



# ARTICLE

## DISMISSAL FOR GROSS MISCONDUCT IN FRANCE: WHAT HAPPENS IF THE DATE OF THE MISCONDUCT IS MISSING?



Employment and Social Security Law | 04/11/24 | Fabienne Haas Lina Torresilla Spinella

The process of dismissing an employee for gross misconduct in France is highly regulated, requiring employers to follow specific procedures to avoid legal challenges. Among these, sending a detailed letter of dismissal is a critical step. This letter must clearly outline the reasons for dismissal, as any additional reasons or facts discovered later are inadmissible before the French labor courts. Since September 2017, the Macron Statute has allowed employers to provide more detailed information regarding the dismissal within 15 days of notification.

However, what happens when a crucial detail—the date of the misconduct—is missing from the dismissal letter? This question was recently addressed by the French Supreme Court (Cour de Cassation) in a ruling on September 11, 2024 (Cass. Soc., 11 September 2024, n°22-24.514), offering employers a potential second chance to defend their decision.

**Case Overview:** In the case at hand, an employee was dismissed for gross misconduct involving embezzlement. The employer sent a letter of dismissal, which included the grounds for dismissal but failed to specify the date of the misconduct. The employee challenged the dismissal in the Rennes Court of Appeals, arguing that the missing date invalidated the letter, thereby invoking the two-month statute of limitations for launching a dismissal procedure. The Court of Appeals sided with the employee, deeming the dismissal unfair.

**Supreme Court's Decision:** Contrary to the Appeals Court's ruling, the French Supreme Court held that the omission of the date in the letter of dismissal did not automatically invalidate the dismissal. The Court ruled that as long as the employer can present sufficient documents and evidence, including a timeline of the misconduct and the discovery of facts, the dismissal remains valid. The Court's decision underscores the importance of employers keeping detailed records of both the timeline of the misconduct and the discovery of those facts.

### Key Takeaways for Employers:

**Document and preserve evidence:** Employers should always keep meticulous records of gross misconduct, including details of when the misconduct was discovered and the related evidence. Supporting documents and affidavits from witnesses or third parties may be essential in defending a dismissal case.

**Include dates when possible:** Although the Court ruling allows some flexibility, it is still advisable for employers to include the date of the misconduct and the discovery of the facts in the dismissal letter to avoid unnecessary legal disputes.

This ruling provides some relief for employers who may have initially overlooked critical details in their dismissal letters, but it is a reminder of the importance of thorough documentation and precision in handling dismissals for gross misconduct.

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