French social security update
Payroll and social benefits

4th quarter 2016

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Changes as of 1 January 2017

For once, several changes that impact payroll preparation were announced and set prior to their entry into force.

Social security ceiling

The annual social security ceiling for 2017 is to be increased to €39,228 (from €38,616 in 2016).

The monthly social security ceiling will therefore be raised to €3,269 in 2017 from €3,218 in 2016.

AGIRC-ARRCO supplementary pension plans

Increase in the AGIRC-ARRCO reference salary

Under the national inter-professional agreement of 30 October 2015, the reference salaries used by the AGIRC ARRCO supplementary pension plan federations are set in accordance with changes to the average salary of AGIRC-ARRCO plan members "plus 2%" (unlike the pension point value, which is based on inflation).

These pension plan federations estimated the increase to the average salary to be 1.4%, meaning that the reference salaries for 2017 will therefore be set at:

- €5.6306 for AGIRC;
- €16.1879 for ARRCO.

GMP contribution

The board of directors of AGIRC decided to increase the amount of the minimum points guarantee (*garantie minimale de points* – GMP) for 2017.

This contribution, which guarantees a minimum of 120 supplementary pension plan points per year for all managerial employees and those with equivalent status whose salary is lower than the social security ceiling or falls between this ceiling and a cut-off salary, will be increased to an annual amount of €844.56 as from 1 January 2017 (compared with €816.84 in 2016), i.e., a monthly contribution of €70.38, divided between the employer (€43.67) and the employee (€26.71).

GMP base

In light of the fact that the annual social security ceiling has been set at €39,228 for 2017, the GMP calculation base for annual salary bracket B should increase to €4,109.78, provided that the AGIRC supplementary pension contribution rate does not also increase.

The cut-off salary below which the GMP contribution is applied will be €39,228 + €4,109.78 falling within salary bracket B, i.e., €43,337.78 per year.

Simplification of payslips

As mentioned in French Social security update no. 88 for the second quarter of 2016, the legislation governing the simplification of payslips has been published.

It will enter into force on 1 January 2017 for employers with 300 employees or more and on 1 January 2018 for employers with fewer than 300 employees.

An employer in this case is defined as any individually identified company, as this obligation is not intended to apply to all of the small companies that form part of the same group.

A government order published pursuant to the decree of 25 February 2016 provided simplified payslip templates for managers and other employees.

However, the government order in question was apparently prepared quickly and without consulting the decree, resulting in simplified payslip templates that were not aligned with the provisions of the implementing decree (e.g., the references to contribution rates).

In the face of an embarrassing situation, the social security administration was asked to issue an opinion, and, with full legal rigour, indicated its preference for the provisions of the decree. This turned out to be a naive move on its part, as it offended the people who drafted the government order without ensuring that its provisions were aligned with those of the decree.

In conclusion, the government order will not be officially deemed unenforceable, though not far from it.

The ministry announced that employers and software publishers could choose whether to:

- apply the provisions of the decree, which involve preparing payslips in a format that is not significantly simplified, or
- comply with the provisions of the government order, under which software publishers are required to configure their tools so that they prepare two separate documents each month: a simplified payslip for the employee and a document to enable payroll professionals to perform the necessary checks on an employee-by-employee basis.

Exemption limits on contributions to meal vouchers

The portion of the employer contribution to meal vouchers exempt from social security contributions will increase from €5.37 in 2016 to €5.38 in 2017.

We remind you that the employer contribution is exempt from social security contributions if it meets the following two conditions:

- the value remains between 50% and 60% of the face value of the voucher;
- it does not exceed an amount that is adjusted every year in proportion to the upper limit of the first bracket of the income tax scale.

We would like to draw our readers' attention to a recent ruling on the issue by the Court of Cassation.

The decision of 19 October 2016 (Court of Cassation case no. 15-20.331 of 19 October 2016) addressed the unequal treatment of:

- employees who, for historic reasons, have access to a cafeteria and also receive meal vouchers, and
- employees who only have access to a cafeteria and who, for this reason, are not entitled to meal vouchers.

The Court of Cassation concluded that there was no evidence to support the objectivity or relevance of the arguments put forward by the employer to justify the difference in treatment and therefore held that the treatment was indeed unequal.

Employer contribution to social housing

Two decisions of 28 October outlined the consequences of the changes to the system for collecting employer contributions to social housing (*participation des employeurs à l'effort de construction* – PEEC).

The first decision provided for the winding up of the company and employee housing union (*Union des entreprises et des salariés pour le logement* – UESL) on 31 December 2016.

