CHAPTER 2

French Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Isabelle Daugareilh, Guillaume Santoro, Haoussetou Traore

1. Introduction

1.1 Characteristic Features of the Law Applicable to Employment Relationships in France

French law is marked by the distinction between public law and private law, the former governing relations between the State, its employees and users, the latter applying to relations between natural and/or legal persons, including those between companies and their employees. As *care* workers may be employed by both public and private establishments, we will present the features of labour law (1.1.1) and those of civil service law (1.1.2) in turn, even if we come to emphasize the strong similarities between the two types of legislation.

1.1.1 Essential Features of French Labour Law

Labour law in France has several characteristics. It is codified (1.1.1.1); its personal scope of application is limited and variable (1.1.1.2). Historically, labour law has been imperative and protective of employees, but today it has been deconstructed in favour of contractual arrangements in the interests of companies (1.1.1.3). *Care* workers occupy an unfavourable position in the Labour Code, compensated for by a body of conventional law that is admittedly complex, but which compensates for the legislator's lack of interest in these workers, who were nonetheless considered essential not so long ago during the pandemic (1.1.1.4).

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Isabelle Daugareilh, University of Bordeaux, France, isabelle.daugareilh@u-bordeaux.fr
Guillaume Santoro, University of Bordeaux, France, guillaume.santoro@u-bordeaux.fr
Haoussetou Traore, University of Bordeaux, France, haoussetou.traore@u-bordeaux.fr

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1.1.1.1 A Codified Legislation Characterised by Strong State Interventionism and a Plurality of Sources

Codified labour law[2] brings together laws, regulations and decrees covering virtually every aspect of the employment relationship.[3] It is a law that stems from strong State interventionism, with the law being the primary source of workers' rights. However, it is made up of various sources subject to the principle of hierarchy and public social order. In addition to the law (including the Constitution and the Labour Code), the other sources of law are: collective labour agreements internal regulations, custom and the employment contract. These sources are governed by the principle of hierarchy, according to which an inferior source cannot, in principle, derogate—*in peius*—from a superior source unless authorised by a special law. The French legal system is monistic. Consequently, as soon as international standards are ratified, they are automatically incorporated into the domestic legal system. France (the second-largest ILO member state in terms of conventions ratified—130 out of 191, including 10 out of 11 fundamental conventions) has not ratified International Convention 189 on domestic work. It has just ratified Convention 190 on violence and harassment at work.

1.1.1.2 A Limited Personal Scope and Variable Geometry

It is a legislation with a limited personal scope.[4] It applies to paid employment relationships. Certain parts of the Labour Code are also applicable to staff of public legal entities employed under private law conditions. Public law contractual employees and civil servants are governed by civil service law (see below). This will therefore be the case for workers employed by a public health and social care establishment (EPHAD for the elderly, for example). All other *care* workers are governed by the Labour Code and the collective agreements to which their company is subject.

It's a binary legislation with variable geometry. French employment law operates on the basis of a binary distinction between salaried work and self-employment. There is no 3rd category or third status. To this end, labour law governs the relationships arising from an employment contract between employers and employees, whose position of weakness/inequality calls for a specific regime. The purpose of employment law is therefore to provide a framework for the relationship of legal subordination between an employee and an employer, by limiting the imbalance between the parties to the employment contract—while legitimising the employer's powers, in the name of freedom of enterprise and property rights in particular.

[2] All references to a Code in this report refer to French Code.

[3] The Code is divided into 8 parts: 1. Individual employment relations, 2. Collective employment relations, 3. Working hours, pay, profit-sharing and employee savings schemes. 4. Health and safety at work, 5. Employment, 6. Lifelong vocational training, 7. Provisions specific to certain professions and activities, 8. Monitoring the application of labour legislation.

[4] Article L.1111-1 of the Labour Code: private-sector employers and their employees.

There is, however, a Part VII of the Labour Code devoted to certain professions and activities, including those of domestic employees and personal services in Titles II and III of Book II of Part VII respectively. Title III defines personal services as follows: "childcare; assistance for the elderly, disabled or other people who need personal help in their own home or mobility assistance in the local environment to help them stay at home". The Borloo law clarified and extended the scope of personal services by defining an exhaustive list of 21 activities set out in the decree of 29 December 2005. The main aim of the Borloo law was to create jobs while improving working conditions and employee qualifications in the personal services sector, while simplifying access to the services on offer (support and development of national brands to make it easier to match supply and demand and creation of the national personal services agency; simplification of the approval procedure, etc.) and the creation of new services and tax benefits (CESU). The Borloo law has also encouraged the social partners to open negotiations on working conditions and access to vocational training (job descriptions, recognition of new jobs, contribution to vocational training, acceleration of VAE, etc.).

Associations that place workers with individuals who are employers and carry out administrative formalities and social security and tax declarations relating to the employment of these workers on behalf of these individuals only act as agents, as the individuals are the sole employers of the workers.[5] These organisations must obtain authorisation from the competent administrative authority to carry out these provision of services activities; they must carry out this activity on an exclusive basis. The system of compulsory authorisation for agent organisations created by law no. 2002-2 of 2 January 2002 was simplified by law no. 2005-841 of 26 July 2005 on the development of personal services and various measures to promote social cohesion (JO no. 173 of 27 July 2005), known as the Borloo law. Following this law, article 4 of Ordinance no. 2005-1477 of 1st December 2005 relating to the right of option, various provisions relating to procedures for admission to social assistance and social and medico-social establishments and services puts an end to the procedures relating to the quality approval (Labour Code) and authorisation required of home help service providers (assistance for families, the elderly and the disabled: CASF). From now on, these services will have the right to choose between the two systems, and authorisation will be equivalent to approval if the condition of exclusive activity is met and certified by the President of the General Council. This relaxation of the authorisation system has the effect of distorting the analysis of the home help sector by increasing competition between the various structures involved in the care sector, i.e. associations, for-profit companies and direct employment by private individuals.[6]

[5] Cass. soc. 23 November 2005, *RJS* 281 (2006): 167; *Dr. soc.* 2 (2006): 217, *obs.* Gauriau.

[6] According to Bernard Ennuyer, "Allowing companies wishing to support frail populations to opt out of the compulsory authorisation mechanism introduced by the 2002-2 law by introducing a right of option between authorisation and quality accreditation (2005

The rules on minimum wage apply to home workers employed by private individuals; this is not the case for the legal rules on working hours (including the definition of actual work) covered by the national collective agreement for private individuals and home workers. The only applicable rules of the Labour Code are those relating to moral harassment, May Day, paid leave and leave for family events, family solidarity and caregiving, medical surveillance, the employer's safety obligations and undeclared work. In addition, Title IV of this same section of the Labour Code applies to self-employed workers using an electronic contact platform. In reality, apart from the reminder of the right to freedom of association and trade union action, the text excludes these workers from the protection of employment law.[7]

Individual disputes arising from employment contracts are settled by a specialised court, the Conseil des prud'hommes (industrial tribunal) in the first instance, and then by the social divisions before the Court of Appeal and the Court of Cassation. The Conseil des prud'hommes is a court made up of lay judges elected by their peers every 4 years on a trade union list. It is made up of sections, one of which, called "Various activities", will receive claims from workers and employers in the care sector.

1.1.1.3 A Historically Imperative and Protective Legislation Now Deconstructed in Favour of Company's Interests

In very broad terms, after a long period of construction and continuous progress generally in favour of workers (from 1841 to 1981), labour law went through a period of extension of the role of collective bargaining to company level (Auroux laws 1981-2000) and at the same time of flexibilisation of working and employment conditions (1990-2000) to end up undergoing a period of deconstruction (2002 to the present day) during which several legal reforms, in the name of modernising the labour market and reducing the cost of labour and social expenditure, have reduced public order and reduced the areas in which the law is imperative, leaving room for collective agreements at company and/or branch level. This process of deregulation/re-regulation has not been without social conflict and massive resistance organised as a unit by the trade unions (2006 against the CPE, 2016 against the El Khomri law, 2017 against the Macron ordinances, 2022 against pension reform). One of the areas hardest hit by this process is undoubtedly that of working hours and working time (laws of 20 August 2008 and 8 August 2016).

Ordinance) has created a distortion in the control of services for frail people by the public authorities, since authorisation gives the latter, in this case the General Council, the power to charge for the service and therefore to control its budget"; cfr. B. Ennuyer, "Les services de maintien à domicile et le métier d'aide à domicile, quel bilan après la loi Borloo de 2005," *Gérontologie et Société* 35, 142 (2012/3): 143–56.

7 Only self-employed mobility platform workers are covered by the provisions on social dialogue.

Not a year has gone by since 2013 without a major reform systematically affecting the system of sources of labour law in an inexorable trend towards strengthening conventional law at the expense of statutory law, with an irreversible trend towards decentralising collective bargaining to company and establishment level.[8] What can be said of this legislative activism except that it has succeeded, *step by step,* in imposing a reversal of sources within conventional law, while the law remains the determining factor in this rearrangement of sources. The ambition of recent governments is to renovate labour law. The Copernican revolution announced by President Macron is in fact the end of a long transformation process begun in 1982 with regard to collective bargaining, and for quite different reasons at the time.[9] What was labour law criticised for? That it was inefficient and unsuited to the challenges of globalisation, digital technology and professional transitions, according to the advocates of these reforms. Yet French labour law has been constantly evolving[10] in all its facets since the 2000s. On the other hand, the Macron reforms underpin the idea of reordering the functions and purposes of labour law not around the protection of the weaker party to the contract, but around the enhancement of competitiveness, competition and the market, in short replacing the centrality of protection—of the employee—with that of economic rationality—of the company. Labour law has always had this ambivalence, but now it should be geared towards the interests of the company and collective bargaining should be placed at the service of the employer, even if this means having agreements that are not negotiated, but proposed by the employer—in very small companies.

The laws passed during this period make substantial references to collective bargaining at cross-industry, industry or company level. Examples include, but are not limited to working time, employee savings schemes, Sunday work, Predictive management of jobs and skills (GPEC), gender equality, the generation contract, vocational training, mobility, job retention and job protection plans. If we add to this the obligations to negotiate at company or branch level, which have also multiplied, almost nothing now escapes collective bargaining. But it is not so much this extension to the entire employment relationship as the relationship between sources of law that is now problematic. As the rule of the State becomes more and more suppletive, leaving an unconstrained space for the rule

[8] Act of 14 June 2013 on securing employment, Act of 5 March 2014 on vocational training, employment and social democracy, Act of 17 August 2015 on social dialogue and employment, Act of 8 August 2016 on work, modernising social dialogue and securing career paths, and the Ordinance of 22 September 2017 - Ordinance no. 2017-1385 on strengthening collective bargaining, Ordinance no. 2017-1388 containing various measures relating to the framework for collective bargaining and Ordinance no. 2017-1718 supplementing and harmonising the provisions adopted pursuant to the Act of 15 September 2017 adopting measures to strengthen social dialogue, all ratified by the Act of 29 March 2018. The ordinances of autumn 2017 were followed by the law of September 2018 on mobility and will be followed by a reform of training and apprenticeship in 2019.

[9] See G. Géa, "Avant-propos," *Droit social* (2017): 996, sp. 999.

[10] Géa, "Avant-propos," 996, sp. 999.

of collective bargaining, company bargaining has in turn emancipated itself from the law and from the collective bargaining framework of the branch. The arrangement of the sources of law and the principle of favour which historically governed it are in fact being called into question. Perrulli[11] speaks of a trend towards the "corporatisation"[12] of industrial relations systems, profoundly affecting the traditional system of sources of labour law, causing an inversion of the pyramid of standards and a radical transformation of the historical function of collective bargaining, which was to improve the lot of workers and to provide legal support for innovations in support of social progress.

Collective labour agreements apply to all employees of companies that are members of the employers' organisations that are signatories to the agreement or collective agreement. These agreements are contractual in nature and legally binding. When the agreement is extended by the Ministry of Labour, it applies to all employees of all companies within the scope of the agreement. It then takes on regulatory status.

1.1.1.4 Remarks on the Research Methodology

The concept of *care* worker does not exist in French law; it is not a legal category. It covers two types of activity covered by the Labour Code: domestic work and personal service and assistance in the field of care. *Care* work therefore corresponds in part to domestic work when it is carried out in the home of the person receiving the service and corresponds to article 1 of ILO Convention 189 "work done in or for one or more households", a Convention not ratified by France.

The place of work is a determining criterion of the applicable legal provisions. If the work is carried out at the beneficiary's home or in a private institution, employment law will apply unless otherwise stipulated. If the work is carried out in a public institution or by public employees at home, civil service law will apply.

Employment relationships in the private *care sector* are governed by 6 national collective conventions (NCC). Here again, the place where the activity is carried out is decisive: the beneficiary's home or an institution. As far as the home is concerned, there are 3 national collective conventions (NCC) in force: one for the NCC for individual employers and home-based employment of 15 March 2021 (extended) and the other 2 applicable to legal entities pursuing a profit-making aim, the NCC for personal services companies (extended) of 20 September 2012, and, for non-profit establishments, the NCC for the home help, support, care and services sector (extended) of 21 May 2010. This distribution, the result of collective autonomy, state interventionism and the unique nature of these activities, is not common to the industrial model. The last three collective agreements have

[11] A. Perulli, "Observations sur les réformes de la législation du travail en Europe," *RDT* 3 (2015): 170–180.

[12] A neologism used by Perulli, "Observations sur les réformes de la législation du travail en Europe," 170–180, to describe the trend towards making the company a central and increasingly autonomous level for creating rules.

been extended; they therefore have regulatory status, which means that they apply to all employees of all employers within the scope of application, whether or not they are members of the signatory employers' organisations. With regard to activity in institutions, there are still 3 national collective conventions in force: the NCC for Private Non-Profit Hospitalisation, Care, Cure and Custody Establishments of 31 October 1951, which has not been extended, the NCC for Private Hospitalisation of 18 April 2002, which has been extended, and the NCC for Establishments and Services for maladjusted and disabled Persons of 15 March 1966, updated to 15 September 1976, which has not been extended.

Although company agreements have become the norm in labour law, this report will only examine the law and industry-level collective agreements. A study of company agreements would have required a different timeframe and would, in any event, have been non-exhaustive.

1.1.2 Characteristic Features of Civil Service Employment Law

Until recently, the law applicable to employment relations in the civil service was radically different from labour law. Since 2021, however, the two have been moving closer together. Some authors consider that labour law has been a direct source of inspiration for the reforms of civil service law, and some speak of the "labourisation" of the civil service. Certain parts of the Labour Code are directly applicable in the civil service (see below the section on health and safety at work). However, this approximation by attractiveness or by mimicry does not erase important differences, including those relating to status, recruitment methods or job stability. Civil service law has now been codified (1.1.2.1) and is in the process of being partly contractualised (1.1.2.2).

1.1.2.1 A legislation recently codified

French civil service law has seen a major event with the ordinance of 24 November 2021 establishing the legislative part of the General Civil Service Code. It has been announced many times since the 1983 law, but has been abandoned time and again. Since 1983, civil service law has consisted of a "pediment" law of 13 July 1983 on the rights and obligations of civil servants and three "legislative columns" covering the State civil service (law of 11 January 1984), the local civil service (law of 26 January 1984) and the hospital civil service (law of 9 January 1986). Together, these constituted the general status of civil servants in France. With the ordinance of 24 November 2021 on the General Civil Service Code, it is almost the equivalent of the Labour Code that has been adopted for the three civil services. For the time being, however, this Code only consists of its legislative part; the regulatory part therefore remains to be integrated, which is bound to raise difficulties, as it is well known that the devil is in the detail. This Code came into force on 1st March 2022; but some of its provisions, in particular those relating to staff representation bodies, did not come into force until 1st January 2023. This is a codification of the law as it stands.

The Civil Service Code applies to all civil servants who hold civil service status and to contract staff. As the number of contract staff is increasing, the risk of a "civil service bis" is avoided. This explicit extension (art. L. 5) to contract staff applies insofar as the principles and standards set out are applicable to them. The Code spells out which workers are excluded from its scope (art. L. 6). The Civil Service Code is therefore not limited to the general status of civil servants, but has a broader scope by including contractual employees. Like the Labour Code, the Civil Service Code is organised thematically into 8 Books.[13] Books II, VI, VII and VIII echo Parts II, III and IV of the Labour Code.

As this is a general code, the special statutes and employment frameworks of the State, regional and hospital civil services have been excluded from both the legislative and regulatory sections. This does not preclude the coexistence, alongside common standards, of rules specific to one of the three civil services, particularly with regard to social dialogue bodies.

The competent court in the event of a dispute between a public employee and his establishment is the administrative court (Tribunal administratif and Conseil d'État).

1.1.2.2 A Legislation Now Fully Open to the Collective Bargaining

The introduction of collective bargaining into civil service law has been a gradual process. The Act of 13 July 1983 on the rights and obligations of civil servants was the starting point for an extension of the social dialogue tools introduced in 1946 with the Act on the status of the civil service. The Act of 5 July 2010 on social dialogue in the civil service broadened the scope of matters that could be the subject of negotiation and also laid down the rules governing the legal validity of the resulting agreements. Nevertheless, the Conseil d'Etat remained faithful to its case law, according to which memorandums of understanding had no legal value.[14] Despite a burgeoning culture of discussion and negotiation, few agreements were concluded.[15]

The law of 6 August 2019 on the transformation of the civil service paved the way for the government to take significant steps to promote negotiated agreements in the civil service at national and local level. This was the purpose of the Ordinance of 17 February 2021 on collective bargaining and agreements in the civil service. The 2021 law contains three essential elements relating to an exhaustive list of subjects for negotiation, the level of negotiations and the legal scope of agreements.

[13] These are Book 1st relating to rights, obligations and protection, Book II relating to the exercise of trade union rights and social dialogue, Book III relating to recruitment, Book IV relating to the principles of organisation and management of human resources, Book V relating to careers and professional development, Book VI relating to working time and leave, Book VII relating to remuneration and social action and Book VIII relating to prevention and protection in terms of health and safety at work.

[14] CE 22 May 2013, no. 356903, Fédération Interco CFDT, Lebon.

[15] The memorandum of understanding of 31 March 2011 on securing career paths, the memorandum of understanding of 8 March 2013 on professional equality between women and men in the civil service, the 2015 agreement on career paths, careers and pay.

Firstly, the text establishes that negotiations on pay and purchasing power can only take place at national level between representative national trade unions and government representatives. The exclusivity of the national level is undoubtedly explained by budgetary reasons and respect for the principle of equal treatment between public servants.

Secondly, collective bargaining on the subjects listed exhaustively at[16] may take place at national or local level between representative trade unions of civil servants and administrative and territorial authorities. With regard to the relationship between the national and local levels, the Act of 13 July 1983, which has been incorporated into the Civil Service Code, stipulates that "an agreement at a lower level may only specify a national-level agreement or improve its general structure, while respecting the essential stipulations". The legislator is here repeating what was a general principle that prevailed in labour law before the reforms of the last two decades. This is one of the major differences that remains with labour law. A second difference is that there is no obligation to negotiate in the new civil service law.

Thirdly, the 2021 text stipulates that majority agreements reached in the areas listed are legally binding.[17] This is a first, indeed a Copernican revolution in civil service law. The collective labour agreement thus becomes an autonomous source of law in many areas, those that do not fall within the scope of the Staff Regulations,[18] it acquires binding force.

The 2021 reform

> puts an end to the previous paradoxes of a norm that is valid but devoid of any legal scope, but has certainly not crossed the Rubicon of opening up the field of the Staff Regulations to negotiation. On the other hand, this reform accentuates the dual role of the civil servant, who has become both a servant of the general interest and a "worker" within EU law as a result of previous reforms. The place of the negotiated norm among the sources of civil service law now marks this duality; it echoes the contemporary face of the public servant.[19]

[16] These include working hours, teleworking, quality of life at work, commuting arrangements, the impact of digitisation on the organisation and conditions of work, social support for service reorganisation measures and the implementation of measures to combat climate change, the preservation of resources and the environment and the social responsibility of organisations, apprenticeships, collective profit-sharing and procedures for implementing compensation policies, changes in professions and forward-looking management of jobs and skills, supplementary social protection.

[17] Agreements concluded in areas open to negotiation may include provisions enacting regulatory measures, as well as clauses by which the administrative authority undertakes to undertake specific actions not involving the enactment of regulatory measures.

[18] It should be noted that these areas include the duration and organisation of working hours, even though the Conseil d'État had ruled that these were statutory rules, CE 9 October 2002, no. 238070 and 238138 Fédération des personnels des services des départements et des régions CGT-FO, Lebon.

[19] E. Marc, "L'ordonnance du 17 février 2021: extension substantielle et maîtrisée de la négociation collective," *AJFP* (2021): 133.

The 2021 ordinance therefore marks the end of the specific nature of civil service law in France, during which collective agreements were legally treated as mere declarations of intent. That said, this reform, which has only recently come into force—on 1st January 2023—will only have a significant impact once the social partners and government departments have adopted this new tool. At present, two collective agreements have been concluded, one on teleworking and the other on supplementary social protection, which will be the only one used in our research.

1.2 The Industrial Relations System in France

Freedom of association. Long enshrined in France by the Waldeck Rousseau law of 1884, applies to all those who exercise a profession, not just salaried employees. Employers, the self-employed, civil servants and the liberal professions are all entitled to form and join trade unions.

The purpose of the union is to represent the collective interests of the profession. It has legal personality and powers, including the right to put forward candidates for elections to set up staff representative bodies in companies and the right to negotiate and conclude collective labour agreements if it is representative. The 2008 reform replaced the representativeness attributed by the public authorities with proven representativeness.

Trade union representativeness. French law recognises the specific powers of the most representative trade unions. The law of 20 August 2008 provides a framework for trade union representativeness. In companies, it is reserved for trade unions that have obtained 10% of the votes in professional elections. At branch and/or cross-industry level, it requires a threshold of 8% of votes. These thresholds, combined with the other conditions, have not led to a reorganisation of the trade union landscape.

The structuring of trade unionism. French trade unionism is structured on a geographical and professional basis. Geographically, there are the local and departmental unions of each confederation. On a professional level, unions exist in the form of federations based on a trade (corporation) or on a branch of industry or economic activity (broader solidarity). French trade unionism has opted for branch-based unionism; there are very few trade unions.

French-style trade union pluralism. The French trade union movement is the product of an eventful history of splits and mergers in line with the ideologies that have run through it. There are 5 confederations: the CGT (Confédération Générale du Travail, founded in 1895, a reformist union); the CFTC (Confédération Française des Travailleurs Chrétiens, a Christian union), founded in 1919; the CGT-FO (Confédération Générale du Travail - Force Ouvrière, a free union), founded in 1947; the CGC (Confédération Générale des Cadres, a category-based union), founded in 1948; and the CFDT (Confédération Démocratique Française du Travail, a self-managing union), founded in 1964. Recent years have seen the creation of two other organisations, the Union syndicale Solidaires, founded in 1981, and the UNSA (Union nationale des syndicats autonomes), founded in 1993. Although this very marked trade union pluralism in France rhymes with trade union divi-

sion, it is sometimes supported by quite remarkable collective action units, attesting to a real vitality and a strong audience for the trade union movement in France.

A trade union movement in crisis. The unionisation rate has been falling steadily since the late 1990s: 11% of subordinate workers are union members (including civil servants) and 9% of private sector employees (DARES 2016). This is half the rate of 25 years ago and three times lower than in 1950. However, 90% of employees in France are covered by a collective agreement (trade unions negotiate on behalf of all employees, not just their members, and social security, unemployment insurance and vocational training are available to all, whether or not they are union members). The unions are also involved in the management of the major social bodies. They retain important means of influence and are able to mobilise and move forward in a unified way on certain issues (such as pensions).

Employers' unions. At national and inter-professional level, there are 3 representative organisations, the MEDEF (Mouvement des entreprises de France), the CPME (Confédération des petites et moyennes entreprises) and the U2P (union des entreprises de proximité which brings together the UPA, Union professionnelle artisanale and the UNAPL, Union nationale des professions libérales). MEDEF represents over 70% of all employees in companies represented in collective bargaining.

Domestic workers acquired the right to belong to a trade union organisation with the law of 1884, but the right to conclude (and extend) collective labour agreements was not recognised until the law of 11 February 1950. A first agreement was signed on 1st June 1951, but was not extended because the federation of employers of domestic staff was not representative. It was not until 8 May 1980 that the national collective agreement for private employers in France (FEPEM) was signed and extended on 26 May 1982. According to Sophie Nadal, the question of the representativeness of employers' organisations was used by the Ministry of Labour to reject requests for extension. Subsequently, the restructuring of the branches launched by the government led to the conclusion of a single agreement for individual employers on 26 March 2021, which was extended on 6 October 2022.[20]

1.3 The Welfare State Model

In this section, we present the general features of social security legislation (1.3.1) and the role of long-term care risk (1.3.2).

[20] The first collective agreement was replaced by the national collective agreement for employees of private individual employers of 24 November 1999. This was subsequently replaced by the NCC for private employers and home-based employment of 15 March 2021, resulting from the convergence of the branches of maternal assistants and employees of private employers. There used to be a specific collective agreement for the profession of childminder, whose place of work is in the childminder's own home and who is directly employed by a private individual to look after a child. S. Nadal, "Régulation négociée du travail domestique: la construction des "branches" et la détermination des droits conventionnels des salariés tributaires de l'action publique," *Droit Social* 9 (2022): 686.

1.3.1 General Presentation of Social Security Legislation

The notion of the welfare state refers to a social and political form of the concept of the state. Equated with the social state or the redistributive state, the welfare state is characterised by its interventionism in social relations, the production of collective goods and the provision of public services.

In France, the origins and stages in the construction of a "social state", understood as the state regulating social life and the economy and guaranteeing high-quality public and social services for all, date back to the end of the 19th century.[21] The first social insurance schemes were created in 1928-1930. But it was not until the aftermath of the 2nd World War that a social security system of the Bismarckian or professionalist type was introduced.[22] The right to social security is not enshrined in the Constitution as such. It includes: the duty to work and the right to obtain employment (para. 5); The Nation guarantees to all, in particular to children, mothers and old workers, protection of health, material security, rest and leisure. Every human being who, by reason of age, physical or mental condition or economic situation, is unable to work has the right to obtain from the community an adequate means of subsistence (para. 11).

The right to social security is linked to the exercise of a professional activity—whether salaried or self-employed. A general scheme was set up for salaried workers,[23] while special schemes (for the non-agricultural working population)[24] were maintained—initially on a provisional basis—and were later to be absorbed by the general scheme and the definitive maintenance of an agricultural scheme. Based on the Bismarckian tradition, the French system is made up of insurance schemes financed mainly by social security contributions, supplemented by assistance schemes financed by taxation. The social insurance funds are managed by the social partners (paritarianism).

Nevertheless, the system has evolved towards generalisation, or even universalisation, of benefits. This is the case for family allowances and health benefits, which are granted to anyone residing in France on a stable and regular basis. France has ratified ILO Convention 102 on social security. The French welfare state is based on the principles of solidarity, universality and redistribution, and includes a social security system, social assistance and public policies for social inclusion.[25]

[21] See, for example, the law on accidents at work of 9 April 1898 and the law on workers' and farmers' pensions of 5 April 1910.

[22] The ordinances of 4 and 19 October 1945 created a social security system that merged the old insurance schemes (sickness, retirement, etc.) and guaranteed that, under all circumstances, everyone would have the means to support themselves and their families in decent conditions.

[23] The scheme comprises 4 branches (sickness, maternity, invalidity, death; accidents at work and occupational diseases; old age; family).

[24] State and local authority civil servants have their own pension schemes.

[25] For example, the creation of the CMU in 2000, which became the PUM in 2016 and the CSS in 2019; see also the Disability Act of 2005, the LASV of 2015, the provisions of the Labour Code relating to the fight against discrimination and for equal treatment, etc.

Since social insurance schemes do not cover all risks, supplementary schemes have been introduced. These include supplementary pension schemes, which have been compulsory since 1972, and supplementary provident schemes, which include compulsory health cover for employees, supplementary health protection as part of universal health cover (CMU) and optional company pension and retirement savings schemes.

In terms of funding, the model is essentially based on compulsory levies (social security contributions and taxes) to meet health and social expenditure. The ratio of compulsory deductions to gross domestic product (GDP) has risen steadily, from 30% in 1960 to 45.4% of GDP in 2022.[26] As social spending continues to rise, this welfare state model is now in crisis and has become too costly, to the point where some people are wondering whether it might not be jeopardising the competitiveness of businesses and undermining the dynamism of the economy.[27] The social protection system is currently burdened by the economic crisis, the demographic crisis of special occupational schemes, the ageing of the population, and so on.

It is a system that practices policies of activation of social spending. These policies are based on the idea that the unemployed should not only be passively compensated, but also actively helped to find a job. Unemployment insurance in France is governed by labour law, not social security law.

Social security law is a state-based right subject to the principle of territoriality for liability and entitlement to benefits, operating on the principle of equality and non-discrimination. Foreign nationals must have regular and stable residence in order to be affiliated to a social security scheme and receive social security benefits.

1.3.2 Coverage of Dependency Risk Under French Social Security Law

One institution: the Caisse Nationale de Solidarité pour l'Autonomie (French national fund for independent living - CNSA).

Created in 2004, since 2021 it has been responsible for managing the new autonomy branch of the social security system. It is a "fund" that finances the social and medico-social establishments and services that care for the frail elderly and the disabled, and helps to finance the benefits intended for these groups, i.e. the APA and the PCH, as well as the cost and operation of the departmental centers for the disabled.

Distribution of responsibilities in the area of dependency.

Although France is a centralised country in which the State is responsible for social welfare legislation, since the decentralisation laws the départements

[26] Source v. Institut national de la statistique et des études économiques (INSEE), *Tableaux de l'économie française*, édition 2024, <https://www.insee.fr/fr/statistiques/2381412> (accessed January 20, 2026).

[27] P. Rosanvallon, *La crise de l'État-providence* (Paris: Seuil, 1992), 184, spec. 7.

have been given powers in the area of personal independence. The département is responsible for areas conferred on it by law, including personal independence. It is responsible for the general coordination of social action within its area. It draws up the social and medico-social organisation plan, in particular for establishments and services working in the disability and loss of independence sectors, coordinates the elderly sector and organises integration policies at departmental level. As for the municipalities, they have lost their own powers in the area of social assistance. However, they remain an essential link in the delivery of social assistance.

Two joint institutions for the elderly and disabled have been created: the Departmental Council for Citizenship and Autonomy (CDCA) and the Departmental Autonomy Centres (MDA).

Services:

- Personalised autonomy allowance (APA)
  This benefit is not means-tested, but the amount varies according to the income of those concerned and their degree of dependency. Managed by the départements, it is funded by the départements, old-age insurance schemes and part of the CSG (general social contribution). The law of 28 December 2015 sought to improve the situation of elderly people losing their independence, in particular by providing them with better support throughout their lives (development of independent living residences and service residences, increase in the APA at home, recognition of a right to respite for carers, etc.).
- Home help
  Health insurance cover for care prescribed by a doctor (100% for long and/or costly illnesses), the increase for a third person provided by the social security funds and the personalised allowance (or disability compensation benefit for people under 60) provided by the département. Other assistance: exemption from employers' contributions on the salary of a home help hired by an elderly person or tax deductions.

Reception facilities

Accommodation: there are various types of establishment: independent residences for able-bodied elderly people, retirement homes, establishments for dependent elderly people (EHPAD), etc.

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

2.1 Characteristics of the Care Sector

The care sector is characterised by a range of heterogeneous and complementary activities (2.1.1), with an increase in home working (2.1.2), a low level of undeclared work (2.1.3) and an absence of subcontracting (2.1.4).

2.1.1 The Care Sector, a Heterogeneous and Complementary Field of Activity

In France, the care sector covers a very broad and heterogeneous field of application, including medical and social players whose aim is to meet people's needs, restore a state of complete physical, mental and social well-being, or help them regain their autonomy. The different types of structure can be divided into health structures and medico-social structures, which can be classified according to activities or objectives, public or private sector and place of operation.

The health sector is made up of institutionalised players, town-based medicine and hospital establishments. Ambulatory structures are responsible for so-called "town care" or town medicine; they are steered by the Regional Health Agency (ARS) to provide initial access to care. Medical and paramedical professionals, both self-employed and salaried, work individually in practices, in groups or in coordinated fashion in health centers (general practitioners and specialists, pharmacists, nurses, physiotherapists, etc.). These are private structures with few salaried employees. Hospitals provide general care (medicine, surgery, obstetrics) and more specialised care (psychiatry and mental health, for example). They are also involved in emergency medicine, with emergency medical services (SAMU) located throughout the country. Administratively, hospitals fall into 3 main categories: public hospitals, private for-profit clinics and private community establishments.

The medico-social sector is made up of establishments that include homes for the dependent elderly (EHPAD) and facilities for the disabled. Their mission is to provide support and care for people in precarious situations, who are excluded, disabled or dependent. They operate in both the public and private sectors.

Alternatives to traditional hospitalisation or accommodation have been developed[28] at the initiative of the public authorities and for the benefit of patients and residents themselves, and even their families. These alternatives include home hospital care (HAD), which, under certain conditions, makes life more comfortable for patients and their families; home nursing services (SSIAD), which provide medical supervision and other hygiene and paramedical care; and home help services, which are mainly for the elderly and disabled. They enable people who need help with everyday tasks to remain at home.

Funding for residential institutions for the frail elderly is currently shared between the health insurance system, which covers the cost of medical care, the general councils (Département), which cover the cost of personal expenses linked to the loss of independence, and the users, who mainly cover the cost of accommodation and food.

2.1.2 The Role of Domestic Work in Care Work

Home care occupies a special place between community care and medico-social establishments that provide medical accommodation. Current care pro-

[28] Cour des Comptes, *Les services de soins à domicile. Une offre à développer dans une stratégie territorialisée de gradation des soins* (Paris: Cour des Comptes, 2021).

vision is still predominantly geared towards residential care.[29] This is why the Ministry of Solidarity and Health and the Caisse nationale de solidarité pour l'autonomie (CNSA) want to develop these services as opposed to facilities offering full-time group accommodation. The aim is to respond to the desire of the French (85%) to keep dependent people in their own homes with the support of home helpers.[30]

The aim of home care services is to provide care that is adapted to the person's state of health, in the comfort of their own home, and to prevent loss of autonomy in order to avoid or delay admission to a health care establishment (EHPAD, independent residence, etc.). By providing home help, people who are losing their independence can maintain their social ties and relieve the pressure on family members. It is a response to changing family structures, where all the adults (men and women) work and are less available to look after the older members of the family.

Home nursing care services (SSIAD) are subject to the regulations of the social action and family Code.[31] They provide, on medical prescription, nursing care services in the form of technical care or basic and relational care, to: sick or dependent people aged 60 and over; adults under 60 with a disability; adults under 60 with chronic disabling conditions or a condition requiring prolonged treatment and particularly costly therapy. The SSIAD comprises salaried care assistants, medical and psychological assistants, nurses and a nurse coordinator. The nurse coordinator is responsible for coordinating the internal workings of the service, i.e. welcoming people and their families, assessing their care needs by visiting them at home in order to draw up and implement individual care plans, and coordinating the professionals involved. The nurse coordinator is the keystone of the home nursing care system, according to a circular dated 28 February 2005.[32] He or she

> draws up and implements individualised care plans for each person being cared for [...]. He/she organises the work of care assistants, medical-psychological assistants and nurses employed by the service.

His duties also include the administration and management of the service and the participation of the SSIAD in the activities carried out by the local information and coordination centre.

Multi-purpose home help and care services (SPASAD) combine the functions of an SSIAD with those of a home help and support service. The aim of these services is to promote the coordination of services provided to patients, and to pool the work done to develop individual assistance, support and care plans.

[29] Cour des Comptes, *Les services de soins à domicile*.

[30] Odoxa, *Aide et soins à domicile: les attentes des Français* (Paris: Odoxa, 2021).

[31] Article L. 312-1 6° and 7° of the Social and Family Action Code.

[32] Circular DGAS/2 C n° 2005-111 of 28 February 2005 relating to the conditions for authorising and operating home nursing care services.

The services on offer are considered to be too fragmented, between home help and home care, and not easy to understand, leading to complex procedures and sometimes encouraging people not to use them. This is why new services called Services Autonomie à Domicile (SAD) Autonomy at Home Services were created in July 2023[33] to provide a more transparent and coordinated service with a real care pathway approach tailored to the needs of the person being cared for. This reform will be implemented gradually until 2025. The sector will be restructured by merging existing services (SAAD, SSIAD, SPASAD).

The purpose of Social Support Services (SAVS) and Medical-social Support Services for Disabled Adults (SAMSAH) is to help disabled adults achieve their life goals by providing them with appropriate support to maintain or restore their family, social, educational, university or professional ties, and to facilitate their access to all the services offered by the community. SAMSAHs also provide care services.

