degrading or humiliating nature or creates an intimidating, hostile or offensive situation for the employee. Sexual harassment can also be serious pressure, even if not repeated, with the real or apparent aim of obtaining an act of a sexual nature, whether such pressure is sought for the benefit of the perpetrator or the benefit of a third party. As a consequence, no employee can be subject to a direct or indirect discriminatory measure for having been subjected to or refused to be subjected to sexual harassment.

Further, related to sexual harassment, the Labour Code prohibits sexist behaviour that can be defined as any behaviour related to the sex of a person that has the purpose or effect of violating his or her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Last, the Labour Code grants protection in favour of whistleblowers, employees who use their right to strike and fixed-term or part-time employees as compared to permanent employees in similar situations.

Enforcement agencies

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The administration of French labour law is entrusted to the Ministry of Labour, which is represented by regional and departmental directors and by labour inspectors organised through regional bodies. The judicial enforcement of French labour law is the primary responsibility of the labour courts, which are competent to judge all individual disputes arising out of the employment relationship. The Defender of Rights, a French independent administrative authority, may assist the labour courts to identify and assess cases of discrimination.

WORKER REPRESENTATION

Legal basis

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Before the reform of September 2017 (relating to several laws and codes), employers were required to organise elections at the company level for staff delegates when the number of employees reached 11 and for a works council when the number of employees reached 50. Subject to certain conditions, a works council must also have been elected at the establishment level and either at group level or European level, or both.

The reform of September 2017 states that, by 1 January 2020, all companies must have implemented a representative body, the social and economic committee, which takes and gathers the competencies of the former works council, staff delegates and health and safety committee. An employer is required to organise elections at the company level for the social and economic committee with reduced competencies when the number of employees reaches 11. The social and economic committee gains full competencies when the number of employees reaches 50. Subject to certain conditions, a social and economic committee must also be elected at the establishment level and either at the group level or European level, or both.

Powers of representatives

5 | What are their powers?

In companies where the number of employees has reached 50, the works council or social and economic committee has both economic and social functions.

Economic function

The works council or social and economic committee's purpose is to ensure that the employees' interests are taken into account in the framework of the decision-making of the company in matters regarding the management and the evolution of the economic and financial situation of the company, work organisation, professional training and manufacturing technique.

It must be informed and consulted:

- each year, in the absence of a collective bargaining agreement providing otherwise, on the strategic orientation of the company, the economic and financial situation of the company and the social policy, working conditions and employment in the company; and
- more generally, on each important project concerning the organisation, management and general activity of the company.

Employers must put in place a single economic and social database permanently accessible to the works council or social and economic committee members. The mandatory content of this database is very broad and covers the following:

- investments regarding employment and assets (both tangible and intangible);
- gender equality at work;
- equity and debt;
- all elements of compensation of employees and managers;
- social and cultural activities;
- payments made to investors or funds; and
- financial aid benefiting the company.

In the absence of a collective bargaining agreement providing otherwise, the economic and social database must also contain the following:

- investments regarding the environment for certain companies;
- outsourcing, recourse to subcontractors; and
- group-wide financial and commercial transfer.

Last, the works council or social and economic committee members have the right to be present at the meetings of the board. They have an advisory voice.

Social function

The works council or social and economic committee ensures, controls or participates in the management of all social and cultural activities established in the company to the benefit of employees, their families and trainees.

The works council or social and economic committee, therefore, has responsibility for activities for the well-being of employees both internally and externally, and the management of social welfare, pension and mutual insurance institutions. It also regulates all aspects of social services, as well as occupational health services, leisure and sports activities.

The works council or social and economic committee can adjust the benefits according to certain criteria, such as the employees' income or the age of their children.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The employer may ask an applicant to provide information directly or through a third party to the extent that such information is necessary to assess the applicant's professional capacities that have a direct link with the position and the employee's skills (article L1221–6 of the Labour Code). Except where the information is relevant in the specific context of the position, the employer may not collect private background information (eg, criminal or credit record or the holding of a driver's licence).

Medical examinations

7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

A medical examination is only mandatory as a condition of employment for an employee intended to work in a particularly dangerous environment (eg, employees exposed to carcinogenic agents, lead or ionising radiation). This examination aims to verify that the applicant is not suffering from a disease that may affect his or her working environment and that he or she is physically capable of carrying out the job's future duties. A medical examination is also mandatory for employees returning from maternity leave, leave for occupational disease and leave of more than 30 days for a work-related and non-professional illness or accident. For other employees, an information and prevention visit shall take place before the end of the trial period and within the three-month period following the date of hire.

Regarding the medical follow-up, the industrial doctor sees each employee at least every five years. Particular provisions exist for some employees. Disabled workers and night workers, for example, must see an industrial doctor at least every three years, and employees holding a high-risk position must see an industrial doctor at least every four years with an interim visit. This period may be adapted to the employee's health conditions.

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

The employer is not, in principle, entitled to ask questions about the applicant's private life, which includes questions about health. Information relating to a health condition should only be given by the applicant to the medical staff during medical examination or an information and prevention visit. The doctor may prescribe a drug or alcohol test if he or she thinks it is relevant in assessing the applicant's ability to carry out the functions of the job. The applicant must agree to the test and must be informed by the doctor of the possible consequences. The results of the tests are not communicated to the employer; the doctor only indicates if the applicant can work.

If provided for by the Internal Regulations, justified by the nature of the position, and when the employee has been duly informed and able to require a second test, an employer may be able to conduct an alcohol or drug test within the company itself.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

An employer cannot give preference in hiring particular people or groups of people because it may be considered discrimination, which is prohibited by law.

