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Newsletter

LABOR LAW

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Headline

Sick leave, overtime, and paid vacation: two case law reversals!

In two decisions published on 10 September 2025 (No. 23-22.732; No. 23-14.455), the Court of Cassation (French supreme court) has modified the rules applicable to paid leave in order to bring them into line with European Union law on two points:

- the treatment of paid leave when an illness occurs during a paid leave period,
- the inclusion of paid leave in the calculation of overtime thresholds.

The first question was **whether an employee who is placed on sick leave during a period of paid leave is entitled to carry over that paid leave.**

In the first of the abovementioned decisions (No. 23-22.732), the Court of Cassation has answered in the affirmative. Since illness prevents one from resting, an employee placed on sick leave during their paid leave is entitled to have the paid leave carried over, as the two rights do not serve the same purpose. However, the employee must notify the employer of the sick leave.

The second question put to the Court of Cassation was: should the calculation of the overtime threshold take paid leave days into account?

Here again, the Court of Cassation has answered in the affirmative (No. 23-14.455). It considers that, given the primacy of European law, the French law, which is deemed to be non-compliant, should be set aside. Indeed, calculating overtime without taking paid leave days into account causes employees to lose a financial advantage, which may discourage them from taking time off to rest.

In other words, employees whose working hours are calculated on a weekly basis may be entitled to overtime pay for a week in which they take a day of paid leave, even if they do not complete 35 hours of "actual" work.

While the first ruling was expected, the same cannot be said for the second. These decisions raise many questions. The practical consequences will be numerous and costly for businesses...

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Articles

Religious freedom and discriminatory dismissal

It is established that a reason based on an employee's personal life cannot, in principle, justify disciplinary dismissal, unless it constitutes a breach by the employee of an obligation arising from their employment contract (Plenary Assembly, 22 Dec. 2023, No. 21-11330).

In a decision dated 10 September 2025 (No. 23-22722), the Court of Cassation has held, pursuant to Articles L. 1121-1, L. 1132-1, and L. 1132-4 of the French Labor Code, that a dismissal for disciplinary reasons based on facts relating to the employee's personal life, and more specifically to **the exercise of their freedom of religion**, is **discriminatory** and void.

In the case at hand, an employee working as a service agent for a child protection association had taken the initiative to visit a hospital where a minor under the association's care had been admitted and to give the minor a Bible. She was dismissed on these grounds.

According to the Court of Cassation, as these events took place outside the employee's workhours and workplace, they did not fall within the scope of her

Briefs

Employees' right to remain silent during pre-dismissal interviews: no duty to inform

Is the employer required to inform the employee of their right to remain silent during the preliminary interview prior to dismissal for personal reasons or to disciplinary action?

In a decision dated 19 September 2025 (following a preliminary ruling on constitutionality, "QPC"), the French Constitutional Council has ruled that the provisions of the Labor Code –which do not provide for such a requirement – are in line with the Constitution. In other words, employers are not required to specify in the **invitation to the preliminary interview or at the start of the interview that employees have the right to remain silent.**

job duties. Therefore, the discriminatory dismissal was **null and void.**

Read the decision: Cass. soc. 10 September 2025, No. 23-22722

Table of occupational diseases: what is the assessment date?

The diseases listed in one of the tables of occupational diseases set out in Appendix II of the French Social Security Code are presumed to be work-related if they were contracted under the conditions defined in those tables (L. 461-1 of the Social Security Code).

But on what date should the conditions of an occupational disease table be assessed? Is it the date of the first medical diagnosis or the date of declaration?

The Court of Cassation has answered this question in a ruling dated 26 June 2025 (No. 23-15112). It has held that, under Articles L. 461-1 and L. 461-2 of the Social Security Code, *"unless otherwise provided, the conditions of a table of occupational diseases, including the condition relating to the duration of exposure to the risk provided for in certain cases, must be assessed at* ***the date of the declaration of the occupational disease,*** *accompanied by the initial medical certificate"*

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Gradual retirement: the scheme is applicable from the age of 60!

Gradual retirement allows employees covered by the French general employee pension scheme (agricultural or non-agricultural) to **receive a portion of their retirement pension while continuing to work part-time or reduced hours**.

The amended Social Security Financing Act of 14 April 2023 (LFRSS No. 2023-270) and two implementing decrees (Decrees No. 2023-751 and No. 2023- 753 of 10 August 2023) had adjusted this scheme. The age of eligibility for the scheme was then to be gradually raised from 60 to 62.

Read the Constitutional Council's QPC decision of 19 September 2025

Bonus-malus: publication of median separation rates

The median separation rates by sector of activity mentioned in Article 50-9 of the General Regulations appended to the agreement of 15 November 2024 on unemployment insurance, which are used to calculate unemployment insurance contribution rate adjustments, are determined each year by a circular issued by the Unédic.

Circular No. 2025-09 of 28 August 2025 sets these rates for the period from 1 September 2025 to 28 February 2026.

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Disputes over the appointment of local representatives and employee consultations on company agreements

Decree No. 2025-619 of 8 July 2025 specifies the procedure applicable to disputes over the appointment of local representatives and disputes over employee consultations on company agreements. It has been in force since 1 September 2025.

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However, Decree No. 2025-681 of 15 July 2025 (Official Journal of 23 July 2025) now lowers the age of eligibility for gradual retirement to 60. The aim is to encourage the use of this scheme.

This measure follows a request from the social partners (ANI 14 November 2024 in favor of the employment of experienced employees).

The provisions of the text apply to pensions taking effect from 1 September 2025.

Read Decree 2025-681 of 15 July 2025

GDPR and diversity surveys: a recommendation from the CNIL

In order to measure diversity within companies (disability, age, gender, diversity related to social, geographical, or cultural origins, etc.), employers have the option of using self-administered surveys, i.e., questionnaires completed directly by employees. In this regard, the CNIL has published an online recommendation aimed at ensuring compliance with applicable regulations on personal data protection.

Read the CNIL recommendation

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