
***Hiring to Firing Podcast* — Croissants, Contracts, and Compliance: When US Work Habits Meet French Law**

Hosts: Tracey Diamond and Emily

Guest: Fabienne Haas

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Tracey Diamond (00:00):

Listen in to our latest episode of *Hiring to Firing*, where we talk with our colleague Fabienne Haas from across the pond about *Emily in Paris* and the differences between US and French law.

[MUSIC]

Tracey Diamond (00:19):

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, a labor and employment partner at Troutman Pepper Locke, and I'm here with my partner and co-host, Emily Schifter. Together, we tackle all employment issues from hiring to firing.

Emily Schifter (00:33):

Today, we're thrilled to welcome as our guest, Fabienne Haas, a partner at August Debouzy. August Debouzy is a full-service French firm with 160 attorneys and has also partnered with our law firm, Troutman Pepper Locke for decades on cross-border matters. Fabienne, why don't you tell us a bit about your firm and your practice group?

Fabienne Haas (00:52):

Well, thank you very much for having me today. I will tell you a bit more about August Debouzy, which is a top tier French full service firm, as you mentioned, and we have 160 lawyers and 42 partners. I am one of the partners in the employment and labor law team. We are the largest team labor and employment in a full service firm in France. And we have 10 partners and about 30 lawyers in the labor and employment law team. We have something special we put on LinkedIn every day, publish daily updates on employment law developments, ensuring that our clients can stay ahead of key trends, regulatory changes, and court decisions. Of course, this is in French, but sometimes we also publish them in English. So half of our work involves cross-border matters. So we are in the best possible position to assist our clients through complex international employment challenges.

Fabienne Haas (00:52):

So I really am happy and thank you for this opportunity. I also would like to tell you a bit more about my own background and give you what are high level thoughts and comments on French employment law, which is honestly a notion away from US employment law.

Emily Schifter (02:16):

That's for sure.

Fabienne Haas (02:17):

I started my career, and first of all, I studied, in fact, in the US at NYU Law School back in the late '80s. And then I worked for Sherman Sterling in New York as a foreign associates for a couple years and moved back to their Paris office for another five years. And then I worked also for another very well-known firm called Sullivan & Cromwell, where I spent two years in France. Then I gave up US firms because I realized I didn't have the right passport to pursue my career. I joined a French firm where I met the founders of August Debouzy, Jill August, and Olivia Debouzy. And this firm has been long ago acquired by Dentons. So I joined August Debouzy back in 1998 as a partner.

Fabienne Haas (03:05):

Just getting back to my New York experience, believe me, I lived my own *Emily in Paris* moment. That was Fabienne Haas in New York, and it was not that simple to adjust with the US culture in the university, law school, and also in the office. I realized how employment and labor law in the US is flexible, very fast, and the relationships can really evolve very quickly.

Fabienne Haas (03:36):

So when I moved to France, I used my experience in the US to helping both sides of the companies, the French subsidiaries of US companies. So I specialize in advising multinational employers on international employment and labor law, mostly US-based companies. As co-head of our international relations, I also manage the relationship with our top tier firms. And of course, Troutman Pepper Locke is on our top list.

Fabienne Haas (04:10):

So what I do is either help US companies to deal with day-to-day basis, including, of course, hiring and firing. I also work on labor matters, including dealing with works councils, unions, matters relating to M&A, private equity, and restructuring, because there's one thing in France, employment and labor law, if they're not monitored correctly, can really stop transactions and put US companies in total despair or being really angry. So we are very much experienced, and I am in explaining to the US companies that it is something that needs to be monitored very early on in a process to make sure that the transaction can go forward.

Fabienne Haas (04:58):

So I also have experience in workplace health and safety regulations, including harassment and discrimination and whistleblowing. We also advise not me, but some other members of the team, advise on compensation and benefits, including management packages and compliance. So of course, we also assist our clients before the courts. Basically, what I do is spend a lot of time explaining to French local teams how US management things decide and operate, and I

help US companies navigate the highly regulated French employment and liberal law rules. My goal is to make sure that cultural differences don't turn into legal issues.

Tracey Diamond (05:45):

That is a very worthy goal indeed, and we're very grateful for the partnership of you and your firm. And your work is a really nice counterpoint to our work, which often involves advising foreign-based companies that have US operations on US employment issues, both on the transactional side, as well as just the advice and counseling and litigation side. So today we're taking advantage of Fabienne's expertise and focusing on the differences between the US and French when it comes to employment law. And as we always do, we're taking inspiration for our topic from a TV show. And this time we're turning our attention again to *Emily in Paris*, which is a TV show that we focused on on our very first episode of Hiring to Firing several years ago. For those who don't know, *Emily in Paris* is a show created by Darren Star of *Sex in the City* and *Melrose Place* and 90210 fame for those who have been around that long.

