- Dismissing employees in France – context and valid grounds
- Employees’ rights during insolvency proceedings

Seminary Eurojuris International

27-30 mai 2010, Marrakech
First Topic:
Dismissing employees in France
context and valid grounds
Introduction

Employment contracts may be terminated as follows:

• **Dismissal on “personal grounds”** – related to acts of the employee (gross misconduct/serious misconduct).

• **Dismissal on “economic grounds”** (redundancy). For instance: adverse business developments; technological changes; reorganisation to render activity more competitive or modification of employment refused by the employee.

• **Resignation** – provided it is a real resignation (employee may contest an act of resignation claiming the employer “forced” him to resign).

• **Agreement** (see below)
DISMISSAL ON ECONOMIC GROUNDS – REDUNDANCY

Before a dismissal on economic grounds the employer must:

• Give information on priorities (method applied for choice of employees subject to redundancy plan) and
• Put in place an individual redeployment program for each employee subject to the redundancy plan. The program concerns both the French company and the group (if the employer forms part of a group of companies).

Failure to comply with these procedures may render a dismissal for redundancy unfair.

The dismissal letter must explicitly set out the reasons for dismissal.
DISMISSAL BY AGREEMENT

The termination agreement must:

- be in writing and
- be approved by the employment authorities (who also vet compliance with the strict procedures).

Possible to withdraw from the termination agreement within 15 days of signature. Agreement of the French employment authorities needed.

Agreement approved => the contract of employment is terminated. Possible to contest within 12 months

These provisions do not apply to fixed term contracts.
Valid economic grounds for collective dismissals include only the following:

a) serious, current business or financial difficulties faced by the company;

b) necessary responses to changing technology;

c) reorganization of the business to preserve its competitiveness; or

d) permanent closure of the entire business due to events outside the management’s control, such as fire or flood.
**GROUNDS FOR COLLECTIVE DISMISSALS**

Dismissal on economic grounds:

- if all efforts have been made to train the employee in acquiring new skills, and
- if the employee cannot be reassigned within the company or to businesses within the group to which the company belongs.

Reassignment offers must be precise and communicated in writing to each employee individually.

Within a corporate group, the employer must ensure that the range of reassignment offers is as wide as possible. Reassignment offers, in particular offers for positions abroad, must be serious and made in such a way as to satisfy the general principle of good faith.
POTENTIAL SANCTIONS FOR INPROPER GROUNDS OF DISMISSAL

- Financial penalties: Dismissals without a valid cause. Damage awards are fixed largely at the court’s discretion (according to many factors)
- Non-monetary remedies: Reinstatement of a dismissed employee,... Substantial risk.
- Annulment of safeguard plans if the measures taken are not considered sufficient
- Other sanctions: If the shop committee was not consulted...
**NOTICE PERIODS**

Exception: Immediate dismissal for gross misconduct

The employer may not comply with the notice periods, but he will then have to pay the salary during the notice period.

**Statutory minimum notice**

- Less than 6 months = as set in house agreement or by common practice
- Between 6 months and 2 years = 1 months notice
- More than 2 years = 2 months notice

Any applicable collective bargaining agreement or the employment contract may increase the statutory minimum.
CALCULATING SEVERANCE PAY UPON DISMISSAL

dismissals notified before the 20th of July 2008

Severance pay is determined by the status of the employee and the grounds for dismissal.

If the dismissal was notified before the 20th of July 2008:

▪ Employees dismissed for personal reasons (non economic) or on termination by agreement having a continuous period of employment of at least 2 years but less than 10 years, the statutory severance pay is 1/10th of net monthly salary for each year of employment. The indemnity is increased by 1/5 of the net monthly salary for each year of employment over and above 10 years.

▪ Employees dismissed for economic reasons having a continuous period of employment of at least 2 years but less than 10 years, the statutory severance pay is 2/10th of the net monthly salary for each year of employment. This indemnity is increased by 2/15 of net monthly salary for each year of employment over and above 10 years.
CALCULATING SEVERANCE PAY UPON DISMISSAL

dismissals notified after the 20th of July 2008

If the dismissal was notified after the 20th of July 2008, it is of no importance to know whether it is due to economic reasons or not. In both cases, the minimum statutory severance pay is:

- 1/5th of net monthly salary for each year of employment.
- If the period of employment goes beyond 10 years, an extra 2/15th of net monthly salaries must be paid for each year over the 10 years limit.

The contract of employment may provide for a higher dismissal indemnity. If the house agreement foresees a higher minimum severance pay than the legal one, so must the employer match the higher amount.
Second Topic:

Employees’ rights during insolvency proceedings
**Employee’s Representative before the insolvency**

The works council may “raise the alarm” the economic position of the enterprise is put at stake.

The employer must answer to its questions.

If the employer does not answer, the works council can draw up a report. Then, the works council will or will not refer the case to the managing board of the society, or to the shareholders if there is no board.

The board has 1 month time to give a relevant answer which will be transmitted to the accountants, who can raise the alarm.

If there is no board, the works council directly informs the shareholders, who can decide not to take measures.
Employees’ Representative during insolvency proceedings

- It is Compulsory to appoint an employees’ representative. If the company has a works council, the works council will elect the employees’ representative in the collective insolvency proceedings.
- If no candidate stands for election:
  The employer must draw up an official account of the failure in order to show that he complied with this obligation, but that the election did not lead to appointment of an employees’ representative.
- The role of the employees’ representative:
  He/She will check that the wages claimed which remain to be paid by the company in difficulty are properly claimable.
EMPLOYEES’ RANK

- Highest priority to employees during a company’s liquidation. The administrator must pay employees’ salaries for the 60 working days preceding the declaration or initiation of proceedings. With certain exceptions, these payments rank ahead of those to secured creditors and even ahead of the costs of the liquidation.

- If a company is being sold, the court’s principal concern is ensuring that most employment contracts are continued. This interest ranks ahead of the company’s ability to repay its creditors and is facilitated by the creation of a works council or, for a smaller firm, an employees’ delegate. At the commencement of bankruptcy proceedings, an employees’ representative is appointed to represent the interests of employees throughout the proceedings.
EMPLOYEES’ RANK ii

The typical role of the employees’ representative in the proceedings includes the right to:

- Be consulted on a petition for bankruptcy, the administrator’s report at the end of the observation period, and any redundancies in staffing.
- Ask managers to explain facts that significantly affect the company’s economic status.
- Approve employees’ claims for salary, which are drawn up by the creditors’ representative.
- Administrators do not have an automatic right to make redundancies during the observation period. This can only be done with the consent of the supervising judge and only when they are urgent and cannot be avoided. The employees’ representative must also be consulted on the issue.
Our Franco-german Team

- Avocats and Lawyers, over 30 years of experience
- Sworn translators and interpreters and graduated translator for subject-specific texts
Judith ADAM-CAUMEIL
Avocat à la Cour de Paris, Rechtsanwältin
2 avenue Trudaine · 75009 Paris
Tel.: (0033) 1 42 81 41 51
www.adam-caumeil-storp.com