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

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Dismissal on disciplinary grounds: Beware of the timeline for notification of the dismissal

With respect to dismissals on disciplinary grounds, the one-month period for notifying an employee of his/her dismissal is counted from date to date. The setting by the employer of a date for a new pre-dismissal interview, due to the non-attendance of the employee at the initial interview, does not interrupt the one-month period.

In a decision handed down on September 28, 2022^[1], the *Cour de cassation* (French Supreme Court) strictly applied the provisions of Article L.1333-2 of the French Labor Code, which stipulates that the disciplinary sanction, and in particular the notification to the employee of his/her dismissal for misconduct, cannot take place more than one month after the date set for the pre-dismissal interview.

In the matter at hand, an employee was summoned to a pre-dismissal interview scheduled on November 21. However, the employee did not show up and the employer decided to summon her to a new interview on December 14. Following the second interview, the employer notified the employee of her dismissal for serious misconduct on December 22.

The *Cour de Cassation* endorsed the reasoning of the employee and considered that her dismissal was without real and serious cause since she had been notified of her dismissal after the one-month period following the date of the first pre-dismissal interview, as the notification was made on December 22 and not on December 21.

It follows from this decision that:

- firstly, the dismissal letter must be sent or delivered to the employee at the latest on the day of the

following month that bears the same calendar number as the day of the pre-dismissal interview, at midnight;

- secondly, the fact that the employee does not attend the pre-dismissal interview to which he/she was duly summoned, without any justification, does not have the effect of postponing the deadline for notifying the dismissal on disciplinary grounds, even if the employer decides to schedule a new pre-dismissal interview. However, the situation is different if the employee informs the employer that he/she is unable to attend the interview and that the interview is postponed, either at the request of the employee or at the employer's initiative. In this case, the one-month period starts running from the date of the second pre-dismissal interview.

[1] Labor Chamber of the *Cour de Cassation*, September 28, 2002, No. 21-15.136

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