Payroll & Labor Newsletter

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Each month, the Pay & Labor Newsletter covers the main labor law and payroll news that impact the life of your company and the economic environment in which we evolve.

We invite you to contact us for support and further information.

Enjoy your reading!

Payroll news

ANACT's guide to support employees with endometriosis

ANACT,Gguide to Endometriosis & Work

The bill on "menstrual leave" was rejected by the French Senate on February 15th 2024.

In the absence of a binding legislative scheme, the "Agence Nationale pour l'Amélioration des Conditions de Travail" (ANACT) has published a guide to better understand endometriosis disease. The guide also suggests actions to be taken in the workplace, including:

- Elimination of non-paid days for sick leaves related to endometriosis,
- Reimbursement of transport costs when returning home,
- Remote-working arrangements,
- Ensure that medical confidentiality is respected,
- Ensure a rest room is available in the workplace

All the relevant information and the complete guide are available on the ANACT website.

Employer contributions to employee savings plans must not increase with salary

Cour de cassation, 2nd Civil Chamber, February 1, 2024, No. 22-16.581

A company that has set up a **company savings plan (PEE)**, a collective retirement savings plan (Perco) or a collective company retirement savings plan (Pereco), or joined an inter-company savings plan (PEI), can top up employee payments with a matching contribution.

In compliance with ceiling rules, the plan rules may freely define the terms and conditions for **allocating the employer's contribution**. However, any modulation of the employer's contribution must respect the **collective nature of the plan**. The modulation must not have the **effect** of making the ratio **between the company's payment and employee's payment** increase with the latter's remuneration.

In this ruling, the Perco regulations provided for an employer matching contribution of **100% of the employee's contribution**, with no remuneration-based distinction. However, the employee's contribution **was capped according to salary bracket**. The ceiling was set at 0.5% of monthly salary for salaries up to 4,000 euros gross, and 2.5% of monthly salary for salaries between 4,000 euros and 18,535 euros. The capped employee contribution rule could lead to widely **varying** amounts of employer contributions, increasing with salary.

The "Cour de cassation" ruled that the introduction **of a single employer contribution rate** that depends on the employee's contribution (capped at an amount determined as a percentage of remuneration) **had the effect of increasing the proportion of the employer's payments with the employee's remuneration**. It therefore approved the URSSAF reassessment of this issue.

The employer's contribution to a savings plan must therefore retain its collective nature in order to avoid an URSSAF reassessment.

Legal news

Change of workplace: new criteria to identify the geographical area

Cour de cassation, Social Chamber, January 24, 2024, No. 22-19.752

If the employee's employment contract does not include a clause setting out a workplace and a mobility clause, it is the **change of geographical area** that constitutes a ground to an employment contract modification.

The “Cour de cassation” has not defined the concept of "geographical area", as the assessment must rely on **objective criteria**. Judges must therefore use a set of indicators to determine whether the employee's transfer takes place within the same geographical area.

The criteria usually used by case law are :

- **Identity of the employment area,**
- **The distance between the two workplaces and their public transport links,**
- **Road network and traffic conditions.**

The above set of criteria allows for assessing whether the new posting merely constitutes **a working conditions modification or an employment contract modification**, in which case the employee's agreement is required.

In this ruling, the “Cour de Cassation” takes into account new criteria. In addition to the criteria of the employment area, the difficulty of accessing carpooling and public transport services, the ruling also notes **the use of the personal vehicle, in terms of tiredness and financial costs, generates additional constraints due to the hours and distance involved**, modifying thus the terms of the contract.

In view of all these factors, the “Cour de cassation” ruled that a change in workplace represented a modification to the employment contract requiring the employee's agreement.

Night work must be justified

Cour de cassation, Social Chamber, February 7, 2024, no. 22-18.940

Article L.3122-1 of the French Labor Code stipulates that night work must be **"justified by the need to ensure continuity of economic activity or socially useful services**", thus establishing their exceptional nature.

It is important to distinguish between employees with a night worker status and those who carry out their night missions on an exceptional basis.

An employee is considered a night worker if he or she meets one of the following conditions:

- She/he works at least **twice a week**, according to her/his usual work schedule, for at least **3 hours during the night shift**,
- **270 hours of night work** over a reference period of **12 continuous months**.

In a ruling handed down on February 7th, 2024, the “Cour de cassation” nonetheless considered that, even though the employee did not have a night worker status, and thus had an occasional night work status, it was appropriate in all cases to investigate whether **this recourse to night work was justified by the need to ensure continuity of economic activity or socially useful services**.

Dismissal cannot be validly made on prescribed sanctions

Cour de cassation, Social Chamber, February 14, 2024, no. 22-22.440

The law provides for a limitation period of **3 years for disciplinary sanctions**.

This means that no disciplinary penalty imposed more than 3 years prior to the date on which disciplinary proceedings were initiated (i.e. the date on which the employee was summoned to a pre-disciplinary interview) may be invoked in support of a new penalty. This limitation period runs from **the date of notification of the previous sanction**, and may be reduced by provisions in a collective bargaining agreement (CBA) or internal regulations.

The “Cour de cassation” recently applied this limitation period in a ruling dated February 14th, 2024, deeming the dismissal of an employee for insubordination and abandonment of post to be devoid of real and serious grounds. In this case, the letter notifying the employee of dismissal referring to acts that had already been the subject of a disciplinary suspension more than 3 years prior to the invitation to a pre-dismissal interview is null and void.

Disciplinary sanctions more than 3 years old thus continue to appear in the employee's file, but can no longer validly be taken into account in subsequent disciplinary proceedings.

Prevention passport to employers and training organizations postponed to 2025

Source: prevention passport information website

News | Passport to prevention information portal (travail-emploi.gouv.fr)

As a reminder, the **prevention passport was introduced by the Health Law in August 2021**: it should enable better tracking of employees' occupational health and safety training throughout their careers.

Its entry into force was initially scheduled for October 1st 2022, however employers and training organizations will only have to declare training courses and certifications once this passport is available and accessible to them, henceforth not from 2024 but from 2025.

The system will not be retroactive: only training courses delivered to employees since the launch of the program in 2025 will have to be declared.

From 2025 onwards, the roll-out will be progressive: it will take place **over 2025 and 2026**. A simulator is planned, accessible in principle prior to the launch of the program for employers and training organizations.

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[1] Where permitted under applicable country laws

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