

 **EXPAND TO FRANCE**

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ABOUT MGG LEGAL



Being an employment law boutique with international connections, MGG Legal regularly advises foreign groups wishing to invest or already settled in France.

One of MGG Legal's key strengths is its ability to combine expertise in French employment and labour law with a keen understanding of the legal cultures of other countries (our team studied or worked in foreign countries, e.g. UK, Germany).

MGG Legal along with its partners form a dedicated team (consisting of accountants, corporate lawyers and payroll specialists) capable of providing a turnkey service to foreign investors. We take care of all the formalities so that our clients can focus on the commercial development of their business.

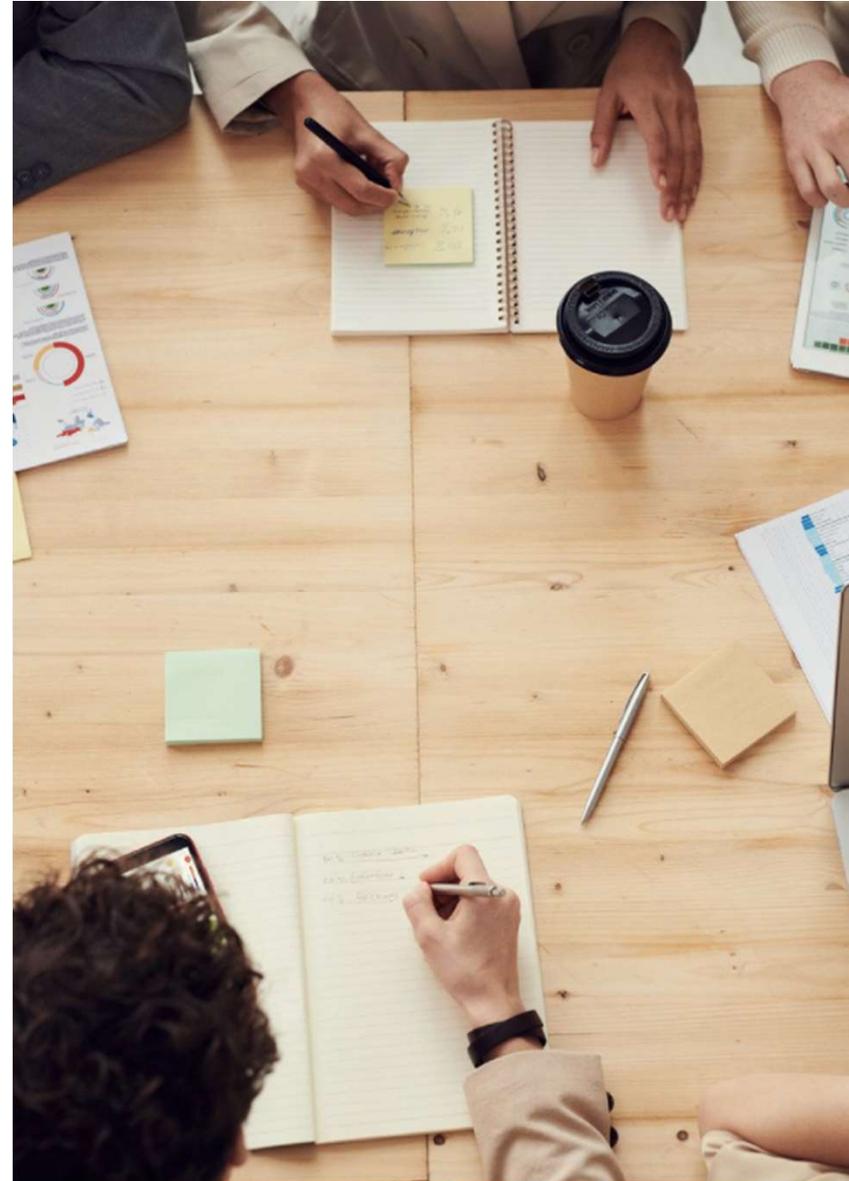


CONTENTS

- 1 MAIN HR CONSIDERATIONS WHEN EMPLOYING STAFF IN FRANCE**
- 2 IMMIGRATION ISSUES WHEN EXPANDING TO OR MANAGING YOUR BUSINESS IN FRANCE**

