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Macron scale

Contrary to expectations, perhaps, and paradoxically in any event, the enshrinement of a scale for compensation for dismissals without real and serious cause, known as the Macron scale, has resulted in an increase in the total amount of compensation paid. The effects of the Macron scale are therefore nuanced, as revealed by a research report finalised at the end of August (Evaluation of the impact on dismissal compensation of the scale for compensation for dismissal without real and serious cause on dismissal compensation, Department of Labour, French administration, 29 August 2025). Indeed, while compensation for dismissals without real and serious cause has, unsurprisingly, decreased – particularly for employees with a short length of service – it has been accompanied by an increase in so-called "secondary compensation claims" and, simultaneously, by a sharp rise in dismissals deemed null and void. Overall, for employers, the average amount of compensation for dismissals without real and serious cause or for null dismissals has increased by approximately 0.9 months' salary since the introduction of the scale. Based on data drawn from 374,235 decisions rendered by all the French Courts of Appeal, handed down between 1 January 2006 and 31 December 2024, the report shows that the increase in claims for additional compensation and actions seeking to have dismissals declared null and void have "significantly limited, or even counteracted, the effects of the scale" for employers.

Trade union and employers' organisation representativeness

In 2025, the weight of trade union organisations and employers' professional organisations recognised as representative at national and interprofessional level was again measured, and the list of such organisations was published (Order of 8 July 2025, Official Journal of 9 July). On both the employee and employer sides, the balances and the bipartite landscape remain unchanged compared to the previous cycle: CFDT, CGT, FO, CFE–CGC and CFTC remain representative of employees, while Medef, CPME and U2P remain representative of employers.

Redundancies/reductions in force, business transfers, and reorganisations

Collective performance agreement

Although a collective performance agreement may result in the termination of the employment contract where an employee refuses a modification of their employment contract implemented pursuant to such an agreement, it is for the court to review the appropriateness of recourse to that agreement, as well as the real and serious nature of the grounds for termination of the employment contract (Cass. soc., 10 September 2025, No. 23-23.231). In this case, an employee who refused the modification of her employment contract resulting from a collective performance agreement was dismissed on account of that refusal. Contesting the termination of her employment contract, she brought her case before the labour court seeking the payment of damages for dismissal without real and serious cause, but her claims were dismissed by the trial courts. Before the French Supreme Court (*Cour de Cassation*), the employee argued in particular that it is for the court to assess the reality and relevance of the grounds that justified the agreement, as well as the real and serious nature of the grounds for the dismissal following her refusal to modify her contract. The *Cour de Cassation*, while restating the employer's right to terminate the employee's contract in the event of such refusal, nevertheless agreed with the employee's arguments. Referring to Article L. 2254-2 of the Labour Code and Articles 4, 9.1 and 9.3 of International Labour Organization Convention No. 158 on Termination of Employment, which provides that it is for the trial court to determine whether a collective agreement is justified by the operational needs of the company, the *Cour de Cassation* confirmed that it is for the trial court to assess the real and serious nature of the grounds for dismissal following such refusal, in light of the soundness of the objectives set out in the collective performance agreement. Accordingly, the judges, who should have examined whether the collective agreement was justified, infringed the applicable rules of law. The dismissal is thus devoid of real and serious cause.

Employment Protection Plan (PSE)

Pursuant to the principle of equal treatment, while certain measures of a PSE may be reserved for specific employees, this is subject to a double condition: first, that all employees in an identical situation with regard to the benefit in question have the opportunity to benefit from it; and second, that the eligibility criteria for the measure be predefined and verifiable (Cass. soc., 5 November 2025, No. 24-11.723). In this case, an employee was denied the benefit of an early retirement scheme provided under the PSE on the ground that she did not meet the age requirements at the time of her application to the scheme. The scheme provided that only employees aged at least 55, with a minimum of 15 years of service and able to retire on a full pension within seven years (taking into account, in particular, any purchased pension credits), and provided they took their full pension at 62, were eligible; both age and seniority were to be assessed as of the date of signing the bilateral termination agreement. The employee, being only 54 years old at the time of her application, was declared ineligible by the employer. She contested this decision on the ground that the agreement did not provide for any binding deadline for the employer between the submission of an application and the date of signing the bilateral agreement. Other applications from employees who did not meet the age requirements at the time of submission had, however, been accepted due to the imminence of their 55th birthday. Her claims were dismissed by the lower courts, whose decisions were subsequently overturned by the *Cour de Cassation*. The *Cour de Cassation* noted that, indeed, "*the collective agreement did not provide for a deadline for the signing of the termination agreement, and that, in the implementation of the collective agreement, satisfaction of the age and seniority condition depended on the employer's discretionary choice of the date of signing the termination agreement, such that the eligibility criteria for the scheme were neither predefined nor verifiable*". Consequently, the employer's decision contravened the principle of equal treatment, since the rules determining eligibility for the measure were neither clearly predefined nor verifiable.