The law relating to the freedom to choose a professional future, enacted on 5 September 2018, has reformed the existing framework to promote and simplify the employment of disabled individuals. Some of the existing obligations have been revised, such as the obligation for employers with at least 20 employees to employ disabled individuals at the rate of 6 per cent of the workforce, which must now be revised every five years (6 per cent becomes a minimum). Some of the provisions of this law include the extension of the reporting of disabled employees to all companies and the facilitation of telework for disabled employees.

Employers may still decide to hire disabled employees, to outsource part of their activity to specified companies employing disabled persons or pay a financial contribution to a dedicated agency in lieu. Employers may also comply with this obligation by applying a certified collective bargaining agreement providing for an annual or multi-annual programme in favour of disabled employees. The Macron Law (Law No. 2015–990, dated 6 August 2015) added three other ways to comply with this obligation:

- adapting the workplace to accommodate disabled undergraduate students for internship periods of at least 35 hours;
- offering a professional settling-in period of at least 35 hours; and
- subcontracting agreements or services contracts with independent disabled workers.

Temporary measures for hiring women or older employees are also authorised.

Provided that an employee dismissed for economic reasons informs his or her previous employer that he or she would like to benefit from a re-hiring priority, the employer must inform and give priority to this employee for any hiring for a position corresponding to the employee's qualification within a 12-month period following his or her dismissal.

Certain collective bargaining agreements provide for an obligation to give priority to internal employees in terms of applying for new positions.

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

A written employment contract is mandatory in specific cases provided by law, such as when an individual is hired as a temporary employee or is hired on a fixed-term or part-time contract. Restrictive covenants are also required to be in writing. A written employment contract is not strictly required under French law in other cases, although it is recommended for evidentiary reasons. Moreover, the EU Council Directive 91/533/EEC of 14 October 1991 requires employers to provide a written agreement with the essential terms of the contract, such as:

- the names of the parties;
- the place of the work;
- the job position;
- a brief characterisation or description of the job position;
- the starting date;
- the term of the employment (for fixed-term contracts);
- the duration or, if not possible, the terms and conditions of annual leave;
- the duration or, if not possible, the terms and conditions of the notice period;
- the amount and components of the compensation;
- the daily or weekly working time; and
- applicable collective bargaining agreements.

The collective bargaining agreement may also impose an obligation to provide the employee with a written employment contract or with specific information.

11 | To what extent are fixed-term employment contracts permissible?

The normal form of employment is the indefinite-term contract. Therefore, a fixed-term contract may only be used to hire an employee to perform a precise and temporary task in factual circumstances strictly defined by the law as follows:

- to replace an employee who is temporarily absent or whose contract is temporarily suspended;
- to temporarily replace an employee whose job is being eliminated;
- to temporarily fill a vacant job position while awaiting the arrival of a new employee (for a maximum of nine months);
- to deal with a temporary increase in business activity;
- to facilitate the hiring of certain categories of unemployed person;
- to provide specific training to the employee; or
- to hire for seasonal work or in business sectors in which fixed-term contracts are standard practice.

Usually, the maximum duration of a fixed-term contract is 18 months and may be extended to 24 months under specific conditions. There is no maximum duration when the fixed-term contract may be made to replace a temporarily absent employee.

Specific limitations or prohibitions apply to companies that have carried out a dismissal on economic grounds during the past six months or hiring to fill a position requiring the performance of dangerous activities and to replace employees on strike. Also, the conclusion of successive fixed-term contracts with the same employee or for the same position is subject to limitations.

Subject to the existence of a specific provision in a collective bargaining agreement, fixed-term contracts may be signed with executives and engineers for a period of 18 to 36 months for the completion of a specific and defined project.

Probationary period

12 | What is the maximum probationary period permitted by law?

For indefinite-term employment contracts, the mandatory probationary periods permitted by law are:

- two months for workers and employees;
- three months for technicians and supervisors; and
- four months for executives.

Longer probationary periods are authorised when they are provided by a collective bargaining agreement entered into before 26 June 2008. Shorter probationary periods are authorised when they are provided by a collective bargaining agreement or employment contracts signed on or after 26 June 2008.

Such probationary periods may be extended once, but only if provided for in the collective bargaining agreement and the employment

contract. Such an extension, which is subject to the employee's express consent, must be agreed to before the end of the initial probationary period. The duration of the probationary period including renewal cannot exceed:

- four months for employees and workers;
- three months for technicians and supervisors; and
- eight months for executives.

The probationary periods can be terminated respecting a notice period of up to one month.

A fixed-term contract may provide for a probationary period that depends on the duration of the contract and may last for up to one month for contracts exceeding six months.

Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

Among other case-specific elements, the primary factors that distinguish an independent contractor from an employee are that the contractor:

- does not carry out duties in a subordinate position to an employer;
- does not belong to the employer's organisation;
- carries out the duties with his or her own equipment or in premises that are different from those of the user company;
- sends invoices for specific services rendered over a specific period;
- is not economically dependent on a single client but has several clients; and
- must have completed all relevant registration and declaration formalities to act as an independent contractor.

French labour law imposes a variety of requirements and obligations on the parties in an employment relationship that do not apply to independent contractors (eg, disciplinary regulations, working-time regulations and paid holidays).

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

Under French law, recruitment agencies must only carry out activities dedicated to providing temporary employees to their client companies. They are not allowed to conduct any other business.

When a temporary employee is made available to a client, two contracts are entered into:

- a service contract between the temporary agency and the user company; and
- a mission employment contract entered into between the employee and the temporary agency.

Although the temp must comply with the working conditions applicable within the user company, his or her link of subordination remains with the temporary agency (ie, his or her employer).

The same conditions provided for using the fixed-term employment contract, mentioned earlier, apply here.

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There is no numerical limitation on short-term visas (less than three months) for foreign employees working for the same employer in France.

All foreign workers need a visa and a work permit to work in France unless they are nationals of one of the member states of the European Union. Foreign workers who are not nationals of these countries need the authorisation to stay and work in France, including all of the following:

- a residence permit, which is valid for 10 years;
- a temporary stay visa with authorisation to work, which is valid for 12 months; and
- a temporary authorisation to work, which is valid for 12 months.