Hospitalisation At Home (HAH) covers all medical care delivered at the home of a patient whose condition does not justify staying in a hospital. However, HAH is not simply a home service, but a way for health establishments to carry out their missions. This is why HAH is included in the Public Health Code as a healthcare activity subject to authorisation in its own right.

2.1.3 Undeclared Work

The concept of "illegal employment" was legally enshrined in the Act of 2 August 2005.[34] It covers a range of offences against public social and economic order as defined by the Labour Code:[35] concealed work, bargaining, illegal lending of staff, employment of a foreigner without a work permit, irregular plurality of employment and fraud involving replacement income.

With regard to personal services, a Dares study[36] states that the proportion of undeclared work fell between 2011 and 2017, mainly as a result of the extension of the tax credit and reduced VAT rates.[37] Despite the development of these financial incentives, undeclared work remains and the study estimates it at 20% in 2017.[38]

[33] Decree no. 2023-608 of 13 July 2023 relating to home autonomy services mentioned in article L. 313-1-3 of the Code de l'action sociale et des familles and home assistance and support services covered by 1o and 16o of I of article L. 312-1 of the same code.

[34] Law no. 2005-882 of 2 August 2005 in favour of small and medium-sized enterprises.

[35] Articles L. 8211-1 to 8291-3 of the Labour Code.

[36] M. Beltzung and L. Malard, "Services à la personne. Baisse du travail non déclaré en 2017," *Dares Résultats* 70 (2021).

[37] France Stratégie. *Le travail non-déclaré* (Paris: France Stratégie, 2019).

[38] It is difficult to estimate the amount of undeclared work carried out by private employers because of the inviolability of the private home, which hinders URSSAF checks.

The Directorate General for Labour has unveiled a national plan to combat illegal employment in May 2023. The plan recommends targeting controls on the sectors most affected, depending on the territory, taking preventive action, combating false status and modernising monitoring and assessment tools.

2.1.4 Outsourcing Practices in the Healthcare Sector

In France, the healthcare sector does not use subcontracting.

2.2 The Notion of Carer

3 care professions were chosen for this study: nursing, nursing auxiliary and home care. The interest of this choice lies in the possibilities of analysis and comparison that it is possible to carry out, as these professions are practised in the public service and in the private sector, in health establishments, but also in the homes of dependent persons. It is also interesting to be able to analyse the working conditions of professions whose objective is purely health-related (nursing), while others have a medico-social aspect (home help).

Nurses and nursing assistants are classified as medical auxiliaries in the French Public Health Code. The profession of nurse is subject to specific regulations in the Public Health Code.[39] Thus,

> any person who usually provides nursing care on medical prescription or advice, or in application of the role assigned to him or her, is considered to be practising the profession of nurse. Nurses take part in a variety of activities, particularly in the fields of prevention, health education, training and supervision.[40]

The profession of nurse may only be practised by persons holding a diploma, certificate or the authorisations provided for in the Public Health Code.[41]

Care assistants work in collaboration with nurses in health establishments or home services and may provide care within the respective limits of the qualifications recognised as a result of their training. When the nurse is not present, the care assistant may carry out routine daily care related to a stabilised state of health or a stabilised chronic pathology which could be carried out by the person themselves if they were autonomous or by a career.[42] The profession of care assistant is carried out by holders of the diplôme d'État d'aide-soignant, the certificat d'aptitude aux fonctions d'aide-soignant or the diplôme professionnel d'aide-soignant.[43]

[39] Articles L. 4311-1 to L. 4314-6 of the French Public Health Code.
[40] Article L. 4311-1 of the French Public Health Code.
[41] Article L. 4311-2 of the French Public Health Code.
[42] Article R. 4311-4 of the French Public Health Code.
[43] Article L. 4391-1 of the French Public Health Code.

Homecare professions are part of the medico-social sector. The French national fund for independent living (Caisse nationale de solidarité pour l'autonomie -CNSA) has a broad definition of these professions,[44] which include: home help, social auxiliary, care assistant, social and family intervention technician, etc. Home helpers are professionals who assist people who need help in their own homes. To work as a home carer, you need to have a diploma (Diplôme d'État Accompagnant éducatif et social or Auxiliaire de vie sociale, Bac Pro accompagnement, soins et services à la personne).

These professions are likely to be practised in the public and/or private sectors. The professions differ depending on whether they are practised in a hospital environment or at home. While professions in the health sector are mainly carried out in health establishments, medical-social professions are carried out in the homes of the people to be cared for. They also vary according to the public concerned. The professions in the medical-social and home services sectors are mainly aimed at young and adult disabled people, dependent people or people in difficulty, and the elderly.

2.3 The Impact of Domestic Work in Care and the Care Sector

2.3.1 Regulations Applicable to Care Workers

As mentioned *above*, Part VII of the Labour Code provides specific legislation for care workers, taking 2 situations into consideration: The employee of an individual employer is characterised as someone who carries out family or household work in the private home of the employer.[45] However, the provisions of the Labour Code applicable to them are limited to those relating to harassment, 1st May Day, paid holidays, entitlement to leave for family events and medical surveillance of employees.[46] The exclusion of the protective provisions of the Labour Code would be justified by the fact that the employer, who may be a dependent and non-professional person in employment, cannot be considered as the strong party to the employment contract.[47] The silence of the Labour Code refers to collective bargaining. The employment relationship is therefore governed by the NCC for individual employers and home-based employment of 15 March 2021. This agreement replaces the French Labour Code. On certain points, it incorporates the provisions of the Labour Code and makes them applicable to domestic employees, thereby bringing their status closer to that of employees under ordinary law. In addition, it puts in place provisions to meet the specific challenges of the sector and its uniqueness, and ensures that employees' social rights are properly implemented.

[44] Caisse nationale de solidarité pour l'autonomie (CNSA), *Les chiffres clés de l'aide à l'autonomie 2023* (Paris: CNSA, 2023).

[45] Article L. 7221-1 of the French Labour Code.

[46] Article L. 7221-2 of the French Labour Code.

[47] S. Maillard. "Travail domestique." In *Répertoire de droit du travail* (Paris: Dalloz, 2017).

The Labour Code also provides a framework for personal services activities, which include childcare, assistance for the elderly, the disabled or other people who need personal help in their own homes or mobility assistance in the local environment to help them stay in their own homes, and services for people in their own homes to help with family chores.[48] In addition to these provisions of the Labour Code, there is the conventional law already mentioned: the NCC for personal services companies of 20 September 2012, the NCC for the home help, support, care and services of 21 May 2010 and the NCC individual home employers of 15 March 2021, all three of which have been extended.

2.3.2 The Impact of Ilo Convention 189 on Domestic Workers

ILO Convention no. 189 on domestic workers, 2011, has not been ratified by France. The government believes that there is no real point in ratifying it on the grounds that there is a fairly well-developed Labour Code and collective agreements. For the trade unions, it would be necessary to ratify this convention in view of the steady increase in the workforce in this sector. However, the inorganisation of workers in this sector means that it is not possible to establish a balance of power through the trade union movement.

2.4 Labour Market Characteristics of Care Workers

It is difficult to characterise the labour market for care workers, because studies are rare and incomplete, and workers do not belong to the same categories: public or private sector, care or medico-social sector, home or hospital. Here are a few points for diagnosis.

Nurses. In 2022, there were 632,644 nurses working in France. 64% of them were employed in hospitals, 19% were self-employed, and 17% were employed in other types of facilities. 87% were women and 13% were men, and their average age was 40.8 years.[49] In France, healthcare establishments are one of the sectors in which employees make the most use of sick leave, with an average of 10 days' absence declared due to illness per year, compared with 7.9 days in all sectors. The number of days of absence due to illness is equivalent in private and public hospitals with a comparable workforce structure and working conditions.[50]

Care assistant. In 2021, the public and private hospital sector had 230,605 nursing assistants, 93% of whom were women. Their average age was 41.4 years.

Home help. Around 249,000 people work in the home help sector as employees of associations (153,000) or for-profit private companies (96,800).[51] The

[48] Articles L. 7231-1 to L. 7234-1 of the French Labour Code.

[49] Source: Ordre national des infirmiers/INSEE.

[50] DREES - Direction de la recherche, des études, de l'évaluation et des statistiques, *Arrêts maladie dans le secteur hospitalier: les conditions de travail expliquent les écarts entre professions* (Paris: Ministère des Solidarités et de la Santé, 2017; Études et Résultats 1038).

[51] Source: URSSAF Caisse nationale, 2021 annual report based on APE code 8810A.

majority of personal services workers (employed directly by an individual or through an organisation) are women (87.3% in 2015), with an average age of 46 compared with 41 for the population as a whole (in 2015). People born outside France are over-represented among the sector's employees in this occupation (14.5% compared with 5.5% of the population in employment in 2015).[52] Vulnerable individual employers employ 547,536 home workers.[53]

2.5 The Overall Regulatory Framework for the Care Sector

As explained *above*, French law is governed by the principle of the hierarchy of standards, and the healthcare sector is no exception. Like all sectors of activity, the care sector has seen a great deal of collective bargaining activity at both company and branch level, as is the case for the 6 collective agreements applicable to our study. It is worth noting, however, that very little litigation relating to homeworkers has been brought before the courts. Finally, as mentioned *above*, France has not ratified ILO Convention 189.

2.6 The Main Debates on Working Conditions

The shortage[54] of care staff in the care professions is one of the main points of discussion on the subject. The shortage of carers became apparent to the general public during the health crisis, but tensions had already been building since 2016 and continue to this day, particularly in the nursing and home care professions.[55]

The decline in attractiveness stems from the deterioration in working conditions in the various care professions. Carers work in a particularly pathogenic environment due to increasingly poor working conditions. These constraints are particularly marked in the hospital sector.[56]

The shortage of carers means that the workload is transferred to other carers, resulting in long working days, irregular and staggered working hours, night and weekend work, and little rest time. This affects all professional families[57] in the hospital sector, but also in home care services.

[52] DARES - Direction de l'Animation de la Recherche, des Études et des Statistiques, *Les salariés des services à la personne : comment évoluent leurs conditions de travail et d'emploi ?* (Paris: Ministère du Travail, 2018; DARES Analyses 38).

[53] Observatoire de l'emploi à domicile, *Rapport annuel sectoriel, édition 2023,* <https://www.fepem.fr/observatoire/rapports-annuels> (accessed January 14, 2026).

[54] P. Pora, "Près d'une infirmière hospitalière a quitté l'hôpital ou changé de métier après 10 ans de carrière," *Drees* 1277 (2023); Y. Croguennec, "Aides-soignants: de moins en moins de candidats à l'entrée en formation et une baisse du nombre d'inscrits," *Drees*, Études et résultats 1135 (2019).

[55] M. Niang, F. Chartier and F. Lainé, "Les tensions sur le marché travail en 2021. Lainé," *Dares*, Résultats 45 (2022).

[56] J. Pisarik, "L'exposition à de nombreuses contraintes liées aux conditions de travail demeure, en 2019, nettement plus marquée dans le secteur hospitalier qu'ailleurs," *Drees* 1215 (2021).

[57] C. Parent, "Crise sanitaire: à l'hôpital, la surcharge de travail a touché l'ensemble des familles professionnelles," *Drees* 1235 (2022).

The care professions are also characterised by their intensity and the physical hardship of the work[58] due to heavy loads, prolonged standing positions and long and frequent journeys for home carers. This leads to fatigue and the risk of physical injury.

Healthcare workers work in a demanding environment. Firstly, there is exposure to specific biological risks (patient infections, toxic products), but also the obligation to comply with standards and protocols. The work environment (patient suffering, death, relations with families, etc.) is also likely to generate an emotional charge. The intensity of working with patients sometimes results in ethical suffering with regard to the job in question, as well as stress and anxiety that can lead to depression.[59]

The lack of attractiveness is also due to the fall in salaries.[60] However, in the branch of individual employers and home based employment, the social partners are determined to ensure that the minimum wages in the classification grid are always 3% above the minimum wage. In addition, very active collective bargaining on this issue has led to the signing of 8 wage endorsements since 1 January 2022, in order to take account of increases in the SMIC due to inflation.

Lastly, the deterioration in working conditions is reflected in resignations, staff turnover and absences, leading to work disorganisation and a deterioration in the quality of care.

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

3.1 Fundamental Trade Union Rights, Collective Bargaining and Collective Action

French law recognises various modes of action for care workers in the private and public sectors. Firstly, there is the constitutional right to organise (3.1.1), followed by the right to collective bargaining, which has been used extensively to develop domestic labour law (3.1.2) and, finally, the right to strike, which is sometimes restricted because of the special nature of the sector of activity requiring a degree of continuity (3.1.3).

3.1.1 Freedom of Association

Freedom of association[61] is recognised as a constitutional right enshrined in the preamble to the 1946 Constitution, to which the preamble to the 1958

[58] S. Benallah and J.-P. Domin, "Intensité et pénibilité du travail à l'hôpital. Quelles évolutions entre 1998 et 2013," *Travail & Emploi* 4 (2017): 5–31.

[59] C. Parent, "À l'hôpital, une prévalence accrue de la dépression et de l'anxiété liée aux conditions de travail," *Drees*, Études et résultats 1270 (2023).

[60] C. Dixte and R. Bour, "En 2019, le salaire net moyen dans la fonction publique hospitalière diminue de 0,8 % en euros constants," *Drees*, Études et résultats 1205 (2021).

[61] G. Auzero, D. Baugard and E. Dockès, *Droit du travail*, (Paris: Précis Dalloz, 2024[37]), 1397 et seq.

Constitution refers, which states that "Everyone may defend their rights and interests through trade union action and join the trade union of their choice".

The Labour Code allows

> trade unions or professional associations of persons exercising the same profession, similar or related professions contributing to the production of specific products or the same liberal profession [to] freely form.[62]

The freedom to form is subject to a derogatory provision concerning private individuals employing domestic staff. Although the latter are not employment professionals, the law authorises them to "form trade unions for the defence of their common interests as employers and employees".[63]

Freedom of association has both an individual and a collective dimension. The result is the right to join the trade union of one's choice, not to join or to withdraw from the trade union[64] and the prohibition of discrimination based on membership or non-membership of a trade union.[65] Any trade union may be summoned or may itself take the initiative to take legal action to defend its own interests, the collective interests of the profession or the defence of individual interests through a substitution action.[66] The collective agreements studied[67] all include provisions relating to freedom of association. They set out the principles and protective measures provided for by law and specify the exercise of trade union rights.

In the public sector, public employees are also guaranteed the right to organise.[68] Trade unions can be set up completely freely, in accordance with the procedures laid down in the Labour Code, in particular article R. 131-1. The difference lies in the union's obligation to inform the administration of its existence and the names of its officers. If it fails to do so, the union cannot be represented on a body set up by that administration.[69] The General Civil Service Code recognises the same rights for civil servants, who "may freely set up trade union organisations, join them and exercise their mandates".[70]

Trade unions representing civil servants may institute legal proceedings and appeal to the competent courts against regulatory acts concerning staff regulations and against individual decisions affecting the collective interests of civil servants.[71]

[62] Article L. 2131-2 al. 1 of the French Labour Code.
[63] Article L. 2131-2 al. 2 of the French Labour Code.
[64] Article L. 2141-1 of the French Labour Code.
[65] Article L. 1132-1 of the French Labour Code.
[66] Article L. 2132-3 al. 1 of the French Labour Code.
[67] See *above*.
[68] Article L. 113-1 of the French Civil Service Code.
[69] C.E. 26 June 1991, *Syndicat des hospitaliers d'Epernay CGT-FO*.
[70] Article L. 113-1 of the French Civil Service Code.
[71] Article L. 113-2 of the French Civil Service Code.

3.1.2 The Right to Collective Bargaining

French labour law provides for 3 different levels of negotiation leading to agreements. The inter-professional level enables collective agreements to be signed between employers' organisations and representative employee organisations[72] on working conditions and social guarantees for employees in several sectors of activity. These agreements generally represent advances in social matters that are often ratified by subsequent legislation (e.g. the ANI of 9 December 2020 on enhanced prevention and a renewed offer in occupational health and working conditions). At industry level, collective agreements are concluded between employers' and employees' organisations representing a specific sector of professional activity[73] (e.g. the NCC for Private Hospitalisation of 18 April 2002). At company and establishment level,[74] the employer and the organisations representing employees may conclude "company agreements or conventions"[75] on specific issues relating to working conditions. In addition to this main typology of negotiation levels, the Labour Code provides for an accessory typology which can be classified from a geographical point of view by stipulating that the territorial scope of application of branch agreements and professional agreements may be national, regional or local.[76]

Initially, collective bargaining occupied a secondary place after legislative or regulatory texts in the main sources of French labour law. Its sole purpose was to improve the situation of employees through the creation of additional benefits resulting from negotiations. Then, labour law was gradually transformed into negotiated labour law. This was reflected in the retreat of the law in favour of collective bargaining, the facilitation of collective bargaining in the absence of union representatives, the primacy of company agreements to the detriment of branch agreements, the generalisation of the majority requirement for company agreements in order to strengthen their legitimacy, and the facilitation of the use of referendums to validate a minority company agreement. The branch level, which for a long time was the central level for collective bargaining, has gradually been overtaken by company bargaining through a succession of reforms since 1982[77] and completed by the Ordinance of 22 September 2017,[78] which unquestionably established the primacy of company agreements over branch agreements, with the exception of certain areas expressly provided for in article L. 2253-1 of the French Labour Code.

As far as the civil service is concerned, collective bargaining could see a real boost with Law 2019-828 of 6 August 2019 on the transformation of the civil service, which authorised the government to take action in this direction. This

[72] Articles L. 2232-1 to L. 2232-4 of the French Labour Code.
[73] Articles L. 2232-5 to L. 2232-10-1 of the Labour Code.
[74] Articles L. 2232-11 to L. 2232-29-2 of the Labour Code.
[75] Article L. 2232-11 al. 2 of the French Labour Code.
[76] Article L. 2232-5 al. 1 of the French Labour Code.
[77] Law no. 82-957 of 13 November 1982.
[78] Ordinance no. 2017-1385 of 22 September 2017 on strengthening collective bargaining.

was the purpose of the Ordinance of 17 February 2021[79] on collective bargaining and agreements in the civil service, the provisions of which are codified in the General Civil Service Code and the Decree of 7 July 2021.[80] Civil service law, traditionally governed by statute, is taking a contractual turn with the introduction of collective bargaining.

3.1.3 The Right to Collective Action

Workers can also take collective action to defend their rights by going on strike.[81] The preamble to the 1946 Constitution states that "the right to strike shall be exercised within the framework of the laws which regulate it". In the absence of legislative provisions, case law has defined a strike as "a collective and concerted stoppage of work in support of professional demands".[82] However, the Labour Code contains certain provisions relating to the exercise of the right to strike.[83]

In the private sector, strikes can be called at any time and employees do not have to give notice. However, the healthcare sector is a special case, and where the staff of public or private companies, bodies or establishments are responsible for managing a public service,[84] concerted stoppage of work must be preceded by advance notice issued by a representative trade union organisation at national level, in the professional category or in the company, body or sector concerned. The notice must specify the reasons for the strike.[85]

Civil servants are liable to disciplinary action if they go on strike without complying with the provisions of Articles L. 2512-1 to L. 2512-5 of the Labour Code. As far as the public hospital service is concerned, there is a principle of permanence and not simply regular operation. The provision and continuity of care impose certain constraints on the exercise of the right to strike in such a context. It is up to the director of the public health establishment to ensure continuity of care, the organisation of which is made more complex during this period. He or she has the power to issue summonses, or "requisitions", which go beyond the mere continuity of care.

3.2 The Social Partners in the Care Sector

Trade unions have a strong presence in the care sector. Each confederation is organised into specialised federations to meet the specific needs of the sector (3.2.1).

[79] Ordinance no. 1021-174 of 17 February 2021 on collective bargaining and agreements in the civil service.

[80] Decree no. 2021-904 of 7 July 2021 on the procedures for negotiating and concluding collective agreements in the civil service.

[81] Auzero, Baugard and Dockès, *Droit du travail*, 1951 et seq.

[82] Cass. soc. 23 October 2007, no. 06-17.802, *D.*, 2008, p. 662, note A. Bugada.

[83] Articles L. 2511-1 to L. 2512-5 of the French Labour Code.

[84] Article L. 2512-1 of the French Labour Code.

[85] Article L. 2512-2 of the French Labour Code.

The rate of unionisation among care workers (3.2.2) is high in the public sector and needs to be developed among homecare workers. The sector as a whole is facing a major shortage of workers due to the low attractiveness of the professions (3.2.3).

3.2.1 Trade Unions and Employers' Organisations

A study of collective agreements in the care sector revealed the signatory federations within the employers' organisations: Fédération des établissements hospitaliers d'assistance privée à but non lucratif; Fédération des particuliers employeurs de France; Syndicat national des établissements, résidences et services d'aide à domicile privés pour personnes âgées; Fédération des services aux particuliers; Fédération des services à la personne et de proximité; Aide à domicile en milieu rural; Union nationale de l'aide, des soins et des services aux domiciles; Fédération nationale des associations de l'aide familiale populaire; Fédérations d'employeurs du secteur de l'aide et des soins à domicile; Fédération de l'hospitalisation privée; Union nationale des associations de l'aide, des soins et des services aux domicile; Fédération nationale des associations de l'aide familiale populaire; Fédération des syndicats nationaux d'employeurs du secteur de l'enfance inadaptée. As far as employee trade unions are concerned, all the trade unions (CGT, CFDT CFTC, FO, UNSA, CFE-CGC, SUD) are organised into "health and social", "services", "inter-collectivity" and "home help" federations in the public and private sectors.

3.2.2 Trade Union Density Among Nursing Staff

According to a 2019 study,[86] 10.3% of employees say they are union members and 3.6% say they are union supporters. The unionisation rate in the civil service is 18.4%, more than twice as high as in the private sector (7.8%). However, the figures for union membership are not exhaustive and it is difficult to establish a precise figure.

Union membership among hospital civil servants fell by 1.3 points to 15.6%. The proportion of union members in the public sector care professions, three quarters of which are in the hospital sector, fell by 2.5 points in 2019, whereas the unionisation rate was slightly below average in 2013.[87]

In the private sector, employees in health and social work (combined with education) have a unionisation rate close to the average at 8%.[88]

3.2.3 The Main Challenges Facing Trade Unions in the Care Sector

As part of the so-called "nursing project", the CGT, FO, SUD and UNSA are continuing to demand the opening of negotiations based on the demands

[86] M.-T. Pignoni, "Légère reprise de la syndicalisation en France entre 2013 et 2019: dans quelles activités et pour quelle catégorie de salariés?" *Dares Analyses* 6 (2023).

[87] Pignoni, "Légère reprise de la syndicalisation".

[88] Pignoni, "Légère reprise de la syndicalisation".

of employees and the needs of users, i.e. an increase in salaries, recruitment and training are demands that must be met as a matter of urgency in order to halt the deterioration of the health and social care system, which is taking place and accelerating. For the unions, the transformation of nursing training is being used to reduce "labour costs" and cut public health spending.

The home help sector is facing a structural problem of underfunding. That's why trade unions such as the CGT and CFDT are calling for support for the mobility of homecare professionals, who have to travel long distances to visit beneficiaries' homes. They are calling for non-consecutive journeys to be paid for, and for the full and systematic reimbursement of the expenses of staff who work with the most vulnerable members of the public in the départements.

FO has denounced Rider 33 of 22 February 2023 relating to the classification and remuneration of jobs in the NCC for Private Hospitalisation of 18 April 2002. Rider 33 provides for the integration of the allowances resulting from the "Ségur 1 and 2" negotiations into the minimum annual level pay. However, in the short term, for low salaries, these bonuses will be absorbed by increases in the minimum wage and, in fact, in the current context of inflation, the gain from these allowances will disappear. The disappearance of the point value will also prevent any general increase in salaries. Employers will be able to increase one level without increasing the others.

3.3 Employees Collective Representation In Company

Under French labour law, employee representation is achieved by setting up a social and economic committee[89] (CSE) since the Ordinance of 22 December 2017,[90] which merged the existing staff representation institutions (staff delegates, works council and health, safety and working conditions committee). It must be set up in companies with at least 11 employees, but the law distinguishes between companies with more or less than 50 employees as regards its prerogatives.

The CSE is the result of professional elections, the organisation of which is the responsibility of the employer. It must inform the staff and the trade union organisations in order to negotiate a pre-electoral agreement and draw up the lists of candidates. The composition of the CSE is bipartite in companies with fewer than 50 employees: the employer or his representative and elected staff representatives. In companies with more than 50 employees, it becomes a tripartite body with the addition of a trade union representative on the CSE. In principle, the term of office is four years, unless it is shorter.

In companies with fewer than 50 employees, the CSE deals with individual or collective requests relating to pay and the application of labour regulations. It promotes health, safety and the improvement of working conditions. It car-

[89] Auzero, Baugard and Dockès, *Droit du travail,* 1621 et seq.

[90] Ordinance no. 2017-1386 of 22 December 2017 on the new organisation of company social and economic dialogue and promoting the exercise and enhancement of trade union freedoms.

ries out investigations into accidents at work or occupational illnesses. It exercises the right to alert in the event of infringement of personal rights and in the event of serious and imminent danger. Committee members may refer to the Labour Inspectorate all complaints and observations relating to the application of labour regulations.[91]

In companies with at least 50 employees, the CSE has general powers to ensure the collective expression of employees' interests so that they are taken into account in decisions relating to the management and economic and financial life of the company, the organisation of work, vocational training and production techniques. The CSE also plays an important role in the field of health, safetý and working conditions. The CSE is informed and consulted on issues relating to the general organisation, management and running of the company, in particular on measures likely to affect the size or structure of the workforce; changes to its economic or legal organisation; employment and working conditions, in particular working hours and vocational training; the introduction of new technologies and major developments altering health and safety conditions or working conditions; measures taken to make it easier to get to work, get back to work or stay at work, in particular the reorganisation of workstations.[92] In addition to these general powers, the Labour Code provides for recurring consultations and information[93] and specific information[94] organised according to the following triptych: public policy, scope for negotiation and supplementary provisions.

The CSE also has powers in the areas of health, safety and working conditions. It analyses the occupational risks to which workers may be exposed. It contributes to facilitating women's access to all jobs, to resolving problems linked to maternity, and to adapting and adapting workstations. It can promote any initiative it deems useful and, in particular, proposes actions to prevent moral harassment, sexual harassment and sexist behaviour.[95] The CSE also carries out health, safety and working conditions inspections and conducts surveys.[96] From 300 employees onwards, the CSE is obliged to set up a health, safety and working conditions committee, which is delegated all or some of the CSE's powers relating to health, safety and working conditions.

As far as information for the CSE is concerned, an economic, social and environmental database brings together all the information required for consultations and recurring information that the employer makes available to the social and economic committee. This information includes all the indicators relating to professional equality between men and women, in particular differences in pay and distribution between men and women among senior executives and mem-

[91] Article L. 2311-5 of the French Labour Code.

[92] Article L. 2312-8 of the French Labour Code.

[93] Articles L. 2312-17 to L. 2312-36 of the French Labour Code.

[94] Articles L. 2312-37 to L. 2312-58 of the French Labour Code.

[95] Article L. 2312-9 of the French Labour Code.

[96] Article L. 2312-13 of the French Labour Code.

bers of management bodies. The information provided to the committee on a regular basis is made available to its members via the[97] database.

The 2017 ordinance[98] also provided for the creation of local representatives within the CSEs. These are staff representatives with a more limited remit than that of the CSE that appointed them. This will prevent staff representative bodies from merging too much and unifying the scope of staff representation, which would result in excessive concentration of representation at company level.

It is possible to introduce co-decision *via* the Works Council once a majority agreement has been reached on the subject. It can also be set up by means of an extended branch agreement for companies without a trade union delegate.[99] The Works Council then exercises all the powers of the CSE and is competent to negotiate, conclude and revise company or establishment agreements,[100] although it is rarely set up.

Of the collective agreements studied,[101] only the NCC for the home help, support, care and services of 21 May 2010 has been amended to incorporate the new provisions relating to the Social and Economic Committee.

In the civil service, social dialogue on occupational health has been reshaped[102] by the law of 6 August 2019,[103] which reorganised staff representative bodies,[104] in particular by merging technical committees and health, safety and working conditions committees into a single body: the social committee. It was created to develop an integrated vision of human resources policies and working conditions alongside other existing bodies.

Local works councils are provided for in article L. 315-13 of the Social action and family for social and medico-social establishments and in article L. 6144-3 of the Public Health Code for public-sector hospitals. The parity rule does not apply to social committees. Their composition varies according to the number of public-sector employees: permanent staff, trainees and contract staff, under both public and private law. All employees are therefore eligible to vote. The CSE is chaired ex officio by the director of the establishment. The CSE only has consultative powers, but must be consulted on the establishment's project, budget, accounts and employment table, the creation, abolition and transfor-

97 Article L. 2312-18 of the French Labour Code.

98 Article R. 1432-116 et seq. of the French Labour Code.

99 Article L. 2321-2 of the French Labour Code.

100 Article L. 2321-1 of the French Labour Code.

101 In the branch of individual employers and home-based employment, the provisions relating to the CSE do not apply since employment is direct between an employee and his private employer, who is not a company.

102 L. Clouzot, "Le dialogue social en matière de santé au travail après la loi de transformation de la fonction publique," *AJFP* 1 (2023): 25–9.

103 Law no. 2019-828 of 6 August 2019 on the transformation of the civil service.

104 M. Cochereau, "Les compétences des nouvelles instances représentatives du personnel: le visage du dialogue social," *AJFP* 1 (2023): 16–20.

mation of medical structures, and the criteria for distributing certain bonuses and allowances.[105]

Where there are at least 200 full-time employees, a health, safety and working conditions committee must be set up within the social committee of public hospitals.[106] These committees are governed by the rules set out in the French Labour Code, but also by specific legislation.[107] Article L. 4111-1 of the Labour Code has extended the provisions relating to staff representatives on the CHSCT to public health establishments, excluding permanent civil servants from the scope of this extension. The CHSCTs must analyse and promote the prevention of occupational risks, which are very specific to public health establishments.[108]

The joint administrative committees[109] represent active parity within the hospital civil service. They are made up of "equal numbers" of representatives of public health employers and representatives of organisations representing civil servants, medical staff or management staff. They are consulted on matters of an individual nature concerning members of the bodies and jobs within their remit, for the most part within the framework of the management guidelines established by the management of the establishment to which they are assigned.[110]

3.4 The Legal Framework for Collective Bargaining

The Labour Code lays down certain conditions of validity common to the various collective bargaining standards.

With regard to the conditions relating to the parties at company level, the ability of employers to negotiate and sign is not subject to a condition of representativeness. As far as the employees are concerned, in principle the text must be signed by one or more representative employee trade union organisations which have received more than 50% of the votes cast in the first round in order to be valid (majority agreement). By way of exception, the text is also valid if it is signed by one or more representative employee trade union organisations with more than 30% of the votes cast in the first round of elections, and if it has been approved by a majority in an employee referendum.[111] Collective agreements are open contracts to which any representative trade union or employers' organisation may subsequently sign up.

The text of the agreement must contain certain mandatory elements (the timetable for negotiations, a preamble, the form and deadline for any renewal,

[105] A. Taillefait, *Droit de la fonction publique* (Paris: Précis Dalloz, 2022), 839 et seq.
[106] Article L. 251-12 of the General Civil Service Code.
[107] Article L. 4612-1 of the French Labour Code.
[108] Taillefait, *Droit de la fonction publique*, 840 et seq.
[109] Article L. 261-8 et seq. of the General Civil Service Code.
[110] Taillefait, *Droit de la fonction publique*, 838 et seq.
[111] Article L. 2132-12 of the French Labour Code.

the form and deadline for any revision, a monitoring clause, review clauses)[112] and comply with certain formal and publicity requirements.

The aim and effect of collective bargaining standards is normally to improve the situation of employees.[113] However, in certain cases, as legal texts are of absolute public policy, the collective agreement cannot modify their provisions, even in a manner favourable to the employee.[114] It is also possible for an agreement concluded at company or establishment level to include one or more stipulations that are unfavourable to employees compared with an industry-level agreement, based on the fact that Ordinance no. 2017-1385 of 22 September 2017 expressly provided that the primacy of company agreements over industry-level agreements becomes the principle. However, the legislator has set a limitative list of 13 mandatory topics in which branch agreements take imperative precedence over company agreements unless at least equivalent guarantees are provided by the latter[115] and a limitative list of four topics that the branch agreement may lock in.[116] The new structure of the Labour Code also allows certain collective bargaining standards to override legal or regulatory rules. In fact, in a growing number of areas, the Labour Code is now divided into three parts: public policy provisions setting a legal minimum from which a company agreement cannot derogate, provisions relating to the scope of collective bargaining and, finally, suppletive provisions establishing rules applicable to the employer in the absence of agreement-based standards.

Agreements must be in writing, otherwise they are null and void. They must be filed with the administrative and judicial authorities. These formalities are essential and condition the entry into force of the agreements. They are also published on a national database. Both employees and staff representatives must be informed of the collective bargaining standards applicable in the company or establishment and of any changes made to these standards.

Compulsory industry-level bargaining was radically reformed by the Ordinance of 22 September 2017, which completely rewrote the provisions of the Labour Code devoted to compulsory bargaining. The Code stipulates that negotiations must be conducted seriously and fairly, which implies that trade union organisations must be provided with the information they need to negotiate in full knowledge of the facts. Organisations bound by a branch agreement are

[112] Articles L. 2222-3 to L. 2222-6 of the French Labour Code.

[113] Article L. 2251-1 of the French Labour Code.

[114] Article L. 2251-1, 2nd sentence of the French Labour Code.

[115] In the areas that interest us in this study, the industry agreement can define guarantees in the following areas: minimum wages, classifications, measures relating to working hours, professional equality between men and women, and the conditions and duration of renewal of the trial period.

[116] Prevention of the effects of exposure to occupational risk factors, professional integration and job retention for disabled workers, the number of employees above which trade union delegates may be appointed, their number and the enhancement of their trade union career, as well as bonuses for dangerous or unhealthy work.

obliged to meet every four or five years to negotiate on certain issues. In order to give the social partners greater flexibility, the legislator has allowed them to conclude "adaptation agreements"[117] under which they can modulate their obligations within a broader framework. In the absence of an adaptation agreement, supplementary legal provisions relating to the precise definition of negotiation topics and frequency will apply.[118]

Several reports have criticised the fact that there are too many branches (687 branches in 2015) and that employees are concentrated in a small number of branches. They have also deplored the existence of numerous cross-cutting branches specific to certain categories of professionals or even certain trades. In this context, the restructuring[119] of professional branches, including a reduction in their number, was presented by the public authorities as a means of revitalising this level of collective bargaining. Three of the NCC studied have been restructured: the NCC for Establishments and Services for maladjusted and disabled Persons of 15 March 1966. By order of 5 August 2021, the scope of the collective agreement for accommodation and social rehabilitation centers was merged with this agreement. The NCC for Private Hospitalisation of 18 April 2002. By agreement dated 14 March 2019, the scope of the national collective agreement was merged with that of the national private hospital collective agreement, designated as the connecting branch. The NCC for the sector of individual employers and home employment is the result of the merger of the national collective agreement for employees of private individual employers and the national collective agreement for maternal assistants of private individual employers.

The public authorities can modify the initial scope of application of an industry standard agreement. This is done by means of an extension order issued by the Minister of Labour, after obtaining the opinion of the National Commission for Collective Bargaining, Employment and Vocational Training (Commission nationale de la négociation collective, de l'emploi et de la formation professionnelle). The effect of extension is to extend the application of a collective bargaining standard to employees in all companies located within its initial professional and territorial scope, thereby making it compulsory in companies that were neither signatories nor members. On the other hand, extension modifies the initial territorial scope of a branch agreement (geographical extension) or its professional scope (professional extension); but extension can only concern agreement texts which have previously been the subject of an extension

[117] Article L. 2241-4 of the French Labour Code.

[118] Article L. 2241-7 of the French Labour Code.

[119] The techniques used to restructure the branches consist of mergers, broadening the scope of application, refusal of extension by the Minister of Labour, refusal to draw up a list of representative employers' organisations and trade unions, which prevent negotiation and the conclusion by the social partners of a scope agreement aimed at establishing a conventional scope combining that of several existing agreements. Article L. 2261-32 of the French Labour Code.

procedure.[120] Four of the agreements studied have been the subject of an extension order (see *above*).

With regard to civil service law, the ordinance of 17 April 2021 opens up the possibility of concluding collective agreements.

The players involved in negotiations differ according to the subject and level of negotiation concerned. Trade union organisations are representative if they have at least one seat: either on the Conseil commun de la fonction publique (CCFP), the Conseil supérieur de la fonction publique de l'État (CSFPE), the Conseil supérieur de la fonction publique territoriale (CSFPT) or the Conseil supérieur de la fonction publique hospitalière (CSFPH); or on the comité social d'administration (CSA), territorial (CST) or établissement (CSE) placed under the competent administrative or territorial authority, or on a body exercising the powers of the social committees. In the case of public-sector employers, representatives of the government, territorial public-sector employers and hospital public-sector employers are entitled to take part in negotiations on pay and purchasing power. For other negotiations: the administrative or territorial authority competent to conclude the agreement is that which is competent to take the regulatory measures it contains, where applicable, or to undertake the specific actions it provides for.