Discrimination and retaliation protection

Moral harassment and medical confidentiality

The employer may not contact an employee's treating physician in order to obtain and use information protected by medical confidentiality. The unlawful nature of the grounds for dismissal based, even in part, on such information, obtained in breach of medical confidentiality, constitutes an infringement of the employee's right to respect for private life and, in itself, renders the dismissal null and void (Cass. soc., 10 December 2025, No. 24-15.412). In this case, an employee dismissed for personal reasons brought her claim before the labour court seeking a declaration that the termination of her employment contract was null and void. She argued, first, that she had been the victim of managerial moral harassment and, second, alleged an infringement of her right to respect for private life, in that the employer had contacted her treating physician in order to obtain information about the medical condition she suffered from and had used that information, despite it being protected by medical confidentiality, to dismiss her. The lower courts, and subsequently the *Cour de Cassation*, declared the dismissal null and void and ordered the employee's reinstatement. Regarding institutional moral harassment, the *Cour de Cassation* confirmed and clarified its case law (Cass. crim., 21 January 2025, No. 22-87.145). Thus, in order to establish the existence of a situation of institutional moral harassment, it is not necessary for the employee to demonstrate that they were personally targeted by such harassment. It is for the court to examine all the elements relied upon by the employee and to assess whether the materially established facts, taken as a whole, suggest the existence of moral harassment within the meaning of Article L. 1152-1 of the Labour Code. In this case, it clearly emerged from the findings of the trial courts that the management methods within the company had resulted in the deterioration of the employee's working conditions and were likely to impair her physical or mental health. Regarding the breach of medical confidentiality, the *Cour de Cassation* upheld the nullity of the dismissal as declared by the Court of Appeal on that ground. Referring to Article 2 of the Declaration of the Rights of Man and of the Citizen, Article 8 of the European Convention on Human Rights, Article 9 of the Civil Code and Article L. 1121-1 of the Labour Code, the Court reiterated that an employee is entitled, even at the time and place of work, to respect for their private life, which includes, in particular, their state of health and their relationship with their treating physician. Consequently, the employer may not, without infringing this fundamental freedom, contact the employee's treating physician in order to obtain and use information protected by medical confidentiality. The unlawful nature of the grounds for dismissal based, even in part, on information obtained by the employer from the employee's treating physician in breach of medical confidentiality constitutes an infringement of the employee's right to respect for private life and, in itself, renders the dismissal null and void.

Pregnancy and dismissal

A deadlock situation between a pregnant employee and her colleagues, of such a nature that she cannot be maintained in her position without posing psychosocial risks for her colleagues and for herself, together with her refusal to accept a transfer, justifies her dismissal, without this constituting discrimination on grounds of pregnancy (Cass. soc., 27 May 2025, No. 23-23.549). An employee whose employment contract was suspended on several occasions due to periods of sick leave and two maternity leaves followed by parental leave was placed on sick leave one week after returning to work. She was then declared fit for work but relieved of her duties pending the imminent submission of a report by the Health, Safety and Working Conditions Committee (CHSCT), which had been petitioned by nine employees from her team who had reported a deterioration in their working conditions and the existence of psychosocial risks related to the employee's return to her position. The CHSCT report concluded that the serious psychosocial risks identified were genuine. The labour inspector, referred to by the employee, also confirmed the existence of psychosocial risks faced both by the employee and by her team should she return to her position. The employer then offered the employee an equivalent position in another establishment, an offer she refused.

Faced with this deadlock situation, the employer summoned the employee to a pre-dismissal meeting, during which she informed the employer of her pregnancy. The employer nevertheless proceeded with her dismissal on the ground that it was impossible to maintain the employment contract. The employee brought her case before the labour court to have her dismissal declared null and void. The Court of Appeal, followed by the *Cour de Cassation*, dismissed her claim. The Court reiterated that "*the employer may terminate the contract [of a pregnant employee] if it establishes the existence of serious misconduct on the part of the employee, unrelated to her state of pregnancy, or the impossibility of maintaining the contract for a reason unrelated to pregnancy or childbirth*". It further emphasised that the employer is bound by its obligation to ensure safety and prevent psychosocial risks, both towards the pregnant employee and the other employees in her team. The employer, who had offered the employee another position matching her professional skills and hierarchical level in another establishment, which she had refused, could not maintain her in her position without posing psychosocial risks for both her colleagues and herself. Therefore, the employer's decision to dismiss the employee was justified and unrelated to her pregnancy.