Other authorisations exist for students and scientists, etc.

Less restrictive visa rules apply to employees seconded from a foreign corporate entity to another related entity located in France to carry out a service (assigned employees). After several legislative back-and-forths, the employer will soon be required to pay a special contribution only when it is in breach of the legislation on secondment.

Moreover, certain French labour legal requirements apply to the secondee during the secondment, including working time provisions, days off, paid holidays, minimum salary, overtime and rules relating to health and safety. These requirements ensure that the secondment will not deprive the seconded employee of the rights they would have been granted under a French employment contract.

Spouses

16 | Are spouses of authorised workers entitled to work?

A temporary authorisation to stay in France for personal reasons is available to the extent that the individual meets the legal conditions set by French law. This authorisation is for a maximum duration of one year (automatic renewal) and allows its holder to carry out a professional activity.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

The procedures to obtain a work permit depend on the place where the foreign worker lives. If the foreign worker lives in France, the employer must check the validity of his or her visa and authorisation to work. If the foreign worker does not live in France, the employer must prove that it has tried, with no success, to recruit a candidate in France to be entitled to recruit a foreign worker.

The labour authorities issue the authorisation to work. Except for certain categories of employees (such as assigned employees, artists or high-level executives), they take into account the employment situation in the area where the foreign worker would work, the employment conditions (notably salary) that would apply to the foreign worker, and the technological and commercial purposes of the stay. Any refusal shall be written and shall provide the grounds for the refusal.

The usual formalities (notably, medical examinations) and labour requirements apply to foreign workers. The employer would have to pay a specific contribution to the employment of a foreign worker.

Failure to comply with the legal requirements governing the introduction of foreign workers to France may give rise to various sanctions including criminal liabilities. Courts will impose fines and imprisonment upon the employer (up to 10 years in prison and a fine of up to €750,000 for individuals, and €3.75 million for legal entities) while French authorities can withhold the employee's authorisation to work or stay in France. Additional criminal or administrative sanctions are incurred, such as confiscation of all or part of the assets, exclusion from public procurement and dissolution.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

A labour market test may be required depending on the particular situation of the foreign worker and the local employment situation. Except for certain categories of employees, the employment situation of the geographical area where he or she will work is taken into consideration by the relevant administrative authority in deciding whether to grant the authorisation to work in France.

Also, when the foreign worker does not live in France, the employer must post the position with the unemployment agency or with agencies that are used by the public employment service. The employer will be entitled to recruit a foreign worker only if it is unable to staff the position with someone who is already authorised to work in France.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The typical working week is 35 hours under French law unless otherwise specified by a collective bargaining agreement (although a more flexible working time organisation may apply to executives). The number of overtime hours that an employee may work during a calendar year is limited by a collective bargaining agreement, by a company-level agreement or by law (a legal threshold of 220 hours per year and employee); beyond such limit, the employee must be given a compensated rest period in addition to the overtime payment.

An employee may not work more than 10 hours per day. The average number of hours that an employee may work per week over any period longer than 12 consecutive weeks may normally not exceed 44 hours, nor may the number of hours the employee works during any given week exceed 48. Each failure by the employer to abide by the applicable rules and regulations relating to working hours or overtime hours is sanctioned by a maximum fine of €750 for individuals and €3,750 for legal entities. The fine is multiplied by the number of employees affected by the violation of the law. The employee cannot opt out of these restrictions.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

All employees are entitled to overtime pay, except high-level employees with management duties who have the greatest independence in carrying out their duties and in the organisation of their schedules and whose compensation is in the highest range of the organisation. Other employees (itinerant workers and executives) may be subject to a particular arrangement that excludes overtime payment within a certain limit (eg, a maximum number of hours or days of work per month or per year).

Overtime pay is calculated based on the hourly rate applicable to the employee with a surcharge (eg, 25 per cent between 35 and 43 hours of work per week, and 50 per cent above 43 hours).

Overtime pay may be replaced, fully or partially, by compensatory time off for overtime hours worked below the overtime threshold. The employee must be given compensated time off on top of overtime pay for hours worked above the overtime threshold.

21 | Can employees contractually waive the right to overtime pay?

Aside from a specific organisation of working time, employees cannot waive their right to overtime pay.

However, employers can propose to employees who benefit from a certain level of autonomy in the organisation of their working time a global remuneration agreement for a certain number of hours worked per week or per month, including the payment of overtime hours, within the limit of either 20.8 hours per month or 4.8 hours per week (these thresholds can be lower depending on provisions regarding working time provided in a collective bargaining agreement or an in-house collective agreement). The remuneration of employees who benefit from this working time organisation must not be lower than the minimum remuneration corresponding to their classifications, as increased by the payment of the overtime hours included in their global remuneration agreements.

A collective bargaining agreement or an in-house collective agreement may allow employers and employees to enter into a global remuneration agreement for a certain number of days worked per year, without regard to the number of hours actually worked over the year by the employees. Provisions on overtime hours do not apply to this category of employees and they are not entitled to receive overtime pay.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

French labour law grants employees the right to a minimum amount of paid annual vacation. Two-and-a-half workable days of annual leave are given per month in the reference year, not to exceed 30 workable days. A 'workable day' is any one of the six days in the maximum six-day working week. Individuals working a typical five-day week during a full reference year will receive 25 working days for their annual vacation. Paid vacation is in addition to public holidays.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

An employee may be absent owing to illness, provided that he or she has informed the employer and produces a medical certificate (usually within 48 hours following the absence). During the absence, the employee receives a social security allowance.