The Staff Regulations do not lay down a general obligation to negotiate; collective bargaining is optional. However, public employers and representative trade unions are obliged to negotiate on a number of issues: the revision of management guidelines, working time derogations and the framework for exercising the right to strike in the case of local public employers, and the organisation of work and the social project in the case of hospital establishments.[121]

The initiative for collective bargaining rests with the public employer. However, representative trade union organisations may, at their level and provided they have received at least 50% of the votes cast, ask the competent administrative or territorial authority corresponding to that level to open negotiations in one of the 14 areas listed in article 8 ter I of Ordinance no. 2021-174 of 17 February 2021. Article 8 ter II also stipulates that the representative trade unions of civil servants and the competent administrative and territorial authorities are also entitled to take part in negotiations in any other area.

The Ordinance of 17 February 2021 specifies that collective agreements concluded on the areas listed

> may include, under the conditions mentioned in Article 8e, provisions enacting regulatory measures, as well as clauses by which the administrative authority undertakes to undertake specific actions not involving the enactment of regulatory measures.

The ordinance did not retain the principle of favour that exists in labour law. For the Conseil d'Etat, there is a general principle of labour law "according to

[120] Articles L. 2261-15 et seq. and R. 2261-1 et seq. of the French Labour Code.

[121] Article L. 6143-3 of the French Public Health Code.

which a collective agreement may always include provisions more favourable to employees than those of the laws and regulations in force".[122]

4. Employment Status, Flexible Forms of Employment, and Employment Protection

If there is one area in which there are still major differences between labour law applicable to the private and public sectors, it is employment. This is why we will examine the particularities of forms of employment in the private sector in turn (4.1), followed by those in the public sector (4.2).

4.1 Specific Features of Forms of Employment in the Private Sector

In terms of employment relationships, a distinction is traditionally made between those resulting from a typical employment contract (i.e. a full-time, open-ended employment contract) (4.1.1) and those resulting from atypical employment contracts (4.1.2). Finally, the arrangements for amending and terminating the contract will be examined (4.1.3).

4.1.1 The Typical Employment Contract

Open-ended contracts are the normal form of recruitment for care workers in France.[123]

4.1.1.1 Recruitment Conditions

The choice of recruitment is a matter for the employer. However, the employer must comply with a certain number of rules or general principles of labour law and civil service law, such as the rule of non-discrimination in recruitment or equal opportunities.[124] However, collective bargaining law may include additional requirements for employee recruitment in the healthcare sector.[125] By way of illustration, the national collective agreement for establishments and services for the maladjusted and disabled stipulates that

> companies shall offer newly recruited employees without qualifications to undertake, within 2 years, a training course leading to a qualification in the sector, at least level V, taking into account their career plans. For employees

[122] CE, 8 July 1994, no. 105471, *Confédération générale du travail*.

[123] NCC for personal services companies, Part II, chap. 1, section 1; NCC for home help, support, care and services branch 2010, titre IV, chap. 3, art 10, al. 1; NCC for private non -for-profit hospital care and nursing establishment, art. 04.02.

[124] Article L. 332-21 of the General Civil Service Code; article of the Labour Code.

[125] See in particular article 04.05.2 of the NCC or private non -for-profit hospital care and nursing establishment; article 11 of the NCC Establishments and Services for malajusted and disabled (conditions of recruitment).

> without qualifications who are already in post, the employer undertakes to offer training leading to a qualification in the sector, at least level V, or to facilitate the employee's commitment to a process of validating the experience acquired in order to obtain a minimum level V diploma. Employees who have obtained a level V qualification within this framework will be given priority consideration for any corresponding position available in the company if they apply for the position concerned. This includes professionals covered by appendices III, IV, IX and X as well as the following jobs: housekeeper, qualified night supervisor and family assistant.[126]

Generally speaking, in both the private and public sectors, the conditions for recruitment as a carer are those relating to the applicant's physical abilities, proof of a qualification or diploma and qualification and/or success in a public service competition.[127]

4.1.1.2 Specific Clauses in Individual Employment Contracts in the Care Sector

Almost all the national collective agreements studied[128] emphasise the "special setting" of the home (of the employer/user) as the place where the worker is employed, the duty of accountability and the requirement of loyalty on the part of staff, in particular against abuse of the weakness of people receiving care. Confidentiality and professional secrecy clauses can be found in most collective agreements applicable to care workers.[129] The regulations are more geared towards protecting users than carers.[130]

In addition, all NCC for public or private hospitals, whether commercial or not-for-profit, emphasise "the needs of the service" or "the requirements of the service" in order to provide for additional constraints or particular hardships (organisation of working hours, timetables and distribution, duty roster with notice period) for employees, sometimes in return for compensation in the form of compensatory rest or allowances (such as weekly rest days or additional days of holiday).[131] Failure to comply with these special clauses may result in penalties that are often particularly severe.[132]

[126] Article 13 of the NCC Establishments and Services for malajusted and disabled Persons.

[127] See *below*.

[128] Excluding the NCC for private non -for-profit hospital care and nursing establishment.

[129] Section 3 of the NCC for personal services companies; title IV, chap. 2, article 1 and 2 - article 8, para. 2 of the NCC for home help, support, care and services; article 05.02.1 of the NCC for private non-for-profit hospital.

[130] On this subject, see Title IV, Chapter 2, Article 8, paragraphs 3 and 4 of the NCC for home help, support, care and services.

[131] Thus, Title IV, article 31 of the NCC for private non-for-profit hospital; article 05.01.2 of the NCC Establishments and Services for maladjusted and disabled Persons (not extended).

[132] Article 05.02.2 of the NCC for private non-for-profit hospital (extended): Miscellaneous prohibitions.

In the public sector, entire chapters (Chapter II, Book Ist, Title II) are devoted to the issue of preventing conflicts of interest and criminal offences (art. L122-1 to L122-25), as well as to the issue of employee liability (Chapter V of the same title: art. L125-1 to L125-2).

4.1.1.3 The Legal Regime Governing the Trial Period

The length of the trial period (4.1.1.3.1) and the conditions governing its termination (4.1.1.3.2) are governed by law.

4.1.1.3.1 Length of Probationary Period (Including Renewal)

The trial period is an integral part of the employment contract. Consequently, its duration and the possibility of its renewal must be mentioned in the employment contract and cannot be presumed. As the main purpose of the trial period is to assess the employee's suitability for the proposed position, any absence on the part of the employee, for whatever reason, will automatically suspend and extend the trial period.

The length of the trial period depends on the employee's professional category and the nature of the contract. Regardless of the professional category, the trial period may be renewed once for a period not exceeding that of the initial period, subject to the written agreement of the parties before the end of the trial period.

4.1.1.3.2 Breach of the Probationary Period (Requirement for a Period of Notice and Penalties)

During the trial period, both parties may terminate the contract at any time without notice or compensation. The very purpose of a trial period is to enable the employer to assess the employee's qualities and the employee to assess the working environment.

If either party wishes to terminate the relationship during the trial period, they must comply with the conditions laid down by law and by collective bargaining agreements to avoid abuse. Some national collective agreements in the care sector simply refer to ordinary law. For example, article 43.2 of the NCC for Private Hospital governs the notice period, distinguishing according to the form of contract (permanent or fixed-term) and whether the termination is initiated by the employer or the employee. Thus,

> in accordance with article L. 1221-25 of the Labour Code, when the trial period is terminated by the employer and until the end of the trial period, the employee is notified within a period that may not be less than: - 24 hours less than 8 days' presence; - 48 hours between 8 days and 1 month's presence; - 2 weeks after 1 month's presence; - 1 month after 3 months' presence. If this period is completed, the employee concerned will be entitled to 2 days' paid job-seeking leave during the month. Each day corresponds to the employee's normal working day. These time limits apply to the termination of a fixed-term or open-ended contract

> throughout the trial period. However, in the case of a fixed-term contract, no notice period is required if the trial period is less than 1 week.[133]

Conversely, when the trial period is terminated by the employee, he must give 48 hours' notice. This notice period is reduced to 24 hours if the employee has been with the company for less than 8 days. These notice periods apply to the termination during the trial period of a fixed-term or open-ended contract.[134]

4.1.2 Atypical Employment Contracts

Under French law, atypical employment contracts are fixed-term employment contracts (4.1.2.1), part-time employment contracts (open-ended or fixed-term) (4.1.2.2) and temporary employment contracts (4.1.2.3).

4.1.2.1 Fixed-Term Contracts

The use of fixed-term contracts and other atypical contracts is authorised under certain conditions that are strictly and exhaustively listed in the law.[135] With regard to the reasons for using fixed-term contracts, most national collective agreements refer to legal law. For example, while they reiterate that the principle is recruitment under an open-ended employment contract, the national collective agreement for personal services companies (extended) emphasises that

> the particular nature of personal services activities is based on the organisation of work in the form of interventions with private individuals receiving services, the duration and frequency of which vary greatly. Fixed-term contracts may be concluded: in the cases provided for by law for the replacement of one or more employees; in the cases provided for by law for the reason of a temporary increase in activity; in the other cases provided for by the provisions of this agreement.[136]

According to the NCC Establishments and Services for maladjusted and disabled people Persons, "employees hired on an intermittent or temporary basis benefit from the provisions included in this agreement". With regard to fixed-term employment, article 14 of the same collective agreement states that

> temporary staff are hired for a specific full-time or part-time job of a temporary nature, in particular to replace the absent holder of a permanent post or to carry out work of an exceptional nature. The temporary nature of the job and its duration must be stated in the letter of recruitment.[137]

[133] Article 43.2 of the NCC Private hospital.

[134] Article L. 1221-26 of the French Labour Code.

[135] Titre IV, chapitre 3, article 10, al. 2 de la NCC for home help, support, care and services domicile; Article 04.02 de la NCC for private non-for-profit hospital.

[136] Part II, Chapter 1, Section 1 of the NCC for personal services companies.

[137] Article 5 of the NCC Establishments and Services for maladjusted and disabled people Persons.

In principle, workers hired under fixed-term contracts have the same rights as permanent workers, in terms of pay and other social benefits linked to the employment contract. They benefit from the same social security cover as the company's permanent employees. In addition, at the end of the fixed-term contract, the employee is entitled under the French Labour Code to a bonus intended to compensate for the precarious nature of the contract and amounting to 10% of the total gross remuneration received during the contract.[138] This bonus is paid when the fixed-term contract comes to an end and is not immediately continued under an open-ended contract.

The fixed-term contract can evolve into a permanent contract (CDI) or even a temporary permanent contract created in 2014 (CDII).

4.1.2.2 Part-Time Work

Legal recognition of part-time work by the law of 27 November 1973, which allowed "the employer to arrange, on a permanent or temporary basis, reduced working hours applicable only to employees who so request". At the time, switching a full-time employee to part-time work was the only option envisaged, the initiative for which was given exclusively to the employee. Since the Act of 28 January 1981, employers have also been able to offer reduced working hours to employees and jobseekers on their own initiative, provided that priority is given to employees and jobseekers who so request.

The extent to which employees have control over the form and conditions of their employment depends on the framework in which they place their initiative. No less than five legal mechanisms can be mobilised depending on the need for a reduction in working hours that the full-time employee intends to satisfy. In addition to the general framework provided by article L. 3123-2 of the Labour Code, which covers all personal needs, the education of young children, caring for someone at the end of their life, looking after a dependent relative, or a business start-up or takeover project are all covered by dedicated schemes which, when compared, give employees varying degrees of control over the decision to reduce their working hours and the arrangements for doing so. However, since the national inter-professional agreement (ANI) of 11 January 2013 and the law of 14 June 2013, the system seems to have stabilised. It is true that the Labour Act of 8 August 2016 made its contribution by redefining the role of the players in the production of standards, but it did not call into question the trade-off between the different interests.

Are these opposing rationales? The 1981 Act has undergone a number of reforms, all of which have sought to reconcile approaches that at first glance appear to be at odds with each other. How, at the same time, can a (primarily) employee-oriented rationale of individual aspiration be translated into legal terms, and a company-oriented rationale of flexibility and development of competitiveness?

[138] Articles L. 1243-8 to L. 1251-32 of the French Labour Code.

The equation seems difficult to resolve, to say the least, especially if we add to it considerations linked to employment policy or family policy, which lead to part-time work being seen as a way of sharing jobs (two part-time jobs for one full-time job) or reconciling work and family life.

However, the legal provisions on part-time working do not apply to employees of "private individuals as employers", and this has been confirmed on several occasions by the Cour de cassation. It has ruled that, by way of derogation, the provisions of the Labour Code on the content and form of part-time contracts do not apply to employees of "private individuals". The presumption of full-time work for part-time employees who do not have a written contract therefore does not apply where the Chèque Emploi Service Unique (CESU) method is used and a written contract is not mandatory. Thus, the High Court refused an employee of a private employer the benefit of Article L. 3123-14 of the French Labour Code relating to the form and content of part-time employment contracts, and in particular the rule whereby in the absence of a written employment contract, or in the absence of the compulsory information in the contract concluded on a part-time basis, the employment is presumed to be full-time.[139]

Another feature of part-time contracts and fixed-term contracts is that they are reserved for certain care activities only. It is likely to modify the working hours of employees. In such cases, they give rise to compensation, particularly in terms of pay.[140] Finally, following the law, the collective agreement provides for equal rights for part-time and full-time employees.[141]

4.1.2.3 The Temporary Employment Contract

Temporary work has a significant impact on the healthcare sector in France. These are temporary contracts between temporary workers and temporary employment agencies, which then make them available to healthcare establishments. The duration of these contracts can vary according to requirements, but is generally limited to 18 months.[142]

Healthcare establishments, such as hospitals and clinics, often use temporary workers to cope with fluctuations in staffing demand, whether due to holidays, temporary work overload or one-off requirements. What's more,

[139] Cass. soc., 11 March 2009, no. 07-44.013. See also Cass. soc., 7 Dec. 2017, no. 16-12.809, no. 2603 FS - P + B; Cass. soc., 8 July 2020, no. 18-21.584, no. 677 FS - P + B: The minimum working time of 24 hours in the case of part-time work does not apply to employees of a private individual employer.

[140] Article 2.5 of the NCC for personal services companies, Special provisions for certain fixed-term contracts called "one-time or occasional mission" (resumption of Article L. 1242-2, 3° of the Labor Code).

[141] Title IV, chapter 3, article 10, paragraph 3 of the NCC for home help, support, care and services: "Part-time employees benefit from the same rights as those granted to full-time employees".

[142] See article L. 1251-12-1 of the French Labour Code for the different durations.

temporary work offers invaluable flexibility in meeting immediate staffing needs. Temporary staff can be mobilised quickly to cover absences or urgent requirements.

The impact of temporary work in the care sector is also apparent from the point of view of employment regulations. In France, temporary work is strictly regulated. Temporary employment agencies must comply with labour laws on wages, working hours, holiday pay and other workers' rights. Temporary workers enjoy the same rights as permanent workers. Temporary workers are paid according to their qualifications, the establishment where they work and the type of assignment. They receive an hourly wage which may be similar to that of permanent workers. The Labour Code prohibits any difference in treatment between temporary workers and other workers. However, because of the precarious nature of their employment, the Labour Code provides, as it does for fixed-term contracts, for a precariousness allowance at the end of the assignment that is identical to the bonus paid at the end of a fixed-term contract. As for the various social benefits, temporary workers are entitled to social security benefits such as health insurance, unemployment insurance and pensions, which are managed by the temporary employment agencies. As far as training is concerned, temporary workers can receive specific training to prepare them for their assignments, particularly in the care sector where special skills are often required.

Temporary work is an important component of employment in the healthcare sector in France, offering a flexible solution to meet the staffing needs of healthcare establishments. However, it is governed by strict regulations designed to protect the rights of temporary workers in principle and to guarantee their equal treatment with permanent workers.

4.1.3 Modification and Termination of Contracts and Job Protection in the Private Sector

The Labour Code distinguishes between substantial changes to the employment contract, such as a significant reduction in working hours, duties, place of work, job classification or pay, and changes to working conditions. As the employment contract is a bilateral contract (agreement between the parties), any substantial change to the elements of the contract requires the employee's agreement. If the employee refuses these changes, the employer may consider terminating the contract on its own initiative. On the other hand, simple changes to working conditions are binding on the employee, as they fall within the employer's power of direction. If they are refused, the contract will be terminated for good reason.

In France, the modification and termination of employment contracts for care workers are subject to specific rules due to the sensitive nature of the job and the protection of employees as a weaker party to the employment contract. Most contract terminations, whether by resignation or dismissal, require a notice period, the length of which varies according to seniority and the type of contract.

Employment contracts in the healthcare sector can be terminated in a number of ways. A typical contract or open-ended contract may be terminated at the

initiative of the employer, the employee or both parties. Firstly, the employer may dismiss an employee for specific reasons, such as disciplinary action or failure to fulfil contractual obligations, particularly in the case of serious misconduct or professional inadequacy. The grounds for dismissal may also relate to the employer's economic difficulties or technological developments. Generally speaking, employees benefit from specific guarantees to protect their jobs and can contest their dismissal. All dismissals must be justified by a real and serious reason and follow a well-established formal procedure (requirement for a letter of dismissal, invitation to a preliminary interview, time limit, etc.). Failing this, the employer is liable to penalties for unfair or invalid dismissal, when the dismissal is based on a prohibited ground, in particular because of the employee's pregnancy, occupational illness or accident, or when the dismissal is based on any other discriminatory ground. In the event of invalid dismissal, the employee may be reinstated in the company (in principle, the employer may not oppose this), with payment of remuneration and redundancy pay (amount and ceiling on damages in the event of unfair dismissal since the Macron ordinances). Dismissed employees may also register as jobseekers and receive back-to-work benefit under the unemployment insurance scheme. They retain their health insurance rights for up to 1 year after termination of their employment contract.

Termination of the employment contract at the employee's initiative is a resignation. The employee may resign from his post. However, a notice period must be observed, unless there is a legitimate reason for immediate resignation or the employer agrees to waive the notice period.

Since law no. 2008-596 of 15 June 2008, employment legislation has authorised termination of the employment contract by mutual agreement of the parties, also known as the conventional termination.[143] In this case, the employee and employer can agree to an amicable termination of the employment contract by means of a conventional severance agreement approved by the Labour Inspectorate. This option offers an alternative to dismissal (the settlement agreement prevents the employee from contesting the agreement) or resignation (access to unemployment benefit rights). The employee is entitled to severance pay at least equal to the redundancy pay.

In addition, carers may be employed on fixed-term contracts, which automatically end on the agreed date. No notice is required to terminate a fixed-term contract when it expires.

4.2 The Particularities of the Commitment of Public Servants

The particularities of the status of public servant are characterised by specific forms of commitment (4.2.1) but also in the modification and termination thereof (4.2.2).

[143] Article L. 1231-1 of the French Labour Code.

4.2.1 Forms of Commitment by Public Employees

The ordinance of 24 November 2021[144] unified the general rules for civil servants in the three civil services, establishing a common general status. There are three types of civil servant. Firstly, permanent employees or civil servants. Article L. 311-1 of the General Civil Service Code sets out the principle that

> permanent civil service posts in the State, regions, departments, municipalities and their public administrative establishments are filled either by civil servants governed by this Code, or by civil servants in parliamentary assemblies, judicial magistrates or military personnel under the conditions laid down by their status.

It follows that public sector employees are civil servants. In principle, these employees are recruited by competitive examination and appointed to the posts to be filled.[145]

A second way of entering the public sector is through the recruitment of contract staff for permanent positions. Recruitment by contract is provided for in Articles L. 331-1 to L. 334-3 of the General Civil Service Code. Since 2019 and the law transforming the civil service, a reform has introduced new recruitment possibilities to meet permanent or temporary needs in both the local civil service[146] and the hospital civil service. Public administrations and establishments can now recruit permanent contract staff if there are no civil servants available to carry out the corresponding functions,[147] to carry out functions requiring highly specialised technical knowledge[148] or for temporary needs to replace part-time civil servants or civil servants who are unavailable due to duly granted leave.[149] At the end of this period, the contract may only be renewed by express decision for an indefinite period.[150]

Notwithstanding the principle set out in article L. 311-1 of the General Civil Service Code, it is also possible to recruit permanent contract staff either to meet temporary needs or to temporarily replace local or hospital civil servants.[151] The contract is concluded for a fixed term (1 year and 2 years maximum) until a civil servant is recruited. It is renewable, by express decision, for the duration of the absence of the hospital civil servant to be replaced. To ensure continuity of service, public administrations and establishments may use permanent contract staff to meet temporary needs under certain conditions.

[144] Ordinance no. 2021-1574 of 24 November 2021 on the general status of the civil service.

[145] Article L. 320-1 of the General Civil Service Code.

[146] Article L. 332-8 to L. 332-14 of the General Civil Service Code/CDD of 3 years and 6 years maximum.

[147] Article L. 332-15-1° and L. 332-17 of the General Civil Service Code/CDD of 3 years and 6 years maximum.

[148] Article L. 332-15-2 of the General Civil Service Code.

[149] Articles L. 332-19 and 20 of the General Civil Service Code.

[150] Article L. 332-9 and 10 of the General Civil Service Code.

[151] Article L. 332-13, article L. 332-9 to L. 332-20 of the General Civil Service Code.

Similarly, local authorities and hospital establishments may recruit contract staff for non-permanent posts either in the event of a temporary increase in activity for a maximum period of 12 months[152] (or a seasonal increase in activity for a maximum period of 6 months)[153]; or as part of a project contract for a minimum period of 1 year and a maximum period of 6 years.[154]

Thirdly, public administrations and establishments may exceptionally use private-sector employees for functions requiring specialised technical skills.[155] In this way, they can benefit from the secondment of employees by signing an agreement with their employer,[156] or use temporary employment agencies under the conditions set out in the Labour Code.[157]

Part-time work is possible for public bodies.[158] However, this part-time work must be at least 50% and "hospital civil servants may be excluded from the benefit of part-time work, depending on the grade they hold, the post they occupy or the duties they perform".[159]

4.2.2 Modification and Termination of a Public Servant's Contract of Employment

In the event of reorganisation resulting in the loss or elimination of a job, the General Civil Service Code provides for the reassignment of civil servants following a change that deprives them of their job:[160] civil servants whose jobs are eliminated are assigned to a new job under the conditions set out in the statutory provisions governing the civil service to which they belong. In the local civil service, where a post is likely to be abolished[161] the local authority shall seek to find alternative employment for the civil servant concerned.[162] In addition, under the terms of article L. 542-4,

> a local civil servant whose post is abolished shall be kept on secondment for one year if the local authority or institution is unable to offer him a post of his grade in his own job category or, with his agreement, in another job category

(other alternatives: priority of employment, possibility of secondment or integration into an equivalent post in another job category or in one of the civ-

[152] Article L. 332-23-1° of the General Civil Service Code.
[153] Article L. 332-23-2 of the General Civil Service Code.
[154] Articles L. 332-25 and 26 of the General Civil Service Code.
[155] Articles L. 334-1 to L. 334-3 of the General Civil Service Code.
[156] Article L. 334-1 of the General Civil Service Code.
[157] Article L. 334-3 of the General Civil Service Code; Article L. 1251-1 of the Labour Code.
[158] Articles L. 612-1 to L. 612-15 of the General Civil Service Code.
[159] Article L. 612-15 of the General Civil Service Code.
[160] Articles L. 541-1 to L. 544-24 of the General Civil Service Code.
[161] In accordance with the conditions set out in article L. 542-2 of the General Civil Service Code.
[162] Article L. 542-1 of the General Civil Service Code.

il service branches.[163] In the hospital civil service, a hospital post may only be abolished after receiving the opinion of the establishment's social committee.[164] A hospital civil servant whose post is abolished will continue to work for his establishment if the latter is unable to offer him another post corresponding to his grade and if the person concerned is not entitled to an immediate and full retirement pension. The employee continues to be subject to the rights and obligations attached to his status as a civil servant and remains under the authority of the director of his establishment. However, they will be offered support in finding a new assignment corresponding to their grade in another body or employment category of at least equivalent level or, at their request, a job in the private sector,[165] or even professional retraining.[166]

In addition, the cases in which a civil servant's duties or employment are definitively terminated include resignation,[167] dismissal, particularly in the event of abandonment of post, refusal by the person concerned at the end of a period of availability of three posts offered with a view to reinstatement, for professional incompetence,[168] and termination by contract.[169] In particular, the procedure for contractual termination is similar to that applicable to employees under private law (interview with the administration, possibility of being assisted by an advisor appointed by a trade union organisation of the employee's choice, standard termination agreement, withdrawal period, fixing the amount of the termination indemnity according to seniority, entitlement to unemployment benefit,[170] etc.),[171] financial support managed by the Centre national de la fonction publique territoriale or the relevant management centre under the conditions set out in Article L. 5424-1 of the French Labour Code.[172]

In the case of contract staff, in the event of a change following territorial reorganisation,[173] or in the event of the transfer or regrouping of health or social activities,[174] the hospital staff member concerned is automatically made available to the establishment(s) or group(s) responsible for the continuation of these activities, by decision of the appointing authority following an agreement between the original establishment and the host organisation. In the event of the transformation

[163] Article L. 542-5 of the General Civil Service Code.

[164] Article L. 543-1 of the General Civil Service Code.

[165] Article L. 543-3 of the General Civil Service Code.

[166] Article L. 543-5 of the General Civil Service Code.

[167] Article L. 551-1 and 2 of the General Civil Service Code.

[168] Article L. 553-1 to 3 of the General Civil Service Code.

[169] Article L. 552-1 of the General Civil Service Code.

[170] On the special unemployment insurance scheme applicable to certain civil servants and public sector employees: article L. 557-1 to L. 557-1-1) of the General Civil Service Code.

[171] Breach of contract: what degree of control for the administrative judge? Ruling handed down by the Paris Administrative Court: 31-10-2022, no. 2103433/2.

[172] Article L. 542-24 of the General Civil Service Code.

[173] Article L. 443-1 of the General Civil Service Code.

[174] Article L. 444-1 and 2 of the General Civil Service Code.

of a private health or social care establishment into a public establishment, or in the event of the total or partial transfer of the activity of such an establishment) to one of the public establishments, the employees concerned may be recruited as hospital civil servants and, in this case, the age limits for access to the bodies and posts of the hospital civil service do not apply to them. Similarly, their service in the private sector may be taken into account for the purposes of reclassification and promotion in the recruiting body or post.[175] In the case of contractual employees, in the event of a transfer of activity between legal entities governed by public or private law, the public entity will offer these employees a fixed-term or open-ended public law contract, depending on the nature of the contract they hold,[176] and their service with the original public entity will be treated in the same way as their service with the host public entity. More generally, the new contract in principle incorporates the substantive clauses of the contract they hold, in particular those relating to remuneration.[177] If the contract employee refuses to accept the proposed contract, the current contract is automatically terminated.[178] The Minister concerned shall apply the provisions relating to redundancy pay.[179] Under certain conditions, contractual agents working in permanent positions or on contracts concluded to meet a temporary increase in activity may receive a termination payment when these contracts, which may be renewed, are for a period of less than or equal to one year and when the total gross remuneration provided for in these contracts is less than a ceiling.[180]

Lastly, the duties of a contract staff member may be terminated in the following circumstances: termination of a fixed-term contract, redundancy,[181] automatic termination of the contract, retirement either on reaching the age limit,[182] or early retirement due to exposure to asbestos at the request of the staff member who meets the conditions,[183] resignation,[184] contractual termination for staff on open-ended contracts,[185] death.

5. Wages and Benefits

Wages in the private healthcare sector will be examined in turn (5.1), followed by those in the public sector (5.2). Finally, an analysis of the possible impact of the minimum wage directive on French legislation will be presented (Section 3).

[175] Article L. 444-2 of the General Civil Service Code.
[176] Article L. 445-1 of the General Civil Service Code.
[177] Article L. 445-2 of the General Civil Service Code and article L. 1224-3 of the Labour Code.
[178] Article L. 554-1 of the General Civil Service Code.
[179] Article L. 554-2 of the General Civil Service Code.
[180] Article L. 554-2 of the General Civil Service Code.
[181] Article L. 553-1 to 3 of the General Civil Service Code.
[182] Articles L. 556-1 to L. 556-15 of the General Civil Service Code.
[183] Article L. 555-1 to 5 of the General Civil Service Code.
[184] Article L. 551-1 and 2 of the General Civil Service Code.
[185] Article L. 552-1 of the General Civil Service Code.

5.1 Wages in the Private Healthcare Sector

Labour law tends to consider as wages "any sum or benefit granted in connection with work carried out within the framework of the undertaking". Wages are food in nature and must be sufficient to ensure the worker's subsistence in decent conditions. Although the preamble to the Constitution does not expressly mention the right to a decent wage, the Universal Declaration of Human Rights and the European Social Charter do.

The NCC for Private hospital (extended) sets out the aims of remuneration, i.e. to enable hospital employees to earn a level of pay commensurate with their qualifications, the technical nature of their job and their personal contribution to the performance of their duties.[186]

The principle of equal treatment. The principle of equal pay for men and women for equal work or work of equal value[187] has long been established in French law, dating back to a law passed in 1972. Although the pay gap has narrowed steadily over the last 25 years (from 22.1% in 1995 to 15.5% in 2021 for comparable working hours and jobs), significant differences remain due to the fact that women are more frequently employed part-time, to the gendered distribution of professions and to lower-paid jobs.[188]

The 2002 NCC for Private Hospitalisation (extended) stipulates that companies shall ensure equal pay for men and women for the same work or for work of equal value, in accordance with the provisions of article L. 3221-2 of the French Labour Code. When examining economic trends and the employment situation in the sector, in application of article L. 2242-3 of the Labour Code, any situations revealed to be in contradiction with this principle will require appropriate measures to be defined in order to put an end to them.[189] More broadly, the[190] collective agreement incorporates the provisions of the Article L. 2223-57 of the Labour Code of the French Labour Code on the principle of professional equality on collective bargaining at company level. It also incorporates the principle of equal treatment between employees, regardless of their ethnicity, nation or race, which must be ensured in particular in terms of access to employment, training, professional promotion, pay and working conditions.

Remuneration, which is the consideration for salaried—subordinate—work, results in principle from the employment contract, subject on the one hand to compliance with the SMIC (Minimum Interprofessional Growth Wage) (5.1.1) and on the other hand to benefits resulting from collective labour agreements, company practices or unilateral undertakings by the employer. Collective agreements specify the elements making up the salary (5.1.2), the methods of pay-

[186] Title VII, article 72 of the NCC for private hospital.

[187] The notion of "equal value" is defined in article L. 3221-3 of the French Labour Code.

[188] See Insee Focus, March 2023, no. 292. Philippe Roussel, *Femmes et hommes, l'égalité en question* (Paris: INSEE, 2022).

[189] Article 78 of the NCC for private hospital.

[190] Articles 79 and 80 of the NCC for private hospital.

ment (5.1.3), the mechanisms for increasing the salary in the event of overtime (5.1.4) and conventional salary scales (5.1.5).

5.1.1 The Minimum Wage

The guaranteed interprofessional minimum wage in France was introduced by the law of 11 February 1950[191] initially to stimulate consumption and combat poverty. This wage is set by the government and can be raised through collective bargaining. Today, its purpose is to ensure that "employees with the lowest salaries are guaranteed: 1. purchasing power and 2. a share in the nation's economic development".[192] The guarantee of purchasing power "is ensured by indexing the minimum growth wage to changes in the national consumer price index established as a reference by regulation".[193]

The obligation to pay an employee at least the minimum growth wage is a general principle of law in France.[194] It is a principle of public policy that applies regardless of the terms of the contract. The legal provisions on the minimum wage apply not only to employees, but also to the staff of public industrial and commercial establishments and to the private-law staff of public administrative establishments.[195]

The minimum wage rate is set by regulation and is increased each year, usually in January. Collective bargaining agreements specify a minimum wage. Whether hourly or monthly, no gross wage may be lower than the collective agreement minimum wage in force, or the minimum wage in force if it exceeds the collective agreement minimum, which is sometimes specified in the agreements.[196]

The gross hourly wage is 11.75 euros, i.e. 10.12 euros net from 1st September 2023, or 1747.20 euros gross, i.e. 1383.08 euros net for a 35-hour week, i.e. 151.67 hours/month. Some authors believe that the level of the minimum wage in France is below the level that would ensure a decent minimum for its beneficiaries.[197] *A fortiori*, part-time workers in the lowest-paid jobs, including *care* work, who are single parents, find themselves in situations of poverty or even extreme poverty.[198] A study carried out on home helpers shows that this is a highly feminised job (95% women), 44% of which is held by employees aged over 50, 90% of whom have permanent contracts, but 77% of whom work part-time, 40% of whom work between half-time and 80% of the time.

[191] Became Smic - salaire minimum interprofessionnel de croissance - by the law of 2 January 1970.

[192] Article L. 3231-3 of the French Labour Code.

[193] Article L. 3231-4 of the French Labour Code.

[194] C 23 April 1982, Dalloz, 1983.

[195] Article L. 3231-1 of the French Labour Code.

[196] Cass. soc., 31 March 1982, no. 80-40.019. Article 144-1 of the NCC Individual employers and home based employment.

[197] See P. Concialdi, "Le salaire minimum en France: historique et débats," *Revue de l'Ires* 100 (2020/1): 145–77.

[198] P. Concialdi, "Les travailleurs pauvres," *Cahiers français* 390 (2016): 20.

5.1.2 Wages Components[199]

Collective agreements provide details of the salary components specific to their field of application.

In the NCC for home help, support, care and services (21 May 2010),

> each job […] is allocated a hierarchical minimum wage. This salary is made up of a basic salary calculated on the basis of category, level and step, plus additional remuneration components (ECR) (seniority, diploma, training and specific features of the work).[200]

The NCC for individual employer and home based employment of 15 March 2021 stipulates that as part of the new classification applicable since 1st April 2016, the social partners have abolished the increase for seniority applicable after 3 years and 10 years of work with the same employer. In return, they have strengthened the recognition of skills and professionalisation by creating a 4% and 5% increase in minimum wages for employees who have obtained a professional qualification in the sector of employees of private individuals working for private individuals registered with the RNCP.[201]

The NCC Establishments and Services for Maladjusted and Disabled Persons of 15 September 1976 (not extended) provides for the payment, in addition to wages, of a family bonus distinct from family benefits and allowances for particular hardship granted to certain categories of staff under special provisions concerning them. Seniority is a factor in calculating wages on recruitment and during the contract, for career progression purposes. This agreement provides for the payment of a differential allowance in the event of occupying a higher category position for a period exceeding 1 month,[202] on the understanding that this situation is limited to 6 months.

The NCC Private hospital provides for special hardship allowances.[203] These are for night work (between 7 p.m. and 8 a.m., with an increase of 15% of the hourly wage); for work performed on Sundays and public holidays: art. 82.2 (an allowance equal to 0.60 points per hour or fraction of an hour); for on-call duty: art. 82.3.1 (an allowance equal to one-third of the hourly wage); for work performed during on-call duty (double the hourly wage). These different allowances cannot be accumulated. If different hardships are superimposed, only the

[199] There is no clause on pay in the CLA for profit-making human services company of 20 September 2012.

[200] Article 11 (IInd part) of the NCC Establishments and Services for Maladjusted and Disabled Persons of 15 September 1966 (not extended).

[201] Amendment no. 1 to appendix 6 relating to the agreed minimum wages applicable to employees of individual employers and home based employment of 18 February 2022.

[202] Article 38 of the above-mentioned NCC of 15 September 1966. Conversely, the clause specifies that no compensation will be payable to an employee whose employment contract provides for the regular replacement of an employee in a higher professional category.