Statutory employment protection rights

Employment of senior employees

The Law of 24 October 2025 in support of the employment of experienced employees and relating to the evolution of social dialogue (Law No. 2025-989 of 24 October 2025, transposing the national interprofessional agreements in support of the employment of experienced employees and relating to the evolution of social dialogue) introduces a new mandatory negotiation, at the industry level and also within certain companies, concerning the employment of experienced employees based on their age. This obligation applies to all companies with at least 300 employees, as well as those with fewer employees but belonging to a group, within the meaning of the group works council, with at least 300 employees. A small company with a few dozen employees may therefore be subject to this negotiation obligation, provided that at least one representative trade union is established within it. Where applicable, a negotiation conducted at group level may exempt the group's companies from such a negotiation. Conversely, if negotiations at the group level fail, and in the absence of specific provisions requiring negotiation solely at that level, each company within the group with at least 300 employees will be required to initiate negotiations. Most of the topics that may be covered by a company-level collective agreement fall within what is referred to as "block 3", as provided for in Article L. 2253-3 of the Labour Code, meaning that a company-level collective agreement concluded on the employment of senior employees, or even a procedural agreement on negotiating such topics, shall prevail regardless of the provisions of the industry-wide agreement, which must, however, be complied with when applicable (for example, regarding the prevention of the effects of exposure to the occupational risk factors listed in Article L. 4161-1 of the Labour Code). An agreement may set the frequency of these negotiations, up to a maximum of four years, as well as the schedule of meetings. In the absence of an agreement, negotiations are held every three years. Regarding the first negotiation following the law's entry into force, companies subject to this obligation should be allowed a period of three years, that is, until 26 October 2028 at the latest, to initiate it. Of course, it may be advantageous to consider this negotiation well in advance, while also taking into account the expiry of any ongoing *Gestion des Emplois et des Parcours Professionnels* (Management of Jobs and Professional Paths) (GEPP) agreement and the social agenda for the next GEPP negotiation, since, even though these are now two distinct sources of negotiation, we know how closely these topics can be linked. Finally, it is important to remember that the obligation is to initiate negotiations, not necessarily to reach an agreement. Subject to an established lack of good faith, the employer cannot be reproached for the negotiations not reaching a favourable outcome. Attention should be drawn to the fact that the failure of negotiations must be formalised, as provided for in Article L. 2242-5 of the Labour Code, by a record of disagreement setting out, in their final state, the respective proposals of the parties and the measures that the employer intends to implement unilaterally. This record is all the more important as it marks the point at which the employer regains its freedom to act unilaterally.

Working time

Litigation relating to working time is recurrent and very frequently occupies the labour courts. A new case on this subject was brought before the Employment Division of the *Cour de Cassation*, enabling it to continue its work of clarifying the methods of monitoring working time, the obligations incumbent on employers in this respect, and the consequences of failure to comply with those obligations (Cass. soc., 13 November 2025, No. 23-19.055). In this case, a managerial employee brought her case before the labour court seeking termination of her employment contract and payment of various sums. She notably requested back pay in respect of overtime and, in support of her request for judicial termination, she alleged that the employer had failed to comply with its obligation to record daily hours worked. However, her claims were dismissed by the appellate judges, who held that the employee could not rely on the failure to keep a daily record of working hours on the basis of Article D. 3171-8 of the Labour Code, which applies only to employees working in relay work, rotating shifts or successive teams, which was not her case. The Employment Division of the *Cour de Cassation*, hearing the employee's appeal, overturned that position. Its decision is a significant one: it reiterates the rules governing proof of overtime; and, most importantly, it provides an important clarification as to the interpretation to be given both to Article D. 3171-8 of the Labour Code and to the manner in which its provisions are to be articulated with those of Article D. 3171-7 of the same Code, to which it refers.