The employment contract is suspended but the applicable collective bargaining agreement or the Labour Code ensures that the employee's salary is maintained in full or in part (subject to certain conditions). The salary is maintained from the first day of absence when the absence results from a work-related illness or accident, and after eight days of absence in other cases.

Under the Labour Code, the indemnity amounts to 90 per cent of the employee's gross salary during the first 30 days of illness, and 66.66 per cent of the gross salary during the following 30 days. Those periods are increased by 10 days for each five-year period worked by the employee above one year within a limit of 90 days of indemnification for each period (maximum 180 days of indemnification for each period of 12

months). Any social security allowance and complementary healthcare indemnity received by the employee is deducted from the amount paid by the employer.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Apart from annual vacation or absence owing to illness, an employee may be absent in various circumstances including maternity or adoption leave, family reasons (eg, marriage, death or parental illness), parental leave, child sickness, training, sabbatical leave or business creation. Payment and duration of the leave depend on the reasons for the leave, and the existence of specific provisions of a collective bargaining agreement or from a specific agreement with the employer.

For example, in the case of maternity, the employee is entitled to a minimum of 16 weeks of absence with a maximum of 52 weeks (in cases of multiple pregnancies with medical risks). During maternity leave, the employee receives a social security allowance. The collective bargaining agreement may also provide for an obligation to maintain the employee's salary in full or in part. At any time after the birth of a child, an employee who has worked at least one year with the company before the birth may ask for parental leave or to move to part-time work for a maximum period of one year, which can be renewed twice, ending on the third birthday of the child. During parental leave, except in the case of part-time work, there is no legal obligation to maintain salary unless a collective bargaining agreement provides for it.

If the employee is absent without a valid reason, he or she will not be paid and may be dismissed.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Employees are entitled to statutory social security benefits that consist of statutory pensions and protection against exceptional situations relating to the employee's health, family events, work-related accident or illness. Employees are also covered against unemployment risk. Such benefits are sponsored by the state through social security contributions paid by the employee (at the approximate rate of 20 per cent of the employee's gross salary) and the employer (at the approximate rate of 45 per cent of the employee's gross salary).

French law requires that any company employing at least 50 employees manage a mandatory profit-sharing plan and a company saving plan.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

An employer may not discriminate against part-time or fixed-term employees based on the fact that they are not employed on a full-time or permanent basis.

At the end of the fixed-term contract, the employee must generally receive an indemnity that is at least equal to 10 per cent of his or her gross salary received during the contract.

A fixed-term contract may only be used to hire an employee to perform a precise and temporary task in factual circumstances strictly defined by law.

For part-time employees, specific terms and conditions are required in writing in the employment contract (eg, qualification, compensation items, working time, weekly schedule, amendment of schedule and additional hours, etc). If a full-time position in the same professional category or with similar duties becomes open, part-time employees must receive priority in terms of both applying for and obtaining such a position.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

Under French law, there is no general obligation to publish information on employees' pay. However, the economic and social database must contain information on gender equality, including the remuneration gap between men and women, and information on executives' and employees' remuneration. Under the law enacted on 5 September 2018 relating to the freedom to choose a professional future, companies are required to publish their gender gap scores on their websites. Companies with more than 1,000 employees had until 1 March 2019 to comply with this obligation; those with between 250 and 1,000 employees had until 1 September 2019 to comply; and those with between 50 and 250 employees had until 1 March 2020 to comply. This law has also introduced provisions in favour of the reduction of the gender pay gap, reforming the existing framework. Equal pay for women and men is now an obligation of results and to ensure compliance with this obligation, companies will have to respect four main criteria:

- the introduction of an equal pay index for women and men, composed of five indicators;
- transparency (each company will have to publish its results on its website);
- a three-year period for companies to catch up on wages (ie, by March 2022, however, companies with between 50 and 250 employees are granted a supplementary period of one year); and
- they will be subject to a penalty of up to 1 per cent of the total payroll in the event of non-compliance.

All collective bargaining agreements, either at a field-of-activity level or at a company level, signed after 1 September 2017 must be published on a public electronic database. The collective bargaining agreement can be partly published or anonymised under specific conditions.

The labour inspector is entitled to require the receipt of specific documents such as payslips.

Moreover, in French sociétés anonymes, every shareholder has the right to obtain information on the global remuneration of the five or 10 highest-paid persons within the company.

Following Directive 2014/95/EU of 22 October 2014 on disclosure of non-financial and diversity information by certain large undertakings and groups, a law of 19 July 2017 and a decree of 9 August 2017 adapted the equivalent French legislation. Certain companies employing an average of 500 employees during the financial year shall include in the management reports a non-financial statement containing, when relevant, the remunerations and their evolution. This non-financial statement must be published on the company's website.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Such covenants must be agreed to in writing. The company must justify the agreement as a protection of its legitimate interests. Further, the covenant must not prohibit the employee from working in his or her area of skill. The territorial scope and duration of non-compete covenants must be limited. Moreover, financial compensation should be provided in consideration of a non-compete covenant. If an employee is not

compensated for his or her non-compete commitment, the covenant will not be enforceable, and he or she may claim damages for the limitation of the right to work that has been suffered.

The maximum period for a non-compete covenant depends on the employment contract and the collective bargaining agreement, if any. Usually, it lasts between 12 and 24 months.

Covenants not to solicit or deal with customers or suppliers are regarded as limiting the right to work and are, therefore, generally subject to the same conditions as non-compete covenants.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Yes, concerning non-compete covenants. If an employee is not compensated for his or her non-compete commitment, the covenant will not be enforceable, and he or she may claim damages for the limitation of the right to work that has been suffered.

The compensation cannot be paid during employment but only after notification of the termination. The compensation must be fixed and its amount must be determinable (eg, it cannot be paid with stock options). It is generally fixed by the collective bargaining agreement, if applicable, and is paid through monthly payments during the period of restriction.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

The employer will be held liable for all acts or conduct of its employees when carried out within the course of his or her duties.

