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Theme: Reconciling work and family life

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I/ Reconciling Work and Family Life within Labour Law:

- aims and rationale of law in this field
- identification of the principal sources of labour law in this field, including collective agreements

A/ Aims and rationales of labour law in the conciliation between Work and Family Life

Actually, in French law as in many legal systems, the principle is that workers have legal personality and consequently get rights and duties. So, it requires a legal and contractual protection.
Besides, some important international texts and principles protect family life, and promote conciliation between professional and family life.

1/ Historical approach

At the beginning, it is mainly the principle of a collective right which appeared in the French conception in order to allow workers a limited force of opposition against the employers.
But the first real and concrete measures concern the protection of the health and safety of limited workers' categories.
In this way, laws which have the goal to protect physically the family's members are quickly promulgated: a law of 1875 limits the night work for the children, a law of 1892 prohibits night work and limits workings hours for children and mothers to allow them to bring up their children.
The real and significant change begins to take shape after the Second World War. At the initiative of the communist and the socialist members of the government, a social security and a real familial policy are established.
Consequently, individual protective standards appeared for the workers in French legal provisions. We can especially mention the protection of the private and family life, the right to health and safety at work, the right to rest and the right to have spare time which are constitutional requirements…

2/ The French conception

Nowadays, in French law, we can consider a text is “fundamental” and so should absolutely be respected when it is enshrined in constitutional provisions and international treaties on fundamental rights (the European Convention of Human Rights, the Charter of Fundamental Rights of the European Union...).
Examples of rights known as fundamental: the right for the worker to choose where he wants to live, the confidentiality of correspondence and the right to action, the right to bring a civil action…
If there is a breach of the contract due to the violation of one of these fundamental rights, the dismissal is null and void.
And if it is not a fundamental liberty: it will be a dismissal without actual and serious basis, so an unfair dismissal.

In the French conception, personal life has not always existed, it was understood previously as private life, which is more restrictive. Personal life is larger than this. Private life encompasses familial life, sexual life, home life, confidentiality of correspondence.
But the activities of the employee are larger than this; political activities, cultural activities, sport activities.
Decisions of the Cour de cassation in 1997 have revealed this wider conception.
So, it is necessary to add the protection of personal data (for example in the IKEA case: an employer looked at the criminal record of his employees before hiring them).

In French labour law, the principle is that a fact of the personal life cannot be considered at work as a disciplinary fault. Many French judgments have confirmed this decision, except in two situations:

- the negligence infringes the loyalty duty of the employee
- the fact is linked to an element of the work

A case of the Chambre sociale of the Cour de Cassation (03/27/2012) concerned the use of drugs by a steward during a stop. In this case, the judges decided the dismissal was justified by the negligence of the employee.

But in some circumstances, a fact of the private life could lead to dismissal under the common law. It is the case when an “objective disorder” is created by the employee's conduct to the firm's working.

We can also remark protective rules.

The employer cannot in principle impose a constraint beyond the place of work or outside office hours. As a consequence, the employee cannot be sanctioned for motives linked to his personal life.

Concerning the night work, there are particular provisions: an employee can refuse to work at night if he justifies stringent familial obligations.

Or concerning the couples’ contracts: if the couple breaches, could the end of the contract for one of them, have an impact for the other one? It doesn't in French law.

If one member of the couple is an employee and the other one is the employer, the breakup of the couple apparently doesn't matter. But if one of them has impropriate behaviour in the firm, the dismissal could be possible because it affects the image of the business.

B/ The main sources of labour law

First it is important to note the constant influence of European law.
EU law and the ECHR have an influence, especially the article 8 of the ECHR which directly protects the private life.

1/ The legal provisions

In French law, there are constitutional rights (which are standards of the block of constitutionality).
Then the legal provisions have really a central role, they are the basis of the French legal system.
One of the most important texts is the article 9 of the Code civil, which provides that: “Everybody has a right to see his private life guaranteed.” The inviolability of the home, the confidentiality of correspondence and the protection of personal data shall be guaranteed, unless in exceptional cases prescribed by law.
This provision was recognized and confirmed by the French Constitutional Council.

The Code civil and the Code de procedure pénale protect especially the respect of the employee's home.

We can also vote article L1121-1 of the Code du travail, which recognizes and protects the workers’ liberties. This article prohibits restricting the personal and collective rights and freedoms.
But if it allows the recognition of the principle of the respect for the liberties of the employee, it also allows a legitimization of the powers of the employer on his employees and limitations of their liberties, if the employer's decisions are proportionate to the objective pursued.