The second decision, effective as from the same date, revoked the authorisation given to 20 inter-professional housing committees (*comités interprofessionnels du logement* – CIL), the bodies responsible for collecting the contributions to social housing levied on businesses. The new management structure, "Action Logement Groupe" will replace the UESL on 1 January 2017 and "Action Logement Services" will become the sole body in charge of collecting the contributions.

Disclosure of traffic offences committed in company vehicles

As of 1 January 2017, employers will be required to disclose the identities of any of their employees who have committed traffic offences. Failure to so will result in an additional fine of up to €750 (law 2016-1547 of 18 November 2016, article 34, Official Journal of 19 November 2016; article L121-6, as amended, of the French Highway Code).

However, this obligation will not enter into force until after the publication of the government order setting the procedure for disclosing the driver's identity. It will cover offences identified via official automated checking devices (radar detectors, speed cameras, etc.). A decree will be published specifying the offences concerned (article L121-6, as amended, of the French Highway Code).

The obligation is binding on the entity in whose name the vehicle is registered or who holds the registration certificate.
It must be fulfilled by his or her legal representative, who will have 45 days as of the delivery of the offence notification in which to disclose, using electronic means, the identity and address of the employee who was driving the vehicle.

Where applicable, the employer may also report a vehicle theft, the use of false number plates or any other force majeure event that makes it impossible to identify the driver. ■

Contributions to the works council: calculation base

Court of Cassation case law

Court of Cassation case law provides for the concept of a calculation base for works council contributions, i.e., what constitutes "total payroll".

This case law has existed since 2011 and was recently confirmed in a decision of 31 May 2016 in which the Court specified that "total payroll" should be understood within the meaning of account 641 of the general chart of accounts subject, however, to a few adjustments:

- compensation paid to company executives, reimbursements of expenses, contractual and additional payments made under an employment protection plan (*Plan de sauvegarde pour l'Emploi*) and compensation paid to employees seconded to other companies should not be included,
- compensation paid to employees seconded from other companies (generally recognised in account 621) and severance payments provided by law and collective bargaining agreements, including those recognised in non-recurring income, should be added back to account 641 (Court of Cassation case no. 14-25.042 of 31 May 2016).

The Court of Cassation recently clarified the concept of executive compensation.

In a decision of 3 November 2016, it specified that only compensation paid to corporate officers, in the strict sense of the term, should be excluded from account 641 and from total payroll.

Compensation paid to senior managers with employment contracts or who hold an employment contract and a corporate officer position must remain included in the calculation base for works council contributions (Court of Cassation case no. 15 19.385 of 3 November 2016). However, the Court of Cassation specifies that if a senior manager holds both an employment contract and a corporate officer position and receives compensation for both sets of duties, said compensation must be separate and only the compensation paid in respect of the corporate officer position should be excluded from account 641.

Opposition from the Versailles Court of Appeal

The Versailles Court of Appeal does not interpret the texts in the same way as the Court of Cassation.

According to the former, total payroll, to be used as the calculation base for the operating budget of the works council and, where applicable, its budget for social and cultural activities, should include all salaries declared on the unified automated social data declaration (*Déclaration automatisée des données sociales unifiée* – DADS U) system, which is to be replaced by the single monthly electronic payroll return (*déclaration sociale nominative* – DSN) system.

According to this interpretation, all amounts paid to employees who are subject to social security contributions should be included in the calculation base for works council contributions (Versailles Court of Appeal case no. 15/00883 of 27 September 2016).

The Versailles Court of Appeal justifies its position by arguing that using the total payroll amount declared via the DADS system is more consistent with the principle that the amount of the subsidies should be in line with the number of employees who may benefit from them.

Unlike the "adjusted" 641 account excluding the amounts indicated by the Court of Cassation, the total payroll declared via the DADS system includes neither amounts paid to employees who have left the company, nor provisions.

This opposition may come as a surprise to some given that the decision may be appealed before the Court of Cassation and that the Court of Appeal has been aware of the Court of Cassation's position on the matter for several years.

It may simply be the lower court's last resort to try to convince the Court of Cassation to change its case law. ■

The use of personal devices in a work environment

Overview

There are currently no, or only very few, French regulations covering the BYOD (Bring your own device) policy. In the absence of a legal framework, there is nothing to prevent the implementation of such a policy.

Although the French data protection authority (*Commission nationale de l'informatique et des libertés* – CNIL) is taking a cautious approach, it has provided advice for employers who wish to know about potential BYOD related issues. It is therefore possible to anticipate the problems it is likely to create and to put in place the necessary material and legal resources.