[203] Article 82 of the NCC Private Hospital.

most advantageous scale for the employee will be used. However, as an exception, allowances for work on Sundays and public holidays may be accumulated. The same agreement specifies that a temporary replacement in a lower-skilled position will not result in a change of qualification or a reduction in remuneration. On the other hand, a temporary replacement in a higher-skilled position will result, after a period of 15 days (continuous or discontinuous), in the payment of a differential between the two basic contractual salaries, from the first day of replacement. It should also be noted that if the position requires the incumbent to hold a diploma required by law (DAPAS, State nursing diploma, etc.), the substitute must meet the same conditions.[204]

The NCC Private non-for-profit hospital and nursing establishment of 1951 (not extended), establishes that staff remuneration is determined by a reference coefficient set for each group of professions; to this reference coefficient are added, in order to constitute the agreed base coefficient for the profession, any additional remuneration linked to supervision, qualifications and/or the profession itself. A seniority bonus is applied to this basic salary, plus any technicality supplement, any allowance to guarantee the agreed minimum salary and any promotion allowance. The collectively agreed minimum wage is determined by taking into account all the remuneration received by the employee in return for or in connection with his work, within the meaning of legal provisions and case law. The agreed minimum wage may not be less than the minimum wage, it being specified that the seniority bonus is not taken into account in this assessment.[205] Professional experience must be taken into account in determining the rate of the seniority bonus, at least 30% of the length of professional experience acquired previously, whether recruitment is for a skilled or unskilled trade. When an employee is promoted, he or she will receive a gross increase of at least 10%, excluding the decentralised bonus, between the old job and the new job. The provisions of the collective bargaining agreement do not preclude the granting of exceptional allowances justified by particular hardships or difficulties inherent in the service or the location of the establishment. The agreement sets out the terms and conditions for granting the differential replacement bonus in the event of a better-paid job (beyond a 15-day replacement), a replacement allowance representing a gross increase of at least 10% will be paid. This bonus is not payable when the replacement is provided for in the employment contract or when replacing an employee on leave. The same agreement includes provisions on accommodation, travel and meals. It specifies that there is no obligation to provide accommodation. However, accommodation may be provided in return for payment according to a scale established by agreement, or free of

[204] Article 76 of the NCC for Pivate Hospital.

[205] Articles 8-1 et seq. of the NCC private, for-non-profit hospital and nursing establishment. The determination of this conventional minimum wage and its impact on the various elements of remuneration are specified in the appendix to this amendment (Amendment no. 2009-03 of 3 April 2009).

charge (if provided for in the employment contract).[206] The agreement also includes clauses on meals (the possibility of feeding staff in return for payment in accordance with the rates set out in the wage agreements and appendices to the NCC) and on the dining rooms provided for this purpose in the establishment.

5.1.3 Wages Payment Arrangements

In France, wages have been paid on a monthly basis since the law of 19 January 1978; in particular, this makes it possible to neutralise the consequences of the unequal distribution of days between the months of the year.[207] However, the NCC for the sector of individual employers and home-based employment of 15 March 2021 provides for monthly pay "regardless of the number of days or weeks worked in the year. The monthly payment of wages guarantees a smoothing of remuneration".[208] This agreement contains another special feature: with the employee's agreement and the employer's mandate, the salary can be paid by CESU or PAJEMPLOI.[209]

When an employee is paid, a pay slip is issued. An action for payment or recovery of wages is time-barred after 3 years.

Wages are protected. Deductions from wages by employers are prohibited and punishable by law. Wages are among the privileged claims in the event of a company's safeguard, reorganisation or compulsory liquidation proceedings.

5.1.4 Wages and Overtime

Any overtime worked in excess of the legal working week (35 hours) or the working week considered to be equivalent is considered to be overtime and, in accordance with article L. 3121-28 of the French Labour Code, "entitles the employee to additional pay or, where applicable, to an equivalent compensatory rest period". Overtime is counted per calendar week, unless there is an agreement on the organisation of working time. In the absence of an agreement (at branch or establishment level), overtime pay is increased by 25% for each of the first 8 hours, with the following hours attracting a 50% increase.[210] This formerly mandatory legal rule is now (since the Macron ordinances of 22 September 2017) a suppletive provision. There are two ways in which it can be derogated from: by means of a collective agreement or a unilateral decision by the employer. In the case of a collective agreement, the increase may be different, but may not be

[206] The text specifies that enjoyment is precarious in the sense that it ceases with the contract. The NCC stipulates that housed staff have the individual freedom to leave the accommodation unless the job involves a residence obligation.

[207] However, the NCC for establishments for the disabled specifies that permanent part-time staff may be paid on a monthly or fortnightly basis, based on the hourly rate for their category.

[208] Article 52 of the NCC Individual employers and home based employment of 15 March 2021.

[209] Article 56-2 of the above-mentioned NCC.

[210] Article L. 3121-36 of the French Labour Code.

less than 10%. The increase in overtime pay may be replaced in whole or in part by compensatory rest if a company or branch collective agreement so provides (see chapter on working time).[211] In companies where there is no trade union delegate, the employer may unilaterally replace all or part of the overtime pay and additional payments by an equivalent compensatory rest period, provided that the Social and Economic Committee, if there is one, does not object, the CSE having a right of veto.[212] In the absence of a social and economic committee, the employer has full room for manoeuvre.

5.1.5 Collective Bargaining Wage Scales[213]

The addenda to the national collective agreements listed below have all been extended and are therefore applicable to all employees in all establishments falling within the scope of the national industry collective agreement.

The NCC for individual employers and home based employment of 2021 - Amendment no. 7 of 16 October 2023, extended by Ordinance of 15 January 2024. The social partners have decided to raise the hourly wage for level I (the lowest on the scale) to 1.01 SMIC.

Table 1 – Gross minimum contractual wages.

Level	Gross hourly wage	Gross monthly salary	% increase for professional certification	Gross hourly wage with certification premium	Gross monthly salary with certification bonus
I	11.75 euros	2,044.50 euros	4%	12.22 euros	2,126.28 euros
XII	16.95 euros	2,949.30 euros			

NCC for personal services companies de 2012 – Amendment of 5 octobre 2022 (extended)

Table 2 – Gross minimum contractual wages.

Domestic assistant - Level I	10.85 euros gross
Life assistant - level 2	11 euros gross
Life assistant - Level 3	11.25 euros gross

NCC for the home help, support, care and services sector of 2010 - Rider of 12 May 2023 extended. The partners point out that the successive increases in the SMIC in 2022 (0.9% then 2.6% and 2%) have had the effect of placing the conventional minimum wage below the Smic. They therefore undertake to ne-

[211] Article L. 3121-33 II and III of the French Labour Code.

[212] Article L. 3121-37 of the French Labour Code.

[213] We will give the salaries for the lowest and highest levels.

gotiate the conventional minimum wage each time the minimum wage is increased. Finally, the partners point out that the law of 16 August 2022 (Ségur de la santé) on emergency measures to protect purchasing power urges professional branches to raise minimum wages to at least the level of the Smic. They point out that in their industry the value of the point is set at €5.77.

Table 3 – Gross minimum contractual wages

Intervention channel: degree 1 employee			Intervention channel: level 2 employee		
Step 1	Step 2	Step 3	Step 1	Step 2	Step 3
Coef.291	Code 304	Coef.324	Coef.344	Coef.359	Coef.383

NCC for establishment and services for maladjusted and disabled persons of 1966 - Amendment of 22 February 2023 extended

Table 4 – Gross minimum contractual wages

Level	Benchmark jobs	Minimum annual remuneration
2	Hospital services employee	23,500 euros
5	AES	23,800 euros

5.2 Wages and Benefits in the Public Healthcare Sector

We will examine remuneration (5.2.1) and benefits (5.2.2) in turn.

5.2.1 Remuneration

The Civil Service Code includes a Title II devoted to protection and guarantees against discrimination and a chapter on professional equality between men and women. Following the example of the private sector, it introduces a legal obligation for public establishments and local authorities to introduce a multi-annual action plan including, in particular, measures to assess, prevent and, where appropriate, address pay differentials between women and men.[214]

The remuneration of civil servants is payable after service has been rendered. Civil servants are entitled to remuneration after service has been rendered, comprising: 1) salary; 2) residence allowance;[215] 3) family salary supplement;[216] 4) bonuses and allowances provided for by law or regulation.[217] A civil servant oc-

[214] Article L. 132-2 of the General Civil Service Code.

[215] It is set according to the place of residence of civil servants and the amount of their pensionable pay.

[216] It is based on the number of dependent children. The family supplement cannot be cumulated with a benefit of the same nature granted for the same child.

[217] Article L.712-1 of the General Civil Service Code.

cupying a post involving particular responsibility or technical expertise may be awarded a new index bonus.[218]

The remuneration of contract staff shall be fixed by the competent authority taking into account the duties performed, the qualifications required for the performance of those duties and the experience of the contract staff.[219]

The bonuses and allowances allocated to civil servants may take account of the duties performed, their professional results[220] and the collective results of the department to which they belong.[221] These compensation schemes are maintained for local authority civil servants during leave linked to parental responsibilities without prejudice to their modulation according to the professional commitment of the local authority civil servant and the collective results of the service. The deliberative bodies of local authorities and their public establishments set the compensation schemes for their employees within the limits of those available to the various government departments.[222] By way of derogation, local civil servants working in the medical and social sector, a list of which is set by decree, may benefit from a compensation scheme set by decree.[223] Collectively acquired benefits in the form of additional remuneration that local authorities and their public establishments introduced before 28 January 1984 are maintained for the benefit of all their civil servants; they may be maintained on an individual basis if the civil servant moves within the local civil service.[224]

A profit-sharing bonus may be introduced to take account of the collective performance of departments by the decision-making body of a local authority or public institution. Within the hospital civil service, a collective incentive bonus linked to the quality of the service provided may be awarded to hospital employees after consultation with the establishment's social committee. This bonus is paid in accordance with article L. 6143-7 of the French Public Health Code.[225]

The salary scales currently in force give the figures below:

- Territorial general care nurse (category A): step 1: 1,919.88 euros/step 11: 3,313.03 euros.
- Territorial nurse in general care, hors classe (category A): step 1: 2,077.41 euros; step 11: 35,554.25 euros.
- Territorial social worker - AST (Category C): step 1: 1,777.12 euros; step 11: 1,880.50 euros.

[218] Article L.712-12 of the General Civil Service Code.

[219] Article L.713-1 of the General Civil Service Code.

[220] In the local civil service, we talk about professional commitment rather than professional results.

[221] Article L. 714-1 of the General Civil Service Code.

[222] Article L. 714-4 of the General Civil Service Code

[223] Article L. 714-10 of the General Civil Service Code.

[224] Article L. 714-11 of the General Civil Service Code.

[225] Article L. 714-14 of the General Civil Service Code.

- Agent territorial - AST 2nd classe (Category C): step 1: 1,782.05 euros; step 12: 2,067.57 euros.
- Agent territorial - AST 1st classe (Category C): step 1: 1,811.458, step 10: 2,328.47 euros.
- Aide-soignant - (Collectivités) classe normale: step 1: 1,811.58 euros; step 11: 2,520.46 euros.
- Healthcare assistant - Local authorities: (higher grade): step 1: 1,880.50 euros, step 11: 2,732.14 euros.
- Community orderly (exceptional class) step 1: 1,811.58, step 10: 2,328.47 euros.
- Aide-soignant - Hôpital classe normale; step 1: 1: 1,811.58 euros; step 11: 2,520.46 euros.
- Aide-soignant - Hospital: senior class: step 1: 1,880.50 euros; step 11: 2,732.14 euros.

5.2.2 Miscellaneous Benefits and Reimbursement of Expenses

Local authorities may allocate housing free of charge or in return for a fee from the local authority, in particular because of the constraints associated with these jobs. The list of jobs is set by the local authority's decision-making bodies.[226] The same applies to hospital staff in certain positions requiring them to live in or near the establishment to which they are assigned, and they may receive benefits in kind. Hospital civil servants are entitled to free medical treatment and pharmaceutical products dispensed for their personal use by the hospital pharmacy in the hospital where they work, on prescription from the hospital doctor.[227] The cost of hospitalisation not reimbursed by the social security bodies to hospital civil servants is paid for a maximum period of 6 months by the establishment where the person concerned is working, provided that the hospitalisation takes place in this establishment or in another establishment under certain conditions (emergency, need recognised by the employing establishment's doctor).[228]

Public-sector employees' travel expenses are paid by their employer.

Irrespective of pay, grade, position or service, civil servants are entitled to individual or collective welfare benefits, which means that the beneficiary must contribute to the costs incurred; this contribution takes account of income.[229]

If the public employer cannot provide a catering service compatible with the place of work, meal vouchers may be awarded. Holiday assistance may also be granted in the form of holiday vouchers.

[226] Article L. 721-1 of the General Civil Service Code.
[227] Article L. 722-1 of the General Civil Service Code.
[228] Article L. 722-2 of the General Civil Service Code.
[229] Article L. 731-3 of the General Civil Service Code.

5.3 The Compliance of French Law With The European Directive 2022/2041 of 19 October 2022 on Adequate Minimum Wages

In this section, we will look at two elements which seem essential in the European text in the light of the national law in force in France: the purpose of minimum wages (5.3.1) and the means of ensuring these minimum wages (5.3.2).

5.3.1 The Purpose of Minimum Wages: to Ensure a Decent Standard of Living

As already emphasised in the introduction to this chapter, French law does not spell out the aims of minimum wages in a text. However, the preamble to the directive calls for this when it states that the primary purpose of minimum wages is to ensure a decent standard of living on the basis of full-time work (point 28) and gives as a reference "the basket of goods and services at real prices established at national level to determine the cost of living". The text explains that "In addition to basic necessities such as food, clothing and housing, the need to participate in cultural, educational and social activities could also be taken into account". The text recommends the ratio of 50 to 60% between the minimum wage and the average wage as a benchmark for "internationally agreed" values. Article 1 of the directive, paragraph 1, takes up the idea in the following terms: "the aim of adequate statutory minimum wages is to achieve decent living and working conditions".

Although the legal minimum wage is an "old institution" in France, it lacks a reflection that would carry the purpose spelled out by the European text and that could be the basis for a real and adapted revaluation of the level of the legal minimum wage to the needs of the human being, as a social being. It is true that article L. 3231-2 of the Labour Code explicitly attributes to the minimum growth wage the aim of guaranteeing purchasing power and participation in the economic development of the nation. Purchasing power is guaranteed by indexing the minimum growth wage to changes in the national consumer price index, which is set as a benchmark by regulation. As for the second aim, participation in the economic development of the nation, which is not defined by law, it reflects an economic orientation rather than the development and fulfilment of the human person in a given society. On this point, the directive adopts a more global—societal—stance and starts from the prism of the human person.

In addition, although both European and French law use full-time workers as the benchmark, it turns out that *care* workers are particularly affected by atypical part-time work. However, as the law and public policy currently stand at national level, there is nothing to take account of this fact, which is inherent in care work and consequently not chosen by the worker, to compensate for it financially, which contributes to placing these workers in a state of poverty, which is also detrimental to the attractiveness of jobs in this sector. In the same way, the physical hardship of working with beneficiaries and the emotional and psychological burden inherent in caring for someone who is deprived of autonomy are not taken into account. What's more, the vast ma-

jority of *care* workers are in low-skilled or unskilled jobs with very low wages, because the symbolic and real value of this work for individuals and society in general is not taken into account.

In addition, the European text refers to the need to regularly review the level of minimum wages and suggests a timeframe of two years. Under French law, the principle of revising the statutory inter-professional minimum wage is annual. As for collective bargaining on wages, this is at branch level and is compulsory at least once a year,[230] just as it is compulsory every three years to negotiate measures at branch or professional level to ensure equality between men and women.[231]

Finally, the European directive postulates a broad field of application, including workers in both the private and public sectors. In its preamble (point 21), the text refers to a list of workers including domestic workers, on-demand workers, intermittent workers, workers covered by voucher-based schemes (such as the chèque emploi service in France), platform workers [...] and other atypical workers, as well as bogus self-employed and undeclared workers. On this point, French legislation (private labour law and public labour law) is in line.

5.3.2 The Means of Setting Minimum Wages Recommended by the Directive

The European text addresses several aspects of this question. First and foremost, the European legislator distinguishes between legal minimum wages and contractual minimum wages. In so doing, it distinguishes between the legislative route for the former and the contractual route for the latter. This division of roles is the same as that which prevails in French law, as described above; moreover, it establishes a link between the law and collective bargaining which escaped the reforms on derogatory collective bargaining mentioned in the first introductory chapter of this report. The Directive refers on several occasions to the promotion of collective bargaining as a means of setting wages, while at the same time highlighting the risk of insufficient coverage of workers and calling on the Member States to remedy this situation. As seen above, French law has two very effective means of avoiding such disparities.

On the one hand, the legal minimum wage is interprofessional; set by decree, it therefore applies to all workers, whatever their administrative situation (legal or illegal in the case of foreign workers), whatever their gender, whatever their age, whatever their profession, whatever the sector of activity, the level of professional qualification or the position held. The rules on the statutory interprofessional minimum wage are a matter of public policy; they are mandatory in nature and apply automatically even if the collectively agreed minimum wage is lower. Moreover, most collective agreements applicable in the *care sector* in-

[230] Article L. 2241-8 of the French Labour Code.

[231] Article L.2241-11 of the French Labour Code.

clude a clause providing for this situation and stipulating automatic adjustment of the wages paid to the legal minimum wage.

On the other hand, the risk of disparities in collective agreement minimum wages is limited by two means. The first lies in the fact that collective bargaining on wages takes place at branch level and therefore applies to all employees of companies that are members of the signatory employers' organisation, or if they voluntarily sign the national agreement when it has not been extended, which is the case for the collective agreements for private commercial and non-profit hospitals. The second lever for covering all the employees of the companies concerned is the extension of the national collective agreement by order of the Minister of Labour. This is the case for the 3 collective agreements applicable in the care sector and that for establishments. In these branches, all home care workers are therefore covered by the minimum wage agreements.

6. Working Time, Health and Safety, Implications of the Covid-19 Pandemic, and Training and Competence Development

6.1 Work Time

Under French law, there is no such thing as a zero-hour employment contract. This would be contrary to one of the conditions for the validity of a contract, namely that its purpose must be fixed or determinable. Consequently, employment contracts of indefinite or definite duration are either full-time or part-time. Where part-time work is involved, whether the contract is concluded for an indefinite or definite period, it is an atypical employment contract and is therefore subject to specific regulations, some of the provisions of which relate to the links between working hours and the contract. This will be presented in 6.1.1. All the other sections of this chapter concern full-time employment contracts, whether open-ended or fixed-term. As working hours and working time are technically complex and are extensively regulated both by law and by collective agreements, we will present the provisions on working hours in 6.1.2, then in 6.1.3 the arrangements for organising working time, in 6.1.4 the provisions on night work and in 6.1.5 those on rest and leave.

The duration and organisation of working time in France is the preferred area for collective agreements and suppletive statutory law. It is also one of the areas in which the employer's power of direction is expressed. The length and organisation of working time mobilise several principles in a harmonious and/or conflicting manner: the right to health protection, quality of life at work, reconciling professional and personal life, professional equality and the right to training. These principles will sometimes be the subject of attention, sometimes by the legislator, sometimes by the social partners who are signatories to collective labour agreements, which will then be highlighted in the developments that follow. Notwithstanding the comparisons that have been made, and will be made in the future, between civil service law and private sector labour law, each section will distinguish the situation in each of these two sectors.

6.1.1 Links Between Working Hours and Employment Contracts: Part-Time Work

The particular nature of part-time work and its regulation in the private sector (6.1.1.1) and the public sector (6.1.1.2).

6.1.1.1 Part-Time in the Private Sector

In the private healthcare sector, the legal provisions governing part-time working (6.1.1.1.1) are supplemented by contractual standards specific to each area of activity (6.1.1.1.2).

6.1.1.1.1 The Law[232]

First of all, under French law, a part-time employee is one whose working time is less than either the legal or collectively agreed weekly working time, or the legal or collectively agreed monthly working time, or the legal annual working time (1607 hours) or the collectively agreed annual working time.[233]

The provisions relating to overtime and compulsory time off in lieu apply to hours worked in excess of the legal or collectively agreed working time.[234] Part-time employees benefit from a minimum weekly working time in order to limit the effects of casualisation and the risk of poverty. The law sets this threshold at 24 hours per week or the equivalent per month or per year.[235] Employees have the right to request, in writing, a shorter working week to enable them to work full time in the case of multiple jobs, or to work the minimum 24 hours per week.

The employment contract must be in writing and must include compulsory information, including the weekly or monthly working hours, the distribution of working hours between the days of the week or the weeks of the month, except for employees of home help associations and companies and except for part-time employees covered by a collective agreement on the organisation of working hours.[236]

[232] We will deal here only with the links between contract and working time. For further details on part-time work, see chapter IV of this report.

[233] Article L. 3123-1 of the French Labour Code. French law recognises the intermittent employment contract, which is a special form of annualised part-time work: it is an open-ended contract concluded to fill permanent jobs which, by its very nature, involves alternating periods of work and non-work. The written contract must specify the minimum annual working time, the work periods and the distribution of hours over these periods. Such contracts may only be concluded in companies covered by an agreement or collective agreement providing for them. No collective agreement in the care sector provides for this particular form of employment.

[234] Article L. 3123-2 of the French Labour Code.

[235] The NCC for help home, support, care and services of 21 May 2010, as extended, stipulates that working hours may not be less than 70 hours per month, 200 hours per quarter or 800 hours per year. When the situation does not allow for 70 hours per month, 200 hours per quarter or 800 hours per year, employment contracts of a shorter duration may be concluded after consultation with staff representatives, if any.

[236] Article L. 3123-6 of the French Labour Code.

The written document must also specify the cases in which this distribution may be modified, as well as the nature of this modification; the terms and conditions according to which the working hours for each working day are communicated in writing to the employee must also be written down. In home help associations and companies, the working hours are communicated to the employee in writing each month; in the absence of such communication, the contract is deemed to be concluded on a full-time basis.[237] The employee must be given 7 days' written notice of any change in the working hours. The employee may refuse a change in the distribution of working hours, without this constituting grounds for sanction or dismissal, if the cases and nature of such changes have not been specified in the contract, or if this is incompatible with his or her overriding family obligations or with attending school or with completing a period of activity set by another employer or with a self-employed professional activity.[238] This is also the case when timetables are changed during the day. The number of interruptions during the day is set at one and may not exceed 2 hours.

Finally, the written agreement must specify the limits within which overtime may be worked in excess of the contractual number of hours. Overtime that does not result in the weekly working time exceeding the legal or contractual working time is subject to additional pay. The number of overtime hours may not exceed one tenth of the contractual working time. The employee may refuse to work overtime in excess of that stipulated in the contract. If an employee works more than 2 hours of overtime per week or month for more than 12 consecutive weeks, the contractual working hours must be changed, subject to 7 days' notice and the employee's not objecting. Overtime is increased by 10% for up to 10 hours of overtime and by 25% for each hour of overtime worked in excess of this. The monthly working time of a part-time employee may not be reduced by more than one third by the use of a credit of hours in respect of a representative mandate.

The legal provisions on the minimum working week, the quota of overtime hours, the rate of increase for overtime hours, breaks during the day and the notice period for changes in the distribution of working hours are of a suppletive nature. They therefore only apply in the absence of a company or branch agreement or collective agreement and may be revised downwards under the conditions laid down by law and set out below.

6.1.1.1.2 Collectively Agreed Part-Time Working Arrangements

An agreement or collective agreement may provide for the introduction of part-time working at the initiative of the employer and/or at the request of employees. In the *care* sector, it should be noted that the NCC for private non-for-profit hospital and nursing establishment of 1951 is silent on part-time working,

[237] Cass. soc. 20 February 2013, *Dalloz actu*, 13 March 2013, obs. Fraisse.

[238] Article L. 3123-12 of the French Labour Code.

as is the NCC Individual employers and home based employment of 2021. This does not prevent employers in companies falling within this scope from deciding to conclude collective company agreements or to decide unilaterally to implement part-time working. Company or branch agreements and collective bargaining agreements can be derogatory (*in peius*) on the following subjects:

- The minimum weekly, monthly or annual working hours; in this case, guarantees must be provided as to how the employee will be able to combine several activities so that he or she can work full time or reach the legal minimum of 24 hours. In addition, there must be clauses setting out the arrangements for grouping working hours into regular full days or half-days.
- The rate of increase may not be less than 10%.
- Additional hours may be set by rider (up to 8 per year). The law lays down a minimum threshold: additional hours worked over and above those set by the rider are subject to a 25% increase in pay.
- Interruptions during the day: if the agreement provides for more than one interruption or more than 2 hours, the agreement must define the working hours and provide for compensation.[239]
- On the notice period for changes in allocation, which may be less than 7 days, but must be at least 3 days. In home help associations and companies, this period may be shorter in urgent cases defined by agreement or extended branch agreement or company agreement.[240] Agreements providing for periods of less than 7 days must provide for compensation.[241]

[239] This is the case with the NCC for establishment and services for disadapted and handicaped persons, Titre IV: non étendue (article 20-5), which stipulates the possibility of 2 interruptions per day of up to 2 hours, with a maximum working day of 11 hours.

[240] This is the case with the NCC for personal services companies (at home or at a place chosen by the beneficiary) of 20 September 2012 (extended), which defines the cases justifying the reduction of the notice period to 3 days: unscheduled absence of a colleague, worsening of the beneficiary's health, death of the beneficiary, hospitalisation or medical emergency of a beneficiary, unscheduled emergency arrival of a beneficiary, illness of the child, illness of the usual care provider, shortage of the usual care method, unscheduled absence of an employee working with an elderly or dependent public. The NCC for home help, support, care and services branch (BAD) of 21 May 2010, which has been extended, stipulates that the number of unpaid interruptions to work in any one day may not exceed three. The total duration of these interruptions may not exceed 5 hours. Exceptionally, the total duration of interruptions may exceed a maximum of 5 hours for 5 days over 2 weeks.

[241] The NCC for personal services companies of 20 September 2012 (extended): "In return for a notice period of less than 7 days for changes to working hours, in compliance with the periods of unavailability that must imperatively appear in the employment contract, the employee has the possibility of refusing 7 times per calendar year to change his working hours, without these refusals constituting misconduct or grounds for dismissal and without these hours being deducted in any way whatsoever". "Any refusal to change working hours must be confirmed in writing by the employer to the employee. This confirmation must include the proposed hours of work refused, the number of refusals recorded by the employer during the calendar year and the contractual periods of unavailability". The NCC of the home help, support, care and services branch (BAD) of 21 May 2010. The parties agree, in the contract or in the amendment to the contract, to one of the following conditions: - the daily working

6.1.1.2 Part-Time Work in the Public Sector

Part-time work is governed by articles L. 612-1 to L. 612-15 of the General Civil Service Code. As in the private sector, part-time work requires a minimum working week of at least half-time. Applications must be submitted for authorisation, which is granted subject to the requirements of continuity and operation of the service, taking into account the possibilities for reorganising work.[242] Reasons must be given for any refusal and an interview must be held. The Civil Service Code provides for full authorisation to work part-time (from 50% to 80%) in the following cases: on the occasion of each birth, up to the child's third birthday; on the occasion of each adoption, up to the expiry of a period of three years from the arrival in the home of the adopted child; to care for a person with a disability requiring the presence of a third party, or who has suffered a serious accident or illness, if that person is the civil servant's spouse, partner in a civil solidarity pact, dependent child or ascendant; if the civil servant falls into one of the disability categories mentioned in 1°, 2°, 3°, 4°, 9°, 10° and 11° of article L. 5212-13 of the French Labour Code, on the advice of the occupational physician.[243]

In the civil service (Articles L. 612-9 to L. 612-11), certain grades, certain jobs or certain functions defined by decree of the Conseil d'Etat exclude any possibility of part-time working. The amount of part-time work may be adjusted provided that the weekly service resulting from this adjustment comprises either a whole number of hours or a whole number of half-days, in accordance with the conditions laid down by decree of the Conseil d'Etat.[244] The same possibility exists under the same conditions in the local civil service.[245]

The General Civil Service Code also provides for the possibility of holding permanent non-full-time posts. In the local civil service, this may apply to nurses who may, where justified by the nature of their duties or the needs of the service, be authorised to occupy a permanent, non-full-time post or to perform duties involving incomplete service.[246] Permanent non-full-time posts are created by decision of the board of directors of the departmental fire and rescue service. This decision sets the weekly working hours for each post. The local civil servants concerned may hold another permanent non-full-time post covered by the aforementioned Code or engage in a self-employed professional activity. Hospital civil servants belonging to bodies mentioned in a decree of the Conseil d'Etat

time does not exceed 11 hours; - the employee benefits from 2 additional days off per calendar year; - travel time that would have been necessary between each location if the work had been consecutive is treated as actual working time.

[242] Article L. 612-3 of the General Civil Service Code.

[243] Article L. 612-2 of the General Civil Service Code.

[244] Article L. 612-10 of the French Civil Service Code.

[245] Article L. 612-14 of the French Civil Service Code.

[246] Article L.613-7 of the French Civil Service Code.

may be appointed to permanent non-full-time posts of a duration greater than or equal to the duration mentioned in article L. 332-16.

6.1.2 Working Hours (Daily, Weekly, Annual)

Previously regulated exclusively by public-order legislation of an imperative and social nature, working hours have been the subject of a vast deregulation and flexibilisation drive since the end of the 90s. Today, public policy provisions in this area have become the exception rather than the rule, while suppletive rules have become virtually the rule, giving way to collective bargaining at company or industry level (which is rarely required to be extended) and, in the absence of agreement, to unilateral action by the employer. That said, the organisation of working time is a matter for the employer to decide, as set out in a number of collective labour agreements, including the agreement for the home help, support, care and services sector (BAD) of 21 May 2010 (extended). Among the general principles governing working hours, this agreement establishes the need to reconcile employees' professional and personal lives, specifically recommending that employers should not combine the different ways of organising and arranging working hours provided for in the agreement. However, this concern does not translate into anything other than compliance with maximum daily and weekly working hours, daily and weekly rest periods and holidays, which are governed by public policy laws.

The regulations on working hours and working time resulting from the adoption of the General Civil Service Code are largely based on, or even refer to, the Labour Code (6.1.2.1). This is why we will limit ourselves to mentioning, where they exist, the remaining specificities in the public sector (6.1.2.2).

6.1.2.1 Working Time Law in the Private Sector

The law on working hours is based on 3 elements: actual working hours (6.1.2.1.1), maximum working hours (6.1.2.1.2) and overtime (6.1.2.1.3).

6.1.2.1.1 Actual Working Hours

Effective working time is defined by article L. 3121-1 of the French Labour Code as "the time during which the employee is at the employer's disposal and complies with the employer's instructions without being free to pursue personal interests". This legal definition also applies to the public sector (including all civil services), as Article L.611-1 of the General Civil Service Code expressly refers to the Labour Code. The same definition is used almost systematically in the sector's collective agreements. This definition plays an important role for several reasons. It is used to calculate rest periods, holidays, overtime, pay and social security contributions. It makes it possible to distinguish between time that is paid and time that is not, even if the employee is in the company. This means that a whole range of time will not qualify as actual working time. For example,

travelling time to the place of performance of the employment contract (home-workplace) is not actual working time.[247] In principle, breaks and meal times are therefore not actual working time unless the employee is, as the definition indicates, "at the employer's disposal". The legislator treats dressing and undressing time differently: if this is required by law, agreement, internal regulations or the employment contract, and if these operations must be carried out in the company, then this time is subject to compensation, either in the form of rest or in financial terms. In the absence of an agreement on meal times, breaks and dressing/undressing, the employment contract may provide for compensation.

The treatment of actual working time varies greatly depending on whether the activity takes place in an institution or at the beneficiary's home. In the first case, the agreements are relatively laconic. For example, the national collective agreement for establishments and services for the maladjusted and disabled, Title IV (not extended), states that "when the employee is unable to leave his or her workstation during the break, the break is nevertheless paid, particularly for employees responsible for the safety and continuity of care for users". On the other hand, collective agreements in the home care sector are very detailed, taking into account the specific features of the way work is organised, both from a quantitative perspective in terms of counting working hours and from a qualitative perspective in terms of the moral investment required of the employee.

For example, the NCC for personal services companies of 20 September 2012 (extended) provides that for people working at home or at a place chosen by the beneficiary, the time spent preparing for any service at the place of work, including putting on appropriate clothing, is treated as actual working time. Catering time is treated in the same way as under the French Labour Code: if the employee remains at the workplace "where the service is required at the same time", this is working time. Commuting time becomes working time if it lasts more than 45 minutes (return journey) or covers a distance of more than 30 km. Financial compensation of not less than 10% of the hourly rate will be paid for travelling time in excess of this. The time spent travelling between the places of work is working time when the employee cannot be self-sufficient. If the employee uses his own vehicle, he is entitled to an allowance of at least 35 cents/km. The time between 2 interventions is taken into account as follows: in the event of an interruption of less than 15 minutes, the waiting time is paid as working time; in the event of an interruption of more than 15 minutes (excluding the journey between the 2 interventions), the employee has regained his freedom and can go about his personal business without any particular instructions from the employer, in which case the time is neither counted as working time nor paid. According to the above-mentioned NCC, a working day may not comprise more than 4 interruptions, 2 of which may not each exceed 2 hours. If there are more than 3 interruptions each lasting more than 15

[247] Article L. 3121-4 paragraph 1 of the French Labour Code.

minutes, flat-rate compensation is paid for the 4th in an amount not less than 10% of the hourly rate.[248]

This is also the case for the NCC for individual employers and home based employment of 15 March 2021 (extended), which stipulates three working regimes in terms of working hours: regular, irregular and "responsible presence hours" during the day. Employees in the benchmark jobs in the "Adult" field defined in appendix 7 of the collective agreement may, within the framework of the working hours defined in the employment contract, work "responsible daytime presence hours". Within the framework of the timetable defined in the employment contract, these employees may carry out hours of actual work, but also hours of responsible daytime presence. These responsible daytime presence hours are those when the employee can use his time for himself (reading, resting, etc.) while remaining vigilant to intervene, if necessary. The number of hours depends on the composition of the family and/or the state of health of the employer, who is disabled or losing his autonomy. The collective agreement determines the legal status of these hours: they are not counted as normal working hours. One hour of responsible presence is equivalent to 2/3 of an hour's actual work. The hours of responsible presence during the day must therefore be converted into actual working hours when calculating the actual weekly working time. The respective number of hours actually worked and hours of responsible presence must be specified in the employment contract (or in the letter of engagement). If the employee is required to work on a recurring basis, the hours of responsible presence will be reclassified as actual working hours. If this is the case, an amendment to the contract will have to be agreed between the parties.

Another example is provided by the NCC for home help, support, care and services of 21 May 2010, which has been extended and which sets out in detail the contractual arrangements for working hours in order to reposition working time with regard to the specific features of the organisation of work involving travel, on the one hand, and of the profession and its related effects in terms of the quality of life at work, on the other. To this end, the NCC focuses on three points.

- First of all, the NCC clarifies the definition of the legal period of effective working time, some of which are educational for both the employee and the employer. The following in particular are therefore considered to be actual working time support time; internal consultation or coordination time; consultation and summary time with professionals from outside the company; time spent drafting assessments; "dead time" in the event of the user's absence for the duration of the planned intervention, whenever the absence is not reported; travel time between two consecutive periods of actual work; time spent organising and distributing work; time spent on continuing professional training as part of the training plan, with the exception of training carried out outside working hours, in particular as part of the individual right

[248] All these clauses apply exclusively to people working in the home or at the location chosen by the beneficiary.

to training; time spent on occupational health check-ups and additional examinations; meal times when the employee remains at the employer's disposal and is unable to attend to personal matters; time spent on the right of expression as part of the provisions of the collective bargaining agreement; time spent on delegations to staff representative bodies.

- Secondly, as the activity carried out in the beneficiary's home involves travel by the worker, the NCC includes several clauses on the equivalence between travel time and working time. The NCC includes clauses on travel, which is an integral part of their professional practice and is paid for on the basis of the following provisions: 1 half-day is made up of either: - the afternoon/evening, which begins with the first shift after the lunch break and ends at the end of the last shift. The travelling time required between two successive periods of actual work during the same half-day is considered as actual working time and paid as such, as long as they are consecutive. When the successive periods of actual work during the same half-day are not consecutive, the travelling time between these two periods is reconstituted and considered as actual working time and paid as such. The employer may use tools to facilitate the recording and monitoring of such travel time. However, these tools must not prevent time and mileage from being verified on the basis of the actual time worked. The same rules apply to employees who work at night. Naturally, the NCC includes clauses on compensation for travel expenses and on insurance cover for the employee's vehicle if it is the one used to carry out his or her duties.[249]
- Thirdly, it is the only agreement that expresses the will to integrate working hours as an element of the quality of life at work: "The organisation of work plays an essential role in the quality of life and health at work. To enable feedback on situations encountered in the home, the employer must organise at least 8 hours a year of discussion time for employees in the intervention sector and for employees in charge of planning. These exchange times may be: support times (psychological support, analysis of practice) up to a maximum of 11 hours per year and per employee; work organisation and distribution times up to a maximum of 11 hours per year and per employee. On its own initiative, the employer may decide, depending on the employee's mission or complex cases, to supplement the time for organising and distributing work referred to above with time for consultation or internal coordination, up to a limit of 40 hours per year per employee. The employer organises this time either collectively or individually. With regard to the organisation and distribution of work, the employer gives priority to organising these times collectively. These times are scheduled at least once a month to encourage as many employees as possible to take part."[250] The NCC expresses a concern to ensure that the length of time worked is consistent with the purpose of the work (quality of life at work): Art. 4 "The minimum duration of the in-

[249] Article 14-1 et seq. of the NCC for home help, support, care and services of 21 May 2010.
[250] Article 3 - Title V, Chapter 1 of the above-mentioned ADB NCC.