01

MAIN HR CONSIDERATIONS WHEN EMPLOYING STAFF IN FRANCE



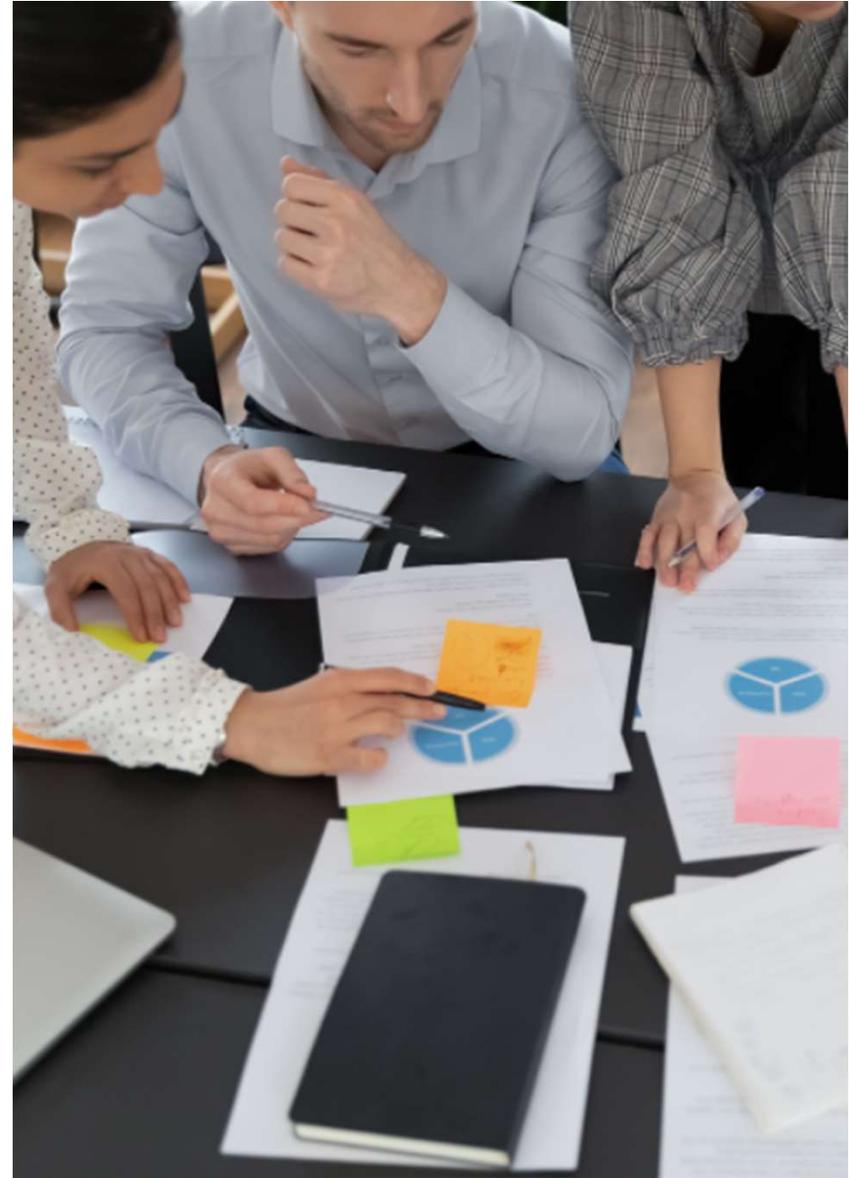


CONTENTS

- 1 WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE?**
- 2 WHAT ARE THE RULES APPLICABLE TO WORKING TIME?**
- 3 HOW IS AN EMPLOYMENT CONTRACT TERMINATED?**

1

WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE IN FRANCE?



WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE?

01 EMPLOYMENT AND OTHER STATUS

In France, an individual may work with a company under 3 different status:

- ⇒ Employee
- ⇒ Corporate officer: the corporate officer is the company's legal representative and is subject to corporate law regulations.
- ⇒ Self-employed / Consultant: The consultant concludes a service agreement, subject to commercial law and is therefore independent from the company.