However, it remains a sensitive issue and this is why we have attempted to identify some of the principles and obligations arising from the introduction of this new way of working.

Limited use of personal devices in a work environment

Under French labour law, employers are required to provide their employees with the necessary means to carry out their tasks, i.e., their work tools (such as a landline or mobile phone if they are required to make phone calls).

The use of personal devices for professional purposes does not relieve employers from this obligation and failure to provide employees with the necessary work tools results in a breach of their obligation to perform the employment contract in good faith.

In the case of non-mandatory tools, the employer may ask an employee to bring their personal equipment, though the latter are entitled to refuse.

Data security

Employers are responsible for ensuring the security of their employees' personal data when they have authorised the use of such data to access the company's IT resources, even if the data is stored on terminals that they cannot physically or legally control.

Employers must therefore take measures to protect data availability, integrity and/or confidentiality by putting in place material resources to guarantee data protection (e.g., data segregation techniques to separate the employee's private and professional use of the telephone meaning that the employer can retain control of the professional data and, if necessary, delete it remotely).

If not, an employee leaving the company could potentially leave with a list of client or prospect contact numbers or any other confidential or sensitive data that is automatically retrieved when an attachment in a professional email is downloaded and stored in the internal memory of the employee's personal device.

System security and the right to privacy

Employers may not put in place security measures with the purpose or effect of inhibiting their employees' use of their mobile phone in a private setting on the grounds that it could be used to access company resources (such as prohibiting web browsing or the downloading of mobile applications).

In addition, employers may not access information that is stored on an employee's smartphone pertaining to his or her private life.

It is therefore essential to use techniques such as data segregation to separate the private and professional areas on an employee's telephone.

Mandatory consultation of employee representative bodies

The use of personal telephones for professional purposes constitutes a new way of working, meaning that the company's employee representative bodies, if any, must be consulted before it is introduced. The employees themselves must also be informed about the roll-out of such a policy. Several provisions of the French Labour Code (*Code du travail*) provide for the mandatory consultation of employee representative bodies.

Article L2323-29 of the Code states that the works council must be informed and consulted prior to any major projects introducing new technology if they are likely to affect the employees' job, status, compensation, training or working conditions.

Article L4612-9 provides that the work health and safety committee (*comité d'hygiène et de sécurité et des conditions de travail* – CHSCT) must be consulted with regard to the impact of the new technology on the health and safety of employees. It further provides that if a company does not have such a committee, the employee representatives or, failing that, the employees themselves, should be consulted instead.

Mandatory declaration to the French data protection authority

A standard declaration regarding the implementation of this new work practice must be submitted to the French data protection authority.

However, this is not required if the company has a dedicated data protection officer (*correspondant informatique et libertés* – CIL) or if it has already submitted a standard staff management declaration that covers personal data processing to ensure the security and proper functioning of its IT systems.

The need to establish rules governing this new work practice

It is in the company's interest to organise and establish rules governing the use of personal telephones for professional purposes either in its internal regulations, its IT charter, a company-wide agreement, or directly in the employee's employment contract.

The existing rules, if any, contained in the internal regulations or IT charter must be amended in order to take account of new security-related issues and the impact of introducing a BYOD policy on the employees' private lives.

The financial implications of BYOD

As there is no legal framework, the issue of compensating employees for the professional use of their personal telephones must be determined by the company.

In light of the absence of any rules or guidelines on the issue from the URSSAF, it is difficult to comment on how this compensation should be treated, but the latter at least acknowledges that payments made to employees by an employer as compensation for the use of personal equipment constitutes a benefit in kind that is subject to social security contributions.

Unless an employer is required to provide, in the event of an audit, a detailed justification of the respective costs of a BYOD policy for the company and the employee (such as the price of the mobile contract) as well as the implementing framework, it is preferable to only reimburse the employee for their professional use of the device, calculated as accurately as possible.

The issue of maintenance costs (software and hardware) and insurance must also be taken into account when a company is considering whether or not to introduce a BYOD policy.

In conclusion, for all of the above reasons, the introduction of a BYOD policy should not be taken lightly and may have as many potential disadvantages as advantages if it is not effectively implemented. ■

{ in brief }

Extended sick leave

To extend sick leave, a form must be signed by the doctor who originally prescribed the leave of absence, or by the employee's GP.