> tervention must allow it to be feasible in order to ensure, in compliance with official recommendations on good treatment, quality services for users and good working conditions for employees. The question of the minimum duration of the intervention is the subject of consultation with the works council or, failing that, the staff representatives, if they exist, at least once a year.

The Labour Code regulates the special time spent on call, which is customary in the healthcare sector. This is a period during which the employee, without being in the workplace and without being permanently and immediately available to the employer, must be able to intervene to carry out work for the employer: this is actual working time.[251] This period is compensated either financially or by time off. It is taken into account when calculating the minimum rest period. It is the responsibility of the company or branch agreement or convention to set up standby duty, the way it is organised, the arrangements for providing information, the notice periods and the compensation in the form of either money or time off. Failing this, the decision will be taken by the employer after consulting the Social and Economic Committee and informing the Labour Inspectorate. On-call duty is covered by collective bargaining agreements.

The NCC for private non-for-profit hospital and nursing establishment of 31 October 1951 (not extended) provides for a system of on-call duty at home or in the establishment.

> When the continuity of care and safety services so requires, certain staff, the list of whom is drawn up in each establishment after consultation with the works council or, in the absence thereof, the staff representatives, may be called upon to perform on-call duty at home.

The frequency of such on-call duty may not exceed 10 nights per month per employee, as well as one Sunday and one public holiday per month. Staff performing on-call duties at home are remunerated as follows. If the on-call duty is performed during the day, except if it is performed on a Sunday or public holiday, 1 hour of on-call duty is equivalent to 15 minutes of work at the normal rate; - if the on-call duty is performed at night and on Sundays and public holidays, 1 hour of on-call duty is equivalent to 20 minutes of work at the normal rate.

> If, during an on-call period, the employee is called upon to do actual work, this time will be remunerated as actual work with the application of the corresponding supplements, provided that the legal and regulatory conditions giving entitlement to these supplements are met.[252]

The NCC for personal services companies of 2012 (extended) provides for the possibility of on-call duty, which it defines as a legal right, specifying that

[251] Article L. 3121-9 of the French Labour Code.

[252] Article 05.07.2.1 of the NCC of private non-profit hospitalisation.

> the possibility of being subject to on-call duty and the compensation granted to employees must be included in the employment contract. The compensation will take the form of compensatory rest. This compensation will be 2.5 hours of compensatory rest for every 24 hours of on-call time, where applicable in proportion to the duration of the on-call period. This compensatory rest may be replaced by at least equivalent financial compensation with the agreement of the parties…

The NCC sets limits on the use of on-call duty: it must be used in accordance with the employee's unavailability, it must be strictly reserved for daily or weekly rest periods, it must be limited in terms of the number of hours and the possibility of exceeding the limits set must be open only on a voluntary basis.

The NCC for home help, support, care and services of 2012 which has been extended, also sets out arrangements for on-call duty, which it defines in the same way as the law. Employees may refuse to work 1 Sunday or 1 public holiday no more than twice a year, without their refusal constituting misconduct or grounds for dismissal. The NCC takes into account the impact of standby duty on employees' personal lives, providing a relatively protective framework in terms of predictability and planning. All employees may be required to be on call at or near home, including on Sundays and public holidays. As far as possible, and in order to enable each employee to reconcile his professional and personal life, the employers draw up a quarterly schedule given to each employee indicating his days or periods of on-call duty. Changes to this schedule may not be made within a period of less than 1 month, except in the case of replacing a colleague who is unavoidably absent, in which case the employee may be notified within a period of less than 3 days. The employer shall set up an organisation enabling employees to be contacted at any time when they are on call. If on-call employees are called to work, their working time is effective working time, including the time spent travelling to and from work. Effective working time during on-call time is cumulated with the on-call allowance. A Sunday worked or public holiday cannot be followed by an on-call Sunday or public holiday. In addition, the NCC makes on-call duty a subject for consultation with staff representative bodies and sets precise quantitative limits: After consultation with the works council or, failing that, staff representatives if they exist, the number of on-call periods per month is limited to: - either 8 on-call periods of 24 hours or 16 on-call periods of 12 hours; - for SSIADs, CSIs and management staff, on-call periods may be split into periods of up to 150 hours per month spread over a maximum of 5 days per week. Under no circumstances may the time actually worked during on-call duty have the effect of: - to reduce the daily or weekly rest period laid down by the provisions of the law or collective bargaining agreement. Employees on call are entitled to an additional element of remuneration (ECR) defined in article III-19.2 of the said agreement.

6.1.2.1.2 Maximum Working Hours and Overtime

6.1.2.1.2.1 Maximum Working Hours

The maximum daily working time may not exceed 10 hours (public policy), unless a derogation is granted by the labour inspector, in an emergency or

under a company or branch agreement in the event of increased activity or for reasons relating to the organisation of the company, provided that this does not exceed 12 hours. The maximum weekly working time is 48 hours over one week (public policy provision) or 44 hours (or 46 hours under a company or branch agreement) over 12 consecutive weeks; exceptions may be made with the authorisation of the Labour Inspectorate, provided that they do not exceed 60 hours. These daily and weekly maximums are combined with compulsory rest periods, which are also a matter of public policy. As soon as the actual daily working time reaches 6 hours, the employee is entitled to a break of at least 20 consecutive minutes (public policy).

In most cases, collective bargaining law incorporates and clarifies legal provisions on working hours. For example, the NCC for establishment and services for maladjusted and disabled persons of 15 March 1966, Title IV (not extended) provides that the uninterrupted rest period between 2 working days is set at 11 consecutive hours. However, when the needs of the service so require, this period may be reduced to not less than 9 hours, under the conditions laid down in the industry agreement of 1st April 1999. The maximum daily working time is 10 hours, day or night. However, in order to respond to specific situations, it may be extended to 12 hours in accordance with legal provisions. In the event of discontinuous work, when the nature of the activity so requires, this duration may include 3 working sequences of a minimum duration of 2 hours.

The NCC for private non-for-profit hospital and nursing establishment of 31 October 1951 (not extended) includes the legal texts relating to the 35-hour working week and weekly rest periods. However,

> Taking into account the needs of the service and after consulting the works council or, in its absence, the staff representatives, the organisation of the working week is established in accordance with the provisions of articles 05.05.2 to 05.05.5. Working hours shall be allocated in such a way as to cover all requirements resulting from the organisation of services and the need to ensure continuity of care, safety and well-being of users, including at night, on Sundays and public holidays.

Staff required to ensure continuity of service must be able to take at least 1 Sunday every 3 weeks as part of their 2 consecutive days off.

> Subject to a different organisation of work defined by company or establishment agreement concluded in compliance with legal and regulatory provisions, in each establishment, staff are employed in accordance with the indications of a duty roster specifying for at least 2 weeks the distribution of working days and hours. The provisional duty roster shall be drawn up at the initiative of the employer or his representative and brought to the attention of the staff by posting it in the various workplaces, in principle 1 week—and in any event no later than 4 days—before its application. Where the organisation of working time is not established over 2 weeks, the working hours must be brought to the attention of employees in compliance with the legal and regulatory provisions, particularly with regard

> to posting. Any change in the initially planned distribution of working hours and days shall give rise to a rectification of the duty roster in compliance with the legal and regulatory provisions, where this is justified by an emergency.

For full-time employees, in the event of discontinuous work, the daily working time may not be split into more than two working periods of at least 3 hours each.

Collective bargaining law in the home *care* sector also takes account of the specific features of the activity and its organisation, not so much in terms of exceeding the maximum working hours mentioned above, but in terms of organising working hours in a way that differs from practices in the industrial and commercial sector. To this end, the NCCs use the concepts of amplitude and distribution of the working day to meet "service imperatives".

For example, the NCC for personal services companies of 20 September 2012 (extended) specifies that the daily working time may not exceed 12 hours. The daily working time may be extended to 13 hours for work with vulnerable and/or dependent individuals. However, if the normal contractual travel time from home to the place of work is exceeded (see point d, section 2), the excess must be deducted from the maximum daily working time of 13 hours. The daily working time is calculated on the same day from 0 hours to 24 hours. (2). The maximum daily working time is in principle 10 hours, but may be increased to a maximum of 12 hours for up to 70 days a year. The maximum daily working time is calculated on a daily basis, i.e. from 0 hours to 24 hours. The maximum weekly working time may not exceed 48 hours or 44 hours over any period of 12 consecutive weeks. In addition, the same agreement provides that the distribution of working hours may be modified according to service requirements. "… Details of the work carried out by the employee with beneficiaries are made available to him/her by the employer. The employee may consult it at any time."

> In return for less than 7 days' notice of changes to working hours, and in compliance with the periods of unavailability that must be stipulated in the employment contract, employees may refuse to change their working hours 7 times per calendar year, without such refusals constituting misconduct or grounds for dismissal and without these hours being deducted in any way whatsoever. Any refusal to change working hours must be confirmed in writing by the employer to the employee. This confirmation must include the proposed working hours refused, the number of refusals recorded by the employer during the calendar year and the contractual unavailability periods.

Lastly, the NCC stipulates that the usual weekly rest period is Sunday, and that there must be at least 35 consecutive hours between 2 operations during the week. However, given the need for daily operations due to the special nature of the services provided to employees, it is possible to derogate from the Sunday rest rule, up to a limit of 2 Sundays per month, unless the employee agrees. To take account of the constraints associated with Sunday working, remuneration is increased by at least 10%. Employees who do not wish to work on Sundays may specify this in their contract of employment as part of the periods of unavailability.

In order to take account of the service requirements specific to this sector, the NCC individual employer and home-based employment (extended) distinguishes between 2 working regimes, regular/irregular, which it defines as follows. When the parties determine a fixed weekly working time; or when periods of work follow one another and/or are repeated regularly according to a working pattern laid down in the employment contract and any amendments thereto. Working periods are expressed in days and/or weeks. When the working hours do not meet one of the conditions for regular working hours, they are said to be "irregular". Where applicable, the individual employer must inform the employee in writing of the working hours and their distribution, giving 5 calendar days' notice. To this end, the employer may provide the employee with a schedule for each work cycle.

6.1.2.1.2.2 Overtime

According to the French Labour Code, the legal working week is 35 hours. Any hour worked in excess of this is considered to be overtime. Overtime is calculated on a weekly basis and may be worked up to a maximum annual quota. Any overtime worked in excess of this entitles the employee to compulsory time off in lieu. Overtime is paid at a higher rate of 25% for the first 8 hours of overtime and 50% thereafter (supplementary legal provisions). A branch or company agreement may provide for a different rate of overtime pay, provided that it is not less than 10%. These agreements may also set out all the conditions under which overtime may be worked in excess of the annual quota, as well as the duration, characteristics and conditions of compulsory time off in lieu, which may not be less than 50% of the hours worked. In companies where there is no trade union representative, the employer may replace all or part of the overtime pay and supplements with compensatory rest, provided that the CSE, if it exists, does not object.

The NCC for the home help, support, care and services as extended, incorporates the maximum daily working hours, weekly working hours, monthly working hours and maximum daily working amplitude set by law and referred to above.

Conversely, the NCC for individual employer and home based employment (extended) includes a working time regime that is distinct in several respects from statutory law, for the simple reason that the latter does not apply to home care workers employed by private individuals. The situation of home care workers employed by a private employer is more unfavourable than that of workers subject to ordinary labour law, and consequently than that of workers benefiting from the application of the NCC de l'aide à domicile of 2010 mentioned above or the NCC for personal services companies of 2012.

- The NCC sets the contractual working time in excess of the statutory working time (35 hours) at 40 hours. What's more, it leaves the parties free to provide for a shorter or longer working week, in compliance with the collectively agreed maximum working week of 48 hours over 12 consecutive weeks, or 50 hours in any one week in the case of regular work, or between 0 and 48 hours in the case of irregular work. Here again, the maximum contractual working hours are higher than those set by the legislator.

- The NCC stipulates that the individual employer is obliged to pay overtime or have it recovered under the conditions set out in article 147 of the agreement. Overtime refers to hours actually worked in excess of the 40-hour working week.[253] Article L. 3121-30 of the French Labour Code, which states that overtime may be worked up to an annual quota and that hours worked in excess of this quota give entitlement to compulsory time off in lieu, does not apply to employees of private individual employers.[254] According to the national collective agreement for private individuals working as employers, in the case of regular working hours, overtime may not exceed an average of 8 hours per week calculated over any period of 12 consecutive weeks, without exceeding 10 hours in the course of the same week. Overtime worked on a regular basis and provided for in the employment contract is paid on a monthly basis. In the event of irregular working hours, the employee may work a maximum of 48 hours per week. Overtime is paid on a monthly basis, or recovered within 12 months of being worked, in accordance with the conditions laid down in the employment contract. Overtime is paid or recovered at a rate of 25% (for the first 8 hours) and 50% (for overtime in excess of 8 hours).

6.1.2.1.2.3 Daily and Weekly Rest Periods

A number of public policy provisions apply to rest periods.

The daily rest period must be at least 11 consecutive hours, unless there is a collective agreement or an emergency.[255] It is possible to derogate from this requirement by means of a collective agreement at company or branch level,

[253] If the schedule is regular, overtime pay is applicable when the number of hours actually worked exceeds 40 hours per week. Overtime is calculated on a weekly basis, i.e. from 00:00 on Monday to 24:00 on Sunday. In the case of shared childcare, if the total number of hours worked exceeds the agreed weekly working time, the overtime pay and additional pay are borne by the individual employers, according to the method agreed between them. If the working hours are irregular, overtime pay is applicable when the number of hours actually worked (and/or the number of hours resulting from the transformation of the hours of responsible presence) exceeds an average of 40 hours per week calculated over 8 consecutive weeks. In the case of irregular working hours, the weekly amplitude ranges from 0 to 48 hours of actual work per week.

[254] Cass. soc., 8 July 2020, no. 17-10.622, n 676 FS - P + B. On the other hand, pursuant to Article L. 3171-4 of the French Labour Code, "in the event of a dispute relating to the existence or number of hours worked, the employer must provide the court with evidence of the hours actually worked by the employee of a private individual employer. On the basis of these elements and those provided by the employee in support of his claim, the judge will form his opinion after ordering, if necessary, any investigative measures he deems useful. Cass. soc., 19 March 2003, no. 00-46.686, no. 882 F - P. In the same sense, Cass. soc., 13 July 2004, no. 02-43.026, no. 1614 F - P + B; Cass. soc., 16 Feb. 2011, no. 09-43.220; Cass. soc., 5 July 2017, no. 16- 10.841, no. 1228 FS - P + B; Cass. soc., 7 Dec. 2017, no. 16-12.809, no. 2603 FS - P + B. Cass. soc., 18 March 2020, no. 18-10.919, no. 373 FP - P + B + R + I. Cass. soc., 8 July 2020, no. 17-10.622, no. 676 FS - P + B.

[255] Article L. 3131-1 of the French Labour Code.

under conditions laid down by decree, for activities where there is a need to ensure continuity of service or split shifts (on-call, surveillance and duty activities to ensure the protection of individuals, to ensure continuity of service if the working pattern is that of successive shifts, or in the event of a surge in activity).

Weekly rest is legally guaranteed by the fact that "it is forbidden to have the same employee work more than 6 days a week".[256] Rest is granted on Sundays, except in certain activities where it is granted on a rotating basis to employees employed in activities listed by decree, which include personal services to individuals in their own homes.[257] With regard to young workers, the French Labour Code[258] stipulates that they must have 2 consecutive days off per week, unless, due to the particular characteristics of the activity which justify it, a company or branch agreement may reduce this rest period to 36 hours. Young workers may not be employed on public holidays or festivals recognised by law.

Collective bargaining rights relate essentially to the Sunday rest day, which is customary in this sector and can therefore be considered as an additional constraint requiring special collective bargaining treatment.

This is the approach taken by the NCC for establishment and services for Maladjusted and Disabled persons of 1976, Titre IV (not extended). Taking into account the needs of the service and after consultation with the staff representative bodies, the organisation of the working week is established in accordance with the following principles: working hours are distributed in such a way as to cover all needs resulting from the organisation of care or educational or social work, on a full-time or part-time basis, and from the need to ensure their continuity as well as the safety and well-being of users, including at night, on Sundays and public holidays; - a duty roster specifies for each establishment the distribution of working hours and days as well as the scheduling of weekly rest days. Staff are informed of this schedule by means of posters in the various workplaces. In the event of an irregular work pattern, the employees concerned will be informed of a provisional timetable, taking into account the foreseeable workload. An irregular work pattern is defined as a schedule that includes the following 2 conditions: irregular working hours depending on the day or week, including evening and/or night shifts; weekly rest periods granted irregularly depending on the week. Variations in working hours due to foreseeable changes in workloads are subject to consultation with staff representative bodies. A notice period of 7 calendar days must be observed.

It is in much the same spirit of continuity of service that the NCC for home help, support, and care services of 2010 (extended) has made provision for work on Sundays and public holidays. In order to ensure the continuity of home help

[256] Article 3132-1 of the French Labour Code.

[257] Article R. 3132-5 of the French Labour Code. This is a permanent legal exemption that applies to associations or companies approved by the State or a local authority that hire workers to make them available to other people. All activities directly linked to the purpose of these associations or companies are covered.

[258] Article L.3164-2 of the French Labour Code.

and home care activities, all employees may be required to work on Sundays and public holidays for work relating exclusively to the essential acts of daily life (with reference to legal and regulatory provisions), to the specific support of users and to the continuity of the organisation of the resulting services. The introduction of Sunday work is subject to consultation with the works council or, failing that, the staff representatives, if they exist. a) For weekend shifts: for structures that have introduced this organisation of work for weekends with voluntary employees, the working pattern for Sunday work is a maximum of 3 Sundays worked followed by 1 Sunday not worked. b) For other cases: in other cases, the working pattern for Sunday work may be 1 Sunday worked out of 4 or 1 Sunday worked out of 3 and a maximum of 1 Sunday worked out of 2. In all cases, the working pattern for public holidays is a maximum of 1 public holiday worked followed by 1 public holiday not worked. A Sunday worked or public holiday cannot be followed by an on-call Sunday or public holiday. With the exception of 1st May, which is governed by legal provisions, employees working on Sundays and public holidays benefit from an additional element of remuneration (ECR) as defined in article III.19.2 of this agreement. As far as possible, and in order to enable each employee to reconcile their professional and personal lives, employers: - arrange for employees to work in their sector of activity or in a neighbouring sector; - arrange for the same employee to work for the whole of a Sunday or public holiday; - draw up a quarterly schedule given to each employee indicating the Sundays or public holidays on which they will be required to work, in accordance with the deadline set out in article V.37 of this collective agreement. Employees may refuse to work on 1 Sunday or 1 public holiday no more than twice a year, without their refusal constituting misconduct or grounds for dismissal.

In the NCC for individual employers and home based employment of 2021 (extended), a different approach has been adopted, emphasising the contractualisation of the day of rest with all the related effects in the event of work on that day. The usual day of rest must therefore be included in the employment contract. According to the collective agreement, the weekly rest period must last at least 35 consecutive hours between the last hour worked before the weekly rest period begins and the first hour worked after it ends. This rest period must be provided for in the employment contract and preferably include Sunday. Work on the rest day may only be exceptional and carried out with the written agreement of the employee. If work is carried out, at the employer's request, on the weekly rest day, it must be paid in accordance with the collective agreement, at the normal rate plus 25%, or compensated by an equivalent rest period plus the same proportion (one and a quarter hours rest for one hour's work). As for ordinary public holidays, the collective agreement leaves it up to the employer to decide whether or not the employee should come to work on these days. Public holidays worked must be provided for in the written employment contract. Otherwise, work on an ordinary public holiday can only be arranged by mutual written agreement between the parties. Depending on the employer's choice, if the public holiday is worked, it will be paid at an additional rate of 10% of the

salary due. If the public holiday is not worked, it is paid as soon as the employee has worked for the individual employer on the last working day before the public holiday and on the first working day after the public holiday, unless permission for absence has been granted in advance.

6.1.2.1.4 Protection Measures for Pregnant Women

Some agreements, which have no legal obligation to do so, provide for measures to reduce the effective working hours of pregnant women.

This is the case of the NCC for private non-for-profit hospital and nursing establishment of 1951 (not extended) which states that "pregnant women, from the first day of the 3rd month of pregnancy, will benefit from a 5/35 reduction in their contractual working hours. This reduction will be spread over their working days".

The NCC for home help, support and care services of 2010 (extended) provides for an hourly reduction of 1 hour per day worked without loss of pay at the end of the 3rd month of medically certified pregnancy, for full-time employees. This measure applies to part-time employees on a pro rata basis. By agreement between the employee and her employer, this reduction may be accumulated and taken in the form of a half-day or full day of rest. The NCC provides for minimum daily and weekly rest periods, as well as the daily breaks stipulated in the Labour Code. It specifies that the lunch break of at least 1/2 hour may under no circumstances include travel time related to an operation.

As for the NCC for establishment and services for maladjusted and disabled persons of 1976, Titre IV (not extended), it stipulates that pregnant women (working full-time or part-time) benefit from a 10% reduction in their working week from the beginning of the 3rd month or 61e day of pregnancy, without any reduction in their pay.

6.1.2.2 Regulation of Working Hours in the Public Sector[259]

Effective working hours are set at 35 hours per week, i.e. a maximum of 1607 hours per year in the 3 civil services. Effective working hours are defined in the same way as in the private sector, with article L.611-1 of the General Civil Service Code referring to article L.3121-27 of the Labour Code. However, in the regional and hospital civil services, specific decrees are adopted, always with reference to the limits applicable to State employees. In each of the civil services, it is possible to take account of the specific hardships to which certain employees are subject or to take account of the specific nature of the tasks performed. Working time is one of the subjects that can be the subject of collective bargaining with local authorities. At this stage of the research project (30 September 2023) we are not aware of any agreements concluded in this sector and in this area.

[259] Articles L. 611-1 to L. 613-11 of the General Civil Service Code.

The decree of 25 August 2000 on the organisation and reduction of working hours in the state civil service[260] is the reference standard for the other two civil services. It stipulates that the annual working time may be reduced due to hardship linked to the nature of the tasks and the definition of the resulting work cycles, in particular night work, work on Sundays, staggered working hours, long shifts or arduous and dangerous work.

The decree, as last amended by the decree of 20 November 2020, establishes minimum guarantees for maximum working hours. These maximum working hours are exactly the same as in the private sector, covering the week (48 hours over 1 week or 44 hours over 12 weeks), the day (10 hours, with a minimum rest period of 11 hours), the maximum working day (12 hours) and the daily break. Derogations from these guarantees are only possible (as in the private sector) where there is a need to protect individuals or in exceptional circumstances for a limited period).

The 2000 decree also establishes the possibility of setting periods of on-call duty: a period during which the employee, without being permanently and immediately available to his employer, is obliged to remain at home or nearby in order to be able to intervene to carry out work in the service of the administration, the duration of this intervention being considered as actual working time. The cases in which on-call duty may be used are defined by ministerial decree. Compensation and remuneration for standby duty are specified by decree, with reference to the procedures and rates applicable in government departments.

The possibility of working flexitime is envisaged by the 2000 decree "subject to the requirements of the service after consultation of the social committee of the administration".

Work may be organised according to reference periods known as work cycles: working hours are defined within the cycle (which may be weekly or annual). These cycles are defined by ministerial decree.

6.1.3 Organisation of Working Time

As there is no provision for the organisation of working time in the General Code for the Civil Service, we will only examine the private sector here.

The organisation of working time makes it possible to introduce reference periods for working time longer than one week, which has consequences for the calculation and payment of overtime. The French Labour Code authorises the negotiation of agreements or arrangements providing for periods of up to 3 years (public policy provision), despite a decision by the European Committee of Social Rights on 15 March 2019. In this decision, the Committee considered that providing for a reference period of more than one year

[260] Decree no. 2000-815 of 25 August 2000.

> unfairly deprives the employee of the right to an increase in overtime without the rest granted constituting adequate compensation, as multiannual working time does not comply with the European Social Charter.[261]

In the absence of a collective agreement, the employer may unilaterally introduce a reference period which may not exceed 9 weeks in companies with fewer than 50 employees and 4 weeks in companies with more than 50 employees (public policy). Overtime is deducted at the end of the reference period. If such a system is introduced, employees must be informed within a reasonable period of any change in the distribution of working hours. This period must be set by collective agreement. In the absence of a collective agreement, the notice period for any change in the distribution of working hours is set at 7 days (default provision). It should be noted that if this change is provided for by collective agreement, it cannot legally be considered as a change to the employment contract for full-time employees.

At the request of employees, the employer may, after consulting the works council, introduce a system of individualised working hours allowing hours to be carried over from one week to the next; hours worked in excess of the statutory or collective agreement working hours at the employee's initiative are not considered overtime. Family carers and relatives of a disabled person are entitled to flexible working hours to make it easier to support the person being cared for.

The collective bargaining law applicable to care workers in institutions is not very developed on the organisation of working time. The NCC for private non-for-profit hospital and nursing establishment of 1951 (non-extended) limits itself to stating that in the event of the organisation of working time over 2 weeks, the law applies to the counting of overtime, its remuneration and its counterpart in compensatory rest. The NCC for establishments and services for maladjusted and disabled persons provides for the possibility of organising work in cycles in accordance with the 1998 law[262] in accordance with the branch agreement of 1st April 1999. The cycle may be organised on a fortnightly basis (70 hours), over several weeks (up to a maximum of 12) or over all or part of the year by granting rest days in accordance with article 4 of the law of 13 June 1998. In application of the branch agreement, working hours may be organised in the form of a work cycle, provided that the distribution of hours within the cycle is repeated identically from one cycle to the next. The number of hours worked during the weeks making up the cycle may be irregular. An employee may not work more than 44 hours per week, either during the day or at night. The work cycle may not exceed 12 consecutive weeks. Over the entire cycle, the average weekly working time may not exceed the legal working time. The employer shall post a table showing the working hours for the duration of the cycle.

[261] ECSR 15 March 2019, no. 154/2017.

[262] Article 20-2, Title IV of the NCC for establishments and services for maladjusted and disabled persons (not extended).

For homecare workers, the situation varies widely from one national collective agreement to another. The NCC for personal services companies extended) of 2012 refers to Article L. 3121-44 of the French Labour Code, which states that it is possible to arrange working hours by company agreement, provided that the agreement specifies the reference period, which may not exceed 12 months, the conditions and periods of notice for changes in working hours or hours, the conditions for taking account of employee absences and, where applicable, the smoothing of monthly pay. The NCC stipulates that the company agreement may provide for a lower limit than 1607 hours for counting overtime, which is suggested as a possibility by the legislator.

On the other hand, the NCC for home help, support and care services of 2010 (extended) is very prolix on the subject, devoting a chapter to it. It sets out common provisions for the different types of organisation and provides in detail for 2 types of organisation of working time.

- The common provisions concern the notice period for informing employees of working hours and their distribution. This period is at least 7 days (as in the French Labour Code). It may be reduced to 4 days to "better meet the needs of users, cope with fluctuating demands inherent in the activity and ensure continuity of service". In the event of an emergency, the NCC does not set a minimum time limit, but specifies that, in accordance with legal and regulatory provisions, the employer must check that the intervention is justified exclusively by the performance of an essential act of daily life and falls within one of the following cases:
  - replacement of a colleague on unplanned absence: illness, leave for family events or exceptional leave;
  - immediate need for assistance with children or dependent persons due to the unforeseeable absence of the usual carer;
  - return from unplanned hospitalisation;
  - sudden deterioration in the state of health of the person being cared for. The specific situation of employees with multiple employers is taken into account. The collective agreement provides for compensation if the notice period is less than 7 days, although this is not required by law. Employees may refuse to change their working hours four times per reference year, without this refusal constituting misconduct or grounds for dismissal. Employees who undertake to accept emergency call-outs (less than 4 days' notice) will be entitled to an additional day's leave per reference year, at the employee's discretion, provided that they have actually been called out. These employees may refuse to take part four times; after that, they lose their right to additional leave. Any employee refusing a change in working hours must confirm this in writing to the employer. In addition, the agreement stipulates that the choice of a method of organising working time involves informing and/or consulting the works council or, failing that, staff representatives if they exist, informing the labour inspector and informing employees in accordance with legal and regulatory provisions.

- The special provisions apply to the 2 methods of organising working time. In all cases, it is stipulated that the monthly remuneration must be smoothed. The first method consists of distributing working time over a period of 2 weeks. This type of working time arrangement is open to all employees. For full-time employees, the working time is 70 hours per period of 2 calendar weeks. An unequal number of working hours may be worked during either week, provided that the legal maximum working hours are respected. Employees working in this context may not work more than 6 consecutive days. They are entitled to at least 4 days off per 2-week period comprising at least 2 consecutive days, including one Sunday.[263] The second method of organising working time involves the granting of rest days either over an annual reference period[264] or over a reference period of 4 weeks.[265]

6.1.4 Night Work

As the General Civil Service Code does not contain any provisions on night work, we will only present here the legal (6.1.4.1) and contractual (6.1.4.2) rules applicable in the private care sector.

6.1.4.1 Legal Provisions Governing Night Work in the Private Sector

Under French law, night work must be "exceptional".[266] According to article L. 3122-1 of the Labour Code (public order), "it takes into account the impera-

[263] Article 42 of the NCC for home help, support and care services of 2010.

[264] Article 43 of the NCC for home help, support and care services of 2010. This arrangement of working hours consists of maintaining a working week of more than 35 hours and granting, in return, additional days off up to a limit of: 23 working days per year for 39 hours; 18 working days per year for 38 hours; 12 working days per year for 37 hours; 6 working days per year for 36 hours. Under no circumstances may these days be added to the main paid leave. Half of these days are taken at the employees' discretion and half according to a schedule determined by the employer. Any change to this schedule, with reasons, may only be made subject to: 15 days' notice when the period of leave does not exceed 1 week; 1 month's notice when the period of leave is equal to or greater than 1 week. These days may be split, but are not subject to any additional charges. They are subject to the same collective bargaining arrangements as paid leave. Unless they are paid into a time savings account, these days must be taken at the latest before the end of the reference period or year determined in the information notice or local agreement.

[265] Article 43 of the NCC for home help, support and care services of 2010. A schedule drawn up in advance according to the needs of the service and the personal constraints of the employees must set the dates on which these days or half-days of rest are taken within the 4-week period. The rules relating to the conditions and notice periods for changes in working hours or hours of work are 7 days. The employer shall provide the employee with monthly information on the working time completed in accordance with the legal provisions in force. An unequal number of hours may be worked in any one week, provided that the maximum working time is respected. Hours worked in excess of 140 hours over this 4-week period, and counted at the end of the period, are overtime hours paid in accordance with legal and regulatory provisions.

[266] Article L. 3122-1 of the French Labour Code.

tives of protecting the health and safety of workers and is justified by the need to ensure the continuity of economic activity or services of social utility". The law defines night work as work performed over a period of at least 9 consecutive hours, including the period between midnight and 5am. The night period begins no earlier than 9 p.m. and ends no later than 7 a.m.[267] In the absence of an agreement, work performed between 9 p.m. and 6 a.m. constitutes night work. The law also defines a night worker as either someone who works at least 3 hours of night work per day at least twice a week as part of his or her normal working schedule, or someone who works a minimum number of hours of night work during a reference period, as defined in the definition of night work (public order).[268]

A night worker's working time may not exceed 8 hours, unless the work is carried out in shifts (see rest section below), and the weekly working time may not exceed 40 hours over 12 consecutive weeks (public policy).[269] Night workers are entitled to compensation in the form of compensatory rest and, where applicable, pay. All night workers are entitled to regular medical check-ups. When night work is incompatible with imperative family obligations, in particular the care of a dependent person, refusal to perform night work does not constitute misconduct or grounds for dismissal. All these provisions are of public order.

6.1.4.2 Contractual Law on Night Work in the Private Sector

A company or branch agreement may introduce night work, provided that it sets out the reasons for such recourse, the definition of the period of recourse, the compensation, measures to improve employees' working conditions, measures to facilitate the reconciliation of private and professional life (in particular means of transport), and break times. In the absence of an agreement, and provided that the employer has entered into serious and fair negotiations with a view to concluding an agreement, he may unilaterally, after authorisation from the Labour Inspectorate (which verifies the existence of compensation and breaks), assign workstations to night work (suppletive provision).[270] In view of the developments in all the national collective agreements, we will first present the conventional law on night work in institutions (6.1.4.2.1) and then that at the beneficiary's home, which has special characteristics due to the workplace (6.1.4.2.2).

6.1.4.2.1 Collective Bargaining Agreements on Night Work in Establishments

The NCC for private hospital of 2002 (extended) devotes a very long article to night work, the use of which is justified by the need to ensure continuity

[267] Article L. 3122-2 of the French Labour Code.
[268] Article L. 3122-5 of the French Labour Code.
[269] Article L. 3122-6 of the French Labour Code.
[270] Article L. 3122-21 of the French Labour Code.

of service.[271] It should be emphasised from the outset that the industry agreement incorporates certain legal provisions as they stand, and in others has taken advantage of the possibility offered by the law to derogate *in peius*, going so far as to authorise certain aspects of night work to be organised at establishment level either by collective bargaining or, failing that, by referendum. In this way, the NCC incorporates the law on definitions, medical surveillance, the right to refuse night work on the grounds that it is incompatible with family responsibilities, break times, transport conditions and changes of assignment for pregnant women. On the other hand, the collective bargaining agreement allows the daily working time to be extended to a maximum of 12 hours by company agreement. In the absence of a company agreement, after informing and consulting the works council or, failing that, the staff delegates, or failing that, after consulting the categories of employees concerned, and by anonymous ballot with a majority of the votes cast, the daily working time may be increased to a maximum of 12 hours.

Night workers who are exempted from the maximum daily working time of 8 hours on night shifts must be given equivalent rest time. This equivalent rest time will allow, as part of the work organisation, either an increase in the daily rest period, or an increase in the weekly rest period, or an increase in the rest period over 2 weeks. The only exception to this rule is an equivalent compensatory payment, which ensures appropriate protection for the employee concerned and is provided for exclusively by collective agreement at company or establishment level, where it is not possible to grant this rest. Independently of the hardship allowance for night work, as defined by article 82.1 of the collective agreement, when the night worker within the meaning of article 53.1.2 has worked at least 3 hours per hour, rest time equivalent to 2.50% of each hour worked between 9 p.m. and 6 a.m. will be granted. This time off in compensation may be taken by the day or half-day when the time off acquired represents a day corresponding to the daily working time of the person concerned. In this case, the employee must request it, giving 15 working days' notice, specifying the date and duration of the rest required. Unless the service requires it, the rest period will be granted on the date requested by the employee. To take account of the particularities of night work, when the Works Council is consulted on the training plan, the conditions of access to professional training for night staff will be examined. All provisions will be made to enable these employees to access training under the same conditions as day workers.

The NCC for private, non-for-profit hospital and nursing establishment (non-extended) of 1951 simply states that

> In view of the need to provide continuous care for users and to take account of the arduous nature of night work, the staff concerned benefit from the specific provisions laid down by the branch agreement relating to night work and/or by

[271] Article 53 of the NCC for private hospital of 2002 (extended).

company or establishment agreements. The employees concerned benefit from article A 3.2.2 of this agreement if they meet the conditions.[272]

This agreement was supplemented by an agreement of 17 April 2002 on night work (extended) to which the Federation of establishments for the disabled (Fédération des établissements pour personnes handicapées) has signed up, which will therefore apply to all workers in this sector. The agreement justifies the use of night work as follows: "Given the activities of the not-for-profit health, social and medico-social sector, the use of night work is inseparable from the need to provide continuous care for users". The agreement adopts the statutory nighttime working hours (between 9 p.m. and 7 a.m.) and the legal definition of a night worker. However, it opens up an option with regard to night workers: they can also be workers who work at least 40 hours over a period of 1 calendar month during the night shift as part of their normal working hours. The agreement derogates *from* the French Labour Code by raising the maximum daily working time to 12 hours (instead of 8). In return, if the daily working time exceeds 8 hours, employees will be entitled to a rest period equivalent to the duration of the excess, in addition to the statutory daily rest period of 11 hours. However, the industry agreement stipulates that collective agreements may define sectors where work involves particular risks or significant physical or mental strain, in which night work may not exceed 8 hours in any 24-hour period.

The agreement provides for night work to be monitored by the occupational physician and staff representative bodies. The agreement stipulates that a visit to the occupational physician will be organised prior to the start of night work and renewed every 6 months. The employer will have to transfer the night employee to a day shift, once the occupational physician has established that the employee's state of health so requires. The occupational physician shall be consulted prior to any major decision relating to the introduction or modification of the organisation of night work.

