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French Care Workers' Discrimination Map Report

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Please note that the data and information presented in the national reports and the comparative report are accurate only up to June 2024. Any subsequent changes have not been included and are therefore not reflected in this document.

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Table of contents

1. Mapping gender discrimination among care workers

French legislation mainly refers to the concept of sex, which is used to guarantee equality between women and men by prohibiting discrimination based on sex. This concerns aspects such as equal pay, access to employment and sexual harassment. The notion of "gender", which refers more to the socially constructed behaviors and norms associated with being male or female, is often used to address gender stereotypes, discrimination linked to the social expectations associated with a certain sex and to promote diversity.

As mentioned above, legislative activity has developed considerably over the last 50 years. In addition to the provisions of the Labor Code aimed at prohibiting all forms of discrimination, the legislator has promoted collective bargaining at branch and company level[1] to contribute to professional equality between women and men.

Like many sectors of activity, the care sector has been the subject of a great deal of collective bargaining activity. Each of the national collective agreements in the care sector includes chapters devoted to professional equality. These include the 2021 National Collective Convention (NCC) of individual employers and home-based employment branch the 2012 NCC for personal services companies branch, the 2010 NCC for the home help, supports, care and services branch and the 2002 NCC for private hospital branch. Some of these branches have signed agreements or riders on equal treatment. These include the agreement of 12 June on quality of life at work and professional equality in the NCC for private hospitals of 2002, and Rider 59/2023 on equality in the NCC for the home help, support, care and services branch of 2010. Rider 59 specifies that "company agreements relating to professional equality may not derogate in a less favorable manner from the provisions contained in the said branch rider".

However, we have found no national agreement or rider for the NCC for des private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951, nor for the NCC establishments and services for the maladjusted and disabled of 1976.

The 2010 NCC for the home help, support, care and services goes further in its commitments in principle, firstly by affirming "a proactive approach to promoting gender diversity and professional equality and combating all forms of direct and indirect discrimination", and secondly by covering all aspects of the employment relationship: recruitment, remuneration, classification, promotion, mobility, career development, assessment, vocational training, organization and working conditions, disciplinary measures or dismissal and retirement rights[2]. The NCC specifies that "the gender mix necessarily involves better representation of men in the intervention professions and of women in the management professions, where they are under-represented"[3]. Rider no. 59 of 17 July 2023 recalls in its preamble the desire of the partners to change "representations and behaviors, to make a decisive contribution to changing professional equality, to promote gender diversity" and "to prevent sexist and sexual violence in the workplace". The aim of this rider "is to improve the mechanisms for reducing inequalities and to act on the causes".

Of all the branch agreements and conventions on professional equality, the agreement of 12 June 2018 of the NCC for private commercial hospitals has the particularity of dealing with quality of working life and professional

[1] The study covers collective bargaining in 6 branches of activity. A study of company agreements was not feasible in the time available.
[2] Title VIII - Article 1st Preamble.
[3] *Ibid*.

equality and is in line with the ANI of 19 June 2013 relating to a policy for improving quality of working life and professional equality. The partners explain this at length in the preamble to the agreement. They "affirm their commitment to quality of life at work and professional equality in an increasingly constrained economic environment, in a rapidly changing technical environment, in a particularly complex social environment and in an increasingly demanding physical environment in view of the lengthening of working life, in an environment in which the pain, distress and end of life of patients and residents are part of the daily life of a certain number of staff". Taking up the terms of the national interprofessional agreement of 19 June 2013, the social partners wish to reiterate that "quality of life at work and professional equality are first and foremost about work, working conditions and whether or not they open up the possibility of 'doing a good job' in a good atmosphere". Quality of life at work and professional equality are also associated with employees' expectations in terms of professional recognition within the company and work/life balance. Equal treatment is thus treated as a component of quality of life at work.

As for the civil service, long before the merger of civil services and the adoption of a civil service code, equal treatment had been the subject of a Memorandum of Understanding on professional equality between women and men in the civil service in 2013, endorsed by the circular of 22 December 2016 on the policy of professional equality between women and men in the civil service. Then an agreement on professional equality between women and men in the civil service was concluded in 2018, transposed into the civil service code by the order of 24 November 2021. The reference framework for negotiating agreements on the quality of life and working conditions (QLWC) in the civil service, which includes the issue of equal treatment for men and women, was adopted in June 2023.

Prior to answering the questions, especially when these questions relate to the existence of clauses specific to one or other sex in sources of law and particularly in agreements, it is advisable to recall the legal rule of nullity laid down by article L. 1142-3 of the Labor Code in the following terms: "Any clause in a collective labour agreement or contract of employment which reserves the benefit of any measure whatsoever, to one or more employees, on the basis of sex, is null and void. However, these provisions do not apply where the purpose of the clause is to apply provisions relating to: 1° the protection of pregnancy and maternity, 2° the prohibition of prenatal and postnatal employment, 3° breastfeeding, 4° the resignation of an employee in a medically certified state of pregnancy, 5° paternity and childcare leave, 6° adoption leave". This "does not preclude the adoption of temporary measures for the sole benefit of women aimed at establishing equal opportunities between women and men, in particular by remedying de facto inequalities that affect women's opportunities" under article L. 1142-4 of the Labor Code. These measures are the result of: 1° regulatory measures taken in the areas of recruitment, training, promotion, organization and working conditions; 2° stipulations in extended branch agreements or extended collective agreements; 3° application of the plan for professional equality between women and men. This principle and its adjustments are scrupulously respected in collective agreements in the care sector, as we shall see below.

