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Soulhier Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

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Compulsory wage adjustment for employees returning from maternity or adoption leave: ministerial precisions

According to the Law n° 2006-340 on equal wages which came into force on March 25, 2006, companies have notably the obligation to adjust the wage of employees returning from a maternity or adoption leave.

This Law has supplemented Article L.122-26 of the French Labor Code as follows:

"If there is no branch or company-level agreement including guarantees for the evolution of employees' remuneration at least as favorable as those mentioned in this paragraph during the leaves provided for in this article and following such leaves, remuneration, as defined in Article L.140-2, must be increased after the leaves by an amount corresponding to the general raises as well as to the average individual raises granted during such leaves to employees belonging to the same professional category or, if there is no such employees within the company, by an amount corresponding to the average individual raises granted to all the employees working within the company.

The rule defined in the previous paragraph does not apply to branch or company-level agreements entered into prior to the coming into force of Law n° 2006-340 of March 25, 2006 on equal wages for men and women."

An implementation circular dated April 19, 2007 provided further details on the conditions in which this obligation is to be complied with: Employers must allow all employees returning from a maternity or adoption leave to benefit from the general pay raises **and** from the average individual pay raise granted to employees belonging to the same professional category.

Even though a ministerial circular does not have any legal value it is certain that the recommendations contained therein shall be used as a reference in disputes or conflicts where companies have not concluded a collective agreement on this subject or where the branch agreement does not provide for other more favorable conditions.

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We recall that the **provisions of the Law apply to all employees who have returned from a maternity or adoption leave since March 25, 2006.**

The terms of the ministerial circular can be summarized as follows:

- The adjustment must occur as soon as the employee returns from the leave; if the employee has benefited from a parental leave, the wage must be adjusted upon his/her return but the adjustment shall only take into account the pay raise granted within the company during the maternity or adoption leave.
- For the purpose of the adjustment, the pay raises granted to employees from the same professional category must be taken into account, it being specified that the notion of professional category has to be assessed according to the size and structure of the company:
 - An employee from the same professional category is an employee who has been assigned the same coefficient under the applicable collective bargaining agreement;
 - If there is no other employee with the same coefficient, the employer must take into account the employees coming under the same **level** of classification ;
 - If there is no other employee with the same level of classification, the employer must take into consideration the employees belonging to the same **socio-professional category** (workers/ employees/ executives);
 - If there is no other employee belonging to the same socio-professional category, the employer shall take into consideration the average of the pay raises granted at the **company** level.

The pay raises to be taken into account for the purpose of the wage adjustment are those that are objective, perennial or exceptional and from which the employee would have benefited had he/she been working at the time such raises were granted.

The employer must make a break down of the various elements of remuneration paid to employees from the professional category concerned, identify the individual raises and/or the collective ones applied to each of these elements, calculate the pay raise average for each of them and apply the same accordingly to the employee concerned.

Many companies have waited for this new obligation to be clarified and detailed before proceeding with wage adjustment.

The ministerial implementation circular is now published and, in the absence of any other provisions applicable within the company pursuant to the collective bargaining agreement and/or branch agreement, we strongly recommend to companies to conduct a review of all potential wage adjustments to be implemented to the benefit of employees who have returned from a maternity or adoption leave since March 25, 2006. We also find it useful to recall that the statute of limitations in wage-related matters is five years.

Our labor department is at your disposal to provide you with any further details you may find useful.

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