



French labour law: new procedure before the Conseil de prud'hommes (II)

Actualité législative publié le **05/07/2016**, vu **4045 fois**, Auteur : [CHHUM AVOCATS Paris Nantes Lille](#)

The decree n°2016-660 of May 20th, 2016 introduces important changes in the procedure before the Labour Tribunal (Conseil de prud'hommes).

1) The extension of the powers of the conciliation board ("Bureau de conciliation") – applicable from May 26th 2016

1.1) In case of failure of the conciliation, the "Bureau de conciliation" can prepare the case for trial

From May 26th 2016, the "Bureau de conciliation" will be able to bring the case to a state of readiness before it refers the case to the adjudication panel ("Bureau de jugement").

The "Bureau de conciliation" ensures that the case is sufficiently prepared until the date fixed for the hearing before the "Bureau de jugement". Sessions can be held specifically for that purpose.

After having requested their opinion, the "Bureau de conciliation" sets the deadlines and the conditions of communication between the parties.

The "Bureau de conciliation" may hear the parties in person, invite them to provide the necessary explanations to resolve the dispute as well as give notice to provide any document or evidence required to inform the "Conseil de prud'hommes" within the time it determines (Labour Code Art. R. 1454-1).

The "Bureau de conciliation" may also, by a non-appealable decision, appoint one or two reporting counselors ("conseillers rapporteurs") to conduct a pre-trial of the case. The decision sets a deadline for the execution of their mission (Labour Code Art. R 1454-3).

The reporting counselor is granted the same powers than the "Bureau de conciliation". He can, for the manifestation of the truth, hear anyone and carry out any investigative measure as well as any measure to preserve evidence or disputed objects (Labour Code Art. R 1454-4).

If the parties don't comply with the communication procedure set by the "Bureau de conciliation", he can remove the case from the register or refer it to the earliest possible date before the "Bureau de jugement".

In case of non-production of the requested documents and justifications, he may refer the case to the first useful date to the "Bureau de jugement" which draw the necessary conclusions with regards to the abstention of the party or its refusal

1.2) The “Bureau de conciliation” refers the case to the “Bureau de jugement”

In the absence of conciliation or in case of partial conciliation, the case is referred to the appropriate “Bureau de jugement” designated in accordance with Article L. 1454-1-1 at a date indicated to the parties by the President.

The court clerk (“greffier”) shall notify the parties that have not been verbally informed of the date of the hearing by any means.

When the case is ready to be immediately judged and if the organization of hearings allows it, the “Bureau de jugement” can take place on the spot (Labour Code Art. R. 1454-18).

It is however unclear how it will take place in practice.

In the cases referred to in Articles R. 1454-13 and R. 1454-14, the case is referred to a later “Bureau de jugement” with membership restricted.

The court clerk (“greffier”) shall notify the parties that have not been verbally informed of the date of the hearing by any means.

1.3) The “Bureau de conciliation” may appoint a mediator

The “Bureau de conciliation” can also, regardless of the stage of the proceedings :

- After the agreement of the parties, **appoint a mediator** to hear and discuss their views to help find a solution to the dispute between them ;
- **Require the parties to meet with a mediator**, who informs them about the purpose and conduct of the measure.

The agreement is approved, as applicable, by the “Bureau de conciliation” or the “Bureau de jugement”.

2) The adjudication panel (“Bureau de jugement”) - applicable from May 26th 2016

2.1) The different types of “Bureau de jugement” : ordinary composition, restricted composition or presided by a professional judge

1. In its ordinary composition referred to in Article L. 1423-12, two judges representing employees and two judges representing employers ;

2. In its restricted composition referred to in article L. 1423-13, one judge representing employees and another representing employers ;

3. In the event of a tie, the ordinary or restricted formation that was put in a tie, chaired by a professional judge ;

4. Two judges representing employees, two judges representing employers and a professional judge if the parties request it or if the nature of the case justifies it.

The “Bureau de conciliation” may, by a simple measure of judicial administration :

1. If the dispute concerns a dismissal or an application for judicial termination of the employment contract, refer the case to the restricted formation of the “Bureau de jugement” with the agreement of the parties. The restricted formation must then decide within 3 months.

2. Refer the case to the “Bureau de jugement” presided by a professional judge if the parties request it or if the nature of the case justifies it. Otherwise, the case is referred to the ordinary composition of the “Bureau de jugement”.

The formation designated knows all the requests of the parties, including additional or counterclaims (Labour Code Art. L. 1454-1-1).

2.2) The preparation of the case and the appointment of a reporting counselor in accordance with Article R. 1454-4

In cases where the dispute is directly brought before the “Bureau de jugement” or if it appears that the case transmitted by the “Bureau de conciliation” is not ready for trial, the “Bureau de jugement” may take all necessary measures mentioned in Article R. 1454-1 to do so.

The “Bureau de jugement” may appoint, within the formation, one or two reporting counselors who are granted the powers mentioned in Article R. 1454-4.