This case first provided the *Cour de Cassation* with an opportunity to reiterate the system of shared burden of proof in matters relating to overtime, which departs from the general rule placing the burden of proof solely on the claimant. Pursuant to Articles L. 3171-2 and L. 3171-4 of the Labour Code, it is for the employee to provide sufficiently precise elements as to the hours they claim to have worked, and then it is for the employer, who is responsible for monitoring working time, to produce its own elements. Based on this evidence and that provided by the employee, the judge forms their conviction. This evidentiary system, known as shared proof, ensures that proof of overtime is not rendered difficult, or even impossible. If such proof were to rest solely with employees, while the monitoring documents are held by employers, the outcome of disputes would most often, and undoubtedly unjustly, be unfavourable to employees. In this case, the employee provided the judges with summary tables of overtime hours worked each week between 2016 and 2018, screenshots of files she had worked on showing the time at which each file was saved, emails evidencing late working hours, as well as witness statements asserting that she regularly worked outside her normal working hours. The Court of Appeal held that these elements were not sufficiently precise to allow the employer to respond. However, this decision was overturned by the Employment Division of the *Cour de Cassation*, which criticised the Court of Appeal for having placed the burden of proof solely on the employee, who had provided elements that were sufficiently precise to allow the employer to respond. This reversal is not surprising. The employee is not required to prove the hours worked; they only need to provide sufficiently precise elements as to the hours they claim to have worked. The precision of the elements must not be confused with proof of those elements. This is the reason why the *Cour de Cassation* has abandoned the term "substantiate" and why the employee is no longer required to provide evidence capable of substantiating their claim, but only needs to provide sufficiently precise elements in support of it. By holding that the elements provided by the employee were not sufficiently precise, when they undoubtedly were in light of the flexibility of the case law in this regard, while at the same time disregarding the fact that the employer produced no documents whatsoever, the trial judges committed a methodological error in the application of the shared burden of proof system. They could therefore not escape censure.

Furthermore, the Court provides clarification as to the employer's obligation to keep records of working hours. When Article D. 3171-8 of the French Labour Code refers to Article D. 3171-7 of the same Code, is this to limit the obligation to record daily and weekly hours only to those employees covered by the referenced text, namely those subject to relay, shift or successive teamwork arrangements? The Court of Appeal answered in the affirmative: "*[T]he employee cannot rely on the failure to keep a daily record of working hours on the basis of Article D. 3171-8 of the Labour Code, which applies only to employees working in relay work, rotating shifts or successive teams, which was not her case.*" The *Cour de Cassation*, on the contrary, considered that where an employee is not subject to a collective working schedule, the employer must record working time under the conditions of Article D. 3171-8 of the Labour Code. Thus, the employer is required to keep a daily and weekly record of working time for all employees who do not work under the same collective schedule, as the provision is not solely limited to workers working in relay work, rotating shifts or successive teams. Therefore, with regard to the interaction between Articles D. 3171-7 and D. 3171-8 of the Labour Code, these Articles must be considered autonomous from one another. This solution deserves approval, in particular because they are found in two different subsections: one subsection relating to workers under the same collective schedule for the former provision; and one subsection relating to workers not on the same collective schedule for the latter. Consequently, the reference to Article D. 3171-7 of the Labour Code made by Article D. 3171-8 must be interpreted in light of that autonomy, and it must be considered that, generally speaking, for all employees not working under the same collective schedule, the employer is subject to the daily and weekly recording provided for by Article D. 3171-8, and that this is also the case for those who would be working within a team as defined in Article D. 3171-7 of the Labour Code, when they do not work under the same collective schedule. The solution is in keeping with current judicial trends in matters relating to working time for two reasons. First, because of the influence of European Union law, which is once again evident in this decision: the *Cour de Cassation* expressly relies on the interpretation of the European directive concerning certain arrangements for working time adopted by the Court of Justice of the European Union (CJEU). Second, because of the link established between working time and occupational health. Indeed, not only does the ruling of the CJEU to which the *Cour de Cassation* refers establish such a link, but the decision is based also on Article L. 4121-1 of the Labour Code, which enshrines the employer's safety obligation. According to this article, "*the employer shall take the necessary measures to ensure the safety and protect the physical and mental health of workers*". Among those measures must be included the daily and weekly recording of working time.

Paid leave

Paid leave and illness

Where an employee who is on paid leave is placed on sick leave during that period and has notified the employer of such sick leave, the employee is entitled to have the paid leave postponed (Cass. soc., 10 September 2025, No. 23-22.732). Compliance of domestic law with European Union law by Law No. 2024-364 of 22 April 2024, in matters of paid leave, has not been sufficient: on 18 June 2025, the European Commission issued a formal notice to France for non-compliance with European Union law on paid leave, calling into question the impossibility for French employees to postpone their paid leave when they become ill during their vacation. Indeed, until now, the *Cour de Cassation* had taken the view that the first event giving rise to the absence had to be taken into account chronologically. Hence, an employee could not demand to take, at a later date, paid leave during which a period of sick leave had occurred (Cass. soc., 4 December 1996, No. 93-44.907). This system was considered by the Commission to be contrary to European law, which requires that paid leave allow for effective rest for the employee. France had two months to respond to or comply with this formal notice. This has now been achieved by the decision of 10 September rendered in the context of a dispute relating to the payment of paid leave days to an employee during her sick leave, which she claimed upon her retirement and for which the employer had been ordered to pay by the Court of Appeal. Upholding the trial judges' decision, the *Cour de Cassation* thus reversed its prior case law: "*Accordingly, it must now be held that it follows from Article L. 3141-3 of the Labour Code, as interpreted in the light of Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 4 2003 […], that an employee who is on sick leave due to illness occurring during the period of paid* *annual leave is entitled to subsequently benefit from the paid leave days coinciding with the period of sick leave*." An employee may therefore now claim the carryover of paid leave days in the event of illness, provided that, as specified by the Court, the sick leave has been notified to the employer.