The agreement establishes a series of protections in various situations. Firstly, it recognises (without any legal obligation) the right of any employee who is medically pregnant or who has given birth, as long as she so requests, to be assigned to a day job for the duration of her pregnancy and during the period of legal postnatal leave when she waives this. If the employer is unable to offer a day job, he must inform the employee or the company doctor, as the case may be, in writing of the reasons for not reassigning the employee. The employee's employment contract will then be suspended until the start of her statutory maternity leave. Secondly, measures may be taken by establishments and services to make it easier for night workers to combine night work with family and social responsibilities. When night work is incompatible with the following imperative family obligations: looking after a child, caring for a dependent person, the employee may ask to be assigned to a day shift, insofar as a position compatible

[272] Article 05.04.2 of the NCC for private, non-for-profit hospital and nursing establishment of 1951 (not extended).

with professional qualifications is available. For the same reasons, an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal.

Finally, the agreement provides for compensation for night work. The text distinguishes between establishments and services that are subject to collective agreements or agreements that already provide for compensation for night work, in which case night workers will be granted 1 day's compensatory rest per year starting on the first day of the month. For establishments that do not provide for any compensation, the hours worked at night will give entitlement to compensation in the form of rest.[273] Establishments and organisations will be able to reduce part of this compensatory rest by converting part of it into a financial increase of up to 50%. This possibility of converting part of the compensatory rest into a financial supplement will have to take the form of a collective company agreement. In the absence of union representatives, the employer may implement this provision after consulting the staff representatives.

6.1.4.2.2 Collective bargaining Rights on Night Work Performed in the Beneficiary's Home

In the case of night work performed in the beneficiary's home, the issues raised are for the most part common, at least in the case of workers employed by establishments, and will therefore be examined simultaneously (6.1.4.2.2.1), while the conditions under which night work is performed by an employee employed by a private employer will be analysed separately (6.1.4.2.2.2). It should be emphasised that given the place occupied by night work in the texts of collective bargaining agreements, this is a question examined with attention, care and precision by the social partners.

6.1.4.2.2.1 Night work in the NCC for Personal Services Companies and in the Ncc for Home Help, Support and Care Services

These two NCCs establish a genuine status for night workers, with protection, compensation, the involvement of the IRP and occupational medicine.

6.1.4.2.2.1.1 Definition of Night Work and Night Workers

The NCC for personal services companies stipulates the principle that "an employee who does not wish to be required to work a period of time considered to be night time must indicate this on his contractual periods of unavailability". As a result, an employee wishing to return to or occupy a daytime position shall

[273] The right to compensatory time off is available from the first hour of actual night work for a period equal to 5% per hour worked up to a maximum of 9 hours per night… (article 5 of the agreement).

be given priority for the allocation of a job corresponding to his/her professional category or equivalent job in the company.[274] Night work is defined as working from 10pm to 7am. However, a company agreement may substitute a period of 9 consecutive hours between 9pm and 6am. The text uses the legal definition of a night worker and adds the possibility of considering as night workers those who work "at least 270 hours in this period over twelve consecutive months". The text reproduces the legal provisions on maximum working hours, breaks and minimum daily rest periods, and specifies that exceptions may only be made to rest periods and breaks within the limits and under the conditions defined by law. However, in view of the specific requirements of providing a continuous service to vulnerable groups, particularly in the context of night work, the maximum daily working time for night workers has been increased to 12 hours. If the employee is required to work in excess of the 8-hour threshold defined in article L. 3122-6 of the French Labour Code, he or she will be entitled to a rest period equivalent to the time spent in excess of this threshold. This rest is taken as soon as possible after the period worked.

The 2010 NCC for home help, support and care services (extended) defines night worker by also taking the definition from the French Labour Code and adding another alternative definition according to which any employee who performs a minimum number of 78 hours of night work per month on average over 6 months is considered to be a night worker. Employees whose job contributes to ensuring the physical and moral well-being, health and hygiene of people being cared for in their own homes may be assigned to a night shift. Night workers are employees whose jobs fall *at least* within step 2 of the category employee level 1 of the jobs defined in Title III. The collective agreement provides for 2 types of night work. The first, known as "sedentary night work", consists of the employee spending all or part of the night with a user whose state of health or situation requires continuous actual work in order to respond to any requests. The second, known as "Itinerant night work", involves the employee working one or more shifts with one or more users whose state of health or situation requires acts of care, nutrition or hygiene during the night working hours defined in the agreement, without the employee spending the night in the home of the person being cared for.

The branch agreement introduces exceptions to the legal provisions. For example, the length of actual night work is increased from 8 hours to 10 hours. In return, when the actual working time exceeds 8 hours, employees are entitled to a rest period equivalent to the duration of the excess. In addition, as the night time slot is 9 hours, when the employee actually works 10 hours, the 10th hour is considered as an hour of night work and therefore benefits from the relevant compensation. This rest time is added either to the daily rest time of 11 hours provided for in the Labour Code or to the weekly rest time.

[274] The employee must inform management in writing.

Another derogation, this one in favour of the employee, concerns the actual weekly working time for night workers, which, calculated over a period of 12 consecutive weeks, may not exceed 40 hours. In any event, night workers may not work more than 5 consecutive nights and must be entitled to a weekly rest period. The agreement is based on the French Labour Code as regards breaks. Employees are entitled to a 20-minute break once their actual working time reaches 6 hours. Break times during which employees remain permanently at the employer's disposal are counted as actual working time.

6.1.4.2.2.1.2 Protection for Night Workers

The NCC for personal services companies provides for enhanced medical surveillance of night workers, without providing any further details. In companies with more than 50 employees, the social and economic committee (or staff representatives) is involved in monitoring night work.[275] In addition, by virtue of the protection of social and family life,

> an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal. For the same reasons, any night worker may ask to be assigned to a day shift because of compelling family obligations. The employer must respond within a maximum of one month to any request for a change of assignment from a night shift to a day shift. As stipulated by law, the NCC must provide for transport arrangements, which is a point of attention in the case of work carried out at the beneficiary's home. In order to facilitate the transport of night workers, work schedules are organised in such a way as to allow employees who do not live at home or who do not have a motorised land vehicle to use public transport. Exceptionally, and only with the employer's authorisation, a taxi, the cost of which will be borne by the employer, may be requested by an employee who no longer has any means of transport to return home.

With regard to pregnant women working night shifts who wish to take up a day shift, the NCC incorporates the legal provisions on the rights of pregnant women in relation to night shifts and adds, in view of the specific features of the sector and its work organisation, that if the employer is unable to offer another job, it shall inform the employee and the occupational physician in writing of the reasons preventing the employee from being reclassified as a day shift. The employee's employment contract is then suspended until the date of commencement of the statutory maternity leave and possibly during the additional period following the end of this leave in application of the above provisions. During this period, regardless of the employee's length of service, she will receive guaranteed remuneration consisting of a daily allowance paid by social security and additional remuneration payable by the employer, in accordance with the same

[275] As part of the annual report provided for in Article L. 4612-16 of the French Labour Code.

terms and conditions as those set out in the inter-professional agreement of 10 December 1977 appended to the law on the monthly payment of wages of 19 January 1978. Finally, the NCC stipulates equality between men and women and access to training for night workers:

> in view of the specific nature of night work, the employer must ensure that the conditions of access to training and its organisation are adapted to enable night workers to benefit from training courses. Where appropriate, the employer may propose temporary changes to the employee's working hours.

The 2010 NCC for home help, support and care services (extended) lays down 2 prerequisites for any work in the context of "sedentary night work". The first is for the employer to check that an isolated and sanitary area is available to the employee. The second requires the employer to set up an organisation to ensure that the employee can always contact a contact person. This permanent contact may be organised in the form of an on-call duty for the contact person. In justified cases, the employer will work with the CHSCT, or failing that the works council or staff representatives if they exist, on ways of ensuring the safety of night work. Before introducing night work, the employer must first consult the works council and the health, safety and working conditions committee, or failing that, the staff delegates if they exist. The employer must then inform all employees and propose an amendment to the employment contract for those employees affected by night work. In addition, the company doctor must be consulted before any decision is taken to introduce night work. All night workers are entitled to a medical examination before being assigned to a night shift and every 6 months thereafter.

The NCC for home help, support and care services de 2010 (extended) stipulates measures designed to make it easier for employees to combine night work with family and social responsibilities. Thus, in accordance with legal and regulatory provisions, when night work is incompatible with imperative family obligations (childcare, care of dependent persons), an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. Similarly, because of the pressing family obligations set out above, a night worker may request to be assigned to a day shift, provided that a position compatible with his or her professional qualifications is available. In order to enable each employee to reconcile family and professional life, a schedule is drawn up and given to each employee, indicating the weeks in which he or she may be required to work at night. The agreement prohibits pregnant women or women who have recently given birth from working nights, provided they have provided a medical certificate.

6.1.4.2.2.1.3 Compensation for Night Work

Night work is considered to be a special hardship and gives rise to compensation fixed by decree in the public sector and by national collective agreement in the private sector. It should be noted that, with the adoption of the Social Secu-

rity Financing Act for 2024, the government has increased the financial increase for night work. As a result, non-medical staff (nurses and care assistants in public hospitals and nursing homes, and in private not-for-profit establishments) will see their night-time pay increased by 25% compared with the daytime rate, and the fixed rate paid for work on Sundays and public holidays increased by 20%: see decree no. 2023-1238 of 22 December 2023 on compensation for night work in the hospital civil service, applicable from 1st January 2024. This decree repeals decree no. 88-1084 of 30 November 1988 relating to the hourly allowance for normal night work and the additional allowance for intensive work.

In addition, under the NCC for personal services companies, night workers are entitled to compensatory rest. Each hour worked as part of the night shift entitles the worker to 5% compensatory rest. Compensatory rest must be taken every 7 hours for a full-time employee and at least 4 hours for a part-time employee, within a period of 12 months during the employee's normal working hours. Compensatory rest not taken at the end of the reference period because it is less than the equivalent of one day's rest is carried over to the following half-year. Requests for compensatory rest must be submitted to the employer 1 month in advance. Night workers are also entitled to a 5% increase in their hourly rate for each hour worked as part of the night shift (suggested by law). These increases in hourly rates for night work cannot be combined with the increase for work on Sundays. As a result, hours worked on Sunday nights entitle the employee exclusively to the most advantageous financial increase, either that resulting from Sunday work or that resulting from night work. The increase for night work is cumulative with the increase in the hourly rate for work on a public holiday.

6.1.4.2.2.1.4 Contractual Treatment of Night-Time Presence

The NCC for personal services companies includes specific clauses for night-time presence, which does not necessarily require work: some services do not require continuous work or active watchfulness on the part of the employee with the person being cared for. A system of equivalence has been set up called "night presence". An employee provides a night presence when he or she is required to remain in the home of the beneficiary of a service, at night, and is likely to intervene under certain conditions for tasks relating to the benchmark jobs of life assistant… Two conditions are required for recognition of night work and application of the night work equivalence scheme:

> the need for the employee to sleep in the home of the beneficiary of the service (in a separate, suitably equipped room); a real division of his/her time on this occasion between periods of inaction (without intervention) and periods of action (with intervention), it being understood that this division will be precisely measured taking into account the criteria defined in article 10.2 of this agreement. It is important to specify that in any event, particularly with regard to respect for rest periods, any night presence must be compatible with a day job in order to enable the employee to work full time. The system of equivalence does

> not prevent a worker from being recognised as a night worker. Except with the employee's express agreement, any change to the schedule during night working hours must be made with 7 days' notice. In this respect, refusal to change night working hours, even in an emergency, cannot constitute misconduct or be considered as an absence. The night-time presence of an employee as defined in the previous article may not be less than 10 continuous hours. An employee may not be present at night for more than five nights over a period of seven calendar days. If an employee's presence at night requires continuous and permanent vigilance on his part, the time spent in action and the time spent in inaction cannot be distinguished, and there can therefore be no question of counting hours of equivalence. All hours of presence under these conditions are treated as actual working time, with the requirements of night work,

which means that the employee's employment contract must be amended.[276] Equivalent hours worked by an employee when present at night are counted and remunerated.[277] This count must be made on a weekly basis and systematically brought to the employee's attention by any means.[278] The NCC imposes a duty of vigilance on the employer, who must check the progress of night work by contacting the employee concerned at least once a month and visiting the customer at least once a quarter.

Under the 2010 NCC for home help, support and care services (extended), the cost of transporting the night worker from his or her home to the home of the person or persons being assisted is borne by the employer. Depending on the resources of the employing organisation and the specific nature of the work, this cost is covered either by the payment of mileage allowances, or by the provision of a vehicle, or by the reimbursement of public transport. Night workers are entitled to additional remuneration or compensatory rest, the terms of which are defined after consultation with the social and economic committee, if one exists. However, hours worked during the night on a Sunday or public holiday give entitlement to the compensatory rest provided for in this article and to the additional element of remuneration linked to work on a Sunday or public holiday.

6.1.4.2.2.2 Night Work in the NCC Individual Employers and Home Based Employment

The agreement provides for 2 types of night work. Here again, it should be remembered that the legal provisions on night work do not apply. The partners are free to regulate this type of work organisation. They do, however, set limits and conditions to provide a minimum of protection for the worker concerned.

[276] Article 11 of the NCC for personal services companies.

[277] Calculation of equivalent hours vs. inactive time, see Table of Correspondences, NCC, art. 10-2. Art 10-3.

[278] Article 13 of the NCC for personal services companies.

Night presence means that the employee is obliged to sleep on the premises in a separate room and in decent conditions,[279] without having to do any of the usual actual work, while being required to intervene if necessary as part of his duties. Night work must be provided for in the contract. It is compatible with daytime work. A night is between 8pm and 6.30am. The parties may, however, adjust this time slot by bringing forward the start of the night shift and/or delaying the end of the night shift, up to a total limit of one and a half hours. Night time may not exceed 12 hours. The night shift may be scheduled for more than 5 consecutive nights, subject to compliance with the weekly rest period and the following cumulative conditions: the number of night shifts carried out by the employee must not exceed 4 shifts every night; it is the result of a request made by the employee and/or the individual employer with a view to meeting specific needs requiring a night shift, due in particular to the employee's state of health and/or dependency, disability, age and/or social and/or family isolation; the parties have formalised their agreement in writing. The employee's refusal to work more than 5 consecutive nights may not constitute grounds for termination of the employment contract. The collective agreement expressly states that night work is not taken into account when determining the actual working time. However, if the employee is required to work at least 4 nights in a row, the hours worked during the night must be reclassified as actual working hours and the employment contract must be revised. The hours and conditions of night watch must be set out in the employment contract. Night watch is remunerated in accordance with the collective agreement by means of a flat-rate allowance. The amount of this allowance may not be less than 1/4 of the contractual salary paid for equivalent actual working time. This allowance will be increased according to the nature and number of interventions. If on certain nights the employee is called upon to intervene: at least 2 times, the fixed allowance is due for the night during which the employee intervenes, is increased to 1/3 of the contractual salary paid for equivalent actual working time; at least 4 times, the allowance due for the duration of the interventions corresponds to the contractual salary paid for equivalent actual working time. The flat-rate indemnity for the remaining nights is equal to 1/3 of the contractual salary paid for equivalent actual working time. If the employee works every night and at least 4 times, all night hours are considered as hours actually worked and must be paid at the gross hourly rate stipulated in the contract. The contract must then be revised.

Night nursing hours. Employees working as night nurses remain close to the patient and do not have their own room (they are likely to intervene at any time). This function is not compatible with a full-time day job. The hours worked may not exceed 12 consecutive hours. The collective agreement stipulates that the function of night nurse is exclusively applicable to employees in the benchmark

[279] If the employee is required to sleep on site as part of the night shift, the accommodation will not be taken into account when assessing benefits in kind and will not be deducted from net pay.

jobs in the adult sector "Life assistant C" and "Life assistant D". The hours and conditions of night duty must be stipulated in the employment contract. Night watch is remunerated in accordance with the collective agreement by means of a flat-rate allowance. The amount of this allowance may not be less than 1/4 of the contractual salary paid for equivalent actual working time. This allowance will be increased according to the nature and number of interventions. If on certain nights the employee is called upon to intervene: at least 2 times, the fixed allowance is due for the night during which the employee intervenes, is increased to 1/3 of the contractual salary paid for equivalent actual working time; at least 4 times, the allowance due for the duration of the interventions corresponds to the contractual salary paid for equivalent actual working time. The flat-rate indemnity for the remaining nights is equal to 1/3 of the contractual salary paid for equivalent actual working time. If the employee works every night and at least 4 times, all night hours are considered as hours actually worked and must be paid at the gross hourly rate stipulated in the contract. The contract must then be revised. For employees working as night nurses, remuneration is calculated on a basis that cannot be less than the gross hourly wage stipulated in the employment contract.

6.1.5 Holidays

In this section on leave for *care workers*, we will first distinguish between paid annual leave (par. 1) and other forms of leave (par. 2). In addition, the law applicable to the private sector differs from that of the public sector because the General Civil Service Code retains specific features on this aspect of working conditions which have not been erased despite the approximations with the Labour Code mentioned on several occasions in this chapter on working hours and working time. We will therefore describe these respective specificities, whether in terms of paid leave (6.1.5.1) or other leave (6.1.5.2).

6.1.5.1 Paid Annual Leave

Employees are entitled to 2.5 working days of paid annual leave per month of actual work or equivalent period during the reference period. Leave may be split into periods of more than 12 days. The main leave taken between 1st May and 31 October each year must be at least equal to 12 consecutive working days, which may not be split, and must not exceed 24 working days. Collective bargaining rights in the *care* sector will mainly consist of either increasing the number of days of paid leave, in particular on the basis of seniority, or organising and compensating for the splitting of paid leave by adopting the supplementary legal provision on the granting of additional leave in the event of splitting.[280]

[280] Article L. 3141-23 of the French Labour Code, i.e. 2 working days if the total number of working days taken outside the period is 6 or more and 1 working day if the total number of working days taken outside the period is between 3 and 5 days.

The NCC for private hospital of 2002[281] (extended) and the NCC for personal servicies companies (extended) of 2012 reproduce, without modifying them either favourably or unfavourably, the legal provisions relating to the duration of leave, its calculation, the period during which leave is taken, and the terms, conditions and compensation for fractioning.

On the other hand, the NCC for establishment and services for maladjusted and disabled persons of 1966[282] (not extended) provides that the annual paid leave of permanent salaried staff will be extended by 2 working days for each period of 5 years of seniority in the company, up to a maximum of 6 days. In addition, if, for service reasons, and with the agreement of the employee concerned, annual leave has to be granted outside the normal period, the statutory period will be extended by 3 working days per calendar year, which is more favourable than the relevant legal provision.

The NCC for private non-for-profit hospital and nursing establishment of 1951 (not extended) provides for exceptional paid leave for staff in establishments for disabled or maladjusted children or adults, in which the decentralised bonus is equal to 3%, benefit during each of the three quarters that do not include the annual leave from additional paid leave to be taken in the best interests of the service. The duration of this additional paid leave, which for each of the 3 quarters may amount to 6 consecutive working days for educational staff and 3 consecutive working days for other staff, is calculated in proportion to the actual time worked during the quarter.

The NCC for individual employers and home based employment of 2021 (extended) takes up the legal right to holidays, which once again brings these workers back into the fold of ordinary law, for whom the legislator, without explicitly excluding them, does not expressly mention paid holidays among the provisions applicable to domestic workers. Thus, the calculation and number of days of holiday are those of ordinary law (2.5 days per month worked). And in the event of split leave, the agreement recognises the right to additional leave such as that provided for in the Labour Code.

Civil servants in active employment are entitled to annual leave equal to five times their weekly service obligations for each completed year of service. This period is assessed in terms of the number of days actually worked. An additional day's leave is granted to any employee whose number of days of leave taken outside the period from 1st May to 31 October is five, six or seven days; a second additional day's leave is granted when this number is at least equal to eight days. Absence from work may not exceed thirty-one consecutive days, except in the case of civil servants and State employees who are exceptionally authorised to combine their annual leave to travel to their country of origin or to accompany their spouses travelling to their country of origin.

[281] Title VI of the NCC for private hospital of 2002.

[282] Title IV of the NCC for establishment and services for maladjusted and disabled persons of 1966 (not extended).

6.1.5.2 Other Types of Leave

A distinction should be made between other private-sector leave covered by the provisions of the Labour Code and collective agreements (6.1.5.2.1) and public-sector leave covered by the General Civil Service Code (6.1.5.2.2).

6.1.5.2.1 Other Forms of Leave in the Private Sector

The Labour Code contains a wealth of provisions introducing other forms of leave: child-rearing leave, teaching and research leave, vocational training leave, trade union training leave, mobility leave, parental leave, leave to care for relatives, representation leave, family solidarity leave, international solidarity leave, parental leave, leave to acquire nationality, natural disaster leave, business start-up leave, sick child leave, leave for family events, sabbatical leave (leave for family events, family solidarity leave, leave to care for relatives,[283] sabbatical leave, leave for associative, political or activist commitments, mutualist leave. Collective bargaining agreements applicable in the *care* sector are also covered (only those benefits that are strictly collective bargaining and therefore provide an added benefit to the employee will be discussed here).

It should be noted that the NCC for personal services companies of 2012 and the NCC for home help, support and care services of 2010 are the only agreements that do not include any specific clause on other leave.

The NCC for establishment and services for maladjusted and disabled persons of 1966, Title IV (not extended) provides for benefits in addition to those provided for by the law.[284] Additional and exceptional leave is granted, with justification, to staff for family-related events (between 1 and 5 days depending on the event). In addition to paid annual leave, employees are entitled to up to 21 days' paid exceptional leave per 3-year period to take part in training courses, advanced training sessions and professional conferences. Exceptional unpaid leave for personal reasons may be granted on an exceptional basis, if service requirements allow, and on justification of the reasons for the request, up to a maximum of 3 months. Such leave may, at the option of the person concerned, either be deducted from annual leave accrued on the day the leave is taken, or granted without pay. In the event of work stoppage due to illness, employees who have been with the company for 1 year will receive, after deduction of the daily allowances received under the social security and supplementary provident schemes: for the first 3 months, the net salary they would normally have received without interruption of activity; for the following 3 months, half the net salary corresponding to their normal activity. The same benefits apply in the event of leave due to an accident at work or occupational illness. Lastly, employees who have completed one year's service with the company will be entitled,

[283] Article D. 3142-7 of the French Labour Code.

[284] Title IV of the NCC for establishment and services for maladjusted and disabled persons of 1966 (not extended).

for the duration of their statutory maternity leave or statutory adoption leave, to additional allowances so that, taking into account social security allowances, they receive the equivalent of their net salary.

The NCC for private hospital of 2002, Title VI (extended) provides for leave for family events (between 2 and 5 days), leave for sick children (12 working days per employee or for the couple); in the event of maternity leave, the payment of additional allowances up to the level of salary and, from the end of the 2nd month of pregnancy, a 10% reduction in the daily working time, with their pay being maintained. Paternity leave of 11 days gives rise to the payment of an additional allowance, leave to care for a close relative (12 months). For all other types of leave (parental leave, international solidarity leave, sabbatical leave, etc.), the collective agreement refers to ordinary law.

The NCC for private non-for-profit hospital and nursing establishment (not extended) also includes more favourable provisions for certain other types of leave. This is the case for leave for a sick child (1 to 4 days per child per year), which is paid as actual working time and also benefits cohabitees and PACS employees treated as spouses. This is also the case for leave for family events[285] on justification, paid as actual working time. Exceptional short-term leave for personal reasons may be granted if the needs of the service permit and if the reasons for the request are justified, but it is either deducted from the annual leave earned or unpaid. Unpaid leave may be granted for a maximum of 3 months, renewable once. With regard to maternity and adoption leave, employees with 1 year's seniority will continue to receive their salary.

The 2021 NCC for individual employer and home based employment includes a series of other types of leave which are worth highlighting, since the relevant labour legislation does not in principle apply. By mimicking other national collective agreements and drawing inspiration from the legal provisions, the signatories of the NCC have thus achieved a rapprochement or even alignment with other employees in the sector from the point of view of social benefits. Firstly, there is leave for family events,[286] paid leave for family events, with

[285] Death of an employee's child or spouse's child: 5 days; death of an ascendant, descendant, brother or sister, son-in-law or daughter-in-law, father-in-law or mother-in-law, spouse's brother or sister: 2 days; marriage of a child: 2 days; marriage of a brother or sister: 1 day; employee's marriage: 5 days; birth of a child: 3 days. This leave is also granted to a partner.

[286] According to article 48.1.3.1 of the NCC Individual employer and home based employment: 4 working days for her marriage or for the conclusion of a civil solidarity pact; 1 working day for the marriage or for the conclusion of a civil solidarity pact of a child; 3 working days for each birth occurring in her home or for the arrival of a child placed with a view to adoption. These 3 working days are taken, in accordance with the conditions set out below, in the 15 days surrounding the event; 5 working days for the death of a child. The period of leave is increased to 9 working days in the following cases: death of a child, whatever its age, if it was itself a parent; death of a child aged under 25; death of a person aged under 25 who was the employee's actual and permanent dependant; 3 working days for the death of the employee's spouse, partner in a civil solidarity pact, cohabitee, father, mother, father-in-law, mother-in-law (understood as the father or mother of the employee's married spouse), brother or sister;

salary maintained and treated as actual working time for the purposes of calculating paid leave and seniority. The NCC specifies that when leave for family events is compensated by the social security system, the individual employer maintains the employee's salary after deduction of the daily allowances paid, so that the employee does not suffer any loss of salary during the period of absence. If the employee receives the daily allowances directly from the social security scheme, he must provide the individual employer with proof of the amount of these allowances without delay. There is also leave for the Defence and Citizenship Day, for which salary is maintained and which is treated as time actually worked. Employees are also entitled to leave for a dependent child (2 working days, up to a maximum of 30 per year), for the acquisition of French citizenship. In addition to this paid leave, there is other unpaid leave which is not counted as actual working time: leave on personal grounds if authorised by the employer;[287] unpaid leave of 3 working days for a sick child, separate from leave for a family event, which is not counted as actual working time; unpaid parental presence leave,[288] which is not counted as actual working time for the purposes of determining entitlement to paid leave, but is taken into account for the purposes of determining entitlement to seniority.

6.1.5.2.2 Other Public Sector Leaves

The General Civil Service Code distinguishes between leave of absence and other forms of leave. Civil servants[289] and public employees[290] are entitled to leave of absence in connection with parenthood and certain family events. These absences are not included in the calculation of paid leave, in the same way as the

2 working days for the announcement of the onset of a disability in a child; 1 working day in the event of the death of a descendant in the direct line (grandchild, great-grandchild), other than a child for whom special provisions are made in this article; 1 working day in the event of the death of an ascendant in the direct line (grandparent, great-grandparent). In the event of the death of a child or a person under the age of 25 who is the employee's actual and permanent dependant, the employee is entitled to additional bereavement leave of 8 working days in the event of the death of a child under the age of 25 or a person under the age of 25 who is the employee's actual and permanent dependant.

[287] The individual employer does not have to give reasons for refusing to grant the leave, and if the individual employer does not agree, the employee's absence from work may be treated as unjustified absence.

[288] This leave may be requested if the dependent child suffers from an illness, disability or is the victim of a particularly serious accident, making a sustained presence and constraining care indispensable. There is also family solidarity leave (article 48.2.4 of the NCC for private individual employers and home based employment and leave for close assistance (article 48.2.5 the NCC).

[289] 5 to 7 working days, depending on age, in the event of the death of a child or of a person for whom the civil servant is effectively and permanently responsible. Article L. 622-2 of the General Civil Service Code.

[290] 8 days which may be split and taken within one year of the death. Article L. 622-2 of the General Civil Service Code.

leaves of absence provided for in the hospital and local authority civil services.[291] The Civil Service Code contains a number of provisions relating to other types of leave, which may be regarded as special social benefits associated with civil service status.

Firstly, there is leave linked to parental and family responsibilities in addition to parental leave. The Civil Service Code makes a number of references here to the Labour Code (in relation to birth leave, maternity leave, adoption leave, paternity leave,[292] leave to care for relatives).[293] The Code adds other forms of leave: in the event of the child's hospitalisation or the mother's death during her maternity leave;[294] for parental presence[295] in the event of an accident or a particularly serious disability of the child. The Code also provides for unpaid family solidarity leave[296] for a period of 3 months, renewable once, which is treated as actual work and cannot be deducted from paid leave.[297]

The Civil Service Code also contains lengthy provisions on leave related to civic activities. The first is unpaid citizenship leave of 6 working days per year, which is treated as a period of actual service and cannot be deducted from annu-

[291] Articles L. 622-2 to L. 622-7 of the General Civil Service Code.

[292] Where applicable, to the employee who is the mother's spouse or to the public employee bound to her by a civil solidarity pact or living in a marital relationship with her. Article L. 631-9 of the General Civil Service Code.

[293] Articles L. 634-1 to L. 634-4 of the General Civil Service Code.

[294] Article L. 631-4 of the General Civil Service Code: the father of a civil servant is entitled to leave for the period remaining between the date of the mother's death and the end of the mother's compensation period. If the child's father does not request it, this right is granted to the mother's civil servant spouse or to the civil servant bound to her by a civil solidarity pact or living in a marital relationship with her.

[295] Article L. 632-1 of the General Civil Service Code. In the event of illness, accident or disability of a dependent child that is particularly serious, making it essential for the child's mother or father to be present at all times and to provide constraining care. This leave is for a maximum of three hundred and ten working days over a period of thirty-six months. It may be renewed once for the same reasons for a maximum of three hundred and ten working days over a further period of thirty-six months. The leave may be split up or taken in the form of part-time work. It may not be deducted from annual leave. Civil servants on parental leave are not paid. They receive a daily allowance for parental presence under the conditions set out in Chapter IV of Title IV of Book V of the Social Security Code. State or local civil servants may also, at their request, be assigned to a post closest to their place of residence, after application of articles L. 512-19 and L. 512-26 respectively relating to transfer priorities in the State civil service and in the local civil service: Article L. 631-1 of the General Civil Service Code.

[296] It may, however, give rise to the payment of a daily allowance to support a person at the end of life, under the conditions and according to the procedures set out in Chapter VIII of Title VI of Book I of the Social Security Code.

[297] Articles L. 633-1 to L. 633-4 of the General Civil Service Code: when an ascendant, descendant, brother, sister, a person sharing the same home or a person who has designated them as their trusted support person within the meaning of article L. 1111-6 of the Public Health Code is suffering from a life-threatening condition or is in the advanced or terminal stages of a serious and incurable disease, whatever the cause.

al leave. Then there is left to represent an association or mutual society, granted subject to service requirements, with pay, for 9 working days a year.[298] There is also left prepare and supervise cohesion stays as part of the universal national service, paid subject to service requirements for a period of up to sixty days over a period of twelve consecutive months. Finally, there is paid leave to complete a period of military service, military training or activity in an operational reserve.

6.2 Health and Safety at Work for Carers

- Describe and discuss the regulation of health and safety, including employee representation and influence, employer obligations, physical and psychosocial work environment risks, violence and harassment at work, stress and workload, proactive measures etc., in your country, both *specific* labour law regulation for care workers and *general* labour law regulation applied to care workers.
- Describe and discuss the short-term, long-term, and post-pandemic implications of the COVID-19 pandemic for the working situation, job quality, and working conditions of care workers (in this context often referred to as "frontline workers") and for the care sector in general, both *specific* labour law regulation for care workers and *general* labour law regulation applied to care workers, and the role of social partners, social dialogue, and collective bargaining in this regard.

The provisions of Part 4[e] of the French Labour Code relating to health and safety at work have a very broad scope.[299] Occupational health and safety regulations apply to workers and employers under private law. They also apply to public industrial and commercial establishments, to public administrative establishments when they employ staff under private law conditions, to health, social and medico-social establishments,[300] and to public law health cooperation groups mentioned in 1° of article L. 6133-3 of the Public Health Code.

On 17 May 1948, France ratified ILO Convention no. 17 on compensation for occupational injuries, 1925, and on 13 August 1931 ILO Convention no. 18 on occupational diseases, 1925. French legislation on health and safety at work stems from a framework directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of employees at work. The transposition of this directive into French law was completed by an order of 22 February 2001. This legislation is also the result of 3 directives relating to minimum health and safety requirements for workplaces and the use of work equipment: they were incorporated into French law by Law no. 91-1414 of 31 December 1991 amending and adapting the new Labour Code and the Public Health Code.

[298] Articles L. 642-1 and 2 of the General Civil Service Code.

[299] See articles L. 4111-1 to L. 4831-1 and R. 4121-1 to R. 4822-1; L. 4121-1 of the French Labour Code (Part 4).

[300] Statutory part of the hospital civil service - Ordinance no. 2017-28 of 12 Jan. 2017, article 5.

Most of the regulations are codified in Articles L. 4111-1 to L. 4831-1 and R. 4121-1 to R. 4822-1 of the French Labour Code. There are also special regulations that have not been codified, and various other provisions issued by the occupational health and pension insurance funds (Caisses d'Assurance Retraite et de Santé Au Travail -Carsat) relating to technical safety standards. Occupational health and safety regulations are also set out and supplemented by collective agreements and various types of agreement between the two sides of industry. Employers also have the option of adopting more stringent provisions through internal charters or codes of conduct. In addition, in establishments with at least 20 employees, the internal regulations include compulsory instructions and prescriptions on health and safety at work.

The legal and contractual provisions relating to health and safety at work must be applied (as a matter of absolute public policy) to all companies in the private sector, including establishments and services of all kinds, whether public or private, secular or religious, commercial or not-for-profit. With the exception of a few specific civil service activities (armed forces, police, civil defence), all establishments in the three civil services (State, regional and hospital) are covered by these provisions. The health and safety regulations apply to all persons employed in any capacity by an employer,[301] including temporary workers and trainees.[302] We will look first at the prevention of occupational risks (6.2.1), then at workers' rights in terms of health and safety at work (6.2.2) and finally at the health and safety risk factors at work in the care sector (6.2.3).

6.2.1 Occupational Risk Prevention

As part of the general principles of prevention,[303] the legislator has instituted prevention, information and training objectives and obligations for employers (6.2.1.1) and workers (6.2.1.2). The legislator also intervened to introduce specific obligations during the COVID-19 pandemic (6.2.1.3).

[301] On this subject, see the provisions of the applicable national collective bargaining agreements, most of which refer to common law: article 20, para. 4-5-6; article 21-5-6 and article 21-6-3 of the NCC Home help, support and care services; Article R. 4121-1 of the French Labour Code. On the DUER and the definition of psychosocial risks, see 2013 amendment adopted in accordance with art. 77 of the law of 10 Nov. 2010 on pension reform: article 21-6-5 and article 20, al. 4-5-6 of the NCC Home help, support and care services; article 35 of the NCC for establishment for maladjusted and disabled persons; Title X: Working conditions, health and safety (laconic title) of the NCC Private hospital; Title VI, article (unique) 06.04 of the NCC Private non-for-profit hospital and nursing establishment. The same applies to civil servants: see articles L. 811-1 to L. 829-2 of the General Civil Service Code.

[302] Article L. 4111-5 of the French Labour Code.

[303] General principle of prevention: Document unique d'évaluation des risques (single risk assessment document): articles R. 4121-1 et seq. of the Labour Code resulting from Decree no. 2011-354 of 30 March 2011, Crise COVID-19. See also M. Véricel, "Déconfinement, reprise des activités économiques et santé au travail," *RDT* (2020): 409–11.

6.2.1.1 The Employer's Obligation to Ensure the Safety and Health Protection of Employees

Employers have a legal obligation under Article L. 4121-1 of the French Labour Code to guarantee the safety and health protection of their employees. This obligation implies the implementation of preventive measures, information, training and appropriate means to ensure safety at work. Failure to comply with this obligation may constitute inexcusable fault on the part of the employer in the event of an accident at work or occupational disease.

Until 2015, employers were bound by an "obligation de sécurité de résultat" (an obligation to ensure safety at work), considering any work-related incident to be inexcusable misconduct if the employer was aware of the danger and had not taken the necessary measures. However, following reversals in case law in 2002, the Court of Cassation redefined inexcusable fault as exceptionally serious fault with an intentional element. The "Air France" ruling in 2015 established that the employer does not breach its legal obligation if it proves that it has taken all the measures provided for by the Labour Code, thus abandoning the contractual basis of the obligation of safety of result. This case law was followed by the Second Civil Chamber of the Court of Cassation in 2020.

Failure to comply with the safety obligation exposes the employer to criminal and civil liability, underlining the importance of taking adequate measures to ensure the safety and health of workers in the workplace.

The employer's general health and safety obligation is broken down into various obligations. There are preventive measures (6.2.1.1.1), the introduction of a personal arduousness account for workers (6.2.1.1.2), the obligation to introduce an individual prevention sheet (6.2.1.1.3), the general obligation to inform and train employees about risks (6.2.1.1.4), the obligation to prevent and take action against moral and sexual harassment and other sexist behaviour (6.2.1.1.5), the obligation to check the amplitude and workload of employees on fixed working days (6.2.1.1.6) and the obligation to provide training and specific adaptation measures for the safety of workers (6.2.1.1.7).

