

# SOLUCIAL EXCLUSIVE INTERVIEW

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Partner and labor law specialist  
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# EDITORIAL

Labor law governs the relationship between companies and employees. It sets out a clear framework (10 hours per day, 48 hours per week maximum) but has become more flexible over the last ten years.

Labor law is constantly adapting to changes in the professional world. Annual working time arrangements, overtime, fixed daily rates, etc. are all levers that can be used to adjust the organization according to the company's needs and requirements.

To better understand the issues involved, we met with Caroline Barbe, a lawyer at Solucial, who assists companies with their human resources management on a daily basis.

A dense and enlightening discussion on the legal balance between corporate rights and obligations.



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***French labor law is governed by several authorities. Legal framework, collective bargaining agreements, company agreements, European law... How do these different levels interact with each other?***

Labor in France is governed by what is known as the pyramid of standards. The foundation of this pyramid is the Labor Code. It is the common foundation for all companies, defining which rules are immutable and which can be negotiated—either directly with employees or as part of a collective agreement.

These negotiations lead to the second level of the pyramid: industry-wide collective bargaining agreements. They define the rules for a particular trade.

Next come company agreements, and finally the employment contract, which is ultimately the most detailed and individualized level of individual negotiation.

In the past, the higher up the pyramid you went, the more favorable the rules were for employees. Nowadays, there is latitude on most matters for company agreements to deviate from industry agreements, including in a less favorable manner, on the basis that the social partners closest to the ground are best aware of what the company and workers need, and that negotiation may involve making concessions on some issues in order to make progress on others.

## **What are the main types of employment contracts and their ramifications?**

There are two main types of contracts in France. Permanent contracts (CDI) and fixed-term contracts (CDD).

The permanent contract is the standard contract under common law, the normal and general form of the employment relationship. As its name suggests, it does not specify an end date for the relationship between employer and employee. And it is more flexible than one might think: it can be terminated at any time, provided that the formal requirements and grounds are met.

Fixed-term contracts, on the other hand, are more stringent. Firstly, they can only be used in specific cases, the two most common being replacement or increased activity. And they can only be terminated in three cases: by mutual agreement, for serious misconduct, or due to incapacity as determined by the occupational health service. It is therefore impossible to dismiss someone on the basis of their performance after the probationary period, which is also much shorter than for permanent contracts.

Finally, fixed-term contracts come at a cost. The severance pay that must be paid to employees at the end of their contract corresponds to 10% of the wages paid during the entire period of the fixed-term contract. And that's not insignificant for the company.

Then there are other types of contracts, such as temporary agency work, which is equivalent to a fixed-term contract where the contract is not managed by the employer. It allows the company to fill a temporary recruitment need through a third party, the temporary employment agency. This is often used in industry, particularly during peak periods.

And lastly, there's the apprenticeship contract. The company recruits an apprentice, who will alternate between working on site and attending school. This type of contract has two major advantages. On the one hand, it meets the need for skilled labor by training future junior profiles internally. On the other hand, it costs less than other types of contracts and is eligible for certain subsidies.

**Although it is common practice, fixed-term contracts should not be used as a trial period before a permanent contract.**

**At the end of the contract, even if the employee does not meet the company's expectations, they could request that their employment contract be reclassified as a permanent contract.**

## **How are trial periods regulated, and how much flexibility do they offer companies?**

Trial periods are part of the rules that apply to both fixed-term and permanent contracts. They allow both the employer and the employee to ensure that the position, profile, and expectations of both parties are truly compatible.

The duration of the trial period must be specified in the employment contract. It depends on the profile and collective bargaining agreements, but is currently relatively long. And very often, collective agreements allow for it to be renewed. In this case, the employer must notify the employee in writing before the end of the trial period, with the employee's consent. It is customary to give them a letter to sign with the words "bon pour accord" (good for agreement).

Let's take the example of an executive profile, where there are significant recruitment challenges. The trial period is generally four months, unless otherwise specified in a collective bargaining agreement. If renewed, it can be extended to 8 months. Within eight months, the company is usually able to assess whether the person meets the requirements of the position.