Otherwise it is not considered valid and the French national health insurance fund (*Caisse primaire d'assurances maladie* – CPAM) can refuse to pay the social security daily allowances corresponding to the period in question.

The only alternative solution provided by law is for the employee on sick leave to prove that his or her situation corresponds to one of the cases provided for in article R162-1-9-1 of the French Social Security Code (*Code de la sécurité sociale*), preventing him or her from obtaining an extension from the prescribing doctor, i.e.:

- the extension of the sick leave is prescribed by a specialist doctor consulted on the recommendation of the GP,
- the extension of the sick leave is prescribed by a locum doctor standing in for the doctor who prescribed the initial leave of absence or the GP,
- the extension of the sick leave is prescribed during a stay in hospital.

The Court of Cassation adopted the same strict application of the relevant provisions as the lower court to justify its rejection of a beneficiary's appeal (Court of Cassation, 2nd civil chamber, case no. 15-19.443 F-PBI of 16 June 2016).

Fixed-sum compensation for dismissal without genuine and proper cause

In a decision of 13 October 2016, the French Constitutional Council, in response to an application for a priority preliminary ruling on the issue of constitutionality, held that the minimum statutory compensation of six months' salary applicable to companies with 11 employees or more who dismiss an employee without genuine and proper cause was consistent with the constitutional principle of equality and free enterprise.

The outcome was not obvious and remains topical in light of the compensation scale provided for in the Macron Law, which was rejected by the French Constitutional Council on the ground that the Macron Law was not the appropriate law for such a measure.

The French Labour Code provides for a minimum amount of compensation equivalent to six months' salary for employees with more than two years' seniority who are dismissed by a company with 11 employees or more without genuine and proper cause, but not for the others. Does this absence of a minimum amount breach the principle of equal treatment of employees before the law?

The French Constitutional Council does not believe so, and considers it to be, in any event, the responsibility of the lower court to determine the amount of damages to be paid out to the employee for the harm suffered. Also, in the view of the members of the Council, the existence of this minimum amount does not preclude the lower court from granting such a high amount of compensation to an employee dismissed by a company with fewer than 11 employees, nor to an employee with less than two years' seniority.

What is most important is that the employee can provide proof of the harm suffered to enable the lower court to assess the case.

The French Constitutional Council elaborated on its position, stating that "the principle of equality before the law neither precludes the legislator from providing different rules for different situations, nor from departing from the principle of equal treatment on the grounds of general interest, provided that, in either case, the resulting difference in treatment relates directly to the purpose of the law that establishes it".

The legislator's decision to limit the scope of application of the minimum compensation to companies with at least 11 employees can thus be justified as being in the general interest, given that such companies are by definition more economically stable.

Unemployment insurance

Career-path security contract

The unemployment insurance agreement is to be extended by at least 18 months for the application of the provisions of the career-path security contract so as to enable the social partners to negotiate a new version of the agreement that is better adapted to the current economic environment.

We remind you that the career-path security contract's predecessor was the conversion agreement, which was created on 6 March 1987 and will soon be celebrating its 30th anniversary.

Unemployment insurance for freelance artists (*intermittents du spectacle*)

In April 2016, the unemployment insurance scheme for freelance artists became the only scheme for which the new benefit rules have been approved by the social partners. Subsequently, these new rules were transposed in appendices VIII and IX of the regulations of the French National Professional Union for Employment in Industry and Trade (*Union nationale interprofessionnelle pour l'emploi dans l'industrie et le commerce* – UNEDIC) by virtue of a decree dated 13 July 2016, and came into force for employment contracts entered into as from 1 August 2016.

These new rules provide for:
- access to benefits for both artists and technicians who work 507 hours or more over a 12-month period,
- the lowering of the monthly ceiling of the combined amount of unemployment benefits/salary from 1.4 to 1.18 times the monthly social security ceiling,
- a 1% increase in the employer contribution, effective in two stages (0.5% on 1 July 2016 and 0.5% on 1 January 2017).

In a circular dated 21 July 2016, the UNEDIC specified the conditions for implementing these provisions, applicable as from 1 August 2016, including an increase in the specific contribution and the relaxation of the conditions for accessing benefits.

Abolition of social security courts

The final adoption of the 21st century Justice Act by the French Parliament on 12 October 2016 entails a series of changes regarding social security disputes.

The first of these changes involves the abolition of:
- the social security courts (*tribunaux des affaires de sécurité sociale* – TASS),
- the incapacity dispute courts (*tribunaux du contentieux de l'incapacité* – TCI), and
- the regional social assistance commissions (*commissions départementales d'aide sociale* – CDAS).