The most suitable and compliant choice between the 3 status depends on several factors, including the autonomy of the individual, their level of responsibility and the range of powers the company wishes to give them.

1.1

INDUSTRY-SPECIFIC CBA

01 THE INFLUENCE OF THE INDUSTRY-SPECIFIC CBA

French employment law is structured around 5 levels of mandatory rules:

- EU law and the French constitution
- The French Labour Code
- The collective bargaining agreement applicable to the industry
- Company-level agreements
- The individual employment contract

The CBA is industry-specific, negotiated between employees and employers' trade union representatives at **national level**.



When setting up a business in France, it is necessary to determine whether a CBA is applicable in your industry.

WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE IN FRANCE?

01 THE INFLUENCE OF THE INDUSTRY-SPECIFIC CBA

The applicable CBA is determined:

- ⇒ According to the employer's main activity
- ⇒ Regardless of the employee's activity.

In some cases, CBAs have a geographic scope smaller than the national territory, i.e. a *Région* or a *Département*, which means that the CBA differs depending on where the headquarters or premises are located.



When a foreign company directly hires an employee in France under a French employment contract, it must be determined whether a CBA is applicable according to the company's main activity in France.

01 THE INFLUENCE OF THE INDUSTRY-SPECIFIC CBA

- ⇒ An industry CBA covers broad aspects of the contractual relationship.
- ⇒ In some areas, the French Labour Code sets out mandatory public order provisions, which cannot be altered in any way by a CBA or an employment contract.
- ⇒ In other areas (e.g. regarding working time arrangements), the French Labour Code only provides for general rules and specifies that the CBA (or a company-level agreement) can set out the applicable terms and modalities (within legal boundaries).
- ⇒ When there is a conflict of provisions between the CBA and the employment contract, the more favourable provisions apply, whatever their source.

1.2

TYPE OF EMPLOYMENT CONTRACT

WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE IN FRANCE?

01 PERMANENT / FIXED-TERM EMPLOYMENT CONTRACTS

- ⇒ In France, the **permanent contract** is the standard contract under which an employee must be hired.
- ⇒ The French Labour Code strictly regulates the circumstances under which a fixed-term contract can be concluded with an employee.
- ⇒ A fixed-term contract cannot be used to fill in a position that pertains to the company's normal and permanent activity.



There is no legal provision authorizing to use a fixed-term contract for reasons linked to the launch of a new subsidiary or a new product in France.

WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE IN FRANCE?

01 PERMANENT / FIXED-TERM CONTRACTS

Main differences between permanent / fixed-term contracts (general rules)

	Permanent contracts	Fixed-term contracts
Duration	Indefinite	In general 18 months
Reasons to conclude	No reason	Limited reasons defined by the French Labour Code
Renewal	/	Twice maximum
Notice period	Yes, which duration depends on employee's length of service and status	No. Contract ends at the term provided in the contract
Termination payment	Yes, severance payment, which amount depends on the length of service and status	Yes, end of contract payment, equal to 10% of the total gross remuneration paid during the contract