Paid leave and overtime

Where working time is calculated on a weekly basis, an employee may be entitled to overtime pay even if the taking of paid leave resulted in not performing 35 hours of "actual" work (Cass. soc., 10 September 2025, Nos 23-14.455, 23-14.457, and 23-14.458). In this case, a company applying the Syntec collective bargaining agreement made use, in accordance with its provisions, of an hourly lump-sum arrangement based on a weekly schedule of 38.5 hours for its employees. Some employees, challenging this arrangement, sought payment of various sums in respect of overtime and paid leave indemnities. Having been dismissed on appeal, the employees criticised the trial judges for limiting the sums awarded against their employer, arguing that periods of paid leave should be considered as actual working time with regard to the threshold triggering overtime. By adopting the employer's method of calculation, which takes into account employees' absences during their leave in order to reduce the number of overtime hours, the judges, according to the employees, violated European Union law. The *Cour de Cassation*, referring to national legislation governing overtime, reiterated that it had previously held, on the basis of Article L. 3121-28 of the Labour Code, that paid leave days cannot be taken into account for the determination of overtime hours (Cass. soc., 1 December 2004, No. 02-21.304). The CJEU, for its part, has held that any practice or omission by an employer having a deterrent effect on the taking of those days is incompatible with the right to annual leave (CJEU, 6 November 2018, C-619/16, Kreuziger), a fundamental principle of European Union social law (CJEU, 6 November 2018, C-569/16, *Stadt Wuppertal v. Bauer*). Faced with the impossibility of interpreting national legislation in a way that ensures its conformity with European Union law, the *Cour de Cassation* stated that it is required to set aside the national legislation in question in order to guarantee the full effectiveness of European law. Accordingly, the Court considered that the application of Article L. 3121-28 of the French Labour Code must be partially set aside insofar as it makes the hours taken into account for determining the overtime threshold conditional upon the performance of actual working time. Thus, employees who have been on paid leave during part of a week may now claim payment of the overtime premiums they would have received had they worked the entire week.

Professional evaluation

The *Cour de Cassation* held unlawful an individual interview system based on subjective criteria such as "common sense", "honesty" or "optimism". The Court of Appeal considered that these notions, which carry a moral connotation, lacked a sufficient connection with employees' professional activity (Cass. soc., 15 October 2025, No. 22-20.716). In this case, a company implemented an individual development interview (EDI) system for its employees. This system was challenged by a regional trade union before the *tribunal de grande* instance (or TGI, i.e., a first-instance court of general jurisdiction), seeking to prohibit the system and invalidate the interviews already conducted. The TGI held the EDI procedure unlawful, while rejecting the request to invalidate past evaluations, a judgment upheld by the Court of Appeal. The company appealed to the *Cour de Cassation*, invoking its managerial authority and arguing that its evaluation method was based on precise, objective, and relevant criteria. It claimed that it was legitimate to assess an employee's "common sense" – understood as the ability to be practical, proactive, and effective – and maintained that only the portion of the scheme relating to work evaluation had been criticised. Furthermore, the company argued that the procedure was only being challenged with respect to its work evaluation component and not in its entirety, thus not justifying its prohibition. The *Cour de Cassation*, however, upheld the appellate decision, agreeing with the Court of Appeal that the notions of optimism, honesty, and common sense carried a moralising connotation and encroached upon individuals' personal sphere. This characterisation, deemed too vague and imprecise to establish a direct, sufficient, and necessary link with employees' work, thus effectively rendered the entire system unlawful.

