

# 4 Major Differences Between US And French Employment Laws

Law360, New York (July 14, 2016, 2:17 PM ET) --While France celebrates Bastille Day on July 14, just 10 days after the U.S. celebrates its independence day, employers might find themselves wondering ... what are the main employment law differences between these two countries? What should multinational employers keep in mind when managing workforces in both locations? When should I plan my vacation?



Denise Broussal, Nadege Dallais and Louise Balsan

While vacation planning is beyond the scope of this piece, the information below provides a broad overview of the legal landscape in four primary areas of employment law: (1) the employment relationship, (2) working time, (3) restrictive covenants, and (4) paid time off. As always with employment law, there are important nuances within the laws of each country, state and/or county. Thus, working with experienced counsel with a global footprint is advisable when managing a Franco-American workforce.

## Employment Relationship

<p><b>Liberté, égalité, fraternité and a job for life?</b></p> <p>France, like most European countries, does not recognize the American concept of "at-will" employment. Instead, there is a presumption of and desire for indefinite term employment relationships. There is less freedom for employers to end the employment relationship. Practically speaking, this means that terminations in France are often quite costly for employers. In addition, non-French-based multinationals are also often surprised to find that they cannot make unilateral changes to the employees' terms and conditions of employment in France.</p>	<p><b>"At -...what?" Employment in the Land of the Free</b></p> <p>Subject to common law and statutory exceptions, employment in the U.S. is "at-will," meaning an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability. At-will also means that an employer can change the terms of the employment relationship with no notice and no consequences.</p>
<p><b>Formal Written Employment Contract</b></p> <p>Entering into a formal written employment contract is comforting for employees and provides greater flexibility for employers to agree to more employer-friendly provisions and to clearly set out the company's</p>	<p><b>Preference for Concise Offer Letters</b></p> <p>Employees are automatically covered by federal and state common law and statutory entitlements and protections. As such, most U.S. employers use a simple one- to two-page offer letter for the majority of their</p>

<p>expectations (e.g., very detailed job descriptions should be included). Any written employment contract executed in France must be drafted in French.</p>	<p>nonexecutive workforce memorializing the basic terms of employment (and reiterating the at-will status of employment) rather than a formal employment contract. There is no requirement for communications to be in English, but in the language the employee is most proficient in.</p>
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### Working Time

<p><b>35-Hour Workweek</b></p> <p>The legal working time permitted during the working week is 35 hours per week, which applies to all employers, regardless of the number of employees in the company unless a more flexible working time arrangement is provided by an applicable collective bargaining agreement for certain employees. Executive employees (i.e., directors / managers) generally benefit from flexible working time arrangements (e.g., 218 days per year or 169 hours/month). Any hour exceeding 35 hours per week will be treated as overtime. The rates for overtime may be set by the applicable collective bargaining agreement.</p> <p>In most industries, employees cannot be required to work more than six days per week, with the weekly day off being Sunday. French employers must monitor employees' working time.</p>	<p><b>40-Hour Workweek</b></p> <p>The Fair Labor Standards Act of 1938 ("FLSA") governs minimum wage rules and overtime requirements, but many states, and some cities and counties, have their own more stringent wage and hour laws regulating minimum wage and overtime requirements.</p> <p>As a general rule, all employees are covered by the FLSA unless they are working in occupations specifically exempted from coverage under the statute. Nonexempt employees must be compensated for any time worked, i.e., paid for each hour of work during the workweek, and any time worked above 40 hours must be paid at a rate 1 1/2 times their standard hourly rate of pay. U.S. employers must keep track of hours worked by all of their nonexempt employees in order to avoid FLSA and state law wage payment liability.</p>
<p><b>No Emails Past 6 p.m.?</b></p> <p>Recently the media had a field day with headlines proclaiming the end of work emails after 6 p.m.</p> <p>Not so fast. Don't believe everything you read on social media. In fact, France has not banned work emails after 6 p.m. Instead, the SYNTEC Collective Bargaining Agreement (generally applicable to companies in the IT</p>	<p><b>"9 to 5" to "24/7"</b></p> <p>A large segment of the American workforce is subject to the pressure of a round-the-clock work culture. Technology enables workers to work at any hour and location, from answering emails at midnight to taking calls on Sunday mornings.</p> <p>For now, though many complain of the tyranny of our 24/7 work culture, unlike our</p>

<p>sector) was amended in 2014 and in this sector, since January 2015 the employer must in particular ensure that employees are able to "disconnect" from work calls and emails to benefit from the full minimum statutory rest periods. The very recent Labor bill is planning for similar measures. Meaning, if the bill is not invalidated by the "Constitutional Council" (Conseil Constitutionnel), companies will have to authorize the right to disconnect. This does not mean that workers cannot send emails, it mainly means that workers will have the right to choose not to respond to work emails if they wish.</p>	<p>French neighbors, there are no collective initiatives aimed at establishing a right to "disconnect."</p>
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### Restrictive Covenants