2/ The judges’ influence

In the French legal system, the case law also plays a key role. Judges must apply the provisions but it implies to interpret them.
As a consequence, the judges will frequently modify, adapt these texts or even create new rights or obligations for the employees or the employers. In other words, they create a precedent.
For example, in the Speelers' case decided on January the 19th of 1999, the judges remove the liberty of contract to decide that the workers (including the trainees) should have the right to choose the place where they want to live.
The employer can't impose a residence clause unless the clause is essential and proportionate to the aim pursued.
We can also mention a pioneering decision: the Nikon's case decided in 2001 which protects the confidentiality of correspondence at work. In this case, the judges decided that the employer cannot

open messages identified as “personal” emitted by the employee and received by him thanks to a computer hardware provided by his work.

3/ The collective bargaining agreements

To conclude with the sources, the collective bargaining is more and more active in the development of the labour provisions. This is especially true nowadays with the present government which wants to make social partners as the main source of labour law.

On average, about 33 000 collective agreements are signed each year in France.
The agreements can be negotiated and concluded at national level between a trade union or a confederation of trade unions on the workers side and a single employer or an employer association, for a group of activities (in a branch of activities) or in a geographical area or just at plant level, in a firm.
These collective agreements could especially provide more advantages for the workers, in addition to the legal provisions.

For example, collective agreements can create particular paid leave or compensation linked to the family life (a wedding, a birth, beginning of the school year...) or in conditions more favorable than the legal rules.

II/ Leaves related to family life (notions and legal regime):

A/ *Leaves within the framework of the birth of a child or an adoption*

1/ Maternity leave

The state of maternity is protected by the law since an Act of 1909.
It is ruled by the article L1225-17 of the Code du travail. It begins six weeks before the birth and ends ten weeks after. The duration can be extended in case of special situations (multiple births, disease…). But it is not an obligation for the employee to take sixteen weeks.
Article L1225-29 specifies that hiring a woman in a period of eight weeks before and after her childbirth is forbidden, and the employer cannot compel his employee to work during the six weeks after the delivery.
Compensation is paid by the French public welfare system and another is paid by the employer.
Before the maternity leave the employee can benefit from a relief on her work time, or she can be moved to another work station, less tiring (L1225-7 Code du travail). Moreover the employee is authorized to leave her work place to have medical tests or treatments (L1225-16).
Specific protection is granted to the employee who works at night or to the employee who is exposed to particular risks. They can ask for being moved to another workstation. Otherwise, their contract of employment will be suspended until the beginning of the maternity leave (L1225-9 and L1225-12).
The occupational health doctor can be involved: he should be informed of the state of pregnancy and can propose measures of transfer or change of work stations. If the employee's health is bad, she can benefit from a special leave: pathological leave.
After the maternity leave, the employee goes back to work in the same conditions as before. (L1225-25) But there is an obligation to the company doctor to examine the employee when she is back to work. She can ask for benefiting of a special time for feeding her baby. (L1225-30) The duration of the maternity leave is taken into account to calculate her years of service (L1225-24).
It is forbidden for the employer to terminate the employment contract of the person who benefits from the maternity leave.
Absolute protection against dismissal during the maternity leave implies that it is impossible to dismiss the employee. The sanction consists in a cancellation of the dismissal. Consequently, the employee can reintegrate her job (under the old contract) or benefit from damages. (L1225-29)
There is a simple protection before the maternity leave and four weeks after. Thus, there is a possibility to dismiss the employee but only for gross misconduct and impossibility to maintain the employment contract. Here, the sanction consists in damages. (L1225-4)

2/ Paternity leave (L1225-35 and D1225-8)

Since 2002, within four months after the childbirth, the father can benefit from a paternity leave of eleven days or eighteen days (in case of multiple births). During this time, the contract of employment is suspended. When he wants to benefit from this leave, he has to inform his employer one month before.
After the paternity leave, the employee goes back to work in the same conditions as before.

Compensation is paid by the French public welfare system.

3/ Parental leave (L1225-47 and the following ones)

If an employee can justify of one year of service when the child is born and that his/her child (adopted or not) is not three years old yet, he can benefit from a parental leave.
It can last three years maximum (and can be prolonged for specific reasons: accidents, handicap…).
There is an option for the employee:

- Stop working during the period
- Reduce his/her work time (sixteen hours per week minimum)

The employee has to inform the employer of his intention to benefit from this leave and the employer cannot refuse. But the employee is not authorized to do another job during this leave, except the job of nursery assistant. However he can follow a training (which is not paid).
During the leave the employee is not paid by his employer (except if it is set by a collective agreement). But the French child benefit office grants allocations.
At the end of the leave, the employee goes back to work in the same conditions as before.