Tracey Diamond (06:40):

Those listeners who have been with us since the very beginning may recall that when we first talked about *Emily in Paris*, it kicked off a discussion about national origin discrimination. So *Emily in Paris* stars Lily Collins as an aspiring marketing executive, Emily Cooper, an American who moves from Chicago to Paris to provide an American point of view to a French marketing firm, Savoir, learning a lot about French culture and business along the way. Let's listen to our first clip where Emily meets her French colleagues for the very first time.

[BEGIN CLIP]

Emily (07:12):

Hi. Hello. Bonjour. I'm Emily Cooper from the Gilbert Group in Chicago.

Julien (07:18):

You are... I'm sorry, I don't understand.

Emily (07:21):

I'm going to be working in this office.

Translation App (07:23):

Je vais travailler dans ce bureau.

Julien (07:23):

[Speaking in French].

Sylvie (07:40):

Bonjour. [Continues in French]

Emily (07:48):

You lost me at *bonjour*.

Sylvie (07:53):

Oh, so you're not Madeline.

Emily (07:55):

I'm Emily. Emily Cooper, and I am so excited to be here.

Sylvie (07:59):

Well, that's very unfortunate.

Emily (08:02):

Excuse me?

Sylvie (08:02):

That you don't speak French. It's a problem.

Emily (08:05):

Well, I'm going to take a class, but *je parle un peu français* already.

Sylvie (08:09):

Well, perhaps it's better not to try.

[END CLIP]

Emily Schifter (08:11):

Emily's introduction to France and her new workplace only goes somewhat downhill from there with cultural differences causing her to unintentionally clash with her new boss, Sylvie, and her other *Savoir* colleagues right and left. For instance, she ruffles a few feathers unintentionally by trying to schedule early morning meetings or sending late night emails. Fabienne, why might that have come as a shock to her new French colleagues? What would Emily have needed to know maybe about contacting employees outside of working hours in France?

Fabienne Haas (08:42):

Well, if there is one place where Emily really hits the wall in France, it's working time. That's often the biggest cultural shock for our foreign clients. In France, there is a very strong idea that work is important, but employees do not live to work. Work-life balance, including the right to privacy and to disconnect is protected by law. The right to disconnect means that non-exempt employees should never be contacted even on company mobile phones outside working hours.

Tracey Diamond (09:15):

I don't know, Emily, what do you say? Should we get our next-

Emily Schifter (09:18):

The next flight to Paris?

Tracey Diamond (09:19):

Sounds like the dream.

Fabienne Haas (09:23):

So in France, and there's a tricky part for Americans, especially for employees who work in multinational corporations, even if the email says, "No rush, no need to respond tonight," it can still be a problem because the moment you send the email, employees start thinking about work. And in France, that alone can cross the line and be considered a breach of the right to disconnect. So in France, the law forces everyone to draw a line even if employees don't. So Emily can absolutely be enthusiastic and proactive, but during office hours.

Fabienne Haas (10:03):

So there's also a very hot topic in France, which is the paid vacation. I know in the US, that's not exactly the same. So in France, the law provides for 25 days paid vacation for all employees, even at the start of the employment agreement. Basically, employees accrue approximately 2.5 paid vacation days per month, even during sick leave and maternity leave. Sometimes collective bargaining agreements within a specific industry or within a company may provide for more than 25 days, but never less than 25 days. So every time I say that to my US clients, they say, "Wow," like you said, "I want to get on a plane and start working in France."

Emily Schifter (10:55):

That's right. People are sometimes surprised to hear that there is no requirement to offer vacation at all in the US. There are a few states that are starting to... Illinois has a paid leave for any reason law that I think requires 40 hours per year, but for the most part, it's really up to the employer. Of course, it's something commonly offered as a retention tool, but pretty amazing to have that mandated for everybody and certainly 25 days to start is a good amount.

Tracey Diamond (11:20):

Is that for exempt and non-exempt employees?

Fabienne Haas (11:23):

Yeah. Yeah.

Tracey Diamond (11:25):

And do people work through their vacation the way culturally a lot of US workers do, or is that prohibited the way it's prohibited to work outside office hours?

