

Companies with 20 or more employees are legally obligated to establish and define their internal rules and regulations, while companies with fewer than 20 employees may opt to do so voluntarily. The company's internal rules and regulations define, in particular, the types of disciplinary action available to the employer, and under which circumstances they may be utilised.

Particular attention must be paid to ensure that the internal rules and regulations are in compliance with recent rulings of the Social Chamber of the "Cour de cassation", especially regarding the conditions required for the suspension of an employee.



The disciplinary powers of the employer

The internal rules and regulations are a unilateral decree (of a legally binding nature), made by the employer, and reflecting his organizational and managerial powers in the company.

Its scope is limited to the following domains:

- Discipline (all the corrective measures necessary to ensure the correct and efficient operation of the business, as well as the peaceful coexistence of the employees in the workplace - also called sanctions scale)
- Hygiene and security in the workplace
- The rights of employees accused of infractions

When asked to rule whether, assuming the prior existence of a code of internal rules and regulations, an employer could impose sanctions unforeseen by his company's works' rule book, the French Supreme Court responded negatively. Clearly, only sanctions which are explicitly provided for by the company's internal rules and regulations may be imposed on employees. This ruling effectively limits the authority of the employer to sanctions predefined by said rules and regulations.

Legal prerequisites for the suspension of an employee

The "Cour de Cassation" recently clarified its position with regard to the conditions under which an employee may be suspended.

According to the "Cour de Cassation" ruling, a suspension is only lawful if the company's internal rules and regulations include a clause specifying the maximum permissible duration of the suspension.

Consequently, employers ought to ensure that their company's internal rules and regulations contain said clause, failing which they risk having the suspension overturned if litigation is brought by an employee with regard to the validity of their suspension.

Following this ruling, it is imperative that employers verify that their internal rules and regulations are in compliance with the case law in effect; if found to be lacking in this respect, the code of internal rules and regulations should be promptly modified according to standard legal procedure.

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This information is only a rough summary. It does not cover all the situations nor resume the whole French Employment Code - which is very intricate. Please contact us for accurate information adapted to your situation. We cannot be held responsible for any misinterpretation of this document. Edition Dec-11