

French Court Dismisses Union Claims in First-Ever Class Action Labor Discrimination Case

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03 / 04 / 21

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Class actions were introduced into French law in 2014 via the so-called Hamon Law, though the scope was limited to consumer law issues. In November 2016, the law was expanded to include discriminatory practices in the workplace and with respect to recruitment. Individuals who claim to have suffered from a similar damage can collectively mandate a trade union to file a claim in court in order to obtain an injunction to end the alleged breach and/or damages. Such a class action must relate to direct or indirect discrimination based on the same grounds for all plaintiffs and attributable to the same employer. Prior to filing a claim in court, the plaintiffs must give notice to the defendant through their elected trade union. The employer has four months to answer the notice and take necessary measures to end the presumed breach, and the plaintiffs can file their class action only after the four months have passed.

In the first decision on a class action labor discrimination case in France, issued on December 15, 2020, the Paris Judicial Court (“Tribunal Judiciaire”) ruled against the “Confédération Générale des Travailleurs” (CGT) union, which claimed that all of its union representatives at a French company had been discriminated against over the course of their careers. The union had alleged that its elected members did not experience the type of career advancement that other employees in similar positions enjoyed.

The court dismissed the union’s claims in their entirety on the grounds that the union could only invoke acts of discrimination that occurred after 2016, when the law was expanded to allow class actions for discrimination matters. Since the CGT case was brought in 2017, admissible facts were considered to relate to a period too short to enable the court to assess the existence of acts of discrimination in terms of career advancement or remuneration.

To justify the nonretroactivity of the 2016 law, the court relied on Article 92, Section II of the 2016 law, according to which class action on discrimination issues were “applicable only to actions for which the event giving rise to liability or the breach is subsequent to the entry into force of this law.”

The legislators who crafted the law appear to have intended for it not to be retroactive, but according to French legal scholars, the law is unclear on how to apply the nonretroactivity principle. The law could mean that discrimination that ended prior to the 2016 law could not be the basis for a class action, but discrimination that started prior to the 2016 law and was still ongoing could.

The decision is under appeal, but the “Défenseur des Droits,” a French independent administrative authority with a focus on protecting human rights and fighting discrimination, has intervened on behalf of the GCT union and has already stated that it would be necessary to review the terms of the 2016 law if the decision is upheld.

In addition, the CGT union did not try to prove that every individual plaintiff had been discriminated against. Rather, it used a statistical method called the “panel method” to prove that at least a significant part of the union, which was deemed to be representative of all the plaintiffs, had been discriminated against. Such an approach had never been used in a French labor court before, and discrimination claims usually require proof of the existence of discrimination for each and every plaintiff.

Should this approach be confirmed by the court of appeal, employers should strongly consider performing regular equal pay audits that rely more heavily on statistical tools to establish the absence of discrimination and prevent future class actions.