

France

New Law Eases Employer's Redeployment Obligation prior to Economic Dismissal

By Mathilde Houet-Weil (mhweil@weil-paris.fr), Partner, Weil & Associés, Paris, France

A new Act was passed in France on May 4, 2010, which reduces the scope of the redeployment obligations resting on an employer before any economic dismissal (individual or collective). The draft Act had been commented in an earlier newsletter¹. According to this Act, an employer is now only required to search for redeployment positions that offer "equivalent compensation" and meet certain restrictions expressed by the employee.

In particular, the new law sets forth a preliminary process for employers who belong to a corporate group with subsidiaries outside of France. That is, prior to researching alternative positions within such subsidiaries, the employer must submit a questionnaire to each concerned employee, asking whether the employee would consider relocating abroad and if so, whether such employee has any restrictions in terms of location and/or employment conditions. The employee has six working days to answer the questionnaire. Failure to respond is tantamount to a refusal by the employee to consider any offer for an alternative position located abroad.

The employer's obligation to offer alternative positions abroad is limited to positions that meet the restrictions expressed by the employee in the questionnaires. Of course, even if the offer complies with the employee's restrictions, the employee can always refuse the offer. The only requirement is that the offer must be written and sufficiently detailed to enable the employee to take his/her decision knowingly.

The new Act embraces the fundamental requirement in France that, prior to dismissing one or more employees on economic grounds, an employer has the obligation to try to find new employment positions for the concerned employees, either within the employer's enterprise or within its corporate group. No dismissal on economic grounds is allowed until the employer has unsuccessfully explored and offered redeployment possibilities in France or abroad. Failure to do so exposes the employer to damages for unfair dismissal.

Before the new law, the employer bore the strict obligation to offer each and every redundant employee any redeployment position available within its corporate group, whether in France or abroad, whatever the terms of employment, and without considering the level of compensation.

The new Act was passed in reaction to several highly publicised cases in which employers, who delocalized to low-cost countries, offered manufacturing positions in such countries under local terms of employment, meaning extremely low compensation for European standards. To name a few recent examples, Continental has offered positions in Tunisia for a monthly wage of 137 euros; Philips has offered positions in Hungary for a monthly wage of 450 euros; and Carreman (textile industry) has offered positions in India for 60 euros / month. Such offers were labelled "indecent," adding to the anger and frustration of the concerned employees who were already undergoing the painful process of being made redundant. These "job opportunities" were perceived as provocative; blue-collar workers very rarely considering moving abroad in any case.

On the other hand, failing to extend such offers, before the new law, also drew serious consequences. In one well-known case, a French socks manufacturer, Olympia, relocated its production to Romania. In agreement with its Works Council, Olympia did not offer the new positions in Romania, for a monthly wage of 110 euros, to the employees whose jobs were being eliminated. A group of 47 dismissed employees filed claims for damages for not having been offered the option to relocate to Romania to fill these positions. As a result of these claims, Olympia was ordered to pay 2.5 million euros to these 47 former employees -- nearly the equivalent of 30 to 40 months salary for each of them -- in addition to the indemnities

¹ <http://www.abanet.org/labor/intlcomm/newsletter/2009/11/france.shtml>

already payable per the collective redundancy plan. Unable to face this financial charge, Olympia filed for bankruptcy, which then jeopardized the positions of the 300 remaining employees at a time when the company was on the verge of recovering. A second collective redundancy plan has since been implemented, causing roughly 100 additional employees to lose their jobs.