1.3 OTHER FORMALITIES

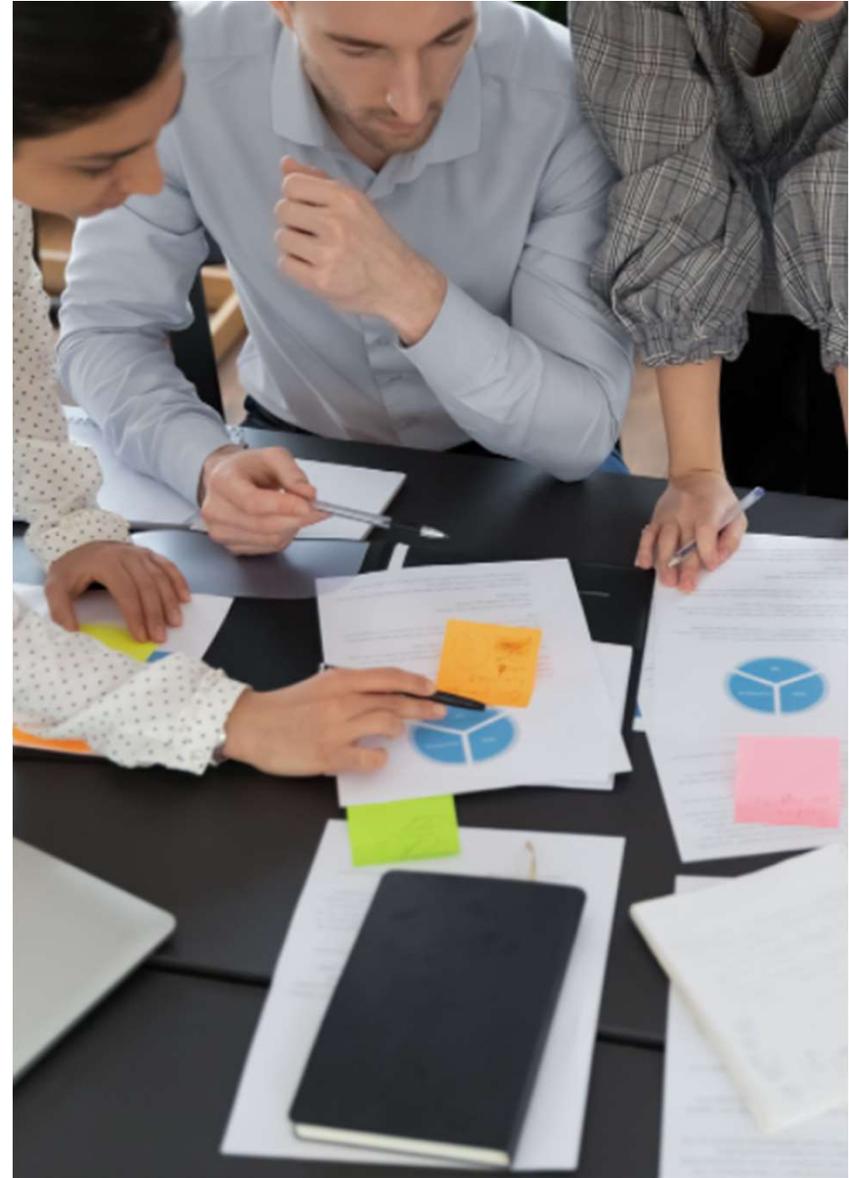
WHAT SHOULD BE KEPT IN MIND WHEN HIRING AN EMPLOYEE IN FRANCE?

01 OTHER FORMALITIES

- ⇒ The employer must carry out a mandatory pre-hire declaration with the Social Security administration and register the employee in a statutory staff ledger.
- ⇒ The employee must be registered with the mandatory additional retirement fund, the health insurance and, if applicable, a life/disability scheme.
- ⇒ Upon hiring of the first employee, the employer should carry out an occupational risks audit and draft a statutory risk assessment document (« DUER ») which includes all the occupational risks identified in the audit.

2

WORKING TIME ARRANGEMENTS



2.1

MANDATORY REGULATIONS

WORKING TIME ARRANGEMENTS

02 MANDATORY REGULATIONS

French Employment law regulates the maximum working time employees may work and the minimum rest that they are entitled to.



Maximum weekly working time	48 hours in any given week 44 hours on a 12-consecutive-week average
Maximum daily working time	10 hours
Minimum daily rest	11 hours
Minimum weekly rest	35 hours (24h of weekly rest + 11h of daily rest)

Under certain strict conditions provided by statutes and the applicable CBA, these limits may be overridden.

2.2

**THE STANDARD
WORKING SCHEME:
35 HOURS PER WEEK**

WORKING TIME ARRANGEMENTS

02 THE STANDARD WORKING SCHEME: 35 HOURS PER WEEK

- ⇒ 35 hours is **not a limit but a threshold**.
- ⇒ Any hour worked over this threshold triggers overtime.
- ⇒ Overtime is assessed week by week.

- ⇒ In the absence of a collective agreement (industry CBA or company-level), the enhanced pay rate is 125% for the first 8 hours worked and 150% for any extra hour worked.
- ⇒ Overtime may be worked within an annual quota.