Otherwise, the employer must simply



give the employee notice of termination, with the length of the notice period determined by the employee's length of service within the company.

Unlike in the case of dismissal, the employer is not required to hold a preliminary interview or justify their decision. Employers must simply ensure that they send the letter before the end of the trial period, either by hand or by registered mail.

If the legal notice period is not respected, the employer must pay compensation equal to the amount of wages and benefits that the employee would have received if they had worked until the end of the notice period, which is a maximum of one month.

***The flexibility of work in France can be misunderstood or misperceived when viewed from the outside. Can you explain how the 35-hour work week is actually implemented?***



Contrary to popular belief, the 35-hour week is not a limitation on working hours, but rather a reference framework. In practical terms, this means that minimum wages set by law and collective bargaining agreements are based on a 35-hour work week.

A company can therefore offer contracts for 39 or 40 hours per week, subject to two conditions. The first is that the fixed salary must be at least equal to the minimum wage plus overtime pay (25% for the first 8 hours of overtime worked in a week, 50% for any additional overtime). The second condition: check whether the desired number of hours

fits within the overtime quota provided for in the collective agreement. Beyond this quota (or the 220 hours of overtime per year provided for by law), mandatory compensatory time off (COR) must be granted to the employee.

When working hours are calculated in hours, the maximum limit that must be observed in all cases is 48 hours per week (or an average of 44 hours over 12 consecutive weeks) and 10 hours per day (over a maximum working day of 13 hours).

## **How can peaks or dips in activity be managed while complying with this framework?**

The maximum working hours may be exceeded, with the labor inspectorate's authorization, in the following cases:

- Work that must be performed within a specified time frame due to its nature, obligations imposed on the company, or commitments made by the company;
- Seasonal work;
- Work that involves increased activity on certain days of the week, month, or year.

During peak periods, companies can also increase their workforce by hiring seasonal workers, temporary workers, or workers on fixed-term contracts to cope with the temporary increase in activity. In the event of a temporary downturn in business, certain measures

are available, such as partial activity (more commonly known by its former name, partial unemployment), which allows businesses to reduce or suspend activity while compensating employees in part, with the government covering part of the cost.

It is worth noting that for cyclical activities, agreements on the organization of working time over the year can be concluded at the industry level, but also at the company level (whether or not there are trade unions). These agreements allow employees to work more during certain periods and less during others, while smoothing out monthly pay and only counting overtime at the end of the year.



## **What about jobs that involve working on Sundays?**

In France, the law requires at least one day of rest per week, which is usually Sunday. There are exceptions, however. Some are directly provided for in the Labor Code for sectors of activity that cannot tolerate interruptions (emergency services, etc.).

For other occupations, this exception is made through the negotiation of a collective agreement or through administrative exemptions.

For activities that benefit from a permanent exemption (food establishments, hotels, transportation, etc.), working on Sundays is mandatory if it is stipulated in the employment contract.

For other types of exemptions, the distribution must be based on the principle of voluntary participation and must be notified in writing.

In all cases, this work is compensated by a salary increase or additional time off in lieu.

When working hours are calculated in hours, the maximum limit that must be observed in all cases is 48 hours per week (or an average of 44 hours over 12 consecutive weeks) and 10 hours per day (over a maximum period of 13 hours).

## **France also has the option of working on a fixed daily rate. How does this differ from the hourly rate?**

In this case, the fixed daily rate is a truly French specificity. I don't think it exists anywhere else in the world. In any case, I've never seen it among my foreign clients, and when I mention it to them, they look at me as if I'm from another planet.

As the name suggests, employees on a fixed-day contract are required to work a certain number of days per year, up to a maximum of 218 days annually. It is therefore not subject to counting the number of hours worked per week. However, the rules relating to daily and weekly rest periods still apply.

My only warning about the fixed daily rate is that it requires monitoring. Managers or human resources must be able to keep track of the number of days worked, periodically discuss the employee's workload, their right to disconnect, and their work-life balance. Otherwise, the daily rate would be invalid.