It may take any measure required to preserve evidence or disputed objects (Article R. 1454-19-1).

2.3) Presentation of conclusions by lawyers – applicable to proceedings launched from August 1st 2016

When all the appearing parties formulate their claims in writing and are assisted or represented by a lawyer, they must, in their conclusions, explicitly mention their claims as well as their pleas of fact and law on which each of these claim is based on, with indication for each claim of the documents relied upon.

A schedule listing the documents is annexed to the conclusions.

The claims are summarized in the operative part of the conclusions. The formation of the “Bureau de jugement” rules only on the claims mentioned in that part.

The parties must resume their claims in their latest conclusions. Otherwised, they are considered to have abandoned it (Labour Code Art. R. 1453-5).

2.4) Non-compliance with the procedure of conclusions and documents communication

If the parties don't comply with the communication procedure, the “Bureau de jugement” can decide to hear the case or remove it from the register.

Claims, pleas and documents disclosed after the due date without legitimate reason and whose tardiness affects the rights of defense (Labour Code Art. R. 1454-19).

2.5) Deliberation at the end of debates

Following the debates, if the decision is not made immediately, the President informs the parties of the date on which the judgment will be delivered, if necessary by making it available at the registry of the court.

If he decides to refer the judgment to a later date, the President shall notify the parties by any means. This notification mentions the reason for the delay and the new date on which the decision will be made.

2.6) Absence of the defendant before the “Bureau de jugement”

When the defendant fails to appear before the “Bureau de jugement” on the day of the hearing, it is ruled on the merits.

However, if the defendant has justified, in time, of a legitimate reason, he is informed by all means of the next hearing of the “Bureau de jugement”.

2.7) Absence of the applicant without legitimate reason

When the applicant fails to appear before the “Bureau de jugement” without legitimate reason, Article 468 of the Civil Procedure Code is applied (declaration of obsolescence).

If the declaration of obsolescence is then withdrawn, the applicant is notified by any means of the hearing date before the “Bureau de jugement”. The defendant is summoned by registered letter with acknowledgement of receipt (Labour Code Art. R. 1454-21).

3) Disputes concerning the dismissals for economic reasons – applicable to proceedings launched from August 1st 2016

In case of dispute related to a dismissal for economic reasons, the employer files or addresses by registered letter with acknowledgement of receipt, the elements mentioned in Article L. 1235-9 within 8 days from the reception of the notice of hearing before the “Bureau de conciliation”.

In the same time, the employer sends the same elements to the applicant by registered letter with acknowledgement of receipt.

The notice of the hearings mentions this obligation (Labour Code Art. 1456-1)/

The “Bureau de conciliation” sets the date of the hearing before the “Bureau de jugement” within a period that can't exceed 6 months from the date on which the case was referred to it or 3 months when it is the restricted formation. (Labour Code Art. R. 1456-4).

It remains to be seen whether “Conseil de prud'hommes” will respect the aforementioned periods.

4) Urgent matters before the “Conseil de prud'hommes” – applicable to proceedings launched from August 1st 2016

Employees will have to write a petition even for urgent matters, in accordance with Article R. 1452-1.

Even if it's not expressly covered by the decree, it seems that these provisions are also applicable to proceedings launched from August 1st 2016.

The decision of the “Conseil de prud'hommes” on urgent matters is granting *res judicata* between the parties and is provisionally enforceable, unless the “Bureau de jugement” ruling on merits decides otherwise, subject to the provisions of Art. R. 1454-28.

When the application before the specific formation of the “Conseil de prud’hommes” ruling on urgent matters is unjustified, it can refer the case to the “Bureau de jugement” in accordance with Art. R. 1455-8 (Labour Code Art. R. 1455-12).

In this respect, Art. R 1455-8, specifies that if it appears that the application brought before the specific formation for urgent matters exceeds its powers, and when it is particularly urgent, refer the case to the “Bureau de jugement” under the following conditions :

- the agreement of all parties is necessary ;
- the specific formation for urgent matters must have completed a conciliation attempt in non-public proceedings according to the provisions of Art. R. 1454-10.

The notification to the parties of the decision to refer the case to the “Bureau de jugement” is considered as a subpoena.

5) Employee representation before the “Conseil de prud’hommes” – applicable from May 26th 2016

The parties defend themselves. They have the possibility to be assisted or represented (labour Code Art. R. 1453-1).

The persons qualified to assist or represent the parties are :

1. The employees or employers in the same industry ;
2. The union advocates ;
3. The spouse, partner under a civil pact (“PACS”) or cohabitant ;
4. Lawyers.

The employer may also be assisted or represented by a member of the company/institution?

The representative, if he is not a lawyer, must show proof a special instrument granting such powers. Before the “Bureau de conciliation”, this instrument must allow him to reconcile in the name and on behalf of the represented and to take part in orientation measures (Labour Code Art. R. 1453-2).

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