If no specific working time arrangement is provided in the employment contract, the standard scheme that applies is the 35-hour scheme.

2.3

**ALTERNATIVE
WORKING TIME
ARRANGEMENTS**

A

WEEKLY WORKING TIME IN HOURS SCHEME

(« *Convention de forfait en heures sur la semaine* »)

When it can be expected that employees will regularly work over 35 hours, a higher weekly working time (for example, 39 hours/week) can be agreed upon in the employment agreement.

The scheme must be agreed upon **in writing**, either in the employment agreement or in an addendum to it signed by the employee.

Hours worked over the fixed amount of overtime hours must be paid on top of the agreed remuneration.



The salary agreed upon in the employment contract must include the payment of the hours worked above 35h/week (at an enhanced rate).

B

WORKING TIME IN DAYS SCHEME

(« *Convention annuelle de forfait en jours* »)

The working time in days scheme removes any reference to worked hours and determines the employee's working time by reference to a certain number of days worked during the year.

Considering the flexibility of this scheme, only some clearly defined categories of employees are eligible to this working time scheme.



The working time in days scheme must provide for additional rest days on top of mandatory paid and bank holidays, which are calculated from the number of days worked in the year.

02 ALTERNATIVE WORKING TIME ARRANGEMENTS

The working time in days scheme must be provided for by either a CBA or a company-level agreement which must set out the terms and conditions of validity.

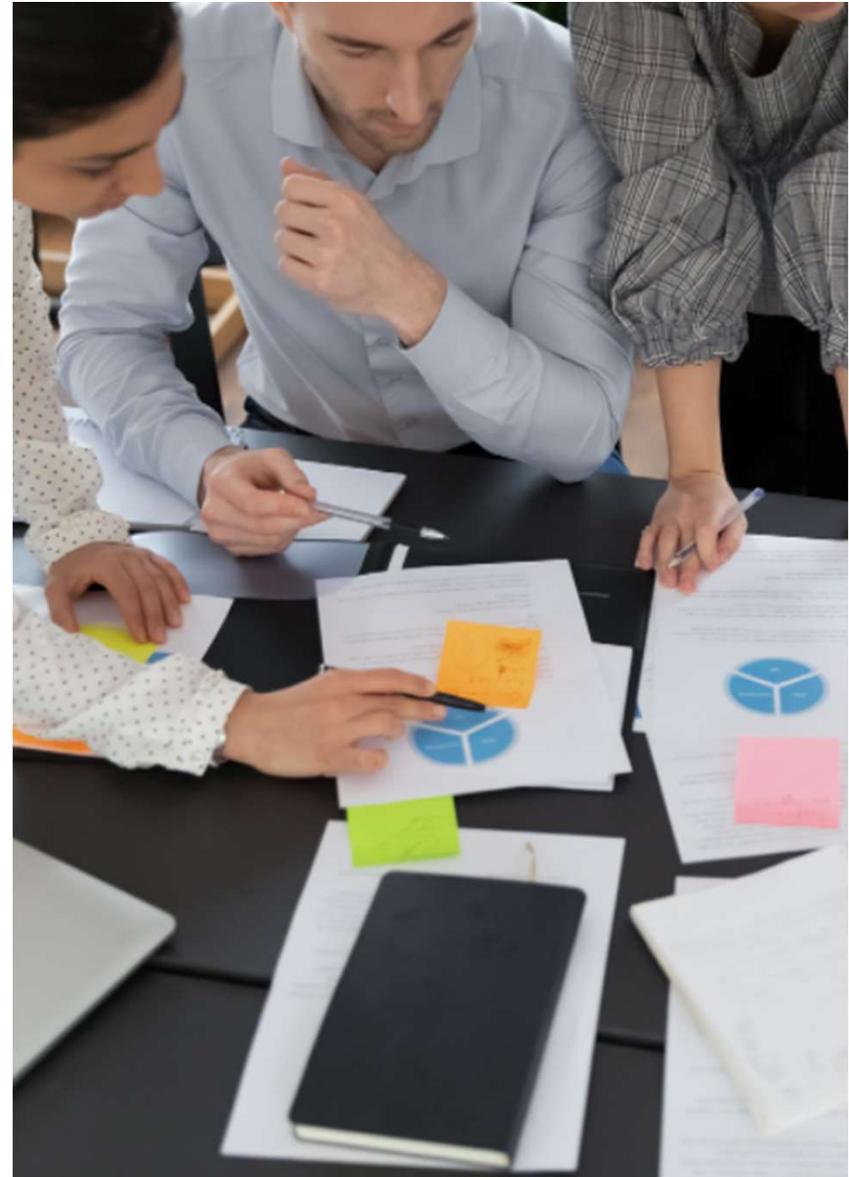
Safeguard measures must be implemented (monitoring of the number of days worked by the employee, implementation of a procedure by which the employee may alert the company if their workload is too high, regular interviews).