4/ Adoption leave (L1225-37 and followings)

In case of adoption, the employee can benefit from a leave. It normally lasts ten days but it can last more in certain circumstances (more than three children at home or multiple adoptions).
He can also have the same relative protection in case of dismissal as the mother during her maternity leave (as it is set in the article L1225-4).
If we are in a case of adoption off mainland France, the leave can last six weeks (because of the trip). But it is unpaid.
During the leave, the employee benefits from a compensation granted by the French health insurance office and by her/his employer.
At the end of the leave, the employee goes back to work in the same conditions as before.

B/ *Leaves to look after a sick member of the family*

1/ Leave for sick children (L1225-61)

If the child of the employee (who is not sixteen years old yet) is sick or victim of an accident, he can benefit from an unpaid leave.
It lasts maximum three days per year or five if the child is less than one year or if there are more than three children at home.

2/ Leave for parental attendance (L1225-62 to L1225-65)

It can be granted to an employee who has a sick child or a child who was victim of an accident and who needs care.

It can last maximum three hundred and ten days. But the specific duration of the leave is determined by the medical certificate given by the doctor who examined the child. It can be renewed in case of relapse.
In order to benefit from this leave, the employee has to inform the employer at least fifteen days before the leave (and forty eight hours before one day off).
After the leave, the employee goes back to work in the same conditions as before.
Half of the duration of the leave for parental attendance is taken into account to calculate the employee's years of service.

3/ Leave for family solidarity (L3142-16 to L3142-21)

It is an unpaid leave granted to an employee who has one of his parents, one of his children, or a person who is sharing his home, who suffers from a mortal disease.
It lasts maximum three years, renewable once. This leave can also be converted in part-time work with the authorization of the employer.
After the leave, the employee goes back to the enterprise in the same conditions as before and the duration of the leave is taken into account to calculate the length of service.

4/ Leave for family support (L3142-22 to L3142-31)

It is an unpaid leave which can be granted to an employee has been working for two years in the enterprise, and who has a member of his family (spouse, cohabitant, partner, parent, children…) who suffers from a handicap.
To benefit from this leave, the employee must fulfil some conditions: the member of his family has to live in France and must live by the employee.
It can last three months, renewable. But it cannot last more than one year in the whole career. The employee can also put an end to it in advance (in case of death of his member of family for instance).
After the leave, the employee goes back in the same conditions as before and the duration of the leave is taken into account to calculate the length of service.
Before and after this leave, the employee is invited to a meeting with his employer to talk about his vocational guidance.

C/ Other relevant categories of leaves

1/ Leave for family events (L3141-1 and L3141-2)

Every employee can benefit from a special authorization of absence in case of marriage (four days), birth of a child or adoption (three days but not cumulated with maternity, paternity, parental or adoption leave), death of a child (two days), death of the spouse or partner of a civil partnership (two days), marriage of a child (one day), death of the father, mother, sister, brother, mother in law or father in law (one day).
These days don't involve any reduction of remuneration.

2/ Emergency leave: It doesn’t exist in the French system.

3/ Leave for caring responsibilities: It doesn’t exist neither in the French system.

III/ Flexible working: is there a right? What is flexible working? (part-time/ homeworking/ school hours/ job share, etc)

In France, flexible working concerns mostly part-time working, teleworking and home-working.
We don't have school hours or job share and flexible working is not really an employee's choice, it is mostly the employer's.

A/ Part-time working

A part-time worker is a worker whose hours of work are less than the legal or conventional limit (article L 3121-1 Code du Travail).

In France in 2012, there were 93,1% of men working full time, and 6,9% men part-time workers.
Concerning women, for 69,8% full-time workers, 30,2% were part-time workers.
So, part-time working affects more women.

The employer decides unilaterally to set up a part-time working scheme in his company but he needs the work council's advice.
An employee can also ask to be a part-time worker (article L 3123-5 Code du Travail) but the employer can refuse it by explaining his objectives reasons, he has to justify that there is no job available.
The employer cannot refuse the right for an employee to ask for a part-time working when it is related to the birth of a child or adoption, in that case, the mother or the father can be a part-time worker for a period of 3 years.

So, part-time working is mostly an employer's decision but, when he wants to set up a specific part-time working which hours of work differs from week to week or month to month, this must be provided in a collective agreement, if it is not, he cannot implement this kind of part-time working scheme.
And an employer cannot force an employee to be a part-time worker.

Part-time workers can cumulate two or more jobs with different employers if they are not linked with any of them by an exclusivity clause.
Nevertheless, the possibility to cumulate several part-time activities is limited by the maximum amount of time an employee can work per days and he is not allowed to work more than the legal authorized limit.

