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NEWS REPORT

Country:	France
Title:	The El Khomri Law and gender equality
Date:	27 September 2016
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<u>Context</u>	
Issue at stake:	New provisions in gender equality and non-discrimination
Ground of discrimination:	Gender
Source:	Legislation
Field:	Employment
Applicable law:	Bill on modernization of social dialogue and securization of career paths, Law n°2016-1088, 8 August 2016

Content

Law development: Since the first presentation of the draft legislation in February 2016, the 'El Khomri' Law, named after the French Minister of Labour, also named the 'Labour Act' ('*La loi travail*'), has generated the following: mass street demonstrations, a new social movement in the form of *Nuit Debout* ('Up All Night' or 'Standing Night'), which began in February 2016, strikes in the energy sector, which have involved blocking oil refineries, and strikes in transport, garbage strikes, and strikes in Universities as well as in other sectors. The central purpose of the Bill is the entire rewriting of the part of the Labour code dedicated to working time. It implies a 'new' articulation of collective norms. This rewriting is supposed to be generalized in a new Labour Code to be adopted possibly by the end of 2017. It is far too early to evaluate the gender impact of the future law, for which the main concern is far away from gender issues. However, in March 2016, the High Council on Professional Equality delivered a non published opinion. The High Council fears the negative consequences of the decentralization of collective bargaining and of the flexibilization of working time for women. Even if the measures are not directly addressed to women, they could have a negative impact and there is a risk of indirect discrimination. The priority given to collective bargaining at company level does not take into account the fact that women are more numerous in sectors with low trade-unionization. Furthermore, the new flexibilities in working time do not take into account the principle of work-life balance.

The Bill also embraces heterogeneous provisions, from occupational medicine to personal account of activity, through redundancy. Moreover, the Bill also contains some provisions on gender equality. Article 3 of the Bill rewrites Article L 1154-1 of the Labour Code related to the proof of sexual harassment in order to harmonize the articles of the Labour Code related to the proof of discrimination and the proof of sexual harassment. The new Article L. 1154-1 now states that workers should present (and not establish) element of facts suggesting a sexual harassment.

The Bill was adopted by the Parliament on 20 July 2016 and published on 8 August 2016. In its decision (Decision n°2016-736), the Constitutional Council determined that the

procedure to adopt the Bill was constitutional, which means that the constitutionality of this provision (and of the other provisions of the Bill) could still be controlled through the 'priority preliminary ruling on constitutionality'.

Internet link source: http://www.assemblee-nationale.fr/14/pdf/3976_article_49_3.pdf, accessed 20 September 2016.