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BLOGS

Legislation and Rulemaking

French Parliament Passes Labor Law Requiring Franchisors to Establish a Dialogue Forum for Labor Issues Pertaining to All Employees in the Franchise System

After review by the French Constitutional Court, the French Parliament recently passed a controversial labor law commonly referred to as the “El Khomri” law (the “Law”). Article 64 of the Law contains provisions governing certain franchises. It is triggered if: (1) a franchise network contains at least 300 employees in France, inclusive of the employees of both franchisors and franchisees, and (2) the underlying franchise agreement contains terms that “have an effect on the organization of work and the conditions of work.” If those two requirements are satisfied, upon the request of a company union or trade union, the franchisor must engage in negotiations to establish a social dialogue forum for the franchise system. The forum must be comprised of representatives of employees and franchisees and chaired by the franchisor.

The representatives will need to determine, among other things, the forum’s composition, the method of appointment of its members, the duration of the members’ terms, the frequency of meetings, and the number of hours dedicated for member participation, and memorialize those terms in a written agreement. The Law provides that the forum must have material and financial resources to perform its tasks and that the agreement establish terms for forum operating expenses and member travel and accommodation costs. At its first meeting the forum must adopt rules regarding its operating procedures. During forum meetings representatives must be informed of decisions likely to affect the labor force such as the number or structure of employees, working hours, labor conditions, and training. Additionally, the forum may make proposals geared towards improving working conditions, training, and benefits.

The Constitutional Court largely upheld Article 64 after considering several constitutional challenges to it. The court found that Article 64 is compliant with the French Constitution and that it did not infringe on the constitutional principles of equality and entrepreneurial freedom, despite the fact that franchisees are required to participate in negotiations to establish and maintain the forum. One reason the court offered for that justification was the notion that franchise systems are distinct from other organized businesses because they have a higher degree of regulation on the organization and activity of franchisees. While the legislation originally granted the government authority to decide the hours delegated for employee participation in the forum, the court noted that such power is reserved to the Parliament. Therefore, France’s State Council cannot establish such provisions in its implementation decree. Finally, the court also

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struck down a provision of the Law requiring the franchisor to bear the costs associated with the forum if the representatives are unable to agree.

It is not yet clear whether the Law applies to foreign franchisors who have a France based master franchisee. Moreover, while it was enacted to improve labor conditions of employees, the Law raises several legitimate concerns for franchisors, including the independence of the franchisor and franchisee to make decisions vis-à-vis their respective employees, potential joint employer considerations, and ambiguity as to the type of terms that will be deemed to have an effect "on the organization of work and the conditions of work" sufficient to trigger the Law's forum requirement.

The State Council is expected to enact an implementing decree later this year to set forth the supplemental conditions of many of the terms outlined above and, as noted above, Parliament must revise the parts of the Law addressing the hours delegation issue and the allocation of costs. Accordingly, franchisors potentially affected by the Law have some time to begin planning for the Law's implementation.