The part-time working contract has to be written.
The written contract must specify:

- the qualification
- the remuneration's elements
- the weekly working time
- the working time share between the days of the week or the days of the month

- cases in which a modification of this share is possible
- the possibility to do additional hours and its limits

If these mentions are not specified or if the contract is unwritten, there is a presumption that the employee is a full-time worker.

Parties to the contract of employment have freedom to choose the amount of working-time, but they have to determine an hourly basis.
The employer is allowed to ask the employee to work more than this hourly basis, it will be considered as additional hours.
The employee must work during these additional hours if they are specified in the contract and within the legal limits.
But these additional hours should not have the effect of extend the working-time to the legal limit for a full-time job.
The contract of employment in this particular area has to mention the repartition of the working period between the weeks of the month or the days of the week.

The employer can only modify this share if a clause provides so in the contract of employment.
If there is such a clause, the employer must inform the employee 7 days before.
The employee can refuse if this modification is incompatible with his/her family obligations.
The part-time workers got the same rights as the full-time workers (article L 3123-11 Code du Travail).
But, the equality is not an absolute. The two categories of employees must have the same proportional remuneration.

Nowadays part-time working has been reformed in France. The new text was supposed to enter into force on January 1st 2014 but the Employment secretary has decided to prorogue the provisions concerning minimum working-time to the 1st of July 2014.
The "sécurisation de l'emploi" Act of the 14th of June 2013 includes a series of measures which purpose is to regulate the involuntary part-time working.
Thus, the minimum working-time for new part-time working contract is fixed at 24 hours per week and the hours worked above this minimum amount of time will lead to an increase in wages.
For part-time workers, the minimum working time is now fixed at 24 hours per week or to an equivalent period fixed in the collective agreement.
But the employees can ask to work less than 24 hours in order to be allowed to cumulate several activities. The request must be in writing and motivated.
For a transitional period until the 1st of January 2016, employees under a part-time working contract can ask for the new legislation to be applied.
From the 1st of January 2016, the minimum working-time will apply to all part-time working contracts (new and old ones).
At the time being, extra hours give a right to the employee for a salary increase of 10% for each hour completed within tenth of those under contract then, extra hours receive a bonus of 25%.

In France, there are also two specifics part-time working in relation to family life : part-time working for family reasons and, part-time working within the parental leave.

➔ The annualized part-timeworking for family reasons:

The 19th of January 2000 Act consolidates the employee's rights to conciliate professional and private life.
Article L3123-7 Code du Travail allows employees to ask for an annualized part-time working for family reasons.
The particularity is that the annualized part-time working is based solely on the employee's initiative.
This is allowed to employees who wish to reduce their working time for family reasons during non-worked period of at least one week.
Thus the employees who wish to be with their families during the school holidays for example can reduce their working-time during this time.
This employee can alternate working weeks and non-working weeks because of his/her family needs.
This kind of part-time work can only be set up by the employee's initiative, and the employer may accept it or not.
If he refuses, the refusal has to be justified by objectives reasons linked to the company's necessities.

The annual period of working hours cannot be over the annual limit of part-time working fixed by article L 3123-1 Code du Travail, which means that it has to be less than 1607 hours or less than the period fixed by the collective agreement.
The employee can ask to work less than 24 hours per week, but he has to say how many hours he wishes to work.

During the working period the employee works accordingly with the collective agreement applicable in the establishment or the company.
The working time reduction leads to grant non-worked period and not by reducing the working time during the worked period.
This distinguishes part-time working for family reasons from the common part-time working.

Being a reduction of time working modality, the annualized part-time working for family reasons can only be applied to employees already employed by the company and not to jobseeker who answered to a job offer.

The amendment to the contract of employment must specify the non-working periods. It can also provide for the different calculation methods for the remuneration but, the contract does not have to provide for the working hours repartition and modification because the law does so.
The employer is not allowed to modify the sharing of the non-working periods without the employee's agreement.
Thus the variation of the contract of employment once the amendment is done will require a new amendment.

In France there also is part-time working in relation with a parental leave.

➔ Part-time working within the parental leave:

For a birth or an adoption, an employee can benefit, under certain circumstances, of a parental leave or a part-time working.
According to article L 1225-47 Code du Travail, the working-time in relation with a birth or an adoption cannot be less than 16 hours per weeks.
The chosen hours must reconcile the occupation with the child's education.
According to the article L 1225-47 Code du Travail, the employee cannot be asked by the employer to do additional hours because it could be contrary with the parental leave's objective which is to educate the child.
Moreover, the employee cannot cumulate several activities, although no penalty is provided in case of violation of this prohibition, it could justify dismissal.