<p><b>Show Me the Money!</b></p> <p>Generally speaking, noncompetes essential to the protection of the company's interests, limited in geographical scope and activity, are enforceable if the employee is provided proper and adequate financial consideration for the post-employment restriction.</p> <p>French case law does not state the minimum amount required for such financial compensation. However, 33 percent of the employee's average previous salary seems to be a minimum.</p>	<p><b>How to Make an American Quilt . . .</b></p> <p>The U.S. takes a "patchwork" approach to restrictive covenants as legal authority to enforce noncompete agreements derives from state legislation or state common law/legal precedent. The majority of states respect noncompete agreements so long as the restriction is reasonable in time, scope and geography and is necessary to protect trade secrets / confidential information / goodwill.</p> <p>However, in certain states such as California, noncompetes are not enforceable at all or under limited application (e.g. if included as part of sale of business or as related to trade secret). In California this reflects a public policy decision meant to encourage innovation and employee mobility.</p>
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## Vacation / Leaves

<p><b>Joie de Vivre</b></p> <p>French employees enjoy 25 days of paid vacation, in addition to approximately 8 public holidays per year and additional days off for seniority or for family leave provided by the applicable collective bargaining agreement. Collective bargaining agreements may also provide for additional paid vacation, depending on seniority and age.</p>	<p><b>The "No Vacation Nation"</b></p> <p>Federal and state law do not require payment for time not worked: vacations, federal or other holidays. That said, it is common practice for employers to provide at least some vacation to employees, often about 2 weeks per year, increasing with seniority.</p>
<p><b>Generous Sick Leave Time Protected by CBAs</b></p> <p>Employees are entitled to take sick leave whenever the employee is sick and has appropriate acknowledgment from a medical doctor. The applicable collective bargaining agreement generally entitles employees to continue to receive a certain level of remuneration and in some cases they benefit from protection against termination of employment. Employees are also entitled to reasonable time off in order to help care for a dependent (spouse, child, parent or another person living in the same household) in an emergency.</p>	<p><b>Required Sick Leave: A Trend in State and Local Legislation</b></p> <p>There is no federal entitlement to paid sick leave. However, since early 2016, cities (e.g., Santa Monica) and states (e.g., California, Minneapolis, Minnesota, Vermont, Washington) have all passed paid sick leave laws requiring employers of a certain size to provide employees varying amounts of paid sick leave hours. Accrual rates, cap rates, and carry-over rules all vary based on jurisdiction.</p>
<p><b>Parental Leave - Supported by Social Security Authorities</b></p> <p>Employees are entitled to 16 weeks of maternity leave / up to 11 consecutive days paternity leave and 3 days of paternity absence for the birth/adoption of one child (these absences are increased for multiple births/adoptions). Employees can also benefit from a parental leave generally from one to three years which is partially paid by the French social security authorities.</p> <p>During maternity leave, maternity benefits are paid directly to the employee by the</p>	<p><b>Parental Leave - No Federal Entitlements to Paid Leave</b></p> <p>There is no federal entitlement to paid maternity / paternity or parental leave. However, it is common practice for multinationals to offer paid maternity and paternity leave. Also, San Francisco and New Jersey, New York, and Rhode Island have very recently enacted paid family leave entitlements providing employees partial wage replacement rates for certain periods of time.</p>

<p>social security fund, unless the applicable collective bargaining agreement provides that the employer will maintain salary. During paternity leave, the employee is paid an allowance by the Social Security Authorities but is not remunerated by the employer.</p>	
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## Takeaways for U.S. Multinationals with French Employees

1. To be enforceable, any written employment contract executed in France must be drafted in French. The same rule applies to any amendments to the initial employment contract.
2. Most employment contracts in France are for an indefinite duration. The parties may provide an initial probationary period in the contract but such a probationary period must be formally agreed to by the parties. (There are various maximum durations for this trial period depending on the applicable collective bargaining agreement.)
3. After the expiration of any applicable probationary period, termination of an indefinite-term employment contract is subject to specific rules. Employers must comply with detailed dismissal procedures depending on the context of the dismissal and are required to pay a specific indemnity.
4. Noncompetes are generally valid in France so long as they are essential to the company's legitimate interests and the employer pays at least 30 percent of the employee's former salary throughout the period during which the clause applies.

## Vive La Différence!

When we talk about work-life balance, we often point to the European work culture, with its short work weeks and lengthy vacations. And, as we break down and examine the major areas of employment law, we see how these cultural differences play out in terms of different rights and benefits for employees in both the U.S. and in France. Keeping the cultural differences and legal requirements in mind when managing a multijurisdictional workforce is key.

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