

Reform of the appeal procedure in employment matters

The Decree n° 2016-660 dated May 20, 2016 on the Labour Court and the judicial treatment of labour disputes will enter into force on August 1st, 2016. This Decree establishes the mandatory representation of parties for appeals filed in employment matters as of this date, and therefore requires the parties to comply with binding provisions which arise from the Decree *Magendie*. It deeply undermines the procedural flexibility that previously presided in employment matters.

Mandatory representation of parties

For any appeal filed as of August 1st, 2016, it will be mandatory for the parties to be represented by a lawyer or a union representative (*défenseur syndical*).

In case of representation by a lawyer, strict rules of territoriality will be applicable.

In practice, and as it is already the case with the appeal procedures in civil and commercial matters, the parties will be required to appoint a **local lawyer (*avocat postulant*)**, reporting to the competent Court of Appeal and responsible for the procedural diligences related to the litigation (statement of appeal, filing of submissions, etc.).

At the same time, the parties will continue to have the possibility to appoint a **pleading lawyer (*avocat plaidant*)**, who will not be required to report to the competent Court of Appeal and be responsible for handling the merits of the case (drafting of the submissions, pleadings, etc.).

Statement of appeal, declaration of the lawyer and exchange of written submissions must be electronically recorded by the local lawyer, via the Virtual Private Network of Lawyers (*Réseau Privé Virtuel des Avocats*) (RPVA), otherwise it will be declared inadmissible by the judges ex officio.

In case of representation by a union representative, he will be responsible for the completion of all procedural diligences. However, the Decree does not provide for any rules of territoriality in this case.

The requirement of electronically recording all procedural diligences is not applicable in this case for the interested party as union representatives cannot access the RPVA.

Strict and binding time limits applying to the appeal procedure

The application of the provisions of the Magendie Decree (as codified in Articles 901 and seq. of the Civil Procedure Code) to the appeal procedures in employment matters imposes strict time limits which must be complied with:

Applicable time limits for the appellant:

- Statement of appeal: the time limits to appeal a decision rendered by a Labour Court are not modified by the Decree and remain up to **1 month** as from the notification of the decision for a judgment rendered on the merits of the case and up to **15 days** as from the notification of the decision for an Order rendered by the Judge of Summary Proceedings.

Upon receipt of the statement of appeal, the clerk will send a copy

of the statement of appeal by simple letter to the respondent stating the obligation to declare a lawyer or to appoint a union representative. In case of return of the letter or if the respondent has not declared a lawyer within a period of one month, the clerk will notify the lawyer of the appellant that **he must serve the statement of appeal by court bailiff** within **one month** as from the sending of the notice of the clerk, under penalty of nullity of the appeal.

- Filing of the submissions and communication of the exhibits: the appellant will have to submit his submissions within **three months** as from the statement of appeal, under penalty of nullity of the statement of appeal.

The exhibits must be communicated simultaneously.

Applicable time limits for the respondent:

- Declaration of a lawyer or appointment of a union representative: as soon as declared or appointed, the lawyer or the union representative of the respondent will inform the one of the appellant as well as the clerk. This procedural step is not constraint within any time limits, it is however a prior step to the filing of the respondent submissions as well as to the communication of his exhibits.

– Filing of the submissions, communication of the exhibits and cross-appeal (appel incident): the respondent will have to submit his submissions within **two months** as from the notification of the appellant's submissions, under penalty of inadmissibility of his submissions. Any potential cross-appeal must be lodged within the same time limit.

The exhibits must be communicated simultaneously.

All of the aforementioned time limits are imperatives and **will not give rise to any request for postponement or extension**.

In the case of a written procedure, lapse or inadmissibility penalizing non-compliance with the aforementioned time limits **will definitely deprive the concerned party of the opportunity to present its case**, including by way of oral argument.

All of the aforementioned time limits will not apply in case of an appeal of an Order rendered by the Judge of Summary Proceedings or when the case appears to be a matter of urgency. In the latter case, the President of the Chamber hearing the case may schedule an hearing without delay, ex officio or at the request of a party.

Control of the procedure by the pretrial Judge

The new applicable procedure, as from August, 1st 2016, involves a new actor in the control of the procedural diligences: **The pretrial Judge**.

Due to the nature of the dispute, the pretrial Judge may set shorter time limits than those required by the Civil Procedure Code.

He will ensure compliance by all the parties with the time limits, and will sanction any potential procedural irregularities.

He will be exclusively competent to know the exceptions of procedures raised for the first time before the Courts of Appeal (e.g. nullity of the statement of appeal, stay of the proceedings).

Once the case is complete, the pretrial Judge will order the closure of the file and will schedule the pleadings. However, if the dispute requires further exchanges of submissions, the pretrial Judge will schedule a procedural timetable.

After the closing order, no elements can be exchanged anymore between the parties, which will have to submit their file comprising their submissions and exhibits listed and referred to in the submissions **15 days** before the date set for the pleadings.

Entry into force and consequences on the ongoing and forthcoming appeal procedures

The procedure described above will only apply to the **appeals filed as from August 1st, 2016**.

As a consequence, the ongoing appeal procedures and those resulting from appeals filed before August, 1st 2016 will not be subject to these new rules, regardless of their end date.

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