If the employee is free to choose the number of working hours he wants to do during his parental leave the employer has a power to choose the repartition.
Only an abuse by the employer can justify a refusal by the employee.
But, the employee's refusal to accept the working hours proposed by the employer is not a gross misconduct if the employer' proposal is incompatible with compelling family obligations. (Chambre Sociale de la Cour de Cassation, 1st April 2013).

The amendment to the contract of employment must be in writing and mentioned the new conditions of work and especially the weekly hours of work chosen by the employee and the repartition of this time work within the week.

The employer can dismiss an employee during the parental leave but the dismissal cannot be justified by it.
In case of dismissal, the employer has to pay to the employee a severance pay.
According to the European Court of Justice, the severance pay that a part-time worker who is under a parental leave can get must be calculated on the full-time remuneration (CJUE, 22 octobre 2009, Meerts v. Proost NV).

Another category of flexible working is teleworking.

B/ Teleworking

Teleworking is a way for the companies to modernise the work organisation and it allows employees to conciliate their professional life with their family life.
A specific agreement regulates this kind of work: Accord National Interprofessionnel of 19 July 2005.
When an employee works outside the company, he is a teleworker.

Teleworking is defined as a specific organisation using the information technologies in relation with the contract of employment and in which a job which could be realized in the company is in fact done outside of it.
The job can be realized at home or somewhere else or moreover 2 or 3 days at home and the other days inside the company.

The employer cannot force an employee to be a teleworker.
Teleworking can be decided during the contract of employment's execution or before its conclusion, it cannot be compulsory, it has to be voluntary.

If teleworking was not a previous condition of employment, it can only be set up if the employee asks so and an amendment to the contract of employment will be necessary.

If an employee expresses his desire to opt for this form of work, the employer may accept or reject the request. If on the other hand the employer makes such an offer, the employee can refuse and his/her refusal is not a fault, it cannot justify a dismissal.

If an agreement is set up, an adjustment period is provided in which, both parties can terminate the experience, they just have to respect a notice period previously set up.
This adjustment period allows to verify if teleworking is compatible with the work organisation and with the employee's technical capabilities.

At the end of this adjustment period, it is still possible to renounce, but 2 situations have to be distinguished:

- If the employee was not hired to be a teleworker, both parties can agree to stop and organize the employee's return in the company's premises.
- If the employee was hired to be a teleworker, this employee can only apply accordingly with his/her qualification to any vacancy post within the company, he will benefit of a priority access.

Concerning the equipment, the employer has to assume and install it, after checking the compliance of electrical connections if the employee works at home.
The employer assumes also the costs (communications, internet subscriptions, ect...) and the ones related to current, loss or damage to equipment and data used by the teleworker and he must provide the teleworker with an appropriate technical support service.
The employee has to take care of the equipment and notify immediately to the employer the failure or malfunction.
If, exceptionally, the teleworker uses his own equipment, the employer provides the adaptation and maintenance.

The third kind of work which can allow an employee to conciliate his/her family and professional life is homeworking.

C/ Homeworking

A homeworker exercises his work independently at his home and is not under the legal subordination of his employer, but, he is considered as employed under a contract of employment and the Code du Travail is applicable to him.

Article L 7412-1 lists the necessary conditions to be considered as a homeworker and the Cour de Cassation states that those who execute work at home in exchange of a remuneration are considered as homeworkers.
More precisely, are homeworkers those who satisfy the following conditions:

- The work must be made on behalf of a client, this distinguishes the homeworker from an independent worker who works for his/her own account.
- A remuneration fixed in advance must be paid
- The homeworker can work for one or more employers.
- The homeworker must work alone, or with limited assistance, he can be assisted by his/her partner, civil partner, or his/ her children.
- There is not necessarily a relationship based on subordination between the homeworker and the employer.

According to the Cour de Cassation, the execution by the employee of his work at his home must be deliberate. The employer cannot require the employee to work at home.

A homeworker can work for several employers.
The article L 7412-1 Code du Travail does not prohibit the employee from working for competitors. Only the contract of employment could provide an exclusivity clause.
A homeworker cannot have a simultaneous and similar independent activity with clients.

The work can be an intellectual or a manual one. Teleworking concerns many activities : clothes'making, drawing, writing...

IV/ Enforcement and remedies :

A/ What courts / authorities are competent?