The terms and conditions set in the CBA or collective agreement must be strictly respected to guarantee the enforceability of the scheme.

3

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT



3.1

GROUNDS FOR DISMISSAL

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03 GROUNDS FOR DISMISSAL

The Labour Code and case law admit various grounds to dismiss an employee. They may be classified in 2 broad categories:

- ⇒ Reasons pertaining to the performance of the employment contract
- ⇒ Economic reasons, i.e. redundancies



Whatever the reason, in case of litigation the Employment Tribunal will ensure whether the dismissal is based on a real and serious ground that can actually be demonstrated.

3.2

**PROCEDURE OF DISMISSAL
(LINKED TO THE
PERFORMANCE OF THE
EMPLOYMENT CONTRACT)**

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03 PROCEDURE (EXCLUDING REDUNDANCIES)

The dismissal procedure implies 3 main steps:

- ⇒ The invitation to a preliminary meeting.
- ⇒ The compulsory preliminary meeting which can only be held on the 6th working day following the date of **receipt** of the invitation.

The aim of the meeting is to present the grounds for the contemplated dismissal and to allow employees to defend their case.

- ⇒ The dismissal letter may be sent, at the earliest on the 3rd working day following the preliminary meeting and no later than 1 month following the meeting if the ground for dismissal is a misconduct.



During the preliminary meeting, the dismissal is only contemplated.

3.3

**PAYMENTS OWED TO
THE EMPLOYEE UPON
DISMISSAL**

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03

PAYMENTS OWED TO THE EMPLOYEE UPON DISMISSAL

Accrued holiday payment in lieu	When the employee has not taken all their holiday entitlement
Variable compensation	If the event that triggers the payment of the variable compensation occurs <u>before</u> the end of the employment contract
Notice period	In any case, except for gross misconduct
Severance payment	In any case, except for gross misconduct

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03 PAYMENTS OWED TO THE EMPLOYEE UPON DISMISSAL

Subject to more favourable provisions of an industry CBA or a company-level collective agreement, the statutory notice period, depending on the salary's length of service, is as follows:

< 6 months	Subject to collective agreement provisions or local or professional customs
Between 6 months and under 2 years	1 month
> 2 years	2 months

The employer may put the employee on garden leave.



Most industry CBA contain derogatory provisions regarding duration of the notice period.

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03 PAYMENTS OWED TO THE DISMISSED EMPLOYEE

If no other applicable provision is more favourable to the employee, the severance is calculated according to statutory provisions.

The statutory calculation method is the following (as of 8 month length of service):

- ⇒ 1/4 of the average gross monthly salary for each year of service up until 10 years
- ⇒ 1/3 of the average gross monthly salary for each year of service from the 10th year onwards



For senior roles, the employment contract may include a golden parachute.

