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NEWS REPORT

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| Country: | France |
| Title: | Ratification of Executive Order n° 2017-1387 relating to the predictability and security of labour relations |
| Date: | 20 December 2017 |
| Expert: | Sophie LATRAVERSE |
| <u>Context</u> | |
| Issue at stake: | Reform of Labour relations and rules relating to compensation of dismissal |
| Ground of discrimination: | All grounds |
| Source: | Legislation |
| Field: | Employment |
| Applicable law: | Articles L1235-3 and L 1235-3-1 of the Labour Code |

Content

Policy development: This reform is the result of one of the major campaign promises of the President of the Republic: to reform labour relations and the labour code through executive orders in 2017. It intends to increase flexibility and security in labour relations, on the one hand, and to simplify negotiation and dismissal procedures, on the other hand.

Executive orders are adopted after adoption of a law empowering Government to adopt said executive orders that defines the topics addressed and time limits of adoption and ratification.

Parliament adopted Law n° 2017-1340 of 15 September 2017 empowering Government to take executive orders for the reinforcement of social dialogue within six months. In application of the Law, Government adopted five executive orders on 22 September 2017:

- Executive Order n° 2017-1385 of 22 September 2017 relating to reinforcement of collective bargaining;
- Executive Order n° 2017-1386 of 22 September 2017 regarding the new organisation of social and economic dialogue in the business favouring the recognition of union activities;
- Executive Order n° 2017-1387 of 22 September 2017 relating to predictability and securing labour relations;
- Executive Order n° 2017-1388 of 22 September 2017 regarding several measures relating to collective bargaining;
- Executive Order n° 2017-1389 of 22 September 2017 relating to the prevention and the impact of exposition to specific professional risks.

The Law of Empowerment adopted on 15 September 2017 provides that the executive orders are in force pending ratification since publication. The bill ratifying the executive

orders was presented before Parliament on 27 September 2017. It was discussed in first reading before the National Assembly on 28 November 2017 and should be adopted by the Senate the last week of January 2018.

Executive Order n° 2017-1387 relating to predictability and securing labour relations intends to facilitate hiring and dismissal and to standardise the procedure and cost of dismissal awards. In order to do so, it provides for scales and ceilings regarding damages awarded in relation with all causes of action related to dismissal of an employee (Article L 1235-3 of the Labour Code.)

However, Article L 1253-3-1 provides that this mandatory scale is not applicable when the judge finds that the dismissal is null and void because it results from the violation of a fundamental right, harassment or discrimination prohibited by law.

In such circumstances, the employee may request reintegration and claim damages and all wages owed for the duration of the time elapsed since dismissal until integral compensation, without financial ceiling or time limit.

Key points of analysis: In a context that intends to create a new flex-security in relation to the interruption of the employment contract and facilitate hiring and dismissal, flexibility cannot be used to discriminate. Fundamental rights and non-discrimination must be guaranteed, cannot be negotiated or be subject to limited protection.

Internet link source:

Law n° 2017-1340 of 15 September 2017 empowering government to take executive orders for the reinforcement of social dialogue:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000035568022&fastPos=1&fastReqId=1129812819&categorieLien=cid&oldAction=rechTexte>.

Executive Order n° 2017-1387 of 22 September 2017 relating to the predictability and securing of labour relations:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000035607388&fastPos=4&fastReqId=1725531780&categorieLien=cid&oldAction=rechTexte>.

Bill adopted by the National Assembly in first reading on 28 November 2017:

<https://www.senat.fr/dossier-legislatif/pjl17-119.html>.