The **Conseil des prud'hommes** is the competent court. It is a general jurisdiction for all the employment matters. There are no professional judges.
The Conseil des prud'hommes has different sections. Each of them has a conciliation office and a judgement office composed equally by representatives of employees and representatives of employers. All members are elected at a national level every five years. The most important mission of the Conseil des prud'hommes is to conciliate both parties. When conciliation is not possible, the judge makes a judgement. The procedure is oral and the dispute must be individual. Every request arising before the referral to the court, and related to the same contract between the same parties, must be made during the same instance.
In order to bring a claim before the Conseil des prud'hommes it must be demonstrated that there is an employment contract. However in matter of anti-discriminate law, it has an exclusive jurisdiction. The Conseil des prud'hommes has jurisdiction even if there is no employment contract. For example if the discrimination has been during a job interview (Chambre sociale of the Cour de Cassation, 20th December 2006).

Another competent organ: the **Défenseur des droits** since 2011. Before, it was the HALDE (Haute Autorité de Lutte contre les Discriminations et pour l'Egalité). It is an independent constitutional authority whose duty is to protect the rights and liberties and to promote equality. In particular it fights against discrimination. In order to achieve this mission the Défenseur des droits is allowed to open an inquiry or to propose a reform.

The **labour inspection** is allowed to find out the offenses in matter of discrimination. The labour inspector can have access to any document or any information which are useful to establish the existence or the absence of a breach of the articles of the Code du travail and the Code penal prohibiting discrimination.

The **independent Trade Unions** at national or firm level can exercise in justice any action concerning discriminatory acts in favour of an employee or a job candidate, an internship or a period of training. The Trade Union must notify to the person concerned his intention to exercise legal actions. He is able to exercise the legal action without a mandate for the victim of discrimination. The victim is free to intervene in the proceedings initiated by the Union.

The **associations fighting discrimination** and regularly incorporated for at least 5 years are allowed to bring actions related to discriminatory conducts, in favour of an employee or a job candidate, an internship or a period of training. The association must have a written consent from the person concerned, who is free to intervene in the proceedings initiated by the association and to put an end to it at any given time.

B/ What role is played by anti-discrimination law (e.g. maternity / part-time)?

In French law we distinguish three different categories: anti-discrimination, same treatment and harassment.

1/ The anti-discrimination law

The anti-discrimination law is a recent law in France. The Act of August 4. 1982 is the first general discrimination Act in matter of recruitment, dismissal and disciplinary sanction. Before this Act, we only had specific Acts about man/woman equality. The anti-discrimination law was influenced by European law especially by the European directives 2000/78 and 2000/43. In France we speak more about equality of treatment.

The discrimination is a different treatment based on illegal grounds (article L1132-1 Code du travail): 20 discrimination grounds are listed in the code du travail.
The twentieth ground of discrimination is new and has been introduced by an Act of February 2014. It concerns the place of residence.
There is a wide range of situations which run from the internship to the dismissal. Nowadays, we can observe the beginning of a cross-discrimination phenomenon. Indeed, the employee tries to invoke a discrimination based on several reasons from the list of the code du travail in order to let the discrimination be acknowledged.

We must make a distinction between direct discrimination and indirect discrimination. The direct discrimination is a situation in which, on the basis of membership or non-membership, true or supposed, ethnicity or race, religion, belief, age, disability, sexual orientation or gender, a person is treated less favourably than another is, has been or would have been treated, in a comparable situation.

The family situation is well protected in French law. Judges have been relying on the fundamental right to a family life to limit the employer's power for many years. Family life can hinder the application of diverse clauses such as a non-competent clause. The choice of residence belongs to the employee. The employer cannot force the employee to leave in a specific place even if justified by a legitimate aim.

Freedom of marriage was applied in a famous case about a stewardesses who had a clause of celibacy (Appeal court Paris, 16 April 1963). The right to be married is an individual right protected by public order. This liberty does not support any exception even if justified by an apparent compelling reason (e.g.: priest).
Dismissal or disciplinary sanctions are forbidden if they are taken on the ground of the employee's family situation. Concerning the internal rules of the enterprise, it cannot contain a prohibition to employment of two spouses (Chambre sociale of the Cour de cassation, 10 June 1982).

Lately, the concept of "trend enterprises" emerged. As an example, the Baby Loup case, which was widely discussed in French media, was about the dismissal of an employee who was veiled and has caused a trouble. In French law, the principle of liberty of faith is recognised but this liberty is limited

in public enterprise by the principle of neutrality. Yet, a general and absolute interdiction which would require an obligation of neutrality, shall not be accepted.
Should the employer specify in the internal rules that employees are forbidden to wear religious symbol, he would have to underline the proportionate and justified character of this measure and demonstrate the existence of any essential and determining professional requirement.

French law does not sanction hypothetical discrimination. The European definition uses the expression "would have been" while the French definition only uses the expression "will have been". It is due to the transposal of the directive. According to a case of the Chambre sociale of the Cour de cassation of the 10th November 2009, the discrimination doesn't necessarily imply a comparison with a comparable situation. The judge may look only at the situation in itself.