3.4

**DISPUTES AND
DAMAGES
ENTITLEMENT**

TERMINATION OF A PERMANENT EMPLOYMENT CONTRACT

03 DISPUTES AND DAMAGES ENTITLEMENT

Upon termination of the employment contract, the employees may bring various potential claims (among others):

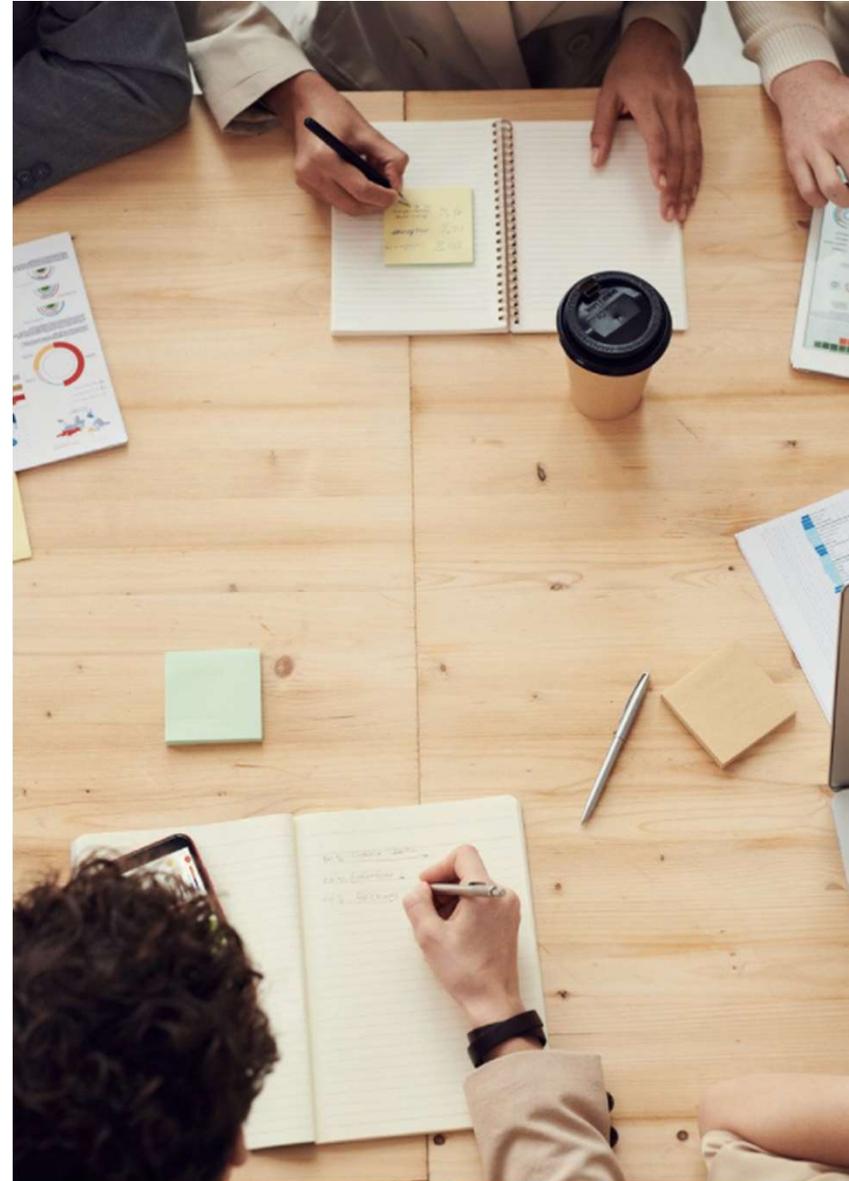
- ⇒ Overtime
- ⇒ Salary back payments
- ⇒ Damages for breach of health and safety regulations
- ⇒ Damages for unfair dismissal



Employment Tribunals may award damages for unfair dismissal that are limited in range depending on the employee's length of service. It is therefore possible to anticipate the employee's claim prior to the dismissal.