Worker consultation, trade unions, and industrial action

The Social and Economic Committee (CSE) right of alert

The Employment Division of the *Cour de Cassation* has provided clarifications on the scope, admissibility, formal requirements and limits governing the exercise of the right of alert by the CSE (the French employee representative body) in cases of infringement of individuals' rights (Cass. soc., 3 December 2025, No. 24-10.326). In this case, three members of a company's CSE exercised their right of alert regarding an infringement of individuals' rights, as provided for under Article L. 2312-59 of the Labour Code, on the grounds of the production, in the context of an employee's labour court proceedings, of an amendment to his employment contract, a document they alleged to be forged. The CSE members denounced these practices of routinely producing forged documents within the company. According to them, the recurrence of such practices contributed to the deterioration of working conditions within the company and evidenced the reality of moral harassment suffered by numerous employees of the company, justifying the triggering of their alert. The company considered that the reported situation did not fall within the scope of Article L. 2312-59 of the Labour Code, relating to the CSE's right of alert. The employee representatives, along with a trade union, brought a claim before the employment tribunal, seeking various forms of relief aimed at bringing the alleged disturbance to an end and sanctioning it, including an order requiring the company, *inter alia*, to amend the Economic, Social and Environmental Database (BDESE). The labour court, followed by the Court of Appeal, dismissed their claims. The *Cour de Cassation* overturned the decision of the lower court on the grounds relating to the admissibility of the claims.

Regarding the scope of the CSE's right of alert, the Court reiterated that Article L. 2312-59 of the Labour Code, which defines the scope of the CSE's right of alert, may cover acts of sexual or moral harassment, or any discriminatory measure relating to recruitment, remuneration, training, redeployment, assignment, classification, qualification, career advancement, transfer, renewal of an employment contract, disciplinary sanction or dismissal. It was therefore incorrect for the lower courts to hold that the action provided for under this provision may be brought only by the employee, or by a member of the CSE's employee delegation provided the employee concerned, having been notified in writing, does not object.

Regarding the employee's failure to act, the lower courts had dismissed the claims brought by the representative body on the ground that the dispute concerned only one employee, thereby implying an individual action by that employee. The Court, however, considered the action admissible, as the exercise by a member of the employee delegation to the CSE of the right of alert is not conditional upon the absence of action by the employee who is the victim of the infringement.

Regarding the formal requirements governing the right of alert, the employer criticised the CSE for the lack of precision in the other breaches reported by the CSE, apart from those concerning this particular employee, which justified the alert relating to the physical and mental health or to the individual freedoms of all employees within the company. However, the Court reiterated that the referral of the matter to the employer by a member of the CSE exercising the right of alert is subject to no formal requirements, and that such member may rely before the court on the situation of other employees affected by the alleged moral harassment.

Regarding the admissibility of the trade union's action, the Court held, contrary to the lower court judges, that "*an infringement of individuals' rights, of their physical and mental health, or of employees' individual freedoms within the undertaking causes harm to the collective interest of the profession, such that a trade union organisation is entitled to join the action brought by a member of the staff delegation to the Social and Economic Committee under their right of alert pursuant to Article L. 2312-59 of the Labour Code*".

Nevertheless, as regards the claims relating to the BDESE, the Court upheld the appellate decision. The claimants had sought an order requiring the employer to make amendments to the BDESE. The *Cour de Cassation* confirmed the decision of the Court of Appeal on this point: the claims relating to the BDESE do not fall within the scope of Article L. 2312-59 of the Labour Code, relating to the CSE's right of alert, and are therefore inadmissible.

Corporate office and trade union mandate

The corporate office of managing director is incompatible with any appointment as a trade union delegate, as held by the *Cour de Cassation* (Cass. soc., 19 November 2025, No. 24-16.430). In this case, an economic and social unit (*unité économique et sociale* – UES) had been established between 24 companies. An agreement set up a central CSE as well as 11 establishment-level CSEs within the unit. Two employees of one of the companies in the UES, who were living together as partners, were registered as voters in the professional elections but declared ineligible: one on account of the corporate office of managing director he held; and the other due to his domestic partnership with him. Nevertheless, they were presented as candidates by the CFE–CGC and, following the election results, one was appointed as central trade union delegate of the UES and the other as trade union representative within one of the establishments. The 23 other companies forming the UES brought proceedings before the judicial court seeking annulment of both appointments. Their claims were dismissed by the court, which found that it had not been established that the employee had a specific written delegation of authority, that his powers were limited and did not grant him genuine autonomy in the performance of his duties as managing director, which in practice differed little from his role as an employee acting as technical director. The court further emphasised that this limited autonomy was reinforced by the fact that he was an unpaid managing director and not a shareholder. Consequently, the court upheld both trade union appointments. The companies appealed to the *Cour de Cassation*, which indeed rejected that reasoning. Referring to Article L. 2314-19 of the Labour Code, which excludes from eligibility employees considered equivalent to the head of the company, read in conjunction with Article L. 223-18 of the Commercial Code, pursuant to which the managing director of a limited liability company enjoys the broadest powers to act on behalf of the company, the *Cour de Cassation* held that the scope of the powers attached to the corporate office confers on the employee the status of head of the company. An employee enjoying such status may therefore not hold a trade union (corporate) office within the company of which he is himself the managing director and, more broadly, may not hold any employee-representation or trade union mandate within a UES to which the company employing him belongs.

