

The French Supreme Court Decides that Employees with Jobs at Risk Take Precedence

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Under French law, an employee can only be dismissed on economic grounds when all efforts have been well documented to redeploy him or her in an alternative position within a company.

On 7 April 2004, the **French Supreme Court concluded that an employee facing economic dismissal has priority over an external candidate to fill a position available in the company.**

On 23 March 2011, the French Supreme Court went even further and ruled that an internal vacancy within a company in France should be offered as a priority to the in-house employee who is at risk of redundancy.

This recent Supreme Court ruling extends the obligations of French entities or international entities operating in France contemplating redundancies. As a result, should an employer decide to offer a position to an employee who is not at risk of redundancy, he or she will be liable to pay damages to the employees who are eventually made redundant.

In the internal recruitment/redeployment process, the employee within the company facing economic dismissal has priority over an employee within the company whose economic dismissal is not contemplated and over an outside candidate. If priority is

not given to him/her, the company's redeployment obligation is not fulfilled and the dismissal is held unfair. That is why we recommend not having external or internal recruitment ads of the shortlisted positions.

Clients contemplating employees redundancies in France should consider the following steps to fulfil its redeployment obligation:

1. Collect information on the employees whose dismissals are contemplated (current and past positions, skills, current compensation, languages spoken, CV's, recent training, annual reviews, etc).
2. List all the positions available in the company worldwide during the period of when the redundancies in France are planned (e.g. 3 to 6 months).
3. Shortlist all the available positions that match the employee's current professional qualifications or are compatible with the employee's skills. Even positions which require employees to have a short period of training or roles viewed as less of a position than the employee's current status need to be listed. Avoid shortlisting employees for roles that: a) require knowledge of a foreign language not mastered or b) require relocation in countries where immigration laws would prevent the employee from working. Also be sure not to externally or internally advertise the shortlisted positions.
4. If one or several available shortlisted positions are located outside of France, the French entity must ask the employee in writing whether or not he/she would accept a position abroad. The letter must make a list of all the company's geographic locations and require the employee to indicate any restrictions regarding redeployment, particularly in relation to the offices proposed and compensation given. Within six days of receiving this letter, the employee must provide a response. If the employee fails to reply within the allocated time than the employer can justify termination on the grounds of refusal to be redeployed abroad. The available positions shortlisted can then be reviewed and the freeze on external or internal recruitment may be totally or partially lifted.
5. Send the employee a letter explaining the redeployment process. The letter must be as precise as possible, with all the necessary details regarding: the position; the location; the compensation; the start date; the recruitment process; the deadline to accept an offer; the relocation package, which might involve a visit to the site before the employee accepts his/her new position. Although the employee has not yet accepted the new position, the letter must be as precise as a job offer in order to comply with French law.
6. If the internal recruitment/redeployment process leads to the employee accepting one of the available positions, his/her employment contract with the French entity is terminated by mutual agreement and a new contract is established with the other group company. If the employee does not accept one of the available positions, he/she is dismissed on economic grounds. Clients can then start advertising again either externally or internally for the recruitment of the shortlisted positions.

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