Fabienne Haas (11:33):

Totally prohibited. If you're on vacation, no one has the right to reach out to you. In practice, some do, but that can come back and haunt them and we'll talk about it because of overtime or they decide that they shall be compensated for the vacation day during which they work. But in 99% of the time, honestly, employees who are on vacation do not work during vacation. And getting back to your retention tool, it's very funny because when we receive job offers from our US clients, they always include some vacation time and we always say, "You can put whatever you want. It's not enforceable under French law. It is what the law or the collective bargaining agreement provides for." If it's more, that's not a problem. If you offer more than the 25 days, this is a bit crazy, but why not? But most of the time they offer less, obviously, and we have to tell them that it's not enforceable and they will be stuck with the 25 days.

Tracey Diamond (12:33):

One thing that is a bit of a running joke on the show is the leisurely French lunch break. Emily at first struggles to adjust having been used to working through lunch at her desk, although she seems to get with the program after a while. Is that part of French culture? Are those long lunches really reality? And are there laws in place to protect that time, Fabienne? What are the French rules about overtime?

Fabienne Haas (12:56):

Okay. So well, the lunch scene where Sylvie has a glass of wine, it's a pretty good snapshot of French work culture, at least for white collar employees. And there's a fun fact is that the French Labor Code has a drinks menu. You have the right to bring in beer, wine, cider, pear cider on the workplace, but that's it. Nothing stronger. To be honest, most companies get champagne as well to celebrate whatever they need. So legally speaking, lunch breaks are much less dramatic than the show makes them look. The law requires a minimum of 20-minute break after six hours of work. That said, for white collar employees, the one-hour lunch break is standard market practice. Employers are legally required to provide a dedicated space for meals and eating at your desk all the time is not really encouraged. Actually, it's even forbidden by the labor code. It's very difficult, obviously, to check every employee to see whether they eat on the desk, but this is definitely not the way things happen in France.

Fabienne Haas (14:03):

And that's also where overtime may kick in. In France, the standard work week is 35 hours, as you mentioned. Any working time beyond that threshold counts as overtime and must be compensated, either with additional pay or with time off in lieu or both at increased rates. The employer is responsible to monitor employees' working time and ensure that the 35 hours is complied with. Overtime is possible within weekly and yearly thresholds, so it's not indefinite. You cannot have anyone work 40 hours during the entire year without any compensation or any other scheme, which at the end of the day is equivalent to a 35 hours week. Another different topic is that work on Sunday is forbidden except in some limited circumstances and night work, which is after 9:00 PM until I think 6:00 AM is highly regulated and additional pay is due.

Tracey Diamond (15:06):

Can I stop you for one second there? Because I have a question about just sort of customer facing roles and Sunday work. I mean, I can't imagine that the entire country completely shuts down on Sunday. Somebody must be working to serve others that are going to restaurants, for example, or stores. How does that work?

Fabienne Haas (15:21):

Well, there are specific areas like restaurants or bakeries or whatever where collective bargaining agreements specifically authorize employees to work on Sundays. Most of the time it's on a voluntary basis and they're paid 150% to 200% more if they work on Sundays. There are also areas, what we call tourist areas within the big cities or outside of big cities, for example, in malls, where there are very specific rules that'll allow employees to work on Sundays, but it's extremely highly regulated. And we have litigation sometimes if stores, for example, open on Sundays and the labor inspector realizes that they didn't have the right authorization to open on a specific Sunday. During sales season, during Christmas season, there are five Sundays where stores and especially department stores and stores in malls can remain open and request that employees come to work on Sundays. Most of the time, all these companies have their own company agreements relating to working time and work on Sundays.

Tracey Diamond (16:32):

Fascinating.

Fabienne Haas (16:34):

Yeah. I can see that.

Fabienne Haas (16:37):

There is another way to compute working time for mid-level executives. Employers are allowed to compute working time in days over the year rather than in hours. This scheme is so called day count. In French, it's called [French 00:16:54]. It's really standard, especially in service companies like the Big Four and other type of companies, the software companies, et cetera.

So this triggers additional time off between eight to 12 rest days called RTT days. You will see that in France, everybody refers to RTT. Basically, it's above 25 vacation days. They get additional days and the company has to make sure that the employees actually take their days because that's mandatory. They cannot be paid or in very limited circumstances. Otherwise, they need to take this time off to make sure that the company is complying with work-life balance.

Fabienne Haas (17:39):

The problem with this day count is that it's extremely highly regulated. If you miss one of the rules, that may lead to a successful challenge of this day count scheme, and employees will likely claim payment for overtime above 35 hours. If the day count is considered not valid, it automatically comes back to a 35 hours week. So obviously, everybody who is on a day count will have worked a lot more than 35 hours. The only exempt employees are top executives such as CEOs, CFOs, HR managers, and members of executive committees. For example, in Savoir, Sylvie would be the only one to be considered a top executive. The others could be on the account, of course, but Sylvie only is exempt.