02

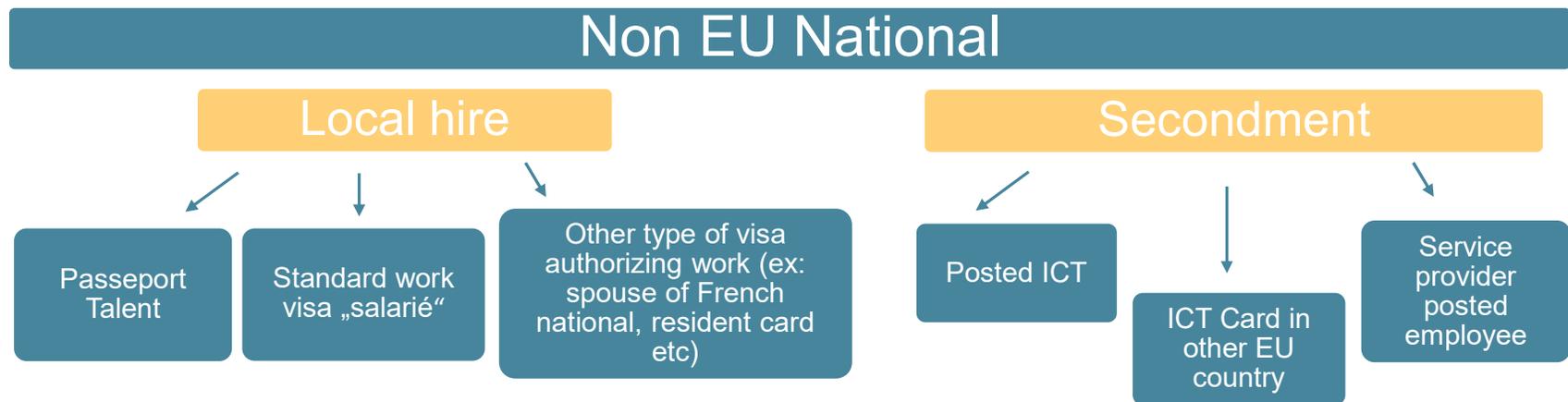
IMMIGRATION ISSUES WHEN EXPANDING TO OR MANAGING YOUR BUSINESS IN FRANCE



02 EMPLOYMENT IMMIGRATION CATEGORIES



- ⇒ Working is permitted with a visa or a residence permit allowing employment
- ⇒ Employment is mostly linked to specific employer and job – limitation may be revoked over time
- ⇒ Some dependents may obtain a visa/residence permit allowing employment without limitations



02 NON-COMPLIANCE & PENALTIES

Non-compliance with French laws, such as:

- ▶ Residing in France without a relevant valid residence permit/visa
- ▶ Performing activities French law considers as working without the required work title
- ▶ Not requesting a residence permit to replace a visa upon expiration
- ▶ Not validating the visa with the OFII or not completing immigration medical and civic sessions
- ▶ Employment under different conditions than those the work permit is based on or its explicit conditions/limitations.

French law considers non-compliance with related laws a criminal offense and penalties may include:

- ▶ Financial penalties for employees of up to € 5,000 and for employers of up to €500,000 ;
- ▶ Incarceration of employee and/or responsible person of up to 5 years ;
- ▶ Visa refusal for a certain number of years

02 TYPICAL CHALLENGES



CHALLENGES	SUGGESTED PRECAUTION
Birth and Marriage certificates	<p>Some documents are quite often not compliant with French immigration requirements (names not spelled in full, same as passport, maiden names not mentioned, etc.).</p> <p>If the certificate is not compliant, an affidavit can be obtained in some countries.</p>
Salary level	<p>Only <u>gross base salary</u> is considered for immigration application. Other payments (per diems, allowances) are not taken into account in the calculation of the base salary.</p> <p>Labour authorities might order an investigation by special department concerning salary level which must be comparable to other employees occupying a similar position. Ensure that actual salary paid matches at least the salary mentioned in the application.</p>
Dependents	Spouses of visa holder “salaré” and “travailleur temporaire” are only eligible to “visitor” visa.
Visa Appointments	Book appointments <u>early in the procedure</u> ; not always available.

02 TYPICAL CHALLENGES



CHALLENGES	SUGGESTED PRECAUTION
<p>Lengthy Governmental Processing Time</p>	<p>New or Renewal process should be started at least 3 months before the expiry date of the immigration documents or estimated start date of employment in France, taking into consideration governmental processing time & each Immigration Office’s specific requirements.</p>
<p>Residence permit application / registration</p>	<p>Residence permit application needs to be submitted within 2 months upon arrival with the police office (prefecture) competent for the place of residence. Housing search should be finalized ideally in max 6 weeks.</p>

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THANK YOU !

