La Kanzlei

Dismissal for personal reasons in France

Arbeitsrecht

Content

Practical tips

- Allow several weeks to comply with French dismissal procedure.
- Pay attention to the wording of the dismissal letter.
- An invalid dismissal leads to the reinstatement of the employee only in exceptional cases. It is much more likely that the employer in France will be ordered to pay damages to the individual: to reduce risks, try to justify the dismissal as much as possible.
- Or consider concluding a mutual termination agreement of the contract.

[1] Conducting the pre-dismissal meeting

Unlike labour law in the USA, French labour law requires a cumbersome and formalistic termination procedure. The employer must hold a meeting with the employee before issuing the notification of his or her dismissal. The employee must be invited in writing to the pre-dismissal meeting. The invitation letter must comply with mandatory formal requirements and should either be sent by registered mail with acknowledgement of receipt or handed over personally to the employee against acknowledgement of receipt. At least a 5-day period must elapse between the reception of the invitation letter by the employee and the date of the pre-dismissal meeting.

During the meeting, the employer shall inform the employee about the reasons for considering his or her dismissal and give the employee the opportunity to explain himself or herself on said reasons.

Under no circumstances the employer may give, during the meeting, the impression that a final decision has been made with regard to the dismissal.

The notification of the dismissal can be delivered to the employee at the earliest on the 3rd working day following the pre-dismissal meeting. The notification of dismissal must be sent by registered letter with acknowledgement of receipt.

a. Can the pre-dismissal meeting take place over the phone?

Unfortunately, no. The pre-dismissal meeting must take place in the context of a face-to-face meeting. Some French courts of appeal have recognized the possibility of organizing a pre-dismissal meeting by video conference, but this case-law is not considered as being confirmed.

b. May lawyers or other persons take part in the pre-dismissal meeting?

The pre-dismissal meeting must be conducted by a member of the company and can therefore not be conducted by your lawyer. In principle, the pre-dismissal meeting is conducted by the managing director. For practical reasons however, the managing director may be represented by an employee of the company responsible for this (e. g. the HR manager or the employee's line manager).

The employee may be assisted during the pre-dismissal meeting by certain persons, but s.he should not be assisted by more than one person.

2 When and how do I announce the reasons for the dismissal?

The reasons for which the employer is considering terminating the employee must be communicated orally to the employee during the pre-dismissal meeting. However, as indicated above, the employer cannot indicate during the pre-dismissal meeting that a definite decision to actually terminate the employment has already been taken: on the contrary, the employer must indicate during and especially at the end of the meeting that it is still under review and that no final decision has already been made.

Furthermore, the dismissal letter must contain all the reasons for termination. However, it may only contain the reasons for termination that were discussed during the pre-dismissal meeting. The dismissal letter must not be formulated in general terms but must state specifically and precisely the reasons for termination.

However, since January 2018, the employer has the possibility to specify the reasons contained in the termination letter on its own initiative or upon the employee's request within 15 days after the notification of termination has been served or the request has been received.

3 Does the Social and Economic Committee (so-called "Comité social et économique") have to be involved in the procedure of a dismissal based on personal reasons?

If a Social and Economic Committee (hereinafter referred to as the"SEC") exists in the company, it will be involved in person-related dismissal procedures only in exceptional cases.

This is the case, for example, if the contemplated dismissal concerns a protected employee (e. g. a member of the SEC, a candidate for professional elections in the company or an employee who requested the organization of professional elections in the company). In this case, the employer must inform and consult the SEC in advance. The latter issues an opinion, but which is not binding on the employer.

In the event of an employee's dismissal due to incapacity for work, staff representatives must also be informed and consulted on the possibilities of keeping the employee in the company.

4 Who must sign the dismissal letter?

In principle, the dismissal letter must be signed by a legal representative of the company. However, the managing director may give a power of attorney to an employee of the company to sign said dismissal letter.

In addition, according to case-law, the dismissal letter can also be signed by the General Manager or HR department of the parent company, provided this is in line with the internal organization.

5 How long can the employee challenge his or her dismissal?

The employee may seize the labour court within a period of up to one year after his or her dismissal. Other claims, such as overtime pay, are time-barred after 3 years.

6 Can sick employees be dismissed?

In principle, a dismissal based directly on illness is prohibited, unless the labour physician has examined the employee, determined his or her incapacity to work (so-called "inaptitude") and tried unsuccessfully with the employer to find ways of keeping the individual in employment.

Apart from dismissal due to incapacity to work, dismissal due to illness may be justified by the consequences of the employee's state of health, provided that the employee's absence due to prolonged or repeated absences constitutes a serious burden for the company and that the employee must therefore be permanently replaced.

However, it is always necessary to check first whether the applicable collective bargaining agreement does not provide for a blocking period during which such dismissal cannot be notified to the employee (so-called “garantie d'emploi”).

7 Is there a duty to reinstate an employee if the dismissal is invalid?

To answer this question, a distinction must be made between an unfair dismissal and a dismissal which is deemed to be null and void.

If the dismissal is declared unfair by the labour court, French law does not provide for an obligation to reinstate the employee. This can only be ordered by the court if both parties agree to it, which, in practice, never happens. In case of unfair dismissal, the employer may only be ordered by the judge to pay damages to the employee, which amount is set on a minimum and maximum scale set by law (so-called “Macron scale”), depending on the employee’s length of service.

It is to be noted that, over the last years, several Courts of appeal have refused to comply with this scale, considering that it may not always allow the judge to provide the employee with an appropriate compensation for the damage suffered. The French Court of Cassation (which is the French Supreme Court) has recalled several times that this scale is mandatory.

However, if the dismissal is declared null and void (e. g. in case of discriminatory dismissal or in case of disregard of the protection against dismissal some employees, such as the members of the “SEC”, benefit from), the employee may request his reinstatement.

8 Is it also possible to conclude a mutual termination agreement (so-called "rupture conventionnelle")?

The so-called "rupture conventionnelle" allows the termination of the employment relationship through mutual termination.

In this case, a specific procedure must be observed. In particular, parties must hold preliminary discussions and then a written agreement must be concluded in which both the termination date and the amount of the mutual termination indemnity are indicated.

Minimum deadlines as well as a minimum amount of indemnity must be observed.

Finally, the entry into force of the agreement is subject to the prior approval (so-called “homologation”) of the Labour Inspectorate (DREETS): the latter has 15 working days to approve or refuse the mutual termination agreement. In the absence of a response within the aforementioned period, the approval is deemed to have been granted. However, by way of derogation, in case of conclusion of a mutual termination with a protected employee, the Labour Inspectorate must expressly grant its approval (so-called “autorisation”) within this period.

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Qivive
Rechtsanwalts GmbH

qivive.com

Köln[D]

Konrad-Adenauer-Ufer 71
D – 50668 Köln
T + 49 (0) 221 139 96 96 - 0
F + 49 (0) 221 139 96 96 - 69
koeln@qivive.com

Paris[F]

50 avenue Marceau
F – 75008 Paris
T + 33 (0) 1 81 51 65 58
F + 33 (0) 1 81 51 65 59
paris@qivive.com

Lyon[F]

10 –12 boulevard Vivier Merle
F – 69003 Lyon
T + 33 (0) 4 27 46 51 50
F + 33 (0) 4 27 46 51 51
lyon@qivive.com