

# Soffal News

## Flash info

### The “Macron” scale: the position of the french appeal courts

The “Macron” scale saga continues<sup>1</sup>.

Since the refusal of several labour tribunals to apply the legal scale capping the damages due to employees unfairly dismissed (so called the “Macron” scale), the French Supreme Court rendered two awaited opinions on 17 July 2019<sup>2</sup>.

According to the French Supreme Court, the “Macron” scale complies with the existing international principles guaranteeing employees the right to adequate compensation in case of unfair loss of employment (provided for in Convention No. 158 of the International Labour Organisation (ILO) notably).

The whole issue was whether the Appeal Courts would follow the French Supreme Court by applying the “Macron” scale.

The Paris Court of Appeal (Chamber No. 3) and the Reims Court of Appeal were the first to rule on this issue, as early as September 2019<sup>3</sup>. Both of them followed the same pragmatic reasoning.

As a first step, they proceeded with an *in abstracto* reasoning and noted that the “Macron” scale complies with international law principles guaranteeing adequate compensation for loss of job, in line with the opinion of the French Supreme Court.

However, they then reasoned *in concreto* and decided whether or not to apply the “Macron” scale to the case at hand: the Courts ensured that the application of the scale and the amount of damages allocated in accordance to such scale did not result in a “disproportionate infringement of the rights of the employee concerned” when taking into account the facts of the case.

**This analysis on a case-by-case basis allows the judges to not apply the “Macron” scale if such application results in an inadequate compensation for the employee with respect to the actual damage suffered due the loss of the job.**

In another case, the Paris Court of Appeal (Chamber No. 6) ruled once again on this issue. On 30 October 2019, in line

<sup>1</sup> See our [Flash News of September 2019](#)

<sup>2</sup> Opinion n° 19-70.010 and 19-70.011 of 17 July 2019

<sup>3</sup> Paris Appeal Court, Ch. 3, 18 September 2019, no. 17/06676 and Reims Appeal Court, 25 September 2019, no. 19/00003

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with the French Supreme Court, the Appeal Court decided that the scale complied with international principles, **without opening the possibility of derogating from it on a case-by-case basis**<sup>4</sup>.

At first sight, this judgment differs from the solution ruled by the Chamber No. 3 of the same Court of Appeal. However, in a press release also dated 30 October 2019, the Court clearly states that it applies the provisions related to the compensation's scale due in case of unfair dismissal **without mentioning any possible derogation.**

Despite this statement, the position of the French judges on the “Macron” scale issue is still ambiguous.

We will keep you informed on the important decisions to come on this topic. The French Supreme Court in particular is expected to rule on the possibility for the French Courts of Appeal to apply the “Macron” scale on a case-by-case basis.

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4 Paris Appeal Court, Ch. 6, 30 October 2019, no. 16/05602

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