6.2.1.1.1 Prevention Initiatives

The employer's legal obligation to ensure health and safety means that preventive measures must be taken to protect workers' health and safety, as set out in articles L. 4121-1 and L. 4121-2 of the French Labour Code. In order to ensure the safety and protect the physical and mental health of workers, the employer must put in place the following measures:

- Actions to prevent occupational risks.
- Information and training initiatives.
- Setting up an appropriate organisation and resources.

These measures are dynamic, and the employer must ensure that they are adapted to take account of changing circumstances and aim to improve existing situations.

Article L. 4121-2 of the French Labour Code sets out nine objectives for preventive measures in the field of health and safety at work. These objectives are: the avoidance, assessment and reduction of risks, the adaptation of work to people, taking account of technological developments, the replacement of dangerous elements, prevention planning, giving priority to collective protection measures, and the communication of instructions to workers.

6.2.1.1.2 The Introduction of a Personal Arduous Work Account for Workers

The personal account for the prevention of arduous work (C2P)[304] has been set up to take account of occupational risks. It covers ten risk factors, such as night work, manual handling of loads and mechanical vibrations. The employers concerned must assess and prevent these risks by means of a Document unique d'évaluation des risques professionnels —DUER— (Single occupational risk assessment document)[305] or an action plan. Employees exposed to these risks (according to certain thresholds)[306] can open a personal account for the prevention of arduous work, and employers must pay a basic arduous work contribution[307] of 0.01%. An additional contribution of 0.2% or 0.4% applies depending on the level of exposure. Failure to comply with these obligations exposes the employer to penalties in accordance with ordinary labour law.

6.2.1.1.3 The Obligation to Draw up an Individual Prevention Sheet

In France, seconded and temporary workers are subject to traceability thanks to the individual prevention sheet.[308] This does not apply to employees of private employers.[309] In France, seconded and temporary workers are subject to traceability thanks to the individual prevention sheet. This does not apply to employees of individual employers and homebased emplyment. In fact, for employees in this unified branch, the law, under the terms of article L.4625-2 of the Labour Code, has opened up the possibility of providing, by means of an extended branch collective agreement, for derogations from the rules relating to the organisation and choice of the occupational health and prevention service, as well as to the

[304] Instruction no. DGT/DSS/SAFSL/2016/178 of 20 June 2016 relating to the implementation of the personal account for the prevention of penibility NOR: ETST1614584J. This instruction cancels and replaces DGT-DSS Instruction no. 1 of 13 March 2015 on the same subject.

[305] Failure to produce a DUER exposes the employer to fines: Article R. 4741-1 of the Labour Code or damages for employees in the event of injury: Cass. soc., 25 Sept. 2019, no. 17-22.224; Cass. soc., 8 July 2014, no. 13-15.474; Cass. soc., 8 July 2014, no. 13-15.470, no. 1475 FS - P + B.

[306] Article D. 4161-2 of the French Labour Code. "These thresholds include a dual dimension of intensity and temporality. Whether or not the thresholds are exceeded is assessed by applying individual and collective protection measures": see Instruction of 2016, data sheet no. 3.

[307] Instruction of 2016, sheet no. 7. Its rate is set by Decree no. 2014-1157 of 9 October 2014.

[308] Article L. 1262-4 of the French Labour Code.

[309] Article L. 7221-1 of the French Labour Code.

procedures for monitoring the state of health of workers. These derogations are necessary in view of the singular nature of the sector resulting from:

- the high number of employees with multiple employers.
- the high number of employees working part-time.
- the diversity of jobs performed by employees in the sector.
- the inviolable private home which constitutes the workplace.
- the fact that the employer is a private individual and not a company.

The personal account for the prevention of arduous work and the individual prevention sheet are integrated into the assessment of occupational risks via the occupational risk assessment document, drawn up by collective agreement at branch level or in accordance with approved occupational benchmarks. The occupational risk assessment document enables the employer to determine the conditions of hardship to which each worker is exposed, thereby enhancing the reliability of individual declarations to the Caisse nationale d'assurance vieillesse.

6.2.1.1.4 The General Obligation to Inform and Train Employees About Risks[310]

The employer is obliged to provide information to employees on health and safety risks at work, taking into account the size of the company, the nature of the activity and the risks identified.[311] This information can be communicated via internal notes or appropriate signage, during working hours.[312] It covers preventive measures, the role of the occupational health service, the provisions of the internal regulations, and instructions in the event of fire,[313] with the collaboration of the occupational physician.[314]

6.2.1.1.5 The Obligation to Prevent and Take Action Against Moral and Sexual Harassment and Other Sexist Behaviour

Employers have an obligation to prevent and remedy the mental distress of their employees,[315] an obligation that also covers public sector employees.[316] Case

[310] See in particular: N. Gacia, "La gestion préventive des risques en matière de sécurité et santé au travail," *JCP S* (2009): 1110; "Training in conditions of movement of persons in the workplace," *R*. 4141-11 and 12; "Training in conditions of performance of the work," *R*. 4141-13 to 16, "Training in what to do in the event of an accident or disaster," *R*. 4141-17 to 20.

[311] Article L. 4141-1 of the French Labour Code.

[312] Article R. 4141-5 of the French Labour Code.

[313] Article R. 4141-3-1 of the French Labour Code.

[314] Article R. 4141-6 of the French Labour Code.

[315] Most national collective agreements refer to ordinary law: e.g. the NCC Individual employers and home based employment refers to article L. 7221-2 of the French Labour Code; articles L. 1152-1 et seq. and L. 1153-1 and L. 1154-2 of the French Labour Code. See also, Title IV, chapter 2, article 2, article 9 of the NCC for Home help, support and care serviceswhich refers purely and simply to common law.

[316] Articles L. 133-1 to L. 133-3 of the General Civil Service Code.

law establishes that the employer's safety obligation takes precedence over the reinstatement of a protected employee in the event of dismissal for harassment.[317] Employers must ensure the physical and mental health of their employees[318] by implementing preventive measures in accordance with the French Labour Code.[319] They are liable if they fail to comply with their obligations and do not take immediate steps to put an end to situations of moral violence.[320]

6.2.1.1.6 The Obligation to Check the Working Hours and Workload of Employees on Fixed-Term Contracts

In a ruling handed down in March 2022,[321] the French Supreme Court (Cour de cassation) ruled that the employer must guarantee a reasonable workload and a balanced distribution of work over time in order to protect the employee's health. In this case, an occupational physician argued that his employer had failed to comply with his safety obligation by ignoring signals of stress and problems of work overload, despite prior warnings. The employer argued that its duty had been fulfilled, but the Court reiterated the importance of annual interviews to discuss workload and its impact on the employee's personal life, stressing that the absence of such interviews also constitutes a breach of the employer's safety obligation.[322]

6.2.1.1.7 The Obligation to Provide Training and Special Adaptation Measures for Worker Safety

The employer is required to provide practical and appropriate safety training for all workers, particularly on recruitment, when changing jobs or techniques, when changing working conditions, when returning to work after an absence of more than 21 days, and whenever necessary.[323] In principle, this training takes place in the workplace[324] and must be repeated periodically.[325] Its aim is to make workers aware of the risks and preventive measures, and to promote

[317] Cass. soc., 8 June 2017, no. 16-10.458; Cass. soc., 21 June 2017, no. 15-24.272; Cass. soc., 22 June 2017, no. 16-15.507.

[318] Article L. 4121-1 of the Labour Code; Cass. soc., 8 June 2017, no. 16-10.458; Cass. soc., 21 June 2017, no. 15-24.272; Cass. soc., 22 June 2017, no. 16-15.507.

[319] Articles L. 4121-1 and L. 4121-2 of the French Labour Code.

[320] Cass. soc., Oct. 17, 2018, no. 16-25.438.

[321] Cass. soc., 2 March 2022, no. 20-16.683, no. 261 FS - B.

[322] In the same vein, Cass. soc., 13 Apr. 2023, no. 21-20.043.

[323] Article L. 4141-2 of the French Labour Code. See also Title IV, chapter I, article 41 of the NCC Private hospital.

[324] Article R. 4141-14 of the French Labour Code.

[325] Article L. 4141-2 of the French Labour Code.

safe behaviour.[326] Time spent on training is considered as working time.[327] In addition, in the event of serious accidents or repeated occupational illnesses, the employer must organise appropriate training,[328] including for employees on fixed-term or temporary contracts working in high-risk jobs.[329] The Social and Economic Committee has a consultative role in the organisation and monitoring of such training.[330] Funding is the responsibility of the employer,[331] and there is now a "prevention passport"[332] for health and safety at work training.

6.2.1.2 Obligations of Employees

Every worker has an obligation to take care of their own health and safety, as well as that of others affected by their actions or omissions. This responsibility implies that the employee must comply with the employer's instructions, in accordance with his or her training and abilities.

Employee breaches of this obligation are assessed in the light of the employer's obligations in terms of information, training and working conditions. Penalties for breaches, such as failure to comply with the safety instructions in the internal regulations or training, are determined by the disciplinary rules of the aforementioned regulations. Serious breaches may be grounds for dismissal. None of this affects the employer's responsibility for the safety of workers.[333] The employer must also take account of the worker's abilities when assigning health and safety-related tasks in line with the company's activities.[334]

6.2.1.3 Occupational Health and Safety Obligations Created by the COVID-19 Pandemic

In light of the COVID-19 epidemic, employers need to update their occupational risk assessment documents to take account of the risks associated with transmission of the virus within the company. This involves identifying work situations where the conditions for transmission of the virus are present, such as close contact without protection, and putting in place appropriate preventive measures.[335]

[326] Articles R. 4141-3, R. 4141-4 and R. 4141-13 of the French Labour Code.

[327] Article R. 4141-5 of the French Labour Code.

[328] Article R. 4141-8 of the French Labour Code.

[329] Article L. 4143-1 of the French Labour Code.

[330] Article R. 4143-1 of the French Labour Code.

[331] Article L. 4141-4 of the Labour Code and Circ. 16 October 1980.

[332] Law no. 2021-1018, 2 August 2021: JO, 3 August, article 6; article L. 4141-5 of the French Labour Code; Decree no. 2022-1712, 29 Dec. 2022: JO, 30 Dec. See the Prevention Passport information portal on the travail-emploi.gouv.fr website.

[333] Article L. 4122-1 of the French Labour Code.

[334] Article L. 4121-4 of the French Labour Code.

[335] CA Versailles, 14th ch., 24 Apr. 2020, no. 20/01993.

Employees' right of withdrawal does not apply automatically in the event of a pandemic or epidemic, as it relates to specific work situations. If the employer has implemented all the protective measures provided for by law and national recommendations to ensure the health and safety of workers, the right of withdrawal should not be exercised.[336] Similarly, other situations such as a heatwave do not automatically justify the exercise of the right of withdrawal.[337]

6.2.2 Workers' Rights to Health and Safety at Work

Workers have been granted various rights in the area of health and safety at work. First of all, individual rights of warning and withdrawal have been given to employees for their immediate protection (6.2.2.1). Secondly, collective rights have been given to the Social and Economic Committee so that it can intervene and communicate as soon as it becomes aware of risks to employees (6.2.2.2), and also negotiate agreements on occupational risks and arduous work (6.2.2.3).

6.2.2.1 The Employee's Right to Warn of and Withdraw from Work in the Event of Serious and Imminent Danger

The right of withdrawal is a fundamental right granted to employees, enabling them to withdraw from a work situation presenting a serious and imminent danger[338] to their health or life,[339] without incurring sanctions. To exercise this right, the employee must first or simultaneously alert the employer to the risk.

Employees also have a duty to warn.[340] But this subjective assessment of the danger is sovereign and specific to the employee. As a result, its use is optional.[341] The right to withdraw may be exercised individually or collectively, provided that each employee considers that he or she is in danger.[342] During the exercise of this right, no deduction of salary or sanction is authorised,[343] failing which the disciplinary sanction will be annulled.[344]

[336] DGT Circular 2009/16, 3 July 2009.

[337] DRT Circular 2004/08, 15 June 2004; DRT Circular 2006/14, 19 July 2006.

[338] Article D. 4132-1 et seq. of the French Labour Code. See also articles L135-1 to L135-6 of the General Civil Service Code.

[339] Article L. 4131-1 of the French Labour Code. CA Toulouse, ch. soc. section 2, 6 June 2003, no. 2002/04756.

[340] Article L. 4131-1 of the French Labour Code. For a reference in collective bargaining law, see e.g. articles 19-20 of the NCC for home help, support, care and services of 2010 (extended).

[341] Cass. soc., 9 Dec. 2003, no. 02-47.579. Circular DRT 93-15, 25 March 1993: BO min. Trav. no. 93/10, 5 June.

[342] Cass. soc., 22 Oct. 2008, no. 07-43.740. However, the collective exercise of a right of withdrawal is not similar to the exercise of a right to strike to improve working conditions, even in the case of a concerted cessation of work: Cass. soc., 11 July 1989, no. 86-43.497, no. 2936 P.

[343] Article L. 4131-3 of the French Labour Code.

[344] Cass. soc., 11 Dec. 1986, no. 84-42.209; Cass. soc., 28 Jan. 2009, no. 07-44.556, no. 151 FS - P + B. C. trav., art. L. 4741-1 et seq.

However, the right of withdrawal is not always legitimate and its exercise is not automatic. Abusive use may result in disciplinary action,[345] or even dismissal.[346] Moreover, unlike the right to withdraw, whistleblowing in public health and environmental matters does not give rise to withdrawal from work,[347] but it does offer whistleblowers legal protection against any form of discrimination or sanction resulting from their reporting.[348]

6.2.2.2 Health and Safety at Work and the Right of Participation or Expression of Workers

In terms of workers' right to information and training, the employer's obligation is perfectly symmetrical with the employees' right to be informed and trained. The Social and Economic Committee (CSE) also has the right to issue a warning in the event of serious and imminent danger, triggering an immediate investigation so that appropriate measures can be taken.[349] In the event of disagreement with the employer, specific procedures are provided for.[350]

Any employee representative on the CSE who becomes aware, particularly through the intermediary of an employee, that there is a serious risk to public health or the environment within the company must immediately alert the employer. The alert is recorded in writing in the alert register. The employer examines the situation jointly with the staff representative on the CSE who forwarded the alert and informs him/her of the action he/she intends to take.[351] The CSE is informed of employee alerts that have been forwarded to the employer, the action taken on them and any referrals to the Prefect, who is notified either if there is disagreement with the employer as to the validity of the alert forwarded, or if no action is taken on the alert within a period of one month.[352]

Since 2010, certain companies have been legally obliged to negotiate and sign a branch agreement or an action plan for the prevention of occupational risks and arduous work.[353] The obligation to do so depends on criteria such as the size of the company, the proportion of employees exposed or the number of

[345] CA Montpellier, ch. soc. 11 March 2003, no. 02/01245.

[346] CA Riom, 23 August 1989, no. 2773/88.

[347] Articles D. 4133-1 et seq. of the French Labour Code.

[348] Article L. 4133-1 and 5 of the French Labour Code.

[349] Article L. 2312-60 of the French Labour Code.

[350] Articles L. 4132-2 to L. 4132-4 and L. 4526-1 of the French Labour Code.

[351] Article L. 4133-2 of the French Labour Code.

[352] Article L. 4133-3 and 4 of the French Labour Code.

[353] Law no. 2010-1330, 9 November 2010, article 86, I: JO, 10 November; DGT Circular no. 08, 28 October 2011. Industry-level negotiations are first given an incentive by Article 86 I of the 2010 law on pension reform. It then became an obligation for certain companies to negotiate an agreement on the prevention of occupational risks (details DGT Circular No. 08, 28 October 2011).

accidents.[354] The[355] agreements or action plans are based on a diagnosis of the risks and cover ten occupational risk factors,[356] according to criteria relating to physical constraints, exposure to dangerous chemical agents or particular work patterns.[357]

6.2.2.3 The role of the Social and Economic Committee (CSE)[358] and Professional Branches in Negotiating Agreements on Occupational Risks and Arduous Working Conditions

According to the French Labour Code,[359] the Social and Economic Council is involved in preparing safety training courses. It is generally consulted on matters relating to health, safety and working conditions. This responsibility also extends to temporary workers, trainees and any person placed in any capacity under the authority of the employer.[360] More specifically, the CSE plays an essential role in promoting safety training and the prevention of occupational risks. It is consulted on these matters during the annual consultation on vocational training.[361] In addition, the CSE is involved in setting up and monitoring a risk prevention action plan.[362] In companies with more than 300 employees, it receives a detailed report on the safety training planned for new employees, workers changing jobs and temporary workers.

As for the professional branches, in France they play a crucial role in preventing arduous work. They draw up collective branch agreements that must be extended in accordance with articles L. 4163-2 and L. 4163-4 of the Labour Code. In addition, they create industry-wide occupational benchmarks to as-

[354] Articles L. 2211-1 and L. 2233-1; article L. 2331- 1; article L. 4162-1 of the French Labour Code.

[355] It is concluded for a maximum of 3 years: article L. 4162-3 of the French Labour Code.

[356] Article D. 4162-2 and 3 of the French Labour Code.

[357] This includes night work as defined in the Labour Code (articles L. 3122- 29 to L. 3122-31), work in successive alternating shifts, and repetitive work, which is characterised by the performance of work involving repeated movements, requiring all or part of an upper limb, at a high frequency and at a constrained pace.

[358] The CSE was created by Ordoniance no. 2017-1386 of 22 December 2017. On the CSE in companies with 11 to 49 employees, see C. trav., art. L. 1226-2 and L. 1226-10. On the CSE in undertakings with more than 50 employees (CSSCT), see C. trav., art. L. 2315-39 to L. 2315-32 from the Ordinance no. 2017-1386). On the warning rights of the CSE: C. trav., art. L. 2312-59; C. trav., art. L. 2312-60; C. trav. L. 2312-70 and art. L. 2312-71.

[359] Article R. 4143-1 of the Labour Code resulting from Decree no. 2017-1819 of 29 December 2017, article 3.

[360] Article L. 2315-2 of the French Labour Code.

[361] Articles L. 2323-33 and R. 4243-2 of the French Labour Code.

[362] Articles L. 4162-2, R. 4143-1 and 2, R. 4644-1 of the French Labour Code. See also articles 21-2 and 21-4 of the NCC for home help, support and care services. For further information on occupational health and safety prevention bodies, see articles L. 4644-1; L. 8113-5; D. 4626-1; R. 4644-11; R. 4626-35 of the French Labour Code.

sess workers' exposure to occupational risks above thresholds set in advance, taking account of protective measures. These benchmarks enable employers to declare the annual exposure of workers and identify the appropriate means of prevention. The benchmarks may cover the entire branch or focus on specific fields of activity. They are subject to joint approval by the Ministers of Labour and Social Affairs. In the event of an obvious error, the authorities may work with the industry to adjust the reference framework for preventing arduous working conditions.

6.2.3 Health and Safety Risks Specific to Care Work

The main risk factors linked to the work of care workers result from the work organisation methods specific to this activity. These include night work,[363] alternating shifts, repetitive work and the handling of heavy loads (particularly for dependent patients).

These risks are taken into account in ordinary law, in particular through the personal account system for the prevention of arduous work,[364] which requires all employers, whether private or public, non-profit or commercial, to guarantee the safety and physical and mental health of workers, including those in precarious forms of employment.[365]

In addition, collective agreements in the various branches of the healthcare sector contain specific provisions on occupational risk prevention[366] involving the CSE.

6.3 Vocational Training and Skills

The French Constitution of 1958 states that "The nation guarantees equal access for children and adults to education, vocational training and culture". According to article L. 6111-1 of the French Labour Code, vocational training follows on from initial training and supports adults "throughout their lives".[367]

[363] Articles L. 3122-29 to L. 3122-31 of the French Labour Code: articles L. 812-4 and L. 813-2 of the General Civil Service Code.

[364] Decree no. 2017-1768 of 27 December 2017, article 1. See also. Pradel and Pardel-Boureux, *JCP S* (2018): 1022.

[365] These include, in particular, the obligation to inform and train employees on the risks to their health and safety (article L. 4141-1 of the French Labour Code), the content of which is determined in association with the occupational physician (article R. 4141-6 of the French Labour Code), and which takes place during normal working hours (R. 4141-5 of the same code).

[366] See, for example, concerning older workers: article 21-3 of the NCC for home help, support and care services. See also Title VI, article (single) 06.04 of the NCC for private and non-for-profit hospital and nursing establishment Hospitalisation, Risk prevention. Similarly, article 89 of the NCC for private hospitals; articles 35, 88.2 and 88.3 of the NCC for establishment and services for maladjusted and disabled persons (not extended).

[367] Expression enshrined in the law of 4 May 2004, the wording of which comes from the EU memorandum of 30 November 2001.

The aims of continuing vocational training are very diverse: to enable adaptation to changes in techniques and working conditions, to promote social advancement, to support job transformation, to facilitate professional mobility and to enable people to return to work. It is organised by the State, local authorities, educational establishments, employers' and employees' professional organisations and, above all, companies.

Under French law, a distinction is made between the right to free and compulsory education (versus instruction under the Constitution) up to the age of 16, which corresponds to so-called initial training, and the right to so-called continuing vocational training. Apprenticeships are part of the so-called alternating initial training. Unlike national education, which is provided by the public sector, continuing education is provided by the market. Since a 1971 law, vocational training has been a subject of great interest to legislators and social partners in France. It was last reformed by the law of 5 September 2018 on the freedom to choose one's professional future. It occupies the whole of Part VI of the Labour Code. Furthermore, training, skills and professional classification are closely linked in legal and collective bargaining law.

We will first present some general considerations on vocational training law (6.3.2), followed by the law on vocational training in the private sector (6.3.1), on the understanding that the law on continuing vocational training for public employees is very similar to that applicable to the private sector. Article L 421-2 of the General Civil Service Code states that

> Public administrations, local authorities and hospital establishments shall implement, for the benefit of their employees, a coordinated policy of lifelong vocational training and social advancement. This policy, which is similar in scope and means to that defined in Title I of Book III of Part Six of the Labour Code, with the exception of the chapter on professional interviews, takes account of the specific nature of the civil service.[368]

6.3.1 General Considerations on Vocational Training Law

The aim here is to present the principles governing vocational training law (6.3.1.1) and the players involved in its implementation (6.3.1.2). These considerations are generally set out in the preambles to the collective agreements or industry-wide collective agreements applicable in the *care* sector.

[368] The individual rights of civil servants include the right to lifelong professional training (article L. 115-4 of the General Civil Service Code) and the right to have a personal activity account (article L.115-5 of the General Civil Service Code). The right to lifelong training for civil servants pursues objectives comparable to those of employees: to encourage their professional and personal development, to facilitate their career development, mobility and promotion, as well as access to the various existing levels of professional qualification, to enable them to adapt to foreseeable changes in professions and to contribute to equal access to the various grades and jobs, in particular between women and men, and to the advancement of the least qualified.

6.3.1.1 General Principles

The right to training is governed by four main principles: lifelong learning (6.3.1.1.1), lifelong vocational guidance (6.3.1.1.2), equal access to training (6.3.1.1.3) and access to vocational certification (6.3.1.1.4).

6.3.1.1.1 Lifelong Learning

Lifelong training is a national obligation:

> it aims to enable all individuals, regardless of their status, to acquire and update the knowledge and skills that will facilitate their professional development, and to progress to at least one level of professional qualification during their working life. It is a key factor in securing career paths and promoting employees.[369]

To this end, everyone, regardless of their employment status (employee/self-employed/liberal), has a personal training account from the moment they enter the labour market.

The NCC for home help, support and care services of 2010 (extended) devotes an entire chapter to lifelong training, in which it spells out the objectives of implementing specific measures for unskilled jobs and measures to inform staff about all the training and development opportunities available, particularly for employees who have been working in the sector for more than 15 years, and to generalise the practice of professional interviews. In this respect, the collective agreement lays down the principle that

> all unqualified employees should be offered a job-related training course leading to a professional qualification or diploma within a maximum of 3 years of being recruited, subject to sufficient funding.

The 2012 NCC for personal services companies attributes to vocational training the objective of enhancing the sector's specific know-how to "motivate employees and ensure the construction of a professional identity".

The inter-branch agreement of 27 November 2020 for individual employers and home based employment 2021sets out the objectives of the sector's professionalisation policy. The aim is to respond to the challenges facing the sector in terms of the growing needs of society in terms of home support, the acquisition of new skills, promoting the attractiveness and diversity of the professions in the professional sector, ensuring that employees' career paths and employment are secure, and supporting forward-looking management of jobs and skills. All other care workers are subject to the Labour Code and the collective agreements of the professional sector to which their company belongs.

[369] Article L. 6111-1 of the French Labour Code.

6.3.1.1.2 Lifelong Career Guidance

Everyone, regardless of their employment status, has the right to be informed, advised and supported in matters of career guidance as part of the right to education guaranteed by art. L. 6111-1 of the Education Code.[370] As the first concrete expression of the right to career guidance, the State has created a free online service accessible to anyone, enabling them to obtain initial information and personalised advice on career guidance and to be directed towards more specialised structures. The right of all individuals to benefit free of charge throughout their working life from career development advice is intended to promote the development and security of their career path. This right is implemented free of charge at regional level by a dedicated operator as part of the regional public guidance service.[371]

6.3.1.1.3 Equal Access to Training

The law sets out the principle of equal treatment for men and women in vocational training; however, as a transitional measure, by regulation or agreement, measures may be taken for the sole benefit of women in order to establish equal opportunities. The principle of equal access also applies to the disabled and similar persons.

The 2012 NCC for personal services companies devotes a large part of its preamble to the principle of non-discrimination and equal treatment.

> Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector, the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms. A periodic report on this subject will be drawn up at branch level on the basis of information collected from companies in the sector.

Apart from any legal obligation, the agreement provides that in companies with a works council, an "equal opportunities correspondent" should be appointed from among the staff to "monitor the training, awareness-raising and anti-prejudice and anti-stereotyping initiatives carried out by the employer". Notwithstanding the employer's legal obligations, an assessment report is produced annually by the "equal opportunities correspondent".

> This report summarises: the company's recruitment procedures, the distribution of new recruits with indications of gender, age and any cases of disability. This report is sent to the works council as part of the single annual report. It will also be sent to trade union delegates as part of the mandatory annual negotiations. More generally, all supervisory staff in companies in the sector must be trained to manage human resources in a way that guarantees non-discrimination and promotes equality.

[370] Article L. 6111-3 of the French Labour Code.
[371] Article L. 6111-6 of the French Labour Code.

6.3.1.1.4 Access to Professional Certification (Training/Skills)

This idea of skills certification was recently enshrined by the legislator in the law of 5 September 2018. The aim is to validate the acquired knowledge required to carry out professional activities defined in a reference framework that describes the work situations and activities carried out and that is associated with a skills reference framework and a development reference framework. A national register of professional qualifications is drawn up and updated by a national institution called "France Compétences". These qualifications are drawn up jointly by the professional sectors.

6.3.1.2 The Players

Four players are involved in continuing training: the State and the regions (6.3.1.2.1), the social partners (6.3.1.2.2), companies (6.3.1.2.3) and training providers.

6.3.1.2.1 The State and the Regions

The State is responsible for initial vocational training for young people, while the Region is responsible for regional policy on access to vocational training for young people and adults seeking employment or a new career direction. The State has a body created by the law of 5 September 2018 on the freedom to choose one's professional future: "France compétences", the keystone of the governance of the training and work-linked training system. The body's many missions are listed in article L. 6123-5 of the French Labour Code. In particular, it is responsible for distributing pooled training and work-linked training funds among the various training funders. The State exercises general administrative and financial control over training initiatives carried out by employers when they are financed by the State, local authorities, etc., as well as over compliance with the obligations set out in article L. 6323-13 of the French Labour Code. Administrative and financial control of expenditure covers all financial, technical and teaching resources.

The regions are responsible for implementing the national training strategy. Each region has a regional employment, training and career guidance committee. In particular, they are responsible for organising information campaigns on careers and training, as well as on gender diversity and equality in the workplace.

6.3.1.2.2 The Social Partners

Continuing training is a matter for collective bargaining at national, cross-industry, branch and company level. The law leaves it to industry-level negotiations to define the priorities, objectives and resources of vocational training. The law requires collective bargaining to take place every 3 years. Unlike in the case of working hours, company agreements on vocational training cannot be derogatory. The reason for this is simple. If training is to fulfil one of its objec-

tives, which is to support employees' professional mobility, it must be designed according to the needs of the sector and not just those of the company. In addition to the obligation to negotiate on training, the French vocational training system is characterised by its joint management. In some branches, the partners have set up a forward-looking observatory for trades and qualifications.[372]

Collective branch agreements set training action priorities for 3-year periods. The 2012 NCC for personal services companies also targets two types of priority, including unqualified workers, young people and senior citizens, regardless of the size of the company. In particular, the aim is to make it easier for these employees to access continuing vocational training by developing literacy courses, combating illiteracy, and introducing and perfecting the French language.

The 2020 inter-branch agreement on the NCC for individual employer and home-based employment specifies that the sector's professionalisation policy must enable it to cope with future demographic changes. It must respond to the growing needs of society in terms of support in the home, while adapting to technological and environmental changes that will progressively require the development and acquisition of new skills. It also aims to improve professional practices.

6.3.1.2.3 The Company

One of the company's first obligations is to contribute each year to the financing of training and apprenticeship in various ways: by direct financing of training initiatives for their employees, by payment of the one-off contribution to vocational training, by payment of the contribution dedicated to financing the personal training account for holders of fixed-term employment contracts and, where applicable, by payment of additional contributions provided for by national professional agreement… Companies with fewer than 11 employees pay Urssaf 0.55% of the business income used to calculate social security contributions under article L. 242-1 of the Social Security Code. In companies with more than 11 employees, this contribution amounts to 11%. The sums are collected by France Compétences and are earmarked for the financing of work-linked training, career development advice, skills development for employees in companies with fewer than 50 employees, training for jobseekers and the personal training account. These funding obligations do not apply to the State, public establishments in the hospital civil service or local authorities.

It should be noted that the law of 5 September 2018 for the freedom to choose one's professional future confirmed the singularity of the branch of individual employers and home-based employment by adapting the methods of organising and financing vocational training to the specific features of the branch. The decree of 28 December 2018 on contributions paid by certain categories of employers enshrines the mandating by individual employers of the

[372] This is the case with the 2010 NCC for the home help, support and care services.

Association Paritaire Nationale d'Information et d'Innovation pour la mise en œuvre des garanties sociales des salariés (APNI).[373] An inter-branch agreement was signed on 27 November 2020 for the implementation of a professionalisation policy in the sector of individual employers and home-based employment. Two contributions are paid by individual employers: one is a legal exception provided for in article L. 6331-57 of the Labour Code (0.15%) and the other is a conventional contribution (0.40% calculated on the basis defined by article L. 6331-58 of the Labour Code) to enable broader funding. In addition, the inter-branch agreement of 2020 on the professionalisation of workers in the sector recalls the specific features of the professions in this sector of activity, which are as follows: the place where the activity is carried out is not the company, but the employer's private home; the employment relationship between the employer and the employee has no profit-making or commercial purpose (the employer is a citizen assuming the responsibility of employer); the sector is characterised by a high proportion of employees in multi-employment situations. All these features are taken into account when implementing the right to training for workers in this sector.

6.3.2 Vocational Training Schemes in the Private Sector

A distinction will be made between training initiated by the employer (6.3.2.1) and training initiated by the employee (6.3.2.2). It should be noted that the 1976 collective agreements for establishments and services for the maladjusted and disabled, the 2002 collective agreements for private commercial hospitals and the 1951 collective agreements for private not-for-profit hospitals essentially reproduce the legal provisions. Consequently, the following sections will focus on the collective agreements in the home care sector.

6.3.2.1 The Employer's Obligations

In addition to the obligation to contribute financially to training, the employer has a dual obligation: to adapt employees' skills (6.3.2.1.1) and to negotiate collectively on vocational training (6.3.2.1.2).

6.3.2.1.1 An obligation to Adapt and Maintain Employees' Skills as Their Workstations Change

This obligation, which was discovered in a court case[374] in which the judge of the Cour de cassation invoked the employer's general obligation to perform in good faith when assessing the merits of a decision to make employees re-

[373] Two decrees dated 21 December 2018 and 27 January 2020 have also been issued to apply the law to this sector.

[374] Cass. soc. 25 February 1992, Bull. Civ, V, no. 122. Expovit.

dundant, was legalised by the law of 19 January 2000, reformed by the law of 4 May 2004. This obligation was enshrined in two complementary ways. On the one hand, redundancies for economic reasons can only take place when "all efforts at training and adaptation have been made". Failing this, the dismissal is devoid of any real and serious cause.[375] On the other hand, and more generally, the employment contract gives rise to an obligation on the part of the employer to adapt employees to their jobs and "to ensure that employees maintain their ability to hold down a job, particularly in the light of changes in jobs, technologies and organisations" and to "offer training to help develop skills, including digital skills, and to combat illiteracy".[376]

Since the law of 5 September 2018, the non-compulsory skills development plan has replaced the training plan.[377] This plan no longer distinguishes between training to adapt to the job and training to develop skills. A distinction remains between compulsory training and other training. Compulsory training includes all training that is a prerequisite for the performance of an activity or function in application of an international agreement or legal or regulatory provisions. Such training is systematically considered as actual working time and gives rise to continued remuneration. Other training courses are also considered to be actual working time and give rise to continued remuneration, subject to a collective agreement at branch or company level[378] providing for all or part of the training to be carried out outside working hours, with the agreement "being able to provide for compensation to offset the cost of childcare" or, at the employer's request and with the employee's agreement, up to a limit of 30 hours per year and per employee,[379] which the legislator has called co-investment.

The 2012 NCC for personal services companies devotes a specific chapter to forward-looking management of the employment and skills of seniors (people aged over 45). A three-yearly analysis of changes in the employment of seniors in the branch must be carried out, including: an age pyramid; details of the arduous nature of jobs; an indication of the percentage increase and promotion by age bracket and job; and an indication of the number of training days. Job retention measures will cover: job adjustments to take account of arduous working conditions; training in the use of new technologies; a progress report on the job held and in the profession. In addition, for employees working in the field, personal services jobs can generate certain physical burdens inherent to the activity. As a result, senior employees who so wish should be given priority for career development in the profession towards positions involving less physical work or even towards sedentary positions. Lastly, senior employees who have been

[375] Article L.133-4 of the French Labour Code.

[376] Article L. 6321-1 of the French Labour Code.

[377] The 2010 NCC for the home help, support, care and services sector encourages employers to adopt a training plan, regardless of the size of the company's workforce.

[378] Article L. 6321-6 of the French Labour Code

[379] Article L. 6324-6 of the French Labour Code.

in the profession for a long time and who wish to do so can provide support for newcomers to the profession through tutoring, which aims to share the experience they have acquired in the profession.

6.3.2.1.2 An Obligation to Negotiate

Although the law gives priority to industry-level negotiations on continuing vocational training, it does reserve some important powers for the company, including the obligation to negotiate a forward-looking jobs and skills management (GPEC) plan every 3 years in companies with more than 300 employees. These negotiations will also cover the broad outlines of vocational training within the company over the next 3 years, as well as the skills development plan. The aim is also to respond to the challenges of the ecological transition and the accompanying measures that must be associated with it in terms of training and top-up of the personal training account, validation of acquired experience and skills assessment. Each year, the Social and Economic Council is consulted on the multi-year training program, the prevention and training initiatives planned by the employer, the skills development plan and the direction of professional training.

Training is also part of the employer's management powers, which must be exercised in consultation with staff representative bodies. Employees are informed when they are recruited that they are entitled to a professional interview every 2 years to discuss their career development prospects, particularly in terms of qualifications and employment. This interview will result in a written document, a copy of which will be given to the employee. Every 6 years, the professional interview provides an overview of the employee's career path, which must be formalised in writing. This ensures that the employer has carried out the two-yearly interviews, and that the employee has attended at least one training course, validated the experience acquired or benefited from salary or career progression. In companies with at least 50 employees, if the employee has not benefited from the interviews and at least 2 of the 3 measures mentioned above, the employer must add 3,000 euros to the employee's personal training account.

The 2010 NCC for the home help, support, care and services sets out in full the legal provisions on the professional interview.

The NCC for personal services companies of 2012 stipulates that all employees reaching the age of 45 must have a professional progress review (interview 2nd part of the career) in the year following their 45th birthday. During this interview, the employer informs the employee of his or her rights to access a skills assessment or professional development program.

6.3.2.2 Employee Rights

An employee's right to training can be broken down into 3 individual rights: the right to professional qualification; the right of initiative to training (the personal training account created by the law of 14 June 2013 to replace the individual right to training; it is open to anyone aged 16 or over)

and the right to be informed, advised and supported in terms of career guidance. Employees can take various training initiatives: the personal training account (6.3.2.2.1), professional retraining (6.3.2.2.2), professionalisation contracts (6.3.2.2.3) and validation of acquired experience (6.3.2.2.4) and skills assessment (6.3.2.2.5).

