

## French Employment Law Update – October 2021

Welcome to our quarterly newsletter, with a summary of the latest news and developments in French employment law.

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# Case law updates



**Maternity leave:** The French highest court “Cour de Cassation” (or “Court of Cassation”) has issued an opinion regarding the employer’s obligation to propose a professional interview to discuss the employee’s professional development prospects upon her return from maternity leave. In this case, the employee was dismissed for poor performance a few months after her return to work from maternity leave. No professional interview had been offered to her. She requested that her dismissal be nullified. The Court of Cassation rejected her position, since the Labor Code does not expressly provide that failure to offer a professional interview leads to the nullification of the subsequent dismissal ([Cass. soc., July 7, 2021, No. 21-70.011](#)).

**Religious freedom and the obligation to take an oath:** The Court of Cassation has ruled on the validity of dismissal for misconduct of a Paris subway transport control officer who refused to take an oath because of his religious beliefs. The Court of Cassation reversed its previous position, noting that dismissal for misconduct following an employee’s failure to swear an oath was not null and void because it could not be determined that it was based on the employee’s religious beliefs, but only considered as unfair dismissal.

## Legislative developments

**Prevention at work:** Law 2021-1018 of August 2, 2021 ([Loi n° 2021-1018 du 2 août 2021](#)) – “to reinforce prevention in occupational health”<sup>1</sup> – will come into force on March 31, 2022. The law specifies that the single risk assessment document (“*document unique d’évaluation des risques professionnels*”) must be kept by the employer and must be made available to workers, former workers and any person or group that can prove an interest in having access to the document for a period not less than 40 years. In addition, the law provides that the Social and Economic Committee will be consulted about this document and its updates. This law also modifies the definition of sexual harassment provided for in the Labor Code so that it conforms with that of the Penal Code: comments or behavior with a sexist connotation directed at another person may now constitute sexual harassment.

**Exceptional purchasing power bonus:** Law 2021-953 of July 19, 2021 ([Loi n° 2021-953 du 19 juillet 2021](#)) regarding rectifying finances for 2021 has renewed the exceptional purchasing power bonus, commonly known as the “Macron bonus.” As in previous years, this bonus can be implemented by company agreement, referendum agreement, or by a

unilateral decision by the employer. The amount of the bonus can be adjusted according to several criteria (salary, classification, length of time employee has been working). The bonus will be exempt from social security charges and contributions and income tax up to a limit of €1,000 (or €2,000 if the company is covered by a profit sharing agreement) provided that the beneficiary employee receives a gross annual remuneration of less than three times the SMIC (minimum wage in France) (that is, €55,694.88 per year in 2021). In order to benefit from these exemptions, the bonus must be paid between June 1, 2021 and March 31, 2022. Bonuses paid before the promulgation of the law will be able to benefit from this regime retroactively.

<sup>1</sup> The “single document for the evaluation of professional risks” is a mandatory document for all companies with at least one employee. It lists all of the occupational risks to which the company’s employees may be exposed, depending on their activity and the positions they hold.

**Aid for the hiring of disabled workers:** Decree 2021-864 of June 30, 2021 ([Décret n° 2021-864 du 30 juin 2021](#)) extends until December 31, 2021 the benefit of aid for the hiring of employees who have been recognized as disabled workers. In order to benefit from this aid of a maximum amount of €4,000, the employer must hire the employee on an open-ended contract, or on a fixed-term contract of at least three months, with a salary less than or equal to twice the hourly amount of the SMIC. The contract must have been concluded between September 1, 2020 and December 31, 2021.

## COVID-19 update

**Health pass:**<sup>2</sup> The extension of the health pass was ratified by [Law 2021-1040 of August 5, 2021](#), which came into force on August 7, 2021, following its validation by the Constitutional Council. Since August 30, 2021, employees of establishments that the public have access to must present their health pass in order to continue going to the workplace. If the employee is unable to present such a document, they may, in agreement with the employer, use paid leave or rest days. If the employer does not agree, or if the employee does not want to use paid leave or rest days, the employment contract will be immediately suspended. The employee will not be paid for the entire period of suspension. The employer must then summon the employee for an interview in order to examine the means to rectify the situation. The text does not provide for the possibility of dismissal in the event that the suspension continues for lack of regularization by the employee. However, the Ministry of Labor has stated that dismissal cannot be completely excluded.

**National Protocol:** The National Protocol to ensure the health and safety of employees in the workplace during the COVID-19 pandemic, established by the Ministry of Labor, was amended once again on September 10, 2021. This new version includes a reminder that employees can be vaccinated during their working hours without any reduction in pay. Employees who qualify as “vulnerable” will be able to return to work, thanks to the reinforced protective measures that the protocol recommends. Only employees meeting strict conditions will be able to continue to benefit from the partial activity mechanism ([Décret n° 2021-1162 du 8 septembre 2021](#)).

**Vaccination by occupational health services:** Published on August 9, 2021, the National Protocol for Vaccination by Occupational Health Services ([“Protocole national pour la vaccination par les services de santé au travail”](#)) provides instructions for applicable persons and specifies the rules pertaining to vaccination against COVID-19. Occupational physicians and occupational nurses are authorized to vaccinate the company’s voluntary employees, even if their contract is suspended, as well as employees of subcontracting companies who are on the premises. The informed consent of the employees must be obtained beforehand. Occupational health services are also required to ensure the strict confidentiality of employees who are vaccinated, particularly with regard to the employer. Finally, each vaccination performed must be entered into the platform reserved for this purpose in order to ensure the traceability of the persons who have been vaccinated and to give them their vaccination certificate.



<sup>2</sup> Decree 2021-1059 of August 7, 2021, article 1, paragraph 4 specifies that the health pass corresponds to either a certificate of full vaccination, or the negative result of a COVID-19 test of less than 72 hours, or a certificate of recovery from COVID-19 contamination, evidence that can be provided in paper or digital form. Each of these certificates is encoded and signed as a QR code.

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