Emily Schifter (18:31):

That's so interesting and so different, of course, than the US, where really being on at all hours is the norm, and at least in many white collar workplaces. And in other industries, of course, working nights and weekends in our stores and restaurants is common. And sometimes employers will offer a shift differential and increase in pay for that, but they're not required to. Non-exempt employees, our work week is 40 hours as opposed to 35, and we do have the same kind of overtime for hours worked over that amount. Some states will add additional overtime, of course, for hitting over eight hours in a day or 12 hours in a day like California and Colorado. In many places, employers aren't required to provide any sort of lunch break or break to non-exempt employees or exempt employees. And if they do, they're typically unpaid and generally limited to 30 minutes to an hour.

Emily Schifter (19:22):

So certainly a much more kind of go, go, go work culture to your point about things moving quickly in the US.

Fabienne Haas (19:30):

But I remember when I started working at Sherman Sterling, there were night secretaries in these old days and also a lot of people who were at reproduction and all these general services of the firm. And I, of course, as a young foreign associate, I was working around the clock. And I saw all these people. I was really surprised. And I said, "But how can these people work at night every night?" Some of them were actually actors or artists or whatever sort, and they were working at night to obviously pay for their studies or whatever, for the lives basically. And I was shocked because I'd never seen anyone, especially in white collar jobs to have these people work overnight. It just came to me as a surprise contrary to Emily to see those people working at night.

Emily Schifter (20:20):

That's so interesting. So in the show, Emily is a big fan of influencer marketing, using social media influencers to help get the word out about Savoir's clients and all of their new products and ideas. Here in the US, agency partnerships or influencer collaborations can sometimes raise that classic question of whether somebody is an independent contractor versus an employee. Does that same dichotomy exist in France?

Fabienne Haas (20:45):

Oh, yes. And it's a very, very hot topic. In fact, this came up some time ago with the reality shows where artists wanted to be considered as employees and we won. We actually were representing one of the major TV channels against these so called artists who were on TV reality shows. And then of course with all the platforms, this came an even hotter topic. Influencers for the moment, at least we haven't seen that much litigation about that. But obviously under French law, it's very restricted and the contractor status, independent contractor status implies to be non-exclusive, free to work without any constraints and not be reporting in to anyone. So the duties shall be defined and provided to the contractor. And if there's a breach, the contract may be terminated based on commercial law. Obviously, this is not a contract which is an employment contract, it's a commercial contract.

Fabienne Haas (21:47):

So if a company enters into a contractor's agreement, which does not comply with those characteristics, and honestly, we spend a lot of time trying to mark up the independent contractor's agreement that we receive from our foreign clients, the likelihood for reclassification into an employment relationship is quite high. The fact of the matter is that US companies or other foreign-based companies try to use this contractor's agreement, which is very flexible to enter the French market, see how this works, and then supposedly will end the contract easily. Problem is, the contractor works only for that very company, and then there's a large chance that the contractor will claim reclassification into an employment agreement. Unfortunately, the reclassification costs a lot of money because that triggers back pay as salary payment, social contributions, and also penalties, let alone criminal claim, which really doesn't proceed, but it could be considered as illegal working and non-declared work as well.

Emily Schifter (22:56):

Oh, wow.

Fabienne Haas (22:57):

Yeah. Something else I wanted to mention. There are a lot of companies US-based most of the time who use this EOR scheme. Unfortunately, this is what I called recipe for disaster. Do not ever go for EORs.

Tracey Diamond (23:14):

What is an EOR?

Fabienne Haas (23:16):

Employee of records.

Tracey Diamond (23:17):

So like a PEO type of organization?

Fabienne Haas (23:20):

Yeah. PEO stands for...

Tracey Diamond (23:21):

Professional employer organization. I think our US employers are a little more familiar with that concept.

Fabienne Haas (23:27):

The professional employment organization may be possible as long as the company remains the real employer. In the EOR, what happens, apparently in the US as well, because we have a couple of cases for US companies, the employee of records is worse than PEO because then the employer of records, company X, Y, Z, is legally the employer in France, which means that company Post-it Note, which is the real company, and the Post-it Note company wants to have this Mr. X working for it in France. And in fact, the contract is between the XYZ EOR and Mr. X. So Post-it has nothing to do with that, but in reality, Post-it provides instructions, supervisors, the Mr. X reports into Post-it and so on and so forth. So at the time Post-it is not happy with this Mr. X performance, he says, "Well, fine. I want to put an end to this EOR contract."

