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LABOUR & EMPLOYMENT LAW : 3 QUESTIONS TO GHISLAINE ZAIDI & BORIS LÉONE-ROBIN

Employment and Social Security Law | 07/03/24 | Ghislaine Zaidi Boris Léone-Robin

More than 10,000 athletes from 206 different countries will be taking part in the Paris Olympic and Paralympic Games, which will attract millions of spectators and television viewers from all over the world. At first glance, it is hard to imagine how such an international sports event could be governed by... Franco-French labour and social security laws. And yet, with the event taking place in France, French employment law will be omnipresent. During the Games, of course, but also before, and this applies to all employers, whether French or foreign, in the sports sector or not.

As France prepares to welcome an unprecedented number of foreign workers into the country, we put three questions to Ghislaine Zaidi and Boris Léone-Robin, both lawyers in our labour & employment law department, to identify the main points to watch out for. Here are their answers.

I am a French employer in a sector of activity linked to the Games. How shall I cope with the exceptional workload?

Companies directly involved in organising the Olympic and Paralympic Games will undoubtedly face a temporary surge in activity. They will naturally be able to turn to additional manpower (temporary workers, fixed-term contracts, trainees, etc.) but also to use the flexibility allowed in terms of working hours.

- Working on Sundays

The Olympic and Paralympic Games have been endowed with their own specific exemptions in terms of Sunday rest. There is a decree stipulating that companies involved in activities specific to the organisation and staging of the Olympic Games may - during the period from 18 July to 14 August 2024 - suspend weekly rest periods without prior administrative authorisation. Companies must nonetheless inform the Labour Inspectorate beforehand. The Employment Ministry has specified that this derogation will only apply, however, to activities that are essential to the "smooth running and success" of these Games, as well as to certain employees. Debates on this concept are therefore to be expected.

In addition to this derogation, collective bargaining agreements may also provide for flexibility in this area.

- Working hours/Night work

There are no specific exemptions for the Olympic Games as regards working hours and night work. The "usual" legal and collective bargaining provisions must therefore be used to deal with any exceptional overload of activity, particularly as regards night work, exceptions to the minimum daily rest period of 11 consecutive hours and the maximum weekly working time, etc.

Note that some of these exemptions require prior authorisation from the Labour Inspectors and consultation with the Works Council. They must therefore be anticipated and justified.

- Holiday pay

For companies directly involved in the organisation of the Olympic and Paralympic Games, the question also arises of taking paid leave during this crucial period. The companies concerned may, after consultation with the Works Council, take measures to adjust the leave period during these events, if necessary by offering incentives in return (exceptional bonus, additional leave, longer period of leave carry-over, etc.).

But we should not forget the companies that are not directly involved in the organisation of the Games, and which also have challenges to meet, that need to be anticipated now (accessibility of workplaces, teleworking, imposing holidays, etc.).

Will foreign employers have to apply French employment law during the Games? For athletes too?

Whenever an employee - whether a sports player or not - is working in France, he or she is subject to French social legislation, even for a limited period such as the Olympic and Paralympic Games. The fact that the employer is foreign is irrelevant.





In practical terms, this means that one of the world's most complex employment legislations will be applied to employers who are nowhere near mastering all its subtleties. This can be a perilous task, as there are many rules that may apply, and the penalties for non-compliance - ranging from a simple administrative fine to criminal sanctions for undeclared work - are very severe. Employers therefore need to anticipate the arrival of this foreign workforce as of now, and to do this they need to be prepared on following questions:

- What administrative procedures should be followed before foreign employees come to France?

All employers must apply for an employment permit to hire a foreign worker from outside the EU, and must also declare in advance any employee seconded to France from abroad and appoint a representative in France. Of course, there are exceptions, particularly for international sporting events. However, and this is where the difficulty lies, these exceptions are not generally applicable to all nationalities or all types of employment. A case-by-case analysis is therefore necessary.

- Which French regulations apply to employees during the Games?

Throughout the period of secondment, the seconded employee in France is guaranteed a core set of rights derived from French law. There are many rules that apply, including minimum pay, professional expenses, health and safety rules and so on. To ensure compliance with these rules, documents - that sometimes need to be translated into French - must be immediately available in the event of an inspection. It is therefore important to identify the rules to be followed.

- What social security cover do employees have during their stay in France?

The situation of each employee must be examined in the light of his or her usual social security system and the existence of international social security agreements between his or her country of origin and France. In some cases, all that is required is a prior declaration that the original social security cover has been maintained. In some cases, however, social security contributions for activities carried out in France during the Games will have to be paid in France.

As you can see, the answers to these questions will depend on the situation of each employee. The work required may therefore take a long time and 4 months before the start of the Games will not be too much time to anticipate and deal with these subjects.

Should audits by the labour and social security authorities be expected during this period?

The authorities have not issued any statement - and are unlikely to do so - on the frequency and extent of the audits that will be carried out during the Games. Usually, with the summer holidays in full swing, the summer period is fairly slow in terms of inspections by the employment authorities or the Social Security Contribution Collection Office (Urssaf). This year, however, we expect inspectors to be encouraged to take their leave at a different time.

In terms of content, we can already identify a number of subjects that should be given particular attention. The Employment Ministry recently published a "*Guide to major sporting events*", listing the "*main offences observed at sporting events which require particular vigilance*". And it is highly likely that these offences, which are frequently observed in similar cases, are also the most frequently monitored. These include:

- compliance with formalities relating to the recruitment of French employees (DPAE form, etc.) and foreign employees (secondment declarations and authorisation requests),
- the use of subcontractors and service providers (compliance with due diligence obligations "attestation de vigilance", for example),
- offences relating to working hours (maximum working hours, distribution of working hours, rest periods, etc.),
- compliance with hygiene, health and safety rules.

But above all, checks will probably be stepped up on one of the causes that has already been made a national priority: the fight against undeclared work and, in particular, the use of any alternative status to salaried employment. This priority has been set for a long time: in the plan to combat illegal employment for the period 2023-2027 presented in spring 2023, the government had already indicated that it wanted the Games to be "exemplary" in this respect.

"Fake" self-employed/freelancers, "fake" trainees, "fake" volunteers, "fake" subcontractors: these are just some of the issues that should keep inspectors particularly busy during the Games...