Employee privacy

Private life and company travel

Misconduct committed during an event organised by the employer, and therefore outside working time and location, falls within the employee's private life and cannot justify dismissal (Cass. soc., 22 January 2025, No. 23-10.888). In this case, during a cruise organised by the company, an employee had obstructed the fire detector in her cabin. Because of the danger thereby posed by the employee to all passengers, the ship's captain had to order her early disembarkation. The company was compelled to take emergency measures and incurred expenses for the employee's accommodation and repatriation. In light of those expenses, and considering that it had suffered damage to its reputation, the employer dismissed the employee for misconduct. The *Cour de Cassation* ruled that the employee's dismissal was without real and serious cause. It reiterated, first, that "*a ground based on the employee's private life cannot, in principle, justify a disciplinary dismissal, unless it constitutes a breach by the employee of an obligation arising from the employment contract*" and, second, that "*an objective disruption to the functioning of the undertaking resulting from a matter pertaining to an employee's private life does not, in itself, justify the imposition of a disciplinary sanction on the employee from whom it arose*". In this case, the employee was not performing her working time when the conduct was committed, and the events occurred outside the workplace. As the company failed to establish the existence of a characterised disruption to the undertaking, and as the facts alleged against the employee fell within her private life, they could not constitute a breach of the obligations arising from her employment contract, thereby rendering her dismissal unjustified.

Private life/professional life and the duty of safety

On 5 November 2025, the Employment Division of the *Cour de Cassation* delivered a decision once again illustrating the permeability of the boundary between private life and professional life, as well as the importance of the duty of safety (Cass. soc., 5 November 2025, No. 24-11.048). In this case, the dismissed employee held the position of sales director. Through the company's internal tools, he had, on several occasions, sent messages and images, presented as humorous but clearly not so, to an intern and to several employees, including one of his subordinates. The intern had received pornographic photographs, while the subordinate received, with regard to his homosexual orientation, remarks questioning, *inter alia*, whether such-and-such employee or service provider appealed to him or was homosexual. As for a female colleague of the sales director, she was the recipient of images with racist connotations targeting Malagasy subcontractors. The employee challenged his dismissal, relying in particular on a previous and difficult-to-interpret decision in which the *Cour de Cassation* had held that an employer could not base an employee's dismissal on the content of messages of a racist and xenophobic nature sent through the messaging system made available by the employer, where those messages formed part of private exchanges within a closed group of persons, were not intended to become public, and had only come to the employer's attention as a result of a sending error by one of the recipients, such that they fell within the employee's private life (Cass. soc., 6 March 2024, No. 22-11.016). The employee contended that the disputed messages, extracted from the internal messaging system, as well as the emails and text messages exchanged with colleagues, formed part of private communications within a closed group of individuals, were not intended to become public, and that, consequently, the employer could not rely on their content to justify his dismissal. The Employment Division of the *Cour de Cassation*, however, upheld the position of the appellate judges approving the dismissal of the sales director for serious misconduct, on the basis of the breach by the sales director of the duty of safety owed by every employee to their colleagues pursuant to Article L. 4122-1 of the Labour Code. After noting that the Court of Appeal had found that "*the employee, who held the position of sales director, had made remarks of a sexual, sexist, racist and stigmatising nature, based on sexual orientation, towards certain colleagues, which undermined their dignity due to their degrading nature and which, even though they were presented as humorous and notwithstanding the fact that it emerged from the statements produced by the employee that he was appreciated by a large number of his colleagues, were nonetheless unacceptable within the company, all the more so as they were repeated on several occasions and had caused offence to certain employees*", the Employment Division of the *Cour de Cassation* concluded that "*the Court of Appeal was entitled to infer that the employee's conduct, occurring in the workplace and during working time, and liable to harm the psychological health of other employees, rendered it impossible for him to remain within the company*".