When an employee injures a third party, the employer may be held jointly or separately liable for such an injury. The employer is not liable for the acts of any of its employees when an employee acts outside of the course of his or her employment or the employee acts in violation of the terms and conditions of such employment.

The employer can further be held liable in case of discriminatory behaviour as well as harassment by its employees or third parties. The employer is obliged to protect its employees' health and safety.

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

All employees working for an employer in France must be affiliated with the French social security system. The amount of the contribution is based on the employee's salary. In addition to social security and unemployment contributions, the main employment-related taxes are:

- the general social contribution;
- the contribution to the social debt;
- providence;
- additional pensions for manager-level employees; and
- the tax on wages, construction, apprenticeships and continuing training.

The employer must withhold the employee's portion (at the approximate rate of 20 per cent) from the employee's gross salary and pay its own contribution to the social security bodies (at the approximate rate of 45 per cent) that comes on top of the employee's gross salary. Specific deductions are awarded to recently registered companies.

Specific taxes may also apply in the case of hiring foreign employees, distribution of profit-sharing, free shares and stock options, etc.

EMPLOYEE-CREATED IP

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

The Intellectual Property Code provides the rules applicable to any invention created by an employee. When an invention is created by the employee in the performance of his or her duties, such an invention belongs to the employer, and all rights shall be assigned to the employer. The employee will be eligible for additional compensation in consideration of the invention, except for software, unless otherwise provided for by collective bargaining agreements or by contract.

An action for payment of this additional remuneration shall be barred after three years from the date on which the employee knew or should have known of the facts that enable him or her to exercise his or her right.

When the invention is created by the employee outside of normal work duties, the invention belongs to the employee. However, when the invention has been created by the employee during the performance of normal work duties, in the field of activity of the employer, by knowledge of documents or studies belonging to the employer, or with material or installations belonging to the employer, the employer has the option to claim ownership of all or part of the rights derived from the invention. The employee will be eligible for fair compensation in consideration for his or her invention.

The employer has no rights to other inventions created by employees or on inventions created by corporate officers.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

Article 226–13 of the Criminal Code prohibits any disclosure of any secret information from a person to whom the information was disclosed through his or her permanent or temporary professional duties. Any secret information disclosed to third parties in this framework is punishable by imprisonment of one year and a fine of up to €15,000.

Moreover, article L1227–1 of the Labour Code incriminates the disclosure of trade secrets. It provides that any legal representative or employee of the company that discloses or tries to disclose trade secrets can be sanctioned by imprisonment of two years and a fine of up to €30,000. Courts can impose additional penalties (eg, reduced civic rights). Moreover, employees are bound by a general duty of loyalty without any time limitation. However, it is strongly recommended to provide a specific confidentiality obligation in the employment contract.

Last, for confidential information provided to employee representatives in the framework of their functions as employee representatives, the latter is bound by a duty of confidentiality for any confidential information presented by the employer as such (although it is difficult to implement in practice).

DATA PROTECTION

Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Data Privacy Law of 6 January 1978 (as amended in June 2018) and the EU General Data Protection Regulation (GDPR) protect French

employee privacy and personal data. Under this regulation, an employer may collect information on employees, except information regarding racial or ethnic origin, political opinions, religious or philosophical beliefs, union membership, health or sexual preferences. Under article L1221–6 of the Labour Code, an employer may collect personal information from an applicant only if the purpose of such collection is to assess the applicant's abilities to carry out his or her future duties or professional skills. The Data Protection Authority (CNIL) controls the collection of personal data. Based on article 9 of the Civil Code, employees have general protection of their private life at work. The monitoring of employees in the workplace is also subject to restrictive requirements (eg, email and video monitoring).

Before processing or filing data relating to its employees, the employer is required to:

- comply with the principle of 'accountability', according to which the persons or organisations in charge of processing personal data must continuously be able to prove their compliance with data protection regulations;
- individually inform each employee of the existence and the finality of the data processing;
- keep a record of all processing activities; and
- for data processing operations putting at high-risk the rights and freedoms of individuals, the controller must conduct a data privacy impact assessment (DPIA) to evaluate, in particular, the origin, nature, specificity and seriousness of that risk, and provide the DPIA to the relevant employee representatives.

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

French legal provisions mainly refer to GDPR provisions on this matter (ie, article 48 of the Data Protection Law refers to articles 12 to 14 of the GDPR).

As the data controller, the employer is required to provide the following information to job applicants and employees:

- the identity of the employer company and its contact details and, where applicable, the identity of its representative;
- the contact details of its data protection officer, if any;
- the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- where appropriate, the legitimate interests the employer pursues;
- the recipients or categories of recipients of the personal data, if any;
- where applicable, the fact that the employer intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the European Commission, or, where applicable, reference to the appropriate or suitable safeguards and how to obtain a copy of them or where they have been made available;
- the period for which the personal data will be stored, or, if that is not possible, the criteria used to determine that period;
- the data subjects' rights;
- whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and the possible consequences of failure to provide such data; and
- the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

Contrary to what is done in many EU countries, the CNIL strongly recommends providing job applicants and employees with an exact list of their personal data that will be processed.

This information must be transmitted through a concise, transparent, intelligible and easily accessible form, using clear and plain language. The information must be provided in writing, and the employer must retain evidence of this so that it can demonstrate that it has fulfilled its obligation.

The information must be given at the time of data collection and before any other processing (ie, for applicants, information may be given before they fill in the contact forms to apply for a position). The information may be provided in a document given to the employee at the same time that the contract is signed.

Concerning job applicants, the CNIL has set up a special protection framework. In the context of recruitment, the personal data collected must only be used to assess the candidate's ability to hold the position offered (eg, qualification and experience, etc); for example, it is prohibited to ask a job applicant for his or her social security number. When hiring the applicant, the employer may collect additional information necessary to the performance of the contract and compliance with legal obligations.

