

# ARTICLE

## UPDATE : FRENCH SUPREME COURT DEEMS ENFORCEABLE THE SO-CALLED “MACRON SCALE” PROVIDING FOR CAPPED DAMAGES IN CASE OF UNFAIR DISMISSAL

Employment and Social Security Law | 19/07/19 | Marie-Hélène Bensadoun Zoé Rival

The French Supreme Court has just put an end to the suspense over the enforceability of the so called “Macron scale”.

The Supreme Court has issued two opinions on July 17, 2019.

Since the 2017 Macron Statutes, Article L. 1235-3 of the French Labour Code provides that in case of claim for dismissal without cause, Labour Courts must allocate damages to former employees ranging between a minimum and a capped amount, based on length of service with the former employer.

This scale was intended to provide security and predictability to Employers, and provide for an assessment of the potential costs on top of statutory payments, in case of unfair dismissal.

The French Constitutional Council (*Conseil Constitutionnel*) as well as the French State Council (*Conseil d'Etat*) had already ruled that this scale was valid and enforceable.

However, certain trade unions considered that such scale violated Article 24 of the European Social Charter and Article 10 of Convention No 158 of the International Labour Organization (ILO), and some Labor Courts have ruled against the scale, considering that it was indeed violating the European and International legislation.

Ultimately, the French Supreme Court was referred for opinion on this matter by two Labour Appeals Courts (Toulouse and Louviers).

The Supreme Court has just ruled against this argument, clearly holding that Article 24 of the European Social Charter is not applicable in disputes between employers and employees and that the “Macron scale” is not contrary to Article 10 of ILO Convention No 158 since it provides for adequate compensation.

From a practical standpoint, what are the implications of these two opinions?

While these are not Supreme Court rulings, it is likely that all Labour Courts will now comply with the Supreme Court's opinions, even though they are not legally binding.

There are currently two pending cases before the Reims and Paris Courts of Appeals which decisions are expected for 25 September. They should, in principle, follow the Supreme Court's opinions.

As of now, we consider that in the context of settlement negotiations and litigation, the Macron scale will apply. However, we would like to remind you that claims based on other grounds than dismissal without cause, inter alia, overtime, harassment, bullying or discrimination are not covered by the Macron scale. Accordingly, extra damages could be awarded to employees in case of successful claim on such grounds.

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