Fabienne Haas (24:27):

Problem is, no one knows from a legal standpoint in France, no one knows Post-it. They only know the EOR company. And the EOR has absolutely no grounds for dismissing this Mr. X because they don't know what he's doing from day one until the day that the Post-it company decides to dismiss him. And that's where the problems arise because A, Post-it has to rely on the EOR company to process with the dismissal procedure and damages are inevitably paid because the dismissal, we'll get to that later, dismissal is without cause because obviously the EOR company has no clue whether this guy was performing well or not because it has never worked with him and Post-it cannot do anything except pay. So that's why I really wanted to mention this because it's an alternative scheme sometime that our clients request this EOR versus contractor, none of them really work in France.

Emily Schifter (25:30):

That sounds a lot like our US clients who often want to say, "Well, I can just sidestep all of these overtime rules and I'll just make them a contractor." And sounds like you have similar issues.

Tracey Diamond (25:39):

Maybe to a further degree, yeah. So that leads us to our next clip. Here in the US, we have employment at will, which means that in most cases, so long as it is not for discriminatory or a legal reason, an employee can be fired at any time for any reason, with or without notice. In our next clip, Emily is fired after causing a PR disaster for one of Savoir's fashion designer clients, but learns that in France, that's not so simple. Let's take a listen.

[BEGIN CLIP]

Luc (26:08):

Are you okay?

Emily (26:10):

No. Sylvie just fired me.

Luc (26:14):

That? Oh.

Julien (26:15):

We thought someone died.

Emily (26:17):

Nope. Just my career.

Julien (26:19):

No, it's impossible to fire someone in France.

Emily (26:21):

What?

Luc (26:21):

Oui, the bureaucracy takes months.

Julien (26:24):

Years. Simply abandon on your self-respect, come in once or twice a week to move papers around your desk and don't make eye contact with Sylvie.

Luc (26:33):

My friend got fired from a law firm. He was so angry that he threw his phone into the Seine. They couldn't reach him for weeks to complete his termination. And then they relaxed. He's a partner now.

Julien (26:46):

We can throw your phone in the Seine if it happens.

Emily (26:48):

Please don't. Thank you, guys. I wouldn't have lasted here a week without you.

Luc (26:54):

Emily, we will never deserve you. Never.

[END CLIP]

Tracey Diamond (27:03):

So are Emily's colleagues correct? Could Sylvie's attempt to fire Emily immediately have stuck or is the red tape required really that restrictive in France?

Fabienne Haas (27:13):

Well, first of all, employment at will simply does not exist in France. So the actual standard employment relationship is an indefinite term, employment agreement called in French, [French 00:27:27]. Such agreement after the probation period shall be terminated by the employer, either based on a separation by mutual consent upon the employee's request or based on a dismissal for real and serious cause. Forget about resignation. Resignation is so unusual in France that no one should rely on an employee resigning. So the valid grounds or cause may not be predefined in an employment agreement since only French courts are entitled to rule whether a cause for dismissal is valid or not. So the answer is yes, Emily's colleagues are very right. There is no way the process that should be complied with is even close to what Sylvie is trying to do to this poor Emily, telling her in a very mean way that she's immediately fired.

Fabienne Haas (28:23):

So basically the real and serious cause may be based on the employee's performance, wrongdoings, misbehavior, or based on economy grounds, which are unrelated to the

employee's performance or behavior. Let's say Emily's disaster was so bad that Sylvie decided to really fire her. Then she would need to go through the legal process and comply with the various steps and timeline, which would be send her a letter calling her to a predissmissal meeting, then hold the meeting describing the grounds for dismissing her. In Emily's case, she should hire a translator because Emily doesn't understand French and the meeting shall be in French and then notify her a couple days later that she is dismissed. So of course, Sylvie telling Emily on the spot that she's fired, even if it's a real disaster, there's no way that she could have told her. And I remember that Emily's colleagues were laughing and told her that it's obviously something that will never stand and she can happily stay at her desk waiting for Sylvie to get in a better mood.

Fabienne Haas (29:36):

And there's also one thing that I wanted to mention is that some of our US clients think that this process is pretty harsh because you just need to send out the letter or hand deliver a letter calling the employee to a predissmissal meeting and they want to speak nicely to the employee before, especially top executives. We always fight against this because this will be considered as a verbal dismissal So and will trigger immediately that the dismissal is without cause. So even though the Labor Code is so employee friendly, in this particular case, American clients think that we are very brutal and violent people because we don't authorize them or advise them to actually speak to the employees in advance. The only thing they could do and sometimes they do is hire a lawyer end of the conversation. And that's very frustrating for them, but it's to protect them from being in a situation where they will have to pay more damages.