6.3.2.2.1 The Personal Training Account

The "professional transition" CPF, created in 1971 and reformed by the law of 5 September 2018 under the name of individual training leave, is designed to help people change jobs or professions as part of a professional transition project.[380] Employees must have been employed by the company for at least 24 months. The request must be made in writing to the employer, who is not entitled to refuse but may simply postpone it in certain situations. Transition employees are entitled to a minimum remuneration set by regulation. The duration of the professional transition project corresponds to the duration of the training course, and cannot be deducted from annual paid leave. This leave is treated as a period of actual work for the purposes of determining entitlement to annual leave and seniority in the company.

The Personal Training Account was created by the Law of 4 May 2004 to enable all employees to receive training throughout their working lives. It is an individual right of employees with open-ended employment contracts; this right took the form of a training credit of 20 h/year that could be accumulated up to 120 h per 6-year period. Replaced by the personal training account under the law of 14 June 2013 on securing employment, it was enshrined unchanged by the law of 2018, which reiterated it in the following terms:

> In order to promote their access to lifelong vocational training, each person has, from the moment they enter the labour market until retirement, regardless of their status, a personal training account which contributes to the acquisition of a first level of qualification or to the development of their skills and qualifications by enabling them, on their own initiative, to benefit from training.[381]

This right may be exercised by any person, whether employed, seeking employment, self-employed, a member of a liberal or self-employed profession or a collaborating spouse.

The Personal Training Account, together with the Personal Account for the Prevention of Penal Injury and the Citizen Commitment Account, make up the Personal Activity Account (CPA). The aim of the CPA is to give its holders greater autonomy and freedom of action, and to make their career paths more secure by removing obstacles to mobility. It also contributes to the right to professional qualification.

[380] Article L. 6323-17-1 of the French Labour Code.

[381] Article L. 6111-1 of the French Labour Code.

Employees who have worked at least half of the legal or contractual working time over the whole year may contribute to the Personal Training Account up to a maximum of 500 euros per year worked, up to a maximum of 5,000 euros.[382] The rights registered on the Personal Training Account are portable in the sense that they remain acquired in the event of a change in the holder's professional situation or loss of employment.

The CPF is used solely on the employee's initiative. However, if the training courses the employee wishes to follow are taken during working hours, the employer's agreement is required. Employees are completely free to use their personal training account, provided that the training leads to professional qualifications registered in the national register. Also eligible are actions to validate acquired experience, skills assessments, etc..[383]

The 2010 NCC for the home help, support, care and services provides an exhaustive list of training courses eligible under the personal training account.[384]

The 2012 NCC for personal services companies incorporates the legal features of the personal training account.

The NCC for personal services companies of 2012 specifies that it encourages the pooling of resources in terms of the personal training account for multi-employer employees (of different statuses), particularly when they carry out an activity within the framework of the branch of employees of the private individual employer. To this end, if the employee is a multi-employer, and if he or she uses his or her acquired rights with his or her various employers, he or she will be given priority for implementing the individual right to training (DIF) as long as the action in question is recognised as a priority by the branch of private personal services companies.

The 2020 inter-branch agreement on individual employers and home-based employment creates a specific tool for the branch with a view to facilitating worker mobility and eliminating the possible perverse effects of multiple employers. This is an inter-branch professional passport enabling employees to: retrace

[382] The amount reached must be used, failing which the account will be frozen.

[383] Article L. 6323-6 I of the French Labour Code.

[384] Article 14-2 of the NCC: the State diploma in educational and social support (DEAES); the State diploma in nursing care (DEAS); the complementary home help qualification; the professional qualification of family life assistant; the State diploma in social and family intervention technician (DETISF); the State diploma in nursing (DEI); the State diploma in family social economy counselling (DECESF); the BTS in health and social sector services and provision; the BEP in health and social careers; added by the social partners: BEPA option services, specialising in personal services; BEPA option économie familiale et rurale; CAP agricole, option économie familiale et rurale; CAP agricole et para-agricole employé d'entreprise option employé familial; CAP petite enfance; CAP employé technique de collectivités; titre employé familial polyvalent; brevet d'aptitudes professionnelles assistant-animateur technique (BAPAAT). Training to acquire the knowledge and skills base defined by decree (CLEA); skills assessments and training to set up or take over a business; and any training listed on the national industry list, the national cross-industry list (COPANEF) or a regional cross-industry list (COPAREF).

their professional experience and the skills they have acquired in the private individual employer and home-working sector; list the professional certifications held by the branches that they have acquired and the training courses they have taken in the sector. In this respect, the professional passport is designed as a tool for enhancing skills, in particular with a view to validating acquired experience (VAE), employability and social recognition of the employee's professionalism. It demonstrates employees' commitment to continuous improvement in their professional practices. It is distinct from the orientation, training and skills passport. This passport, which is separate from the orientation, training and skills passport, is provided for in the French Labour Code and is accessible to anyone via the dematerialised information service dedicated to the personal training account. The inter-branch agreement also provides for the specific case of multi-employer workers. For example, in the case of shared childcare, as provided for in the national collective agreement for employees of private individual employers, the implementation of training is subject to the joint agreement of both employers. The employer who initiated the training project or the employer chosen by the employee to implement the training is the "sponsoring employer". The sponsoring employer gives a mandate to the Association Paritaire Nationale Interbranche (APNI) to ensure the direct payment of remuneration and living expenses during the training course, with the APNI thus acting as a relay employer in accordance with article 14 of the inter-branch agreement.

6.3.2.2.2 Professional Retraining

The aim is to enable employees to change jobs or professions or to benefit from social or professional advancement through training or validation of experience. It applies to employees on permanent full-time or part-time contracts. It applies to employees whose qualifications are below a level determined by decree (corresponding to a bachelor's degree). The list of professional qualifications eligible for retraining will be drawn up by collective branch agreements, and the remuneration of employees undergoing retraining may be paid by the skills operator under conditions laid down by decree. These actions may take place in whole or in part outside working hours, at the initiative of the employee or the employer and with the written agreement of the employee.[385] If they take place during working hours, the employer will continue to pay the employee.

6.3.2.2.3 Professional Training Contracts

The purpose of this contract is to enable the employee to acquire one of the qualifications set out in article L. 6314-1 of the French Labour Code and to promote professional reintegration. It is intended to supplement the initial training of people aged between 16 and 25 and jobseekers aged 26 and over who have not

[385] Article L. 6324-7 of the French Labour Code.

completed a second cycle of secondary education and who do not hold a technological or vocational diploma, which may concern many care workers. According to article L. 6325-3 of the French Labour Code, the employer undertakes to provide the employee with training enabling him or her to acquire a vocational qualification and to provide him or her with a job related to this objective for the duration of the fixed-term employment contract or the vocational training course under the open-ended contract. The employee, for his part, undertakes to work for his employer and to follow the training provided for in the contract. The employee is supervised by a company tutor. The contract is concluded in writing for a fixed or indefinite period. The French Labour Code sets out the conditions relating to pay and working hours, as well as the duration and implementation of the professionalisation measures (from 6 to 12 months), which may be increased or extended by agreement or collective branch agreement.

This is the case with the NCC for the home help, support and care services of 2010, which has decided to extend the minimum duration of the professionalisation action for retraining or promotion through work-linked training to twenty-four months for all employees in the branch, and which specifies that holders of professionalisation contracts aged at least 26 will receive, for the duration of the fixed-term contract or the professionalisation action of the permanent contract, remuneration that cannot be less than either the minimum wage or 85% of the minimum conventional remuneration. In accordance with article L. 6324-3 of the French Labour Code, the social partners in the home help, support, care and services sector have decided to give priority to the eligibility of certain professional qualifications.[386]

As for the NCC for personal services companies of 2012, it specifies that the duration of the training courses may be between 25% and 40% of the duration of the contract (or of the professionalisation period for an open-ended contract), when the nature of the qualification in question so requires, or for groups whose list is broader than that recommended by the law, including in particular: people suffering from illiteracy, people who have not completed upper secondary education (lycée), jobseekers over the age of 45 and employees with at least 1 year's seniority in the personal services sector. It sets the same rates of pay as the NCC for the home help, care, support and care services of 2010.

[386] Article 21-3 of the NCC covers the following diplomas: the diplôme d'État d'accompagnant éducatif et social (DEAES); the titre d'assistant de vie aux familles (ADVF); the diplôme d'État d'aide-soignant (DEAS); the diplôme d'État de technicien d'intervention sociale et familiale (DETISF); the diplôme d'État d'infirmier (DEI); the Bac pro accompagnement, soins et services à la personne (ASSP); the Bac pro services aux personnes et aux territoires (SAPAT); BEPA services aux personnes; BEPA, option économie familiale et rurale; CAP agricole services aux personnes et vente en espace rural (SAPVER); CAP accompagnant éducatif petite enfance (AEPE); CAP assistant technique en milieu familial et collectif (ATMFC); titre complet employé familial; brevet d'aptitudes professionnelles d'assistant animateur technicien de la jeunesse et des sports (BAPAAT); mention complémentaire aide à domicile (MCAD).

6.3.2.2.4 Validation of Acquired Experience

A public service for the validation of acquired experience has been created with the task of guiding and supporting any person requesting the validation of acquired experience who can prove that their activity is directly related to the content of the targeted certification. The validation of prior learning can only be carried out with the consent of the employee, and refusal to do so is neither a fault nor a reason for dismissal. The employee is entitled to leave if he or she has all or part of his or her prior learning validated during working hours and on his or her own initiative. The employer may not refuse an employee's request for leave of absence, but may only ask for it to be postponed for service reasons. The hours devoted to the validation of prior learning for which authorisation has been granted by the employer constitute working time and entitle the employee to continued remuneration and social protection. The Regional Committee for Employment, Training and Vocational Guidance and France Compétences will monitor the validation of prior learning on a statistical basis.

The NCC for the home help, support and care services of 2010 recognises this possibility for all employees, regardless of their length of service with the company, for a period of 24 hours' working time or 35 hours for employees who have not attained a level of training attested by a diploma classified at level V of the répertoire national des certifications professionnelles (national register of professional certifications) or a contractual certification.

The NCC for personal services companies of 2012 specifies, with regard to the validation of acquired skills, that employees aged 45 or over are particularly targeted and that, in any event, after 20 years of professional activity or as from their 45th birthday, any employee who so requests benefits, subject to a minimum of 1 year's seniority in the company, from priority access to VAE.

6.3.2.2.5 Skills Assessment

The purpose of the skills assessment is to enable employees to analyse their professional and personal skills, as well as their aptitudes and motivations, in order to define a career plan and, where appropriate, a training plan.[387]

The NCC for home help, support and care services of 2010 recognises this right to skills assessment leave for any employee with at least 5 years' seniority, consecutive or otherwise, as an employee, whatever the nature of successive employment contracts, including 12 months within the structure, in accordance with legal and regulatory provisions.

The 2012 NCC for personal services companies specifies that skills assessment is particularly aimed at employees aged 45 or over.

[387] Article L. 6313-4 of the French Labour Code.

7. Social Security Coverage and Benefits

7.1 Social Security Regulations

France has introduced a right to social security linked to professional activity which has evolved (7.1.1) but which now faces new challenges (7.1.2).

7.1.1 Main Features of Social Security Law

At the beginning of the XXth century, France introduced non-contributory assistance benefits based on need, while contributory benefits depended on contributions. In 1945, French social security, initially intended for workers, was extended to the entire population, including the self-employed and the unemployed, on the basis of solidarity and universality. This process heralded the possible future autonomy of social security from labour law, although these two branches of law remain highly interdependent.

The French social security system is made up of several schemes, the largest of which is the general scheme, covering around 2/3 of the population, mainly private sector employees.[388] It is based on the contributory principle,[389] whereby benefits are linked to social security contributions and professional activity. However, there is a trend towards universalisation, resulting in rights that are increasingly linked to the individual and less and less to employment status, and from the point of view of financing social protection, increasing taxation.

7.1.2 Evolution, Contemporary Challenges and the Role of Collective Bargaining

Two main challenges can be identified. The first is the ageing of the population. Numerous studies and public reports have shown that as the population ages, appropriate measures need to be taken in terms of public policy on prevention, combating isolation[390] and situations of vulnerability and dependency, or loss of

[388] Today, it comprises 6 branch: the health branch (Cpam, Carsat, etc.) provides social healthcare cover for everyone; the ATMP branch (Cpam, Carsat, etc.) manages the occupational risks faced by workers; the retirement branch (Carsat, CnaV, etc.) pays pensions to retired workers in industry, services and commerce. It follows employees throughout their careers and helps them prepare for their retirement; the collection branch (which, unlike the others, does not manage a risk, but collects social security contributions to redistribute them for the benefit of the other branches); the autonomy branch (CNSA), created in January 2021, manages expenditure linked to the autonomy of the elderly and disabled; the family branch (Caf) helps families in their daily lives and develops solidarity with vulnerable people (maternity, invalidity, etc.).

[389] This principle is largely dominant in social security law. The contributory principle is the founding element common to all schemes, even if a certain amount of taxation is levied on social security contributions.

[390] See in particular Act no. 2015-1776 of 28 December 2015 on adapting society to ageing, chap. III.

autonomy for the elderly.[391] Two laws have attempted to meet this challenge. The first is Article 1st of Law no. 2015-1776 of 28 December 2015 on adapting society to ageing, which states that "adapting society to ageing is a national imperative and a priority for all of the nation's public policies".[392] The aim is to define "the principles and objectives of a coordinated policy of social action to preserve the independence of the elderly",[393] conducted by the State and the various bodies managing the schemes of the social security system, namely the Caisse nationale d'assurance vieillesse des travailleurs salariés, the Caisse centrale de la mutualité sociale agricole, the Caisse nationale du régime social des indépendants and the Caisse nationale de retraites des agents des collectivités locales.

Then, the law of 7 August 2020 on the social debt and autonomy established that

> the Nation affirms its attachment to the universal and mutually supportive nature of the provision of autonomy support, provided by social security. Everyone, regardless of age or state of health, is guaranteed cover against the risk of loss of independence and the need for independent living support.[394]

As a result, in 2021, a 5th branch dedicated to independent living has been created to meet this challenge.

To improve the governance of autonomy policies, bodies such as the Haut Conseil de la Famille, de l'Enfance et de l'Age[395] and the Caisse Nationale de Solidarité pour l'Autonomie[396] have been set up at national level. However, local governance is an important marker of public policy, since the coordination of actions to prevent and support loss of autonomy is the responsibility of the département[397] and in particular the Conseil départemental de la citoyenneté et de l'autonomie.[398]

The second challenge is the difficulty of financing the social security system and repaying the deficits that have accumulated year after year. The issue of funding is at the heart of the latest policies to prevent and combat isolation and preserve autonomy. By way of illustration, the aforementioned 2015 law amends IV of article L. 14-10-5-2° of the Family Social Action Code as follows:

[391] The aforementioned 2015 law reinforces the improvement of the APA, the overhaul of home help (previously covered by law no. 2005-841 of 27 July 20005 on the development of personal services and various measures to promote social cohesion), the support and enhancement of family careers, and the improvement of social and medico-social services across the country.

[392] Article 1 of the law of 28 December 2015.

[393] New Article L. 115-9 of the Social Security Code.

[394] Article 5 of the 2020 Act introduces a new III to Article L. 111-2-1 of the Social Security Code.

[395] Articles L. 142-1 et seq. of the French Social Action and Family Code.

[396] Article L. 14-10 -1 of the French Social Action and Family Code.

[397] Article L. 113-2 of the French Social Action and Family Code.

[398] Articles L. 149-1 et seq. of the French Social Action and Family Code.

> the financing of expenditure on modernising services that provide assistance with everyday tasks in the homes of the frail elderly and disabled people, expenditure on professionalising their staff and workers directly employed for this purpose by the frail elderly and disabled people, expenditure on supporting projects to create and consolidate multi-purpose home help and care services, expenditure on supporting family carees, expenditure on training family carees [...], expenditure on training and support for volunteers who help to maintain social ties for the elderly and disabled, and expenditure on training and qualifications for care staff in the establishments and services mentioned in 1e and 3e of Article L. 314-3-1.

In addition, an analysis of the various social security financing laws shows a gradual and increasingly marked shift towards tax-based financing of the social protection system and, conversely, a relative decline in financing through social contributions. As a result, the State is playing an increasingly important role in the direction and strategic choices governing social security law. An emblematic example of this is the latest pension reform introduced by law no. 2023-270 of 14 of April 2023 of the amended social security financing act for 2023,, the flagship measure of which is the increase in the statutory retirement age from 62 to 64.

While public policy is largely focused on protecting vulnerable people in care, it is also concerned with care workers. From the point of view of care workers, the challenge lies in fighting for recognition of their daily commitments and their difficult working conditions. Several provisions deal with their training, qualifications and working conditions, at a time when their deterioration is being denounced in recurring collective labour disputes.

The COVID-19 health crisis highlighted the extent of this deterioration in working conditions and led to a wide-ranging consultation between the various social players in the medico-social sector, which resulted in the signing of major agreements on 13 July 2020[399] known as the "Ségur de la santé", with the aim of upgrading jobs in health establishments and establishments providing accommodation for dependent elderly people and making public hospitals more attractive. The latest political developments also reflect a resurgence in the issue of improving working conditions for careers (night work, on-call duty, pay). This led to an announcement by the government that it would raise the pay of nurses and nursing assistants (in the public sector) for night work, which will now be paid at a rate of +25%.

7.2 Social Security Benefits (Coverage of Social Risks: Sickness, Maternity, Disability, Death, Occupational Injuries, Unemployment)

On 14 June 1974, France ratified ILO Convention no. 102 concerning Social Security (Minimum Standards), 1952, and Convention no. 3 concerning Mater-

[399] The Ségur healthcare agreements were signed on 13 July 2020 by the Prime Minister, the Minister for Solidarity and Health, and a majority of trade unions representing non-medical professions (FO, CFDT, UNSA) and public hospital medical staff (INPH, SNAM-HP, CMH).

nity Protection, 16 December 1950. As a result, the social protection system covers both private-sector careers s and public-sector employees in the *care* sector.

The French system provides social cover for private-sector careers (7.2.1) and a special scheme for public-sector careers (7.2.2).

7.2.1 Social Security Cover for Care Workers in the Private Sector

Social cover for careers includes ordinary social benefits (7.2.1.1) and cover for accidents at work and occupational illnesses (7.2.1.2), supplemented by unemployment insurance benefits (7.2.1.3).

7.2.1.1 Social Insurance

Social insurance includes sickness and maternity insurance benefits (7.2.1.1.1), disability insurance benefits (7.2.1.1.2) and old age and death insurance benefits (7.2.1.1.3).

7.2.1.1.1 Sickness and Maternity Insurance Benefits (Specific Provisions for Pregnant Women)

In France, the social insurance scheme provides health insurance benefits subject to certain eligibility conditions,[400] including membership of a social security scheme, residence in France and payment of social security contributions.

Health insurance benefits cover the partial reimbursement of medical expenses, the cost of hospitalisation in public or private establishments, including the fixed hospital charge, dental expenses (treatment, prostheses, orthodontics) and optical expenses (glasses, contact lenses), full cover for maternity expenses, including pre-natal consultations and post-natal care, specific cover for patients with long-term conditions, cover for workers who have suffered accidents at work or occupational illnesses with daily allowances and care abroad, both within the European Union and in certain countries outside the European Union. Details of benefits vary according to the situation of each insured person and changes in legislation, so it is advisable to consult your health insurance fund (CPAM, MSA, etc.) for specific information and applicable reimbursement rates.

Careers are covered by the same maternity insurance scheme as all employees. Maternity leave lasts for 16 weeks for normal pregnancies and gives rise to the payment of daily allowances to compensate for the loss of income[401] (paternity

[400] Article L. 411-1 or article L. 411-2 of the French Social Security Code.

[401] With particular regard to the private employer branch, the national collective agreement provides that an employee on maternity leave may receive daily allowances paid by the Social Security under the same conditions as other employees. However, the collective agreement does not provide for continued payment of wages. The employer is therefore under no obligation to pay any additional salary. Nor is the IRCEM (provident fund) obliged to guarantee additional remuneration in the form of supplementary benefits).

leave and childcare leave). Medical care related to pregnancy and childbirth is covered at 100%, including prenatal consultations, ultrasounds and childbirth. Parental leave is provided for after maternity leave. The employment protection rights of pregnant careers have been strengthened, with the right to return to work after maternity leave. In the event of exposure to occupational risks, specific measures may be put in place (e.g. night work, shorter working hours, carrying heavy loads), or even adjustments to working hours (due to recognition of occupational risks; rest; night work; absences; care cover; maternity leave; daily allowances; parental leave; job protection.[402]

7.2.1.1.2 Disability Insurance Benefits

In France, disability insurance benefits are designed to provide financial support for individuals who become disabled, i.e. who are totally or partially unable to work due to illness or accident. These benefits are mainly managed by the Social Security system. In addition, supplementary health insurance provides a guarantee of income in the event of temporary incapacity for work, disability or death.[403]

When a person is recognised as disabled by the Social Security system, they may be entitled to an invalidity pension. This pension is calculated on the basis of the person's degree of invalidity, previous income and ability to work. It is intended to compensate for the loss of income caused by the inability to work.

Adults of working age may also be entitled to the Allowance for Disabled Adults (Allocation aux Adultes Handicapés-AAH), a benefit designed to guarantee a minimum income for people with severe disabilities who are unable to work.

The criteria for entitlement and the amounts of these benefits vary according to the situation of each worker, in particular their resources and the severity of their disability.

7.2.1.1.3 Old-Age and Death Insurance Benefits[404]

Like all employees, care workers are entitled to a retirement allowance, but their agreement is required if they have not reached statutory retirement age. If they agree, the employment contract ends with the payment of retirement pay, equivalent to redundancy pay. Some sectors, such as the private hospital

[402] Art.8 of the NCC for personal services companies- Maternity and night work.

[403] A compulsory collective provident scheme applies to non-managerial and managerial employees, without any seniority requirement, in accordance with the collective agreement, subject to certain conditions: appendix no. 3 of the NCC for individual employers and home based employment.

[404] With regard more specifically to the arrangements for voluntary retirement and compensation for employees, the legal and regulatory provisions of ordinary law are not referred to as applying to employees in the professional branch of the private individual employers and home employment sector. Only the NCC for employees of individual employers and home based employment of 24 November 1999, extended by ministerial Ordinance dated 2 March 2000, IDCC 2111, covered the legal and regulatory provisions relating to voluntary retirement.

sector,[405] provide additional cover under collective bargaining agreements. In the event of death or serious disability, a lump sum is paid to the beneficiaries or to the insured person himself. Terms and conditions vary according to the employee's family situation and the cause of death, and funding varies between employers and employees, ranging from full coverage by the employer to an equal contribution for disability and death, subject to collective agreements.[406] Contribution rates vary according to occupational category, with a legal limit of 50% employer participation.

For civil servants in France, the retirement scheme and associated benefits differ from those in the private sector. The legal retirement age varies depending on the status of the employee. In general, civil servants have the option of retiring at a minimum age with a required number of years' service. Retirement pay for civil servants is not necessarily equivalent to redundancy pay in the private sector. It depends on the employee's status, grade, career (indexed salary, length of service) and the rules specific to each *civil* service (State, local authority, hospital). Pensions for civil servants are managed by the State Pensions Department and the Caisse Nationale de Retraite des Agents des Collectivités Locales (CNRACL) for local authority and hospital employees.

7.2.1.2 Coverage for Accidents at Work and Occupational Illnesses

7.2.1.2.1 Definition of Occupational Risks

Insurance against accidents at work and occupational diseases covers employees,[407] workers treated as employees[408] and certain categories exposed to occupational risks,[409] while public employees are covered by a dedicated national fund.[410] An accident at work is defined as a sudden and brutal action resulting in psychological bodily injury occurring during work or while commuting to and from work, with similar benefits for commuting accidents,[411] but without the possibility of invoking the employer's inexcusable fault[412] or benefiting from protection against dismissal in the event of an accident.[413] Occupational illnesses

[405] Article 84 of the NCC for private hospital article 84.3 and article 13.04 of the NCC for private non-for-profit hospital and nursing establishment.

[406] Article 13.05 of the NCC for private non-for-profit hospital and nursing establishment.

[407] Article L. 411-1 of the French Social Security Code.

[408] Article L. 412-2 of the French Social Security Code.

[409] Article L. 412-8 of the French Social Security Code.

[410] Book VIII, Title I of the General Civil Service Code: Health Prevention and Occupational Safety, Chapter IV: National Fund for the Prevention of Industrial Accidents and occupational diseases: articles L814-1 à L814-2.

[411] Article L. 411-2 of the French Social Security Code.

[412] Cass. 2e civ., 8 July 2010, no. 09-16.180.

[413] Suspension of the contract and impossibility of termination except for serious misconduct on the part of the person concerned or impossibility of maintaining the contract for a reason unrelated to the accident or illness.

are those listed in the tables,[414] but may also be recognised by a personal assessment outside these tables, in accordance with law no. 93-121 of 27 January 1993.

7.2.1.2.2 The Legal System and Social Cover for Occupational Risks

The occupational injury and disease scheme provides lump-sum compensation to victims or their dependants in the event of an occupational injury or disease, with benefits in kind to cover health expenses and cash benefits to compensate for loss of earnings. Daily allowances represent 60% of gross salary for the first 28 days of absence from work,[415] rising to 80% thereafter. A disability pension is provided for permanently disabled victims, based on the degree of disability and previous salary, financed by employer contributions and, in some cases, conditional on the worker's seniority under the applicable collective agreements.[416] Supplementary benefits may not exceed the net salary that the employee would have received had he or she continued to work.[417]

The fault of an employee who is the victim of an accident at work or occupational disease, or that of the employer, can have an impact on the right to compensation. In the event of intentional misconduct on the part of the employee,[418] he or she is entitled to ordinary health insurance benefits, while inexcusable misconduct may lead to a reduction in the pension, and serious misconduct on the part of the employer may give rise to additional compensation for the victim.[419]

7.2.1.3 Unemployment Insurance Benefit

Unemployment insurance is designed to compensate for loss of income due to involuntary loss of employment or activity. France ratified the ILO Unemployment Convention, 1919 (no. 2) on 25 August 1925. The unemployment insurance scheme is based on specific contributions and follows an insurance principle based on income prior to job loss. Eligibility criteria are strict, but certain specific situations, such as termination of the contract on the death of the individual employer, may make it easier to qualify for compensation. The scheme is governed jointly by representatives of employees and employers. What sets it apart for the self-employed is that it is more assistance-based, with conditions of access linked to financial situation and events such as compulsory liquidation.

[414] Article L. 461-1 al. 2 of the French Social Security Code.

[415] On the day of the accident, the employer pays the salary.

[416] For example, Article 84.1 and Article 84.2 of the NCC for private hospitals. See also articles 13.01.2.1 et seq. and article 13.03 of the NCC for private non-profit hospitals and nursing establishment.

[417] Article 13.01.2.4 of the NCC for private non-profit hospitals and nursing establishment.

[418] Article L. 453-1 of the French Social Security Code.

[419] Articles L. 452-1 et seq. and L. 453-1 of the French Social Security Code.

7.2.2 Social Security Cover for Public Sector Workers

In France, civil servants are covered by special schemes (with the exception of contract employees, who are covered by the general scheme)[420], managed by dedicated bodies and offering comprehensive social protection. Benefits are financed by self-insurance by the public employer, with the exception of retirement, where civil servants contribute together with their employer.

Benefits under the special civil service schemes are at least equivalent to those under the general Social Security scheme. Civil servants are divided between the three civil service schemes (State, hospital and local authority), with specific management arrangements for sickness,[421] family allowances[422] and retirement[423] depending on their status.

7.3 Supplementary Social Protection Schemes

In France, supplementary social protection is, in principle, optional, but strongly recommended to supplement basic cover. It is organised and offered by private insurers, mutual insurers and provident societies. This protection is contributory, paying and accessible according to the contributory capacity of each worker, thus complementing the compulsory social security system.

However, membership of supplementary pension schemes has been compulsory in France since the law of 29 December 1972. Similarly, since 1st January 2016, all private sector companies have been required by law to set up a compulsory collective health insurance scheme for all their employees, in accordance with article L. 911-7 of the French Social Security Code. This measure is the result of the 2013 Employment Security Act. As a result, the General Civil

[420] Article L. 829-1 of the General Civil Service Code. More generally, see Livre VIII, titre II: Protections related to illness, accident, disability or death, Chapter IX: Provisions specific to contract staff (Articles L. 829-1 à L. 829-2).

[421] Sickness benefits for civil servants are managed by mutual benefit organisations for State civil servants; a specific national fund, the Caisse nationale militaire de Sécurité sociale (CNMSS), for military personnel and the general social security scheme for local authority and hospital civil servants.

[422] Since 1st January 2005, family benefits have been paid by the family allowance funds on behalf of the State.

[423] Old-age and disability pensions are paid in three ways: - directly by the State to permanent civil servants, the cost of which is included in the State budget; - through a special fund for workers in public industrial and commercial establishments (EPICs): the Fonds spécial des pensions des ouvriers des établissements industriels de l'État (FSPOEIE), which is managed by the Caisse des dépôts et consignations (CDC); - through a national public administrative body, the Caisse nationale de retraite des agents des collectivités locales (CNRACL), for permanent local authority and hospital civil servants. CNRACL is also managed by CDC. <https://www.cnracl.retraites.fr/employeur/accompagnement-partenariat/laccompagnement-des-employeurs/demander-des-statistiques-relatives-la-population-retraitee> (accessed January 19, 2026).

Service Code devotes an entire chapter to the supplementary social protection scheme for civil servants.[424]

In general terms, the supplementary scheme places great importance on parity and collective bargaining. This takes place in three stages: first at industry level, then at company level, and finally by unilateral decision of the employer. No employee may be excluded from health cover on the grounds of a seniority clause, but certain seniority conditions remain for other benefits.[425]

7.3.1 The Supplementary Health Insurance Scheme for Careers

Supplementary health cover may vary depending on the employer, sector of activity, professional status and collective agreements in force.

Generally speaking, and particularly in the health sector, employers are obliged to offer their employees a group health insurance scheme and to contribute towards the cost of health expenses not covered by the national health insurance system. Certain self-employed healthcare professionals, such as nurses, may benefit from contractual schemes negotiated with their professional organisations for supplementary health cover. Similarly, self-employed healthcare professionals who are not covered by contract may take out private health insurance or mutual insurance to supplement their health cover.

In addition, hospital and local authority civil servants may have supplementary health cover depending on their civil service status (State, local authority, hospital).[426] From 1st January 2023, a new scheme will be introduced for public-sector employees in France. Under the Ordinance of 17 February 2021, public-sector employers will be required to fund at least 50% of supplementary social health protection for their employees, covering various risks (maternity, illness, accident, incapacity for work, disability, unfitness for work or death). Supplementary cover is offered either by the employer in the form of a group contract, or taken out individually to supplement compulsory health insurance under a majority collective agreement.[427] This obligation, which will come into effect for the French State *in* 2024, will gradually be extended to all public employers by 2026, including all civil servants, regardless of their status. The sup-

[424] General Civil Service Code, Livre VIII, Titre II: Protections related to illness, accident, disability or death, Chapter VII: Supplementary social protection: art. L. 827-1 to L. 827-12.

[425] For example, the NCC for individual employer and home based employment provides that the death benefit, education annuity and critical illness guarantees are accessible with a reduced seniority of 3 months, unlike the IRCEM (pension and provident institution) supplementary allowance, which requires 6 months. See also Title XIII, article 13.01.2.1 of the NCC for private non-for-profit hospital and nursing establishment. In the event of work stoppage due to a recognised illness or long-term condition, employees with at least 12 months' work experience in the establishment receive supplementary compensation from IRCEM (employee of a private employer).

[426] Articles L. 827-1 and L. 827-4 of the General Civil Service Code.

[427] Article L. 827-2 of the General Civil Service Code.

plementary health insurance scheme provides full cover for co-payments, daily subsistence allowances and dental expenses (at 125% of the standard rate), as well as flat-rate cover for optical expenses, ranging from €100 to €200 depending on the correction.

In any event, careers in precarious situations can access social assistance and specific schemes for their healthcare needs.

7.3.2 Supplementary Pension Scheme for Care Workers

The supplementary pension scheme for care workers in the private sector is mainly managed by the Association générale des institutions de retraites des cadres and the Association pour le régime de retraite complémentaire des salariés (Agirc-Arrco). Agirc-Arrco covers the vast majority of private-sector employees in France, including care workers (nurses, orderlies, home helps). These schemes are funded by employee and employer contributions.[428] Employees contribute to Agirc-Arrco on bracket B of their salary, in addition to their Social Security contributions. The amount of their supplementary pension therefore depends on their salary, years of contributions and the value of the pension point. Supplementary pension schemes are constantly evolving in France, and specific conditions may vary according to current reforms.

Similarly, local authorities and public establishments may sign up to participation agreements[429] designed to cover civil servants, including retired local authority employees.[430] The social protection rules for contract staff are similar to those for civil servants, with the exception of the health insurance and old age insurance schemes.[431]

8. Concluding Discussion

The legal framework for care work in France is the sole responsibility of the legislator in the public sector. In the private sector, it is the joint result of the legislator and the social partners, giving rise to systematic interactions on all working and employment conditions. In this sector, 6 extended national collective agreements are applicable, covering virtually all workers.

Employers are divided between public bodies, private not-for-profit (voluntary or mutual) or for-profit establishments and individual employers, which results in a wide variety of statuses and contractual rights. The private individual employer branch has the highest number of specific features: direct employment by the beneficiary, multiple employers, activity in the home—not accessible

[428] NCC for private non-for-profit hospital and nursing establishment, rider of 27 January 2015 relating to the generalisation of healthcare costs, article 13.1 and article 14.06. See also NCC préc. 2015 rider, article 13.1.

[429] Article L. 827-6 al. 1 of the General Civil Service Code.

[430] Article L. 827-6 al. 3 of the General Civil Service Code.

[431] CGFP, art. L. 829-1.

without authorisation from the Labour Inspectorate -, absence of a prevention policy in terms of health and safety at work, etc.

That said, whatever the sector (private/public), whatever the branch, the problems are similar: the care sector is understaffed due to a lack of attractiveness; the organisation of working hours is constrained by the needs of the people being cared for and the need for continuity of service/care (weekend and night work; non-standard working hours) impacting on the reconciliation of professional and private life; the persistent undervaluation of these activities is reflected in low wages; the physical and mental hardship of the work is reinforced by the nature of the care to be provided and by the working environment. Overall, the sector as a whole is affected by a demographic problem resulting from the historical over-feminisation of these professions and their high average age. It is also over-determined by public funding, which leads to a fragmentation of work.

The "Ségur de la santé" negotiations in 2020 following the COVID-19 were an opportunity to reveal the level of quantitative and qualitative deficits in human resources and funding in this sector and to alert people to the urgent need to remedy them. Some progress was made as a result, such as the adoption of a new collective agreement in the private employer sector, the creation of a certificate of aptitude for the duties of home help, followed by a state diploma in social support, etc. At the same time, a number of reports have recommended measures based on key areas such as training, qualifications and working conditions. Forced to face up to the structural difficulties mentioned above on a daily basis, workers and employers are finding short-term remedies that amount to a band-aid on a wooden leg.

To cope with staff shortages in both the public and private sectors, in institutions and at home, the players are resorting to a variety of solutions, including atypical forms of employment (temporary work), self-employed or self-employed contractors, and digital platforms, which can lead to workers who are already employed by the organisation but need to increase their income holding a number of jobs and statuses at the same time. These solutions are not without legal and economic risks for the organisation and without risk to the health and safety of the workers.

While the need to develop dependency-related activities, and therefore to create jobs in this sector, is clearly stated by the public authorities, the funding is still not forthcoming. Yet this funding is needed to improve training and qualifications and to recognise the work of professionals. If the aim is to improve working conditions, then we need to rethink the entire economic model of the care sector. This presupposes close collaboration between players in the sector and public funders to guarantee decent working conditions and employment for all care workers.

Abbreviations

AJFP	Actualité juridique Fonction publique
AJF	Actualité juridique Famille
AJDA	Actualité juridique de droit administratif
Droit ouv.	Revue droit ouvrier

Dr. soc.	Revue droit social
JCP S	JurisClasseur périodique – Edition Sociale
RDT	Revue de droit du travail
RFDA	Revue française de droit administratif
Dr. soc.	Revue droit social
RTD eur.	Revue trimestrielle de droit européen
Sem. soc. Lamy	Revue Semaine sociale Lamy
JCP S	Jurisclasseurs périodique sociale
GISTI	Groupe d'information et de soutien des immigrés
Cons. Const.	Conseil constitutionnel
Cass. soc.	Chambre sociale de la Cour de cassation
CJCE	Cour de justice des communautés européennes
CJUE	Cour de justice de l'Union européenne
CEDH	Cour européenne des droits de l'homme
CA	Cour d'appel
TA	Tribunal administratif
Lebo	Recueil des décisions du Conseil d'Etat

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