**Little known outside France, the daily flat rate requires careful monitoring of the time worked, especially when management is not based in France.**

**For back-office activities, COVID has witnessed the massive arrival and widespread adoption of remote working. How is this type of work regulated today?**

The Labor Code only provides a very general framework for teleworking and leaves it up to the employer to set the details in an agreement or charter, after consulting with the Social and Economic Committee (CSE), if one exists. Beyond a few general principles (provision of work equipment, coverage of expenses, equal treatment with on-site workers), its framework is therefore specific to each organization, which is interesting because it allows the terms and conditions to be adjusted to the company's culture and operational constraints.

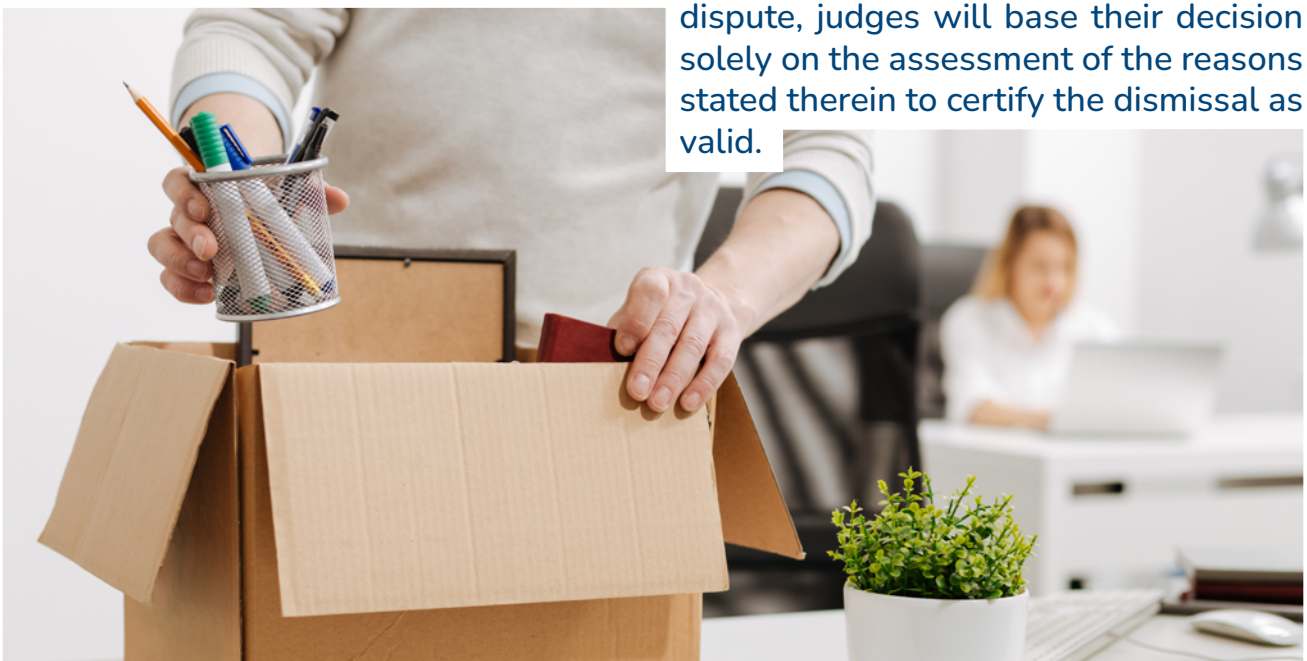
**How does dismissal work in France, and what rules must be followed?**

In France, the procedures for dismissing employees are highly regulated.

A company that wants to dismiss an employee must provide a reason that is permitted by law. There are five: professional incompetence, misconduct, medical unfitness, disorganization due to prolonged absence, or economic reasons (which are themselves governed by law with specific procedures).

Employers must also follow a strict procedure. Notice, interview, minimum cooling-off period of two business days (and maximum of one month), followed by a letter of dismissal.