The cases that these bodies were previously in charge of will be transferred to the Court of First Instance on a date to be set by decree and no later than 1 January 2019.

Less information to be displayed in workplaces

The list of documents to be displayed in workplaces was considerably reduced pursuant to a decree of 23 October 2016. Instead, the information can now be communicated using any medium.

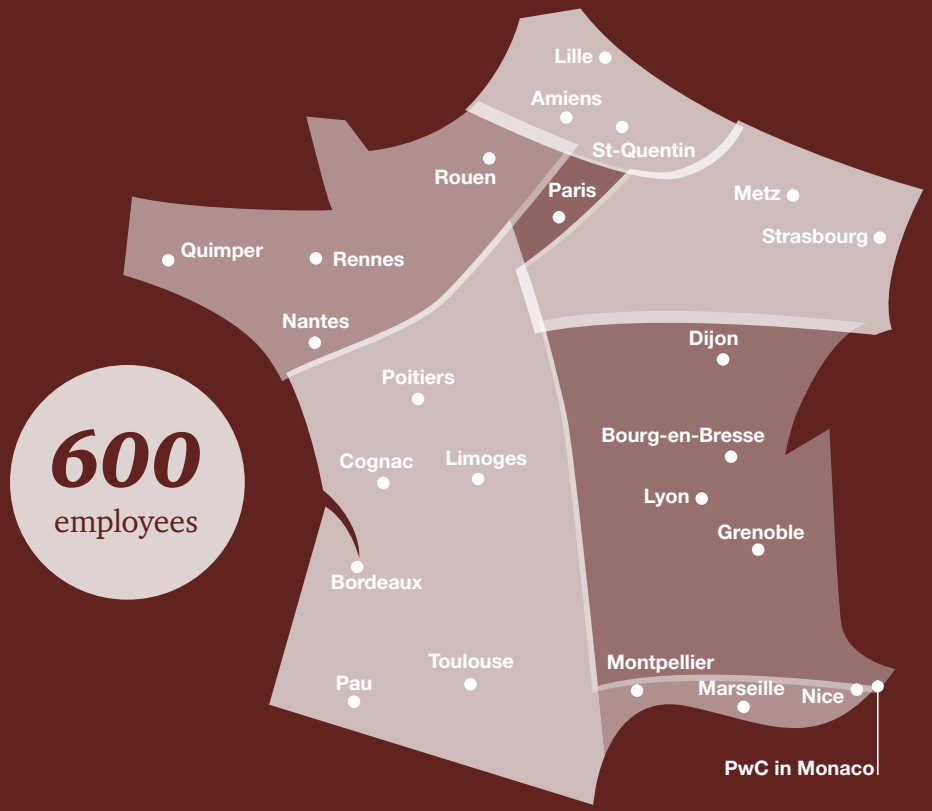
This list was introduced by an order dated 26 June 2014 and initially included information regarding organising and participating in employee representative elections, provisions relating to combating discrimination, psychological and sexual harassment, preferential rights of re-employment or employment protection plans in the event of redundancies, and employee profit sharing.

This list now includes the company's internal regulations, collective bargaining agreements in force, the holding of referendums, the paid leave calendar, weekly rest schedules (if they are not fixed), the provisions relating to the principle of gender equality, and the list of members of the coordinating body of the work health and safety committee.

In fact, companies are still required to display the following information:

- standard working hours and any amendments thereto (daily start and end times, breaks),
- the organisation of working hours in the event of flexible annual schedules, and any amendments thereto,
- information on shift work: lists of team members including temporary employees,
- daily rest periods, if not the same for all employees,
- the list of members of the work health and safety committee and their usual workplace,
- the notice advising employees on how to access the risk assessment document,
- clear reminders that smoking is prohibited by law,
- fire safety instructions,
- instructions in case of an electrical incident,
- the address and telephone number of the occupational physician or workplace health and safety service and emergency health services,
- the address and telephone number of the labour inspectorate and the inspector's name,
- the prior notification of major construction work,
- the name and address of the principal in the event that work is outsourced,
- salaries and expenses for work performed at home. ■

PwC network of accountants



PwC publishes regular social security policy updates.

This newsletter provides a summary of the regulations in force relating to payroll and employment contracts.

It should therefore only be viewed as a basic reference document. Please contact PwC if you require more detailed information on any particular issues.

You can also visit the “Services aux entrepreneurs” (Services for entrepreneurs) section of our website:

www.services-entrepreneurs.pwc.fr

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