Indirect discrimination is constituted when a provision, a criterion, or a practice which is apparently neutral, can potentially lead to a less favourable treatment, on the grounds listed before, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means to achieve it are necessary and appropriate.
In France, most part time workers are women. If, in this kind of situation the employer takes measures concerning part time workers in order to – indirectly – touch women, there is an indirect discrimination based on sex.
The most important difference between a direct and an indirect discrimination is that the indirect discrimination can have an objectively and justified legitimate aim.

2/ The equality of treatment

Equality of treatment comes derives from a social court decision of 1996 named the Ponsolle case. The principle is called "same work for same wages". The basis of this principle is the equality between man and woman. If two different employees are not equally treated, the judge will analyse the case. First we must look if it is a comparable situation. If it is, the employer can justify this different treatment with an objective reason. For example with the length of service, experience… If the different treatment is not really justified, there is an unequal treatment.
It is easier to recognize this principle because contrary to the discrimination principle we do not need to base the decision on one of the 20 reasons recognized by the French labour law. However the effects are different.

3/ Burden of proof

In the standard procedure, the one who alleges the facts must prove it. However in the context of a discrimination procedure, the burden of proof is not entirely carried by the employee. Indeed, the employee is in an uncomfortable situation because of the subordination which characterises the employment relationship. He has no means to report evidence as he has no access to all documents.
Therefore, the anti-discrimination Act has set up alternative means to simplify the burden of proof for the existence of a discrimination. If this requirement is met, the employer has to prove that he has not committed a discriminatory act or, in the case of indirect discrimination, that this act was justified by a legitimate aim and that the means to achieve it were necessary and appropriate.

This renders the procedure easier because it is not necessary for the employee to prove that he was discriminated by the employer.

Furthermore, there are additional obligations for the firm in the fight against discrimination. The firm with at least 50 employees must negotiate annually a collective agreement on man/woman equality. If no agreement is settled, the employer must implement a unilateral plan of action for achieving man/woman equality. A failure can be penalised.

C/ Is there protection from victimisation?

We do not have a lot of protection concerning victimisation. The only protection is that the employer cannot dismiss an employee who alleges that another one is discriminated.
No employee can be sanctioned, dismissed or be victim of discrimination because he has said that another person had been discriminated. This protection is the same as the one for victims of discrimination. It is valid even if the discrimination is not real (Article L1132-3).

D/ What remedies are available? (e.g. compensation / re-instatement / change to contractual terms)

The victim or witness of discrimination is allowed to bring a claim before the Conseil des prud'hommes and before the criminal courts. The purpose is to cancel the action or decision based on a discriminatory ground and ask for compensation for the damages suffered. The time limit is 5 years as from the revelation of the discrimination.
The invalidation is not always possible. Indeed if a person was discriminated during a job application, it isn't possible to force the employer to hire this person. The remedy is just an award.

In a case of unequal treatment, the dismissal is not void but the conditions of its validity are not met. Indeed, the dismissal must have a real and serious cause. It is like an unfair dismissal. Thus, the employee has no right to reinstatement in his job, but he can seek for a financial compensation.

In other cases, the discriminatory dismissal is considered as null and void. The employee can then seek reinstatement into his job. It is not an obligation. If the employee does not wish so, he can seek for additional financial compensation.

It is definitely easier to meet the condition of unequal treatment as there is no need to base the request on the 20 grounds listed. However, the sanctions of unequal treatment are less favourable for the employee than a dismissal because of discrimination. In practice 7/8% at the action concern discrimination but the others are based on unequal treatment.

If the employee is reinstated in the company, he is entitled to receive compensation in order to repair all damages he suffered from the dismissal to the reinstatement within the limits of the amount of wages of which he was deprived.
If the employee refuses the reinstatement, or if it is not possible, he is entitled to ask the following compensations:

- severance pay, awards for notice or paid leave
- compensation repairing damages, which the amount minimum is equal to six months' pay
- compensation for damages caused by the irregularity of the procedure

There is also a criminal sanction (article 225-4 code penal: 3years imprisonment and a fine of 45 000€). In practice this criminal sanction is almost never applied. The legal person can be sanctioned too.

The staff representative who does not reinstate the company is also entitled to compensation equal to the amount of the wages he should have perceived between the dismissal and the period protection.
When an employee discriminates another employee, the employer can pronounce a disciplinary penalty.

V/ Current developments and reforms

Nowadays in France, there are many debates about reforming the law in this field with the purpose of promoting the relations between work and family life.