This letter is crucial for protecting the company in its decision. In the event of a dispute, judges will base their decision solely on the assessment of the reasons stated therein to certify the dismissal as valid.





**We have just seen that dismissal in France is highly regulated.**

**What about the cost of termination for the company?**

Severance pay in France is relatively low. It is calculated on the basis of 1/4 of a month's salary per year of service up to a maximum of 10 years of service, and 1/3 thereafter. This does not represent a significant amount at the time of termination, with notice periods ranging from one to three months depending on the classification of the employee's profile. Of course, this may vary depending on the industry and collective bargaining agreements.

In cases of unfair dismissal, the Macron ordinances of 2017 established a scale to provide security for companies by setting minimum and maximum penalties.

For example, in a company with 11 or more employees, if a dismissal is deemed to be without real and serious cause, the former employee can expect to receive between 3 and 3.5 months' salary if they had 2 years' seniority at the time of dismissal, and between 3 and 20 months' salary if they had more than 30 years' seniority.

However, these scales do not apply if the dismissal is deemed "null and void," i.e., in cases specifically provided for by law, such as discrimination, harassment, or dismissal during maternity leave or sick leave due to a work-related accident (except in cases of serious misconduct or where it is impossible to maintain the contract).

## **In terms of these two aspects—flexibility and dismissal costs—how do we compare with our European neighbors?**

Of course, it all depends on which country you are talking about.

Procedures in France are more restrictive than in Belgium or England, for example, in that the employer must justify the dismissal. They must ensure that their explanations are comprehensive and that the reason given is indeed a legal one. On the other hand, the cost of dismissal will be higher in Belgium because it takes into account the employee's seniority, age, and salary, and requires long notice periods.

But if we compare France with the Netherlands or Germany, I think it's easier to dismiss employees in France. In

these countries, dismissals are subject to approval by a judge or employee representatives. This does not exist in France, except in the very specific case of protected employees such as staff representatives, for whom the labor inspectorate's approval is required. Apart from this specific case, as we have just mentioned, you just need to choose carefully how to describe and justify the reasons for dismissal so that it will be recognized as valid by the courts in the event of a dispute.

***In France, although the dismissal procedure is more regulated than in some European countries, the cost is lower.***



**French employees have a very protest-oriented, unionized, and demanding image abroad. What impact do strikes have on companies?**

I know this is a rather persistent misconception among foreign companies, but there aren't that many strikes in France. In 17 years of practicing labor law alongside companies, I haven't come across many. I even think that at the firm, we hear about three or four strikes per year at most across all the companies we monitor and in sectors that are often targeted.

You should also be aware that strikes are highly regulated in France, and that there is a distinction between the public and private sectors. In the public sector or for those responsible for public services (hospitals, transportation, etc.), the law now requires advance notice with obligations to negotiate in an attempt to avoid strikes. In the traditional private sector, there is no obligation to give advance notice of a strike. However, a strike requires a genuine collective demand.



The percentage of union membership in France in the private sector is extremely low compared to the rest of Europe. It is around 5 or 6%, which is really very little. But of course, you don't have to be a union member to go on strike.

**There aren't that many strikes in France!**



**To conclude this interview, allow us to ask a question related to current events. For several months now, AI has been on everyone's mind. Will she shake up labor law?**

Despite all the advances made in recent years in this area, I believe we are still only at the beginning of AI and its impact on our professions. You just have to read to realize that we are entering a real white-collar industrial revolution.

For the moment, I have not noticed any particular impact on labor law, but that will inevitably come. This is because employers have a duty of transparency on various matters, such as their recruitment methods and the monitoring of production and employee activity. The use of AI in companies will have to be regulated, and we may soon have experts in this field working at our firm.

Let's take recruitment as an example. Perhaps one day we will have to discuss AI-assisted recruitment in a discrimination lawsuit. Today, I see two factors that could cause problems:

- The configuration and algorithm of the AI, which could influence the outcome. It's not obvious yet, but it may be an issue that we'll encounter.
- The data on which the AI works, particularly with regard to the processing of personal data and compliance with the GDPR.

These are very concrete issues for the future.

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