Tracey Diamond (30:36):

It's interesting, that multi-step process reminds me a bit of the pre-adverse action letter and adverse action letter that needs to go out under US federal law under the Fair Credit Reporting Act if you're deciding to reject an applicant based on the results of a criminal background check. We don't have anything like that when it comes to terminating an actual employee. You can just terminate on the spot. It could be verbal or written, although there's many best practices to avoid a discrimination lawsuit.

Fabienne Haas (31:03):

Talking one second, but background checks is totally forbidden in France.

Tracey Diamond (31:07):

Of course it is.

Fabienne Haas (31:09):

You cannot have any condition or subject a job offer to completion of background checks. Either you do it secretly or you live with it.

Emily Schifter (31:20):

That's fascinating.

Fabienne Haas (31:21):

Yeah.

Emily Schifter (31:21):

So what about severance? In the US, severance pay is not required. And that's something that's often surprising when we're dealing with companies who are just entering the US or hiring their first US employees. Sometimes senior executives will negotiate an employment agreement, which sounds like even that's very different from France because they will negotiate over the definition of cause, sometimes pretty heavily in advance. Occasionally there's ERISA-governed severance plans and some rare state warrant act laws. But how does that work in France? Are there severance requirements? And if you're doing a reduction in force or restructuring, does that change the answer?

Fabienne Haas (31:57):

Yes, it does. So as I mentioned before, there's no predefined cause. So no one negotiates anything in that regard. Severance is not an option in France. It's legally required, except in case of gross or willful misconduct, whereas the only payment are paid vacation, but nothing relating to the actual severance. The standard statutory severance pay is three months notice during which an employee can either work or not work or be put on garden leave. And preparatory severance, which amount is calculated based on years of service. And the average monthly salary, which serves as the basis for calculation is based on fixed pay and also variable pay. The standard formula is one fourth of a monthly salary per year of service, but of course, collective bargaining agreement can also provide for much more favorable than one fourth. One fourth is the legal minimum.

Tracey Diamond (32:59):

So basically for every year you work, you're going to get 25% of your salary at the end of this job.

Fabienne Haas (33:05):

25 monthly salary.

Tracey Diamond (33:06):

Month. Okay. I missed that part. Got it.

Fabienne Haas (33:09):

So if you make 10,000, it's one quarter of 10,000 multiplied by four years if you've been for four years in the company.

Tracey Diamond (33:16):

Understood.

Fabienne Haas (33:17):

And that's net of payroll tax of payroll contributions and income tax to a certain threshold. But let's say basically it's net. Now, in case of litigation or in case of settlement, damages may be awarded to the employee in case of alleged dismissal with a cause or null and void. The dismissal could be in case of discrimination or harassment. All of this can be negotiated, but the statutory payments, and that's sometime very difficult to make US employers understand that the statutory is not negotiable. Whatever is negotiable is on top of the statutory pay. We have for now, I don't know, maybe 10 years, a scale, which is called Macron scale when he was minister of finance in France, which theoretically and legally caps potential damages based also on length of service, except in case of dismissal is null and void. The problem is that often at time of termination, old issues suddenly resurface.

Fabienne Haas (34:21):

For example, if Emily was being fired in real life, she might suddenly remember all those late night emails she was sending and cocktail parties she was attending and ask whether that time was ever properly accounted for. Answer is certainly no. So 100% of non-exempt employees make additional claims based on alleged overtime. I don't see any of our clients... It comes back to our day count scheme I was mentioning before. I do not know any of our clients which actually complies with each and every rule related to this day count or the 35 hours. So our goal is to fight against overtime claims, and there is a three years statute of limitation. Reduction in force, that's a lot more complicated, except if it's only for one individual where the same rule basically apply to misperformance. Reduction in force, which we call collective redundancies, trigger an additional layer of obligations depending on the number of employees to be dismissed, and the company's total workforce within France and the EU and worldwide.

Fabienne Haas (35:35):

The first is the information and consultation of the works council and also unions if there are unions within the organization. There are very strict timelines for this information process. An expert may be appointed by the works council. There are selection criteria not to pick and choose, which all of our clients want to do is pick and choose, but that's illegal. They need to also provide redeployment efforts and additional payment such as additional statutory severance, outplacement, any help to make sure that the company does everything for employees not to be unemployed and find another job. The labor administration steps in if the collective redundancies are made in very large companies with a large number of employees. And of course, this triggers a lot of litigation, collective litigation. We don't have class actions,

which is more or less the same thing. Either the unions and works council members decide to suspend the information consultation for lack of appropriate information, or when the plan is rolled out and everybody is dismissed, all the employees could go and file a claim against the labor court, all of them.

