



French Supreme Court protects employees

The French Supreme Court has recently handed down two employment decisions which will be of interest to clients with operations in the country.

In the first decision, the Court decided that the dismissal of a long-term/recurring ill employee, was unlawful.

In this case, the employee had been away from work on several occasions, the last one for a period of more than 7 months. The French labour code states that it is only possible to dismiss a sick employee due to his or her illness if the reason is not the illness itself but some objective negative impact on the employer's business. Here, the employee in question worked in a "back office" function. Her absence impacted on some internal aspects of the employer's business, but the impacts were worked around. As a result, the Supreme Court noted that the employer could not prove the employee's role was *essential* to the running of the employer's business (because her absence was able to be worked around) so the decision to dismiss her was ruled unlawful.

The second decision is an extraordinary case relating to an employee who stole from his employer.

The employee was found out and signed three acknowledgments of the debt he owed to the employer, as well as provided authorisation for the employer to recover the debt from outstanding payments otherwise due to be made. The employee was also dismissed for misconduct (but not *gross* misconduct). Common-sense would suggest that he got off lightly but he didn't think so - he took legal action against the employer to have the debt acknowledgments ruled unlawful. In France, dismissed employees can only be found legally liable to their (ex-) employers if they are dismissed for gross misconduct. So, inevitably, the Supreme Court decided that the employee's acknowledgments of the debts in this case were unlawful (and void) because the employer (who we assume was trying to be nice) dismissed for misconduct but not *gross* misconduct. The lesson of the day: sometimes it just doesn't pay to be nice!

If you have operations in France and need any assistance with HR matters, let us know - we work with some of the best HR lawyers in the country and we will be happy to help.