



# INTERVIEW

Caroline Barbe  
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“While French procedures for layoffs may be more regulated, they offer other advantages compared with the rest of Europe.”

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Caroline Barbe, Labour and Employment law specialist and a partner in the employment law firm Solucial, talks to us about labour flexibility in France.

Flexible working arrangements in France are often poorly understood and negatively perceived from the outside. Can you tell us how the 35-hour week works in practice, how companies can manage fluctuations in their work volume, and when temporary workers or short-term employment agreements may be used?

Contrary to popular belief, 35 hours per week is not a limit but a benchmark. The legal workweek in France is 35 hours, which comes to 151.67 hours per month. This means that if employees work more than 35 hours, a higher rate applies to their overtime (time and a quarter for the first eight hours per week, and time and a half after that).

However, it's possible—and this is common practice—to agree to a **base workweek of more than 35 hours** in return for a fixed salary that already factors in compensation for overtime. This is called a weekly or monthly “salary in hours” and it can be contractually agreed upon. In which case, the agreed-upon compensation must be at least equal to the minimum rate under the company's collective bargaining agreement, taking into account the legal overtime rates for the number of hours agreed to in the employment agreement.

Note that beyond 220 overtime hours over the course of a year (or less in certain business sectors), additional hours must be offset by giving the employee additional paid time off.

In all cases, the maximum workweek is 48 hours (or an average of 44 hours over 12 consecutive weeks), and 10 hours a day (with a daily maximum of 13 hours).

However, even **this maximum may be exceeded** if authorized by the inspector general's office (inspection du travail), which can happen in the following cases:

- Work that must be completed within a specific period of time due to its work, the obligations imposed on the company, or the company's contractual undertakings;
- Seasonal work; and
- Work involving increased hours on certain days of the week, the month, or the year.

At **peak periods**, employers can also hire temporary workers or enter into short-term employment agreements to manage a temporary increase in workload.

If the **workload temporarily decreases**, mechanisms such as partial furloughs can enable businesses to reduce or suspend activity. Their workers are then paid in part by the company and in part by the government.

Note that for cyclical businesses, agreements to manage working hours over the course of a year may be entered into at division level or at company level (whether or not the workers are unionized). These agreements allow the company to ask its employees to work more hours during certain periods and fewer hours during others, while paying a fixed monthly salary and only tallying up the additional hours at the end of the year.

Another sensitive topic, as seen from outside France, is that of French dismissal procedures:

- Can you tell us about the Macron regulations?
- Do all businesses use France's labor courts (prud'hommes)?
- Are there any HR best practices you can share?
- And finally, could you give us some comparisons with other European countries?

In September 2017, **guidelines were put in place to give companies greater predictability** by setting the minimum and maximum damages they can be ordered to pay if a court rules that an employee was dismissed without real and serious cause.

In practice, if a dismissal is deemed to have been without real and serious cause in a company with 11 or more employees, for example, the former employee may obtain between 3 and 3.5 months of salary if he had 2 years' seniority at the time of the dismissal, and between 3 and 20 months of salary if he had more than 30 years' seniority.

Note that these guidelines are not applicable if the dismissal is deemed null and void in the cases specifically provided for by law. These cases include discrimination, harassment, and dismissal during maternity leave or during a medical leave following a workplace accident (unless the employee engaged in serious misconduct or it is impossible to continue the employment relationship).

Whether because of societal change or due to the impact of the guidelines, the number of labor cases has fallen sharply in France in recent years—there are only half as many as there were 20 years ago—and **litigation is no longer the inevitable result of a termination**.

On the other hand, a business that wishes to dismiss an employee **must have one of the motives provided for by law**: unsatisfactory work, misconduct, or economic layoff (which itself is defined by law). In the event of litigation, the court will assess whether the motive stated in the dismissal letter exists (in other words, whether it can be proven) and if it constitutes a sufficient reason for the dismissal. This means that before dismissing an employee, companies should take the time to:

- Gather evidence to prove the complaint against the employee or the economic situation that is forcing the layoff;
- Correctly characterize the evidence under French law; and
- Draft a letter that relies on the evidence and that can be proven in court.

There are specific procedures that must be followed, although the penalties attached to a failure to follow procedures are less severe than those for an improper dismissal on the merits (damages are limited to one month's salary).

While dismissals are more highly regulated in France than in Belgium, for example, the cost of a dismissal that is not challenged is generally lower. Furthermore, there is no need to obtain a concurring opinion from the employee representatives (as required in Germany) or a judge's permission (as in the Netherlands). Court review is only after the fact, and only in very extreme cases would it result in the company being forced to rehire the employee.

One point of caution: if the employee serves as an employee representative—or, curiously, sits on the city council!—the inspector general's office must authorize the dismissal in advance, following specific procedures. It is essential to be mindful of this.



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