April 2020

Skadden

French Labor News

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This is the first issue of our monthly newsletter detailing recent important legislative developments, case law and events regarding labor law in France.

This edition focuses on recent decisions rendered by French courts, particularly regarding the criminal liability of employers in a situation involving "moral harassment", as well as the latest legislative changes and case law impacting businesses in France, with a focus on digital platforms.

French Government Implements Lockdown and Announces Economic Measures in Response to the COVID-19 Pandemic

March 2020

As COVID-19 continues to spread throughout France, the French government has adopted lockdown measures greatly limiting the movement of individuals and ordering the temporary closure of certain businesses throughout the country. In accordance with the closures, the government also announced financial measures aimed at helping businesses cope with this unprecedented situation. The lockdown measures included closures of public places not essential to the "life of the Nation" and a request to businesses to encourage employees who are able to work from home to do so, allowing for selected employees who are vital to the functioning of the company to leave home to fulfill their duties.

Among the financial measures aimed at helping businesses, the most immediate action concerns temporary layoffs, whereby the French government will provide financial assistance to companies to continue paying employees who cannot work due to the pandemic. A complete list of announced measures can be found here.

Takeaway: These measures are in line with similar measures taken by governments around the world. Given the day-to-day nature of the virus and its impact, companies should pay close attention to these and any additional labor-related measures taken by the French government.

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French Supreme Court Recognizes Existence of Employment Contract Between Uber France and One of Its Drivers

5 March 2020

In a decision with far-reaching consequences, the French Supreme Court ruled that a contractual relationship that existed between Uber France and one of its drivers was an employment contract. The decision will have a major impact on drivers who use the app, as they could claim overtime pay and paid holidays. In addition, the Social Security administration could request that contributions be paid on any amounts paid to the driver by Uber France. In its reasoning, the court argued that the driver was a subordinate of Uber France and integrated in an organized service, since it had the power to give the driver orders and instructions, oversee his performance, and sanction him for any breaches of his obligations. These included, for instance, applying a financial sanction if the driver took an inefficient route or Uber France's unilateral ability to remove the driver's access to the application if accused of "problematic behavior". The court also noted that the driver had no freedom to negotiate or set fares, since they are set contractually, based on Uber's algorithm.

Takeaway: This milestone decision was published, with an explanatory notice, on the Supreme Court's website in French, English and Spanish for maximum publicity. The decision could potentially impact Uber France's operations, in particular given that its general terms could be used by other independent contractors working on a similar platform to argue the existence of an employment contract. Additionally, the decision could be used by other national jurisdictions that have not yet ruled on the status of independent contractors working in similar conditions.

Deliveroo Found Guilty of Breaking Labor Laws, Requalifies Contract for One of Its Bike Deliverymen

4 February 2020

A French labor court found the food delivery company Deliveroo guilty of violating labor laws after an independent contractor fought to requalify the contract to which he agreed in 2015 as an employment contract; the court ordered Deliveroo to pay the employee €30,000 in damages. The court's decision notably relied on the fact that Deliveroo had used GPS tracking software to monitor the employee's location during his work and penalized him based on his performance and deliveries, including by reducing his pay for refusing shifts and threatening to terminate his contract. Deliveroo said it plans to appeal.

Takeaway: This case is a good illustration of how tenuous the boundaries between independent contractors and employees can be for companies with a business model similar to that of Deliveroo, and what best practices could be implemented to limit litigation risk.

Charter for Digital Platforms Deemed Illegal by French Constitutional Court

20 December 2019

The French Constitutional Court deemed illegal the French government's law allowing digital platforms that rely on independent contractors, such as food delivery services, to regulate — as an exception to France's labor laws — what factual elements (*e.g.*, a ranking system that could sanction independent contractors) jurisdictions would be allowed to take into consideration when establishing whether independent contractors are bound by employment contracts. The government's goal was to limit the legal risks on digital platforms by reducing the possibility of independent contractors litigating to obtain the recognition of an employment contract. However, the Constitutional Court ruled the law illegal since it permitted private entities to regulate the definition of an employment contract, which the Court said should be the sole prerogative of legislators.

Takeaway: Digital platforms in France must continue to be particularly aware of the terms under which they hire and work with independent contractors, as their unique business model will not grant them any exceptional status before French courts.

Orange and Its Former Top Executives Found Guilty in Landmark 'Moral Harassment' Case

20 December 2019

Orange and three former top executives of the telecom company were found guilty of "collective moral harassment" for having designed and implemented a reorganization plan that resulted in a wave of work-related suicides and suicide attempts. The ruling marked the first time a French company has been convicted of moral harassment. Each executive, including former CEO Didier Lombard, was sentenced to one year in jail — eight months of which will be on probation — and a €15,000 fine. The court also ruled that the company must pay the maximum fine under the law of €75,000. Lombard has denied wrongdoing and will appeal the decision. Orange said it will not appeal.

Takeaway: Although the specific circumstances of this case are somewhat extraordinary, the severity of the sanctions and the manner in which the case was covered by mainstream media are strong indicators of how seriously claims of moral harassment need to be taken.