Private life and information relating to family status

An employer may not require an employee to disclose information relating to their private life, in particular their family status, unless there is an objective and demonstrated necessity to prevent an actual conflict of interest. A dismissal based solely on the failure to disclose a personal relationship is therefore null and void in the absence of proof of misconduct or a legitimate ground (Cass. soc., 10 December 2025, No. 24-17.316). In this case, an employee of a company was dismissed for breach of an obligation arising from his employment contract, the employer alleging a lack of loyalty due to the concealment of his union with a former employee of the company who, at the time of his recruitment, was involved in judicial proceedings against the company. The employee brought the matter before the labour court, seeking a declaration that his dismissal was null and void. The lower courts dismissed his claim, noting that the employee had failed to declare his marital relationship, as required by the company's Code of Ethics, and had also falsely stated that his spouse worked for another firm, owing to the ongoing litigation. As this conduct breached his duty of loyalty towards his employer, his employment contract, and the Code of Ethics, the Court of

Appeal held that the dismissal was lawful. The employee lodged an appeal before the *Cour de Cassation*, arguing that the lower courts had failed to assess whether the marital relationship gave rise to any actual conflict of interest, given that his spouse's occupation was unrelated to his duties and was therefore unlikely to affect the proper performance thereof. He further argued that he was entitled to respect for his private life, even during working time and on the employer's premises, and that he was under no obligation to disclose his relationship to his superior. Lastly, even if the facts had been prejudicial, the employee maintained that loss of trust alone does not constitute a valid ground for dismissal, as it does not amount to an objective reason inherent to the employee's person. The *Cour de Cassation* upheld the employee's appeal. Once again, it affirmed the employee's right to respect for private life, clarifying that an employer may not, without infringing that right, require employees to disclose information relating to their family circumstances. The Court found that the existence of pending litigation was insufficient to establish a conflict of interest. Consequently, in the absence of any wrongdoing or any obligation to disclose changes in family circumstances, the dismissal was null and void.

Privacy and freedom of religion

A dismissal based on conduct relating to the exercise of an employee's freedom of religion or private life is discriminatory. Accordingly, the dismissal of an employee for proselytism is discriminatory where the alleged conduct occurred outside working time and the workplace and did not fall within the performance of the employee's professional duties (Cass. soc., 10 September 2025, No. 23-22.722). In the present case, a service agent employed by an association received a formal warning followed by a disciplinary suspension, in particular for having given a Bible to a young girl who was hospitalised and under the association's care. Later dismissed, the employee brought proceedings before the labour court seeking annulment of her dismissal and of the prior disciplinary sanctions, arguing that these measures were discriminatory. The Court of Appeal held that, although the facts occurred outside the workplace and during the employee's private time, the proselytising behaviour constituted misconduct justifying dismissal. It observed that, even in the absence of any teaching or educational duties, the employee was in contact with minors accommodated by the association, which enabled her to convey or impose her religious beliefs upon them. Accordingly, it concluded that the dismissal was based not on the employee's religious beliefs, nor on their expression as such, but on her proselytising conduct, and was therefore justified. The employee appealed to the *Cour de Cassation*, which quashed the appellate judgment and reiterated, with reference to Articles L. 1121-1, L. 1132-1 and L. 1132-4 of the Labour Code, that reasons deriving from an employee's private life cannot, in principle, justify a disciplinary dismissal unless they constitute a breach of an obligation arising from the employment contract. The Court noted that the employee had personally gone to the hospital where the minor had been admitted in order to deliver a Bible, from which it followed that the facts relied upon by the employer had occurred outside the employee's working time and workplace and therefore did not fall within the exercise of her professional duties. It concluded that the disciplinary dismissal, based on conduct arising in the employee's private life and linked to the exercise of her freedom of religion, was discriminatory and, accordingly, null and void.

Other recent developments in the field of employment and labour law

Disciplinary procedures and the right to remain silent

The *Cour de Cassation* confirmed the decision of the Constitutional Council, Decision No. 2025-1160 *Question Prioritaire de Constitutionnalité* (or Priority Preliminary Ruling on Constitutionality) of 19 September 2025, concerning the employee's right to remain silent in disciplinary proceedings under labour law. In these proceedings, the Court had stayed its judgment and referred a preliminary question to the Constitutional Council regarding the constitutionality of the disciplinary procedure prescribed by the Labour Code – specifically, the absence of any obligation for employers to inform employees of their right to remain silent during the pre-dismissal interview for a dismissal on personal grounds or for disciplinary sanctions, even though their statements could potentially be used against them. The Constitutional Council held that this right applies exclusively to criminal or punitive proceedings, stating: "*Neither dismissal for personal reasons nor disciplinary sanctions imposed by an employer within the framework of an employment relationship constitute punishments within the meaning of constitutional requirements*." The dismissal procedures laid down by the Labour Code were therefore held to be constitutionally compliant. Accordingly, the *Cour de Cassation* concluded the stayed proceedings in line with this reasoning, dismissing the procedural irregularity alleged by the claimant (Cass. soc., 10 December 2025, No. 23-15.305).

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Admitted to the Bar in 1997, Lionel Paraire founded Galion Société d'Avocats in 2008. He worked for six years with Cabinet Jeantet Associés and then at Baker & McKenzie, followed by Mayer Brown, where he became Of Counsel.

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