Fabienne Haas (36:56):

And there are very famous cases where a supermarket in France had to reinstate recently, I don't know how many people, almost even above a hundred employees, and they cannot be reinstated, obviously. So the company was to pay a lot of damages to all these people. Litigation lasted for five or six years, but it's a very, very famous supermarket in France. And obviously all the students are now studying this case. So that's very, very complicated. And that's why reduction in force shall be organized and thought of, anticipated and very carefully from the very beginning. And of course, the US clients always want to do something in August or during Christmas and New Year's, which in France is just a complete shutdown and no one would ever do anything in August. I mean, the shutdown for Christmas and New Year's is probably the same as in US, but frankly, the whole month of August is shut down in France. So you have to really timeline the restructuring.

Tracey Diamond (38:02):

So I want to pivot for a minute and queue up our third clip. And this one's about romance, because of course, how could we talk about France and Paris in particular without talking about romance? And of course, because it is television, there's a lot of romance involved in *Emily in Paris*. As family gets involved with friends and clients, friends who become clients, clients who become quote/unquote "friends." In the latest season, one of the new hires quips that she can't keep up with, who is and isn't a client of the agency and who is or isn't in a relationship with whom. In our next clip, Sylvie outlines just one of the many messy love triangles that Emily has gotten herself into.

[BEGIN CLIP]

Sylvie (38:40):

So you're having an affair with the chef, aren't you?

Emily (38:44):

No.

Sylvie (38:44):

He sent you lingerie. I remember.

Emily (38:46):

That was a misunderstanding.

Sylvie (38:48):

Yeah. Now we know where he got his good taste from. Antoine. This is starting to make sense.

Emily (38:56):

Gabrielle is not staying in Paris for me. Okay? Kami is my friend.

Sylvie (39:00):

Oh, those are two totally unrelated statements. Oh, Emily. You're getting more French by the day.

Emily (39:07):

I'm not having an affair with Gabrielle. I'm actually going to Santa Pei this weekend with Mathieu.

Sylvie (39:14):

Oh, I see. Focus on having sex with a client to get your mind off your friend's boyfriend. Are those in your rules?

[END CLIP]

Tracey Diamond (39:26):

In the US, while consensual relationships are not prohibited, employers often discourage them out of concern about a sexual harassment claim or an appearance of favoritism. Sex harassment is prohibited by Title VII and similar state laws, and includes both hostile work environment harassment, and quid pro quo. The show sometimes makes light of romantic relationships that could cross lines by playing into the stereotypes about the city of love and the romance of Emily's life in Paris. So Fabienne, what's real life like there? Are the rules less strict in France? What issues do you see that might arise from romantic involvement between coworkers and clients?

Fabienne Haas (40:05):

Well, this is where the show really leans into the City of Love's stereotype and with Emily's life, which is obviously a romance in itself. From a legal standpoint, France is not nearly as relaxed as it may look onscreen. Romantic relationships are not prohibited in France, including between coworkers and even sometimes with clients. That is actually a big difference with the US. In fact, what we see from the US policies that we localize most of the time in France is quite common that the US discouraged or even prohibit romantic relationship. That's what you said earlier. The problem in France is that blanket bans on workplace relationships raise privacy concerns. Most of the time, US policies include serious violations of privacy laws. So Emily could in fact have relationships with coworkers as long as there is a consent on both sides.

Fabienne Haas (41:08):

However, French law is very strict when it comes to harassment. Sexual harassment is forbidden in the workplace as well as bullying and moral harassment defined as repeated behavior that creates pressure, discomfort, or a hostile work environment. So while flirting may be more culturally accepted in France, the line is very clear. The moment where an employee feels that the behavior becomes unwanted, creates pressure, or involves a power imbalance, it stops being flirtation and maybe qualified as harassment. So this is even more sensitive when managers, subordinates or clients are involved because consent can quickly be called into question. And unlike what the show sometimes suggests, employers in France have a duty to prevent harassment.

Fabienne Haas (42:01):

However, as I said, when the relationship is consensual, the employer is not allowed to interfere, as this would be a violation of privacy. I have seen one policy for one of our clients who said, "If you even think of having a relationship with someone, you should tell HR." We all laughed because obviously this is something that in France couldn't be written, said, or even thought anywhere because if someone wants to ask someone else on a date within the firm or within any organization, that's fine.