Concerning the personal data of job applicants, the CNIL provides the following regarding the retention period:

- in the event of a negative outcome to an application, the recruiter will have to inform the candidate that it wishes to keep his or her file to give him or her the opportunity to request its destruction; and
- if a candidate does not request the immediate destruction of his or her file, the data are automatically destroyed two years after the last contact. Only the express formal agreement of the candidate allows for a longer retention period.

The retention period of personal data of employees varies depending on the data concerned.

36 What data privacy rights can employees exercise against employers?

Employees and job applicants must be informed by the employer company that they have the right to:

- request access to their personal data;
- rectification or erasure of their personal data;
- restriction of processing or to object to the processing of their personal data;
- data portability;
- withdraw his or her consent at any time, where applicable, without affecting the lawfulness of processing based on his or her consent before the withdrawal; and
- complain to the CNIL.

Also, French law requires that the employees and job applicants also be informed of their right to define guidelines concerning what should be done of their personal data after their death.

BUSINESS TRANSFERS

Employee protections

37 Is there any legislation to protect employees in the event of a business transfer?

Council Directive 77/187/EEC on the transfer of undertakings, as modified by Council Directive 98/50/EC (the Acquired Rights Directive) and Council Directive 2001/23/EC on the maintenance of employees' rights in case of business transfer, was introduced into French law by article L1224–1 of the Labour Code.

Article L1224–1 of the Labour Code provides that individual employment contracts transfer automatically from one employer to another as

a consequence of the transfer of the activity at which they are working if the activity meets the case law criteria of 'an economic and autonomous entity which keeps its identity and which activity is maintained'.

The characterisation of a business or activity as an economic and autonomous entity depends mainly on factual circumstances. The criteria used by the courts to determine whether such an economic and autonomous entity exists include, principally, the following elements:

- assignment of a team of employees to the activity;
- the consistency and autonomy of such a team;
- the dedication of specific assets to the activity;
- the internal rules specific to the activity and autonomous hierarchy; and
- financial autonomy.

The consequences of the application of article L1224–1 of the Labour Code, in the event of such an automatic transfer, are that:

- all rights and obligations under individual employment contracts are transferred to the new employer, subject to the authorisation of the labour inspector for employees' reps;
- employees continue to work for the new employer without the need for any change to their contracts;
- the new employer is bound by the terms of the employment contracts; and
- employees working at the transferred activity may not refuse the transfer of their contracts.

A refusal may lead, in certain circumstances, to dismissal for just cause.

The collective status of employees transferred, according to article L1224–1 of the Labour Code, must be renegotiated with unions to adopt a new collective status applying to the enlarged workforce.

The automatic transfer rule of article L1224–1 of the Labour Code may apply in outsourcing arrangements where the business or function that is outsourced qualifies as an autonomous business entity. In this case, employees assigned to such business or function automatically transfer to the services provider under the outsourcing arrangements.

In circumstances where the automatic transfer may not occur (ie, in the absence of a transfer of activity, or when the transferred activity does not qualify as an autonomous economic entity), the employees concerned are not bound to accept their transfer, and the transferee of the activity is not obliged to employ them.

The automatic transfer of the employee may also result from a collective bargaining agreement in the case of a number of contractors on a contract for the same services (eg, cleaning, transport and security).

TERMINATION OF EMPLOYMENT

Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer must have a real and serious cause to terminate the employment agreement and must comply with all applicable dismissal procedures (on economic or personal grounds). There is no legal definition of what is a real and serious cause. The judge will determine on a case-by-case basis whether or not the dismissal was legitimate. The cause must be 'real', meaning exact, precise and objective, and 'serious', which justifies the termination of the contract.

Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Whatever the cause for a contract's termination (except for serious misconduct or gross negligence), an employer must give a notice period before dismissing an employee (generally between one and three months, but sometimes up to six months). The employer may release the employee from working during the notice period and instead pay an indemnity in lieu of notice. The indemnity is calculated based on the base salary, bonuses and benefits that the employee would have received if he or she were to work during the notice period. The employee may ask to be released from working during the notice period, and when the employer accepts the employee's request, no indemnity shall be paid.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Serious misconduct and gross negligence are legal bases for terminating an employment contract without allowing the employee to serve his or her notice period and without having to pay him or her an indemnity in lieu of notice and severance pay. The qualification used by the employer is not binding on the judge, who can order the employer to pay an indemnity in lieu of notice.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Yes. The employer must pay the dismissed employee the minimum legal severance pay, provided that the employee has been employed for a minimum of one year by the company for dismissals notified before 23 September 2017, and eight months for dismissals notified since 24 September 2017. This severance pay is paid whether the grounds for dismissal are personal or economic. For dismissals notified before 26 September 2017, the severance pay was equal to one-fifth of a month's salary for each year of service, increased by two-fifteenths of a month's pay per year of service longer than 10 years (ie, one-third of a month's pay per year of service after 10 years). For dismissals notified since 27 September 2017, the severance pay is equal to one-quarter of a month's salary per year of service for each year of service up to 10 years, and one-third of a month's salary per year of service for each year of service after 10 years.

The collective bargaining agreement may provide for higher severance pay in lieu of the legal requirement.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

Yes. The procedure to dismiss an employee is highly formal. The employer or its representative must ask the employee to attend a preliminary meeting to discuss his or her potential dismissal. After this meeting, the employer must send a dismissal letter to the employee that indicates, among various requirements, the reasons for the dismissal and the duration of the notice period. For dismissals notified since 18 December 2017, the employee can request precision regarding the reasons for his or her dismissal within 15 days of the notification. In the absence of such a request by the employee, the dismissal cannot be void for insufficient motivation.

