

A review of the French labor law in light of the recent changes brought by the loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels

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A. Introduction to French bargaining system

The most accurate way to understand the French bargaining system is to understand the dualism of social and collective bargaining that occurs in different aspects of the economic and social life.

The fundamental legal source regarding labor legislation and collective bargaining in France is the law no. 2004-391 of May 2004 on professional training and social dialogue. This previous system was modified six times between 2008 and 2014 and was later amended with the Macron law.

The actual collective system has two aspects: the Collective Agreement and the Employees' Representative Authorities.

Such agreements can be defined as agreements concluded between trade unions and employers or employers' federations that the labor legislation to particular situations of national circumstances, industries' specifications or company policies. An employee cannot renounce the rights offered by the agreement, and it is priming on his work every time it gives more protective terms. Moreover, collective agreements can provide better working conditions than labor legislations in various ways (security, health, pay rate, holidays etc). The legal basis of these arguments results from the Labor Code.¹

Collective agreements appear on different levels such as *Accords Nationaux Interprofessionnels* (National Agreements), *Convention de Branche* (Sectorial Agreements) and *Convention d'Entreprise* (Company Agreements).

Article L2223-1 of the Labor Code names the parties than can sign collective agreements: employers' federations or individual employers on one side and trade unions on the other.

As mentioned before, both employers' federations and trade unions have a significant external role via participation in the social dialogue. Even if the French trade union density is one of the lowest in Europe (7.7%)², these

¹ Articles L2221-1 to L2222-4 of the Labor Code

² <http://stats.oecd.org/Index.aspx?lang=en&SubSessionId=504ffdfc-e88f-4db5-94f6-ed0851804dd&themetreeid=13>

social partners influence the public opinion with the media coverage of which they benefit.

Lastly, Article L1 of the Labor Code emphasizes the importance of social partners on social and collective bargaining outside the company area, and it demonstrates the importance given to the trade unions.

B. The “El Khomri” law of 2016

Few pieces of French national legislation sparked such significant public opposition and outrage as the one mentioned above. After some modifications to the initial draft from the French government eventually passed the law through the emergency process as predicted by Article 49 par. 3 of the French Constitution.

The changes to the former workers’ code caused uproar, but without great reason, since neither a huge portion of the Labor Code was modified, neither any of its significant principles were altered: business agreements would continue to take precedence over collective conventions, over collective agreements, and also over work contracts. Medical visits continued to be operative simply as a check on the employee’s aptitude for the workplace. The future of the 35-hour working week is still on the radar for further possible changes. Remuneration for overtime is becoming less commonplace, and is usually granted at the discretion of the employer.

Briefly, the Labor Code wasn’t significantly changed, however the French government renewed its determination to steadily revise the Labor Code in its entirety, a policy which began since the Auroux laws, later followed by the Macron law and eventually followed by the El Khomri law. It’s mentioned clearly in the 1st Article, Chapter I, of the law:

“A commission of experts and practitioners of social relations is established to propose to the Government a recasting of the legislative part of the labor code. This overhaul assigns a central role to collective bargaining, expanding its areas of competence and its scope, in respect of the area of the law set by Article 34 of the Constitution. The commission associated with its work professional organizations of employers and employees union representative at national level. Its work is based on the essential principles of labor law mentioned below.”³

³ <http://www.assemblee-nationale.fr/14/projets/pl3600.asp>