A/ Recent laws:

First the recent Act of May 18. 2012, which authorized homosexual marriage, has enabled homosexual employees to marry and so, to access to enterprises' systems which are only open to married people.

Second the Act 14th of June 14. 2013 has created a new agreement which can be concluded in companies: internal mobility agreement.
Nowadays an enterprise agreement can set the necessary conditions to internal mobility. If it is included in the agreement, the employee cannot refuse mobility; in case of refusal, the employee risks to be made redundant. Thus, the employer can send his employee in a specific geographical zone of employment without the consent of the employee concerned.
However the agreement has to set up rules about several elements:

- The perimeter of the employment geographical zone (in which the employee can be send)
- The perimeter in which the internal mobility is applicable and the limits to this mobility which take into account the employee's personal and family life
- The zone in which the internal mobility agreement is no longer applicable

The agreement regulates restrictions to the mobility and takes into account different elements:

- The employee's personal and family life
- Measures which aim to :
  - Conciliate the employee's professional, personal and family life
  - Take into account handicap or illnesses' situations
- Measures which support mobility (employer's participation…)

As far as we are concerned, even if employees can be obliged by this kind of agreement to move to a restrictive perimeter, his personal and family life is taken into account, in order to enable him to conciliate work and family life. The purpose is to prevent the employee from suffering in his family life because of the shift.

B/ Current bills and debates:

A women/men equality bill was proposed by the Women's rights French Secretary in July 2013. It was adopted by the Senate in September 2013.
This law is aimed at everyone: it obviously concerns women but tries to imply men in order to convince them to contribute to gender equality.
The text is composed of 4 main parts:

- Insure equality in companies and in households
  - By reforming the parental leave
  - By imposing on companies (more than 50 employees) to show that they respect equity
  - By experimenting women support systems

- Build a guarantee against unpaid maintenance allowances :
  - New kind of social welfare : The child benefit office pays instead of the failing parent
  - Reinforce the advices and the family mediation
- Protect women against violences :
  - Promote the eviction of the violent husbands
- Generalize the male/female parity :
  - Ask to French Broadcasting Authority to assure the respect of the women rights in the media
  - Punish political parties which don't respect male and female parity

This project is directly linked to our theme, especially the reform of the parental leave, the experimentation of women support systems and the new kind of social welfare.
The new parental leave is meant to encourage fathers to benefit from their right to parental leave (duration: six months). Thanks to that system, the woman will be able go back to work and the father will be capable of playing his role in his family. But a problem remains: What about compensation? How many fathers can easily leave their job during such a long time without benefiting from an equivalent of their wages? The same problem still exists concerning mothers…
The new women support systems are created to enable the employee to benefit from a work time management plans, negotiated by collective agreements, to pay children custody, home help…
The new kind of social welfare aims to help the woman who suffered from an unpaid maintenance allowances to be paid; the failing parent is afterwards chased by the French welfare public system which wants to be paid back.
This bill was adopted by the National Assembly on the 21st of January 2014.

Finally a current debate concerns Sunday working. Nowadays the rules on Sunday working are really complicated in the French labour law and not well known by the society. The general principle is set by the article L3132-3 of the French labor law code: For the employees' benefit, the compulsory weekly day off is Sunday.
But there are lots of derogations which can be vague and often decided in a discretionary way by the regional authority.
These last months some DIY (do-it-yourself) shops criticized the fact that gardening shops were allowed by the law to work on Sundays. They consider this treatment as not equal and ask for a reform… What about extending the rule to others working sectors and shops?
The question of Sunday working is closely linked to our theme: work and family life:

- The whole functioning of the society is based on that system. Children don't have school on Sundays for example. In this case, if parents work on Sundays, they have to find structures to look after their children. So nurseries and nursery assistants should also be concerned by the reform…
- Sunday has often been a traditional family day: the day in the week on which families gather and spend moments together. It enabled to fix a rhythm and to put a limit that work cannot cross: the right to have a family life. Without it, the employee may have the impression to miss something in his private life.
- Even if the proposition may be based on employee's voluntary work, which would imply that parents who have children should have the possibility to refuse to work on Sundays in order to stay with their family, in fact we can assure that behind this pseudo employees' will, there

is the employer's wish to push his employees to work on Sundays in order to improve his benefits.

However the employer is not necessarily to be blame. It was revealed that some employees ask for working on Sundays and late in the evening, at the expense of private moments with their family, in order to benefit from financial advantages in this period of financial crisis.

Finally collective agreements can offer higher wages and compensatory leaves because of Sunday working. These attractive measures can also influence the employee on his decision to work on Sundays.

Mr Ayrault, the French Prime Minister, suggested adopting a new law this year to clarify the situation…