The applicable procedure depends on the nature of the dismissal, that is, for personal reasons (including disciplinary grievances) or

economic reasons, and on the number of employees to be dismissed as well as on the number of employees in the company.

When applicable, the employer must consult its works council or social and economic committee regarding the economic grounds and on a redundancy plan when the number of employees who are made redundant exceeds certain thresholds. The works council or social and economic committee has no veto power and simply provides its opinion. The employer must notify the council of the procedure and must look for any redeployment solution.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Employee representatives are covered by specific protection. A special procedure (authorisation of the labour inspector) must be followed should the employer wish to terminate the employee representatives' contracts.

Moreover, as a general rule, it is illegal for an employer to treat an employee differently based on the categories listed in the Labour Code (eg, gender, sexual orientation or identity, age and political opinions) when terminating an employment contract. Specific procedures apply where the employment contract is suspended (eg, for illness or maternity). Termination of fixed-term employment contracts is also subject to specific rules.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

Yes. The procedure is highly complex and formal.

The law provides for two different methods of carrying out a collective dismissal (10 or more employees dismissed in a company of 50 or more employees); namely, negotiating a collective agreement or drawing up a 'unilateral document'.

A collective agreement must be negotiated and signed with one or several trade unions. The agreement must provide details of the content of the collective redundancy plan (measures aimed at avoiding or at least mitigating the effects of redundancies, including redeployment measures) and can also contain provisions concerning the consultation procedure to be carried out with the works council or social and economic committee. The trade union representatives may be assisted by an expert paid by the company.

The collective agreement is sent to the labour authorities at the end of the works council or social and economic committee consultation period for checking. If the labour authorities approve the agreement within 15 days, the employer can then dismiss the employees.

A unilateral document drafted by the employer sets out the terms of the collective redundancy plan and other specific details concerning the redundancies. This document is then submitted to the works council or social and economic committee for consultation. The works council or social and economic committee is also informed and consulted on the restructuring leading to the collective dismissals.

The final document is sent to the labour authorities at the end of the works council or social and economic committee consultation period for checking. If the labour authorities validate the agreement and the project within 21 days, the employer can then dismiss the employees.

The law provides for a maximum period for the works council or social and economic committee to give its opinion following consultation on the redundancy process (two to four months depending on the number of employees to be dismissed). If the works council or social and economic committee does not give its opinion by the end of this period, it will be deemed to have been properly consulted.

If the works council or social and economic committee elects to be assisted by an expert, the law also provides for a specific framework and timing for the exchange of information and questions and requires the expert to render its report 15 days before the end of the maximum period for consultation.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Employees may assert labour and employment claims on an individual basis. However, several employees may petition the court and join their claims into one sole procedure.

Class actions are only allowed in the specific field of discrimination. They can pursue two different aims: to enjoin an infringement; and to establish the liability of the employer to obtain compensation for the prejudice suffered. Class actions can only be exercised by some particular associations or by a trade union representative of employees, before a civil court to establish that several applicants for a job, internship or training period at a company or several employees are subject to direct or indirect discrimination. A formal notice to cease the infringement or to repair the prejudice sent to the potential defendant is a prerequisite. No class action can take place until a six-month period has elapsed since the date on which the potential defendant received the formal notice if he or she has not refused to answer in the meantime. Any term of a contract that aims to prohibit anyone from taking part in a class action is null and void.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

No. Retirement ages are defined by statute and may not be imposed by the employer. Except in a limited number of situations that are strictly regulated (eg, public companies or companies governed by specific statutes), the employer may not pension off an employee before the age of 70, and covenants imposing automatic retirement from a certain age are therefore unenforceable. Below the age of 70, the employee's express consent is required for retirement, and a specific procedure applies.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

No. If the parties to a French employment contract agree to private arbitration, the opinion of the arbitrator will have no binding effect.

The Labour Code gives exclusivity to the Labour Courts when dealing with disputes between employers and employees. Article L1411–4 of the Labour Code states that 'Any agreement to the contrary is deemed unwritten.'

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

No. An employee cannot waive statutory and contractual rights to potential employment claims in advance. The only possibility is to enter into a settlement agreement after a dispute arises. The employee and the employer must agree on reciprocal concessions. A settlement agreement in which an employee waives claims in connection with

employment termination is not valid when signed before a notice of termination has been given to the employee.

Limitation period

49 What are the limitation periods for bringing employment claims?

All claims regarding salary are subject to a three-year statute of limitations following the date of the alleged violation. Discrimination claims are also subject to a five-year statute of limitations following the revelation of the alleged discrimination. Any claim in relation to the performance of the employment contract must be brought before the labour court within two years following the revelation of the employer's wrongdoing. Any claim in relation to the termination of the employment contract must be brought before the labour court within 12 months following the notification of the dismissal. Claims in relation to the validity of the collective agreement or the unilateral document drafted in the framework of a collective redundancy must be brought before the administrative court within a 12-month period following the date of the notification of the authorisation or validation decision by the labour authorities.

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UPDATE AND TRENDS

Key developments of the past year

50 Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

The covid-19 crisis has profoundly changed work habits and, in particular, the use of remote working, which has become increasingly popular.

Today, the supervision of remote working is essentially done through collective bargaining or unilaterally by a simple charter, or even by an agreement between the employer and the employee that they formalise 'by any means'. On 26 November 2020, a National Interprofessional Agreement was signed by the trade unions, which includes certain common rules:

- a 'double voluntary' approach;
- the assumption of expenses; and
- the right to disconnection.

Some, however, have called, for reform of remote working to make this system more secure.

Unemployment is not spared either.

The 'territory with zero long-term unemployment' experiment, which aims to combat long-term unemployment at the territorial level, has just been extended for a further five years until 2026. The scheme has also been extended to 50 new territories – up from the initial 10. Others may subsequently be authorised by a decree of the Council of State. The law includes other measures aimed at facilitating integration through economic activity. For example, a 'bridging contract' to place an employee in integration at the disposal of a company under common law or a 'permanent inclusion contract' for senior citizens.