Fabienne Haas (42:39):

Just to give you an anecdote, within August Debouzy, we have probably, I don't know, maybe over 20 marriages and also children whom we name August Debouzy babies because both parents are actually August Debouzy, either current or former lawyers, partners with partners, or associates. The last one, we have one of the associates in our team who is on maternity leave and the father is happily working in litigation two flights down.

Tracey Diamond (43:14):

That's not so dissimilar to our firm. And while sometimes in the US, there may be this policy of, "You need to tell HR if you're in a relationship," I query how often that's followed.

Emily Schifter (43:25):

That's exactly right. Wishful thinking. Right. So obviously there is that question of when something crosses the line, what are the best practices for investigating allegations of harassment or even just of discrimination in France?

Fabienne Haas (43:38):

So once there is an allegation of harassment or discrimination, there's no way to ignore it and employers have a duty to act. This means that employers have to launch an internal investigation that is neutral, confidential, and fair to everyone involved. Sometimes US clients decide to do it internally in English with HR or ethics and compliance teams who have no idea what the culture is in France. And that's very difficult because sometime the result is really not

what we would expect. Employee representatives most of the time shall be involved. That is works council and union representatives, which at that stage, if you put a US team with French employee representative together, this is again, recipe for disaster. So in sensitive cases, it's even better to hire an external investigator to can ensure that the process is seen as fair and objective rather than having an internal investigation.

Fabienne Haas (44:40):

Also, when you run the internal investigation, that means also gathering documents, messages, and making sure that all sides are heard, and especially if there are witnesses to be heard, then the investigator shall also take the list of the alleged victim and interview all the people that the victim wants to be interviewed. The goal is obviously not to make a decision on guilt, but just to establish the facts. In France, if the investigation is poorly handled, for example, my ethics and compliance investigation, it's very damaging, as much as not investigating, especially if employees feel that the process was biased or rushed. And since this investigation may end up on the labor inspector's desk or before a French employment labor court, obviously this needs to be done by French minds.

Fabienne Haas (45:42):

Also, it's important that company from a defense perspective really show that the company has put into place the appropriate tools as mandatory trainings for managers and employees, codes of conduct, including anti-harassment, discrimination rules, and access to hotline to alert on potential misbehavior. So that makes the difference. And the company really needs to have put this in place before everything happens because then it's going to be too late.

Tracey Diamond (46:17):

That's pretty similar to here in the US, I would say. Well, Fabienne, this has been a really interesting conversation about the differences between US and French law. I think my takeaway is that it's pretty expensive for an employer to do business in France. Is that right?

Fabienne Haas (46:31):

I'm glad you're raising this because that's exactly what the problem is.

Tracey Diamond (46:36):

Yeah.

Fabienne Haas (46:37):

It is very expensive. And we have not discussed payroll contributions, for example, which is about 45% of the monthly salary to be paid on top for the employer.

Tracey Diamond (46:47):

Oh, wow.

Fabienne Haas (46:47):

And 20% to be paid by the employee and the company pays on behalf of the employee. So adding up it's 60 to 65% on top of the salary, it is extremely expensive. That's why it's very difficult for US companies to do business in France. Although if you think about the big names in France, some of them are our clients, they cannot avoid to be in Paris. I mean, the big brand names, whether it's in software, clothing, restaurants, fast food, they cannot decide all of a sudden to just wind down France because the market for them is huge. However, sometimes they have issues complying with French law. And that's why we have this, as I said, 30 attorneys team here in Paris in our firm. And we have also colleagues in different firms because employment and labor law in France has become a very, very hot topic.

Fabienne Haas (47:46):

And with tax law, I think these are the worst process and topics that non-French employers have to face, but they still want to be successful in France and the price to pay is to comply with French law.

Emily Schifter (48:01):

Sure. And I think there's probably some things US employers could learn from French employment law. You're right. There can often be quick to hire and fire and want to do all of the background checks beforehand and want to force people to work lots of long hours sometimes. And every now and then, it might be nice to have that forced take a step back and think about it and recognize it as a bit more of an investment. Pros and cons on both sides, for sure.

Fabienne Haas (48:24):

Yeah. You have a very flexible market. We don't. That's the problem. And people don't find jobs as easily as they do in the US. Moving from one state to the other in France is just not possible. That's why employees are more protected and French law is more employee friendly than in the US, obviously.

Emily Schifter (48:43):

Yeah. Well, like Tracey said, this was such an interesting conversation. We're so grateful that you joined us. Thanks to our listeners as always for tuning in. Keep an eye out for future episodes you can find anywhere you get your podcast. Please reach out to us with any questions or suggestions for other topics. Thanks so much.

Fabienne Haas (48:59):

Thank you so much for having me. It was a great pleasure to compare notes with you on this very interesting podcast.

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