The Collective Transitions scheme, launched on 1 February 2021, completes the arsenal. It aims to support companies and employees facing lasting economic changes in their sector.

On another level, occupational health has become a greater concern for joint organisations. This is evidenced by the National Interprofessional Agreement signed on 10 December 2020, which is the outcome of long and in-depth negotiations aimed at strengthening the effectiveness of employee health protection.

Professional equality is reinforced. All companies with 50 or more employees must calculate and publish their Gender Equality Index by 1 March 2021 at the latest. They must also send their overall score and indicators to the labour authority and their social and economic committee. The scores of companies with more than 250 employees will be published on the Ministry of Labour's website.

The law of 24 December 2021 completes this system. Companies with at least 50 employees are required to publish the following indicators:

- the average pay gap between women and men by age group and by category of equivalent positions;
- the difference in the rate of individual salary increases;
- the percentage of female employees who received an increase in the year following their return from maternity leave; and
- the number of employees of the under-represented sex among the 10 employees with the highest salaries.

Companies with more than 250 employees must also publish the gender promotion rate gap.

In addition, the above indicators must be published in a visible and readable manner on the company's website, where it exists. Otherwise, the results must be brought to the attention of employees by any means (eg, mail, newsletter, intranet). In the event of results below the thresholds set by decree, the company will be required to publish improvement targets for each of these indicators.

Last, an increase in the duration of paternity leave and childcare was enacted by the Social Security Financing Act 2021, published in the Journal Officiel on 15 December 2020.

Until 30 June 2021, the duration of this leave will be the same as at present (ie, 11 calendar days or 18 days in the case of multiple births (eg, twins or triplets)), plus a minimum of three working days' leave, as some collective agreements may provide for more.

For children born on or after 1 July 2021, these periods will be increased to 25 calendar days for single births and 32 days for multiple births.

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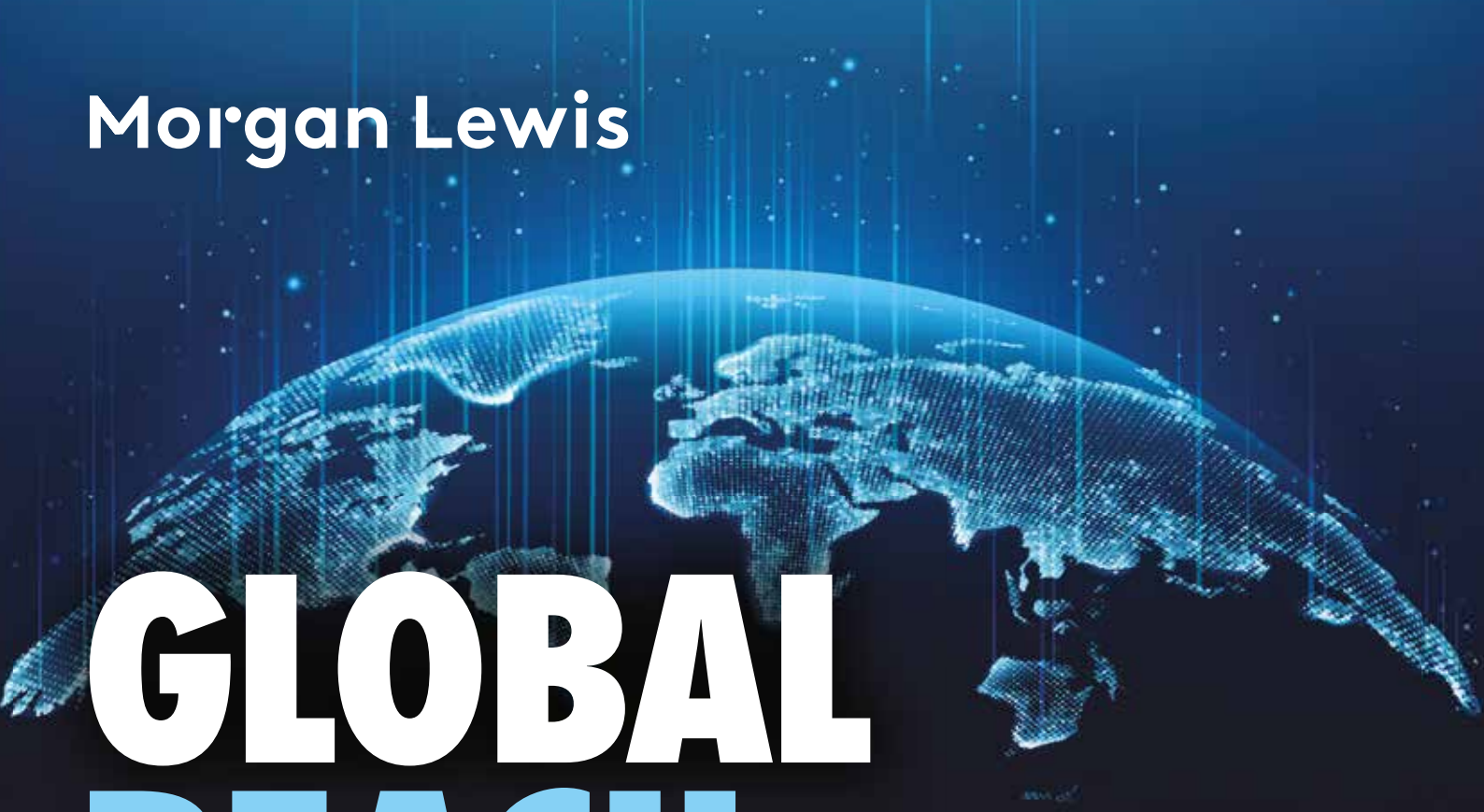

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