It is also worth highlighting another provision of the Labor Code associated with violence, discrimination and harassment, which is set out in Article L. 1142-1 of the Labor Code: "No one shall be subjected to sexist harassment, defined as any harassment related to a person's sex, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment".

1.1. National legislation on sex discrimination in the field of employment

French legislation on combating discrimination on the grounds of sex includes fairly similar provisions in employment law (1.1.1.) and civil service law (1.1.2.) applicable to workers in the care sector.

1.1.1. Non-discrimination labor law in the private sector

The fight against gender-based discrimination in the workplace includes a substantial body of rules set out in the Labor Code. These include, on the one hand, rules aimed at prohibiting employers from taking certain gender-related characteristics into account when making decisions (1.1.1.1.), and on the other, means of action based on prevention, information and collective bargaining (1.1.1.2).

1.1.1.1. Prohibition of sexist discrimination in the workplace

After establishing the principle of equal treatment in terms of pay (1.1.1.1.1.), the French legislator prohibited measures, decisions or attitudes taken by the employer based on prohibited criteria relating to sex (1.1.1.1.2.), sexual harassment and sexist behavior (1.1.1.1.3.). More recently, the French legislator has used quotas to implement a proactive policy of equal representation of men and women in company management (1.1.1.1.4.).

1.1.1.1.1. Equal pay for men and women

The principle of equality is a fundamental pillar of French law[4]. The Preamble to the 1946 Constitution describes it as a principle that is particularly necessary for our times. Thus, "the law guarantees women equal rights with men in all areas"[5]. It was enshrined as a general principle of law by the Conseil d'Etat, and then established as a principle of constitutional value by the Conseil constitutionnel[6]. Since 2008, a second paragraph has been added, stating that "the law promotes equal access for women and men to electoral mandates and elective functions, as well as to professional and social responsibilities".

The equality model in French law has been influenced by the conceptual framework of international law and Community law (now European Union law). As will be explained *below*, French law has ratified numerous ILO conventions and transposed many European directives. ILO Convention No. 100 of 1951 on equal pay for men and women for work of equal value and Article 119 of the Treaty of Rome[7] requiring equal pay for men and women were major events in the promotion of gender equality in employment relations and paved the way for the enactment of the Equal Pay Act of 22 December 1972[8], the provisions of which were incorporated into the Labor Code[9]. This law was supplemented by a succession of laws designed to combat the phenomenon of unequal pay between women and men. For example, the Labor Code requires all employers to ensure that "women and men receive equal pay for equal work or work of equal value"[10]. The Court of Cassation has noted that the principle of equal pay for men and women is merely an application of the general rule of "equal pay for equal work". From this it deduced that "the employer is required to ensure equal pay for all employees of either sex, provided that the employees in question are placed in an identical situation"[11].

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[4] M.-T. Lanquetin, *Discrimination*, Répertoire de droit du travail, Dalloz, 2023.
[5] Article 3 of the Preamble to the 1946 Constitution.
[6] G. Braibant, "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État", *La Déclaration des droits de l'homme et du citoyen et la jurisprudence*, 1989.
[7] Now Article 157 of the TFEU.
[8] Law nº 72-1143 of 22 Dec. 1972 on equal pay for men and women.
[9] Article L. 3221-2 of the French Labor Code requires all employers to ensure equal pay for women and men "for the same work or for work of equal value".
[10] Article L. 3221-2 of the French Labor Code.
[11] Cass. soc., 29 October 1996, no. 92-43.680.

1.1.1.1.2. Prohibition of sexist discrimination

The concept of discrimination emerged late in French law. Initially confined to the sphere of public law, the scope of discrimination has gradually been extended to private behavior, particularly that falling within the scope of employment law[12]. French anti-discrimination law has evolved gradually, reflecting changes in French society and the French government's European and international commitments. It was not until 1982 that French labor law took discrimination into consideration with the insertion of Article L. 122-45 of the Labor Code[13], which was gradually amended and supplemented to become the core of the legislation on combating discrimination in employment relationships in France[14]. After the failure of the Act of 16 November 2001 to create a general anti-discrimination law, the Act of 27 May 2008 containing various provisions for adapting to Community law led to the enshrinement in the Labor Code of the concept of direct and indirect discrimination in order to comply with European Union law[15], which has thus led to a number of technical and conceptual advances in French law[16].

French law distinguishes between direct and indirect discrimination.

Discrimination is direct[17] when, for a prohibited reason, an employee is treated "less favorably than another is, has been or will be treated in a comparable situation". It is not necessary to establish a comparison with one or more other employees[18]. It is sufficient to prove that the reason for the employer's action is based on a prohibited criterion. Differences in treatment between employees are authorized provided that they "meet an essential and determining occupational requirement, and that this objective is legitimate and the requirement proportionate"[19].

Indirect discrimination aims to conceal the act inspired by the use of a prohibited criterion. It can be defined as a provision or practice that is neutral on the face of it, but which is likely to place people at a particular disadvantage compared with other people.

The concept of positive discrimination, which consists of giving preferential treatment to certain categories of the population in order to improve equality of opportunity, is not explicitly recognised as such in French legislation. However, measures to promote equal opportunities have been put in place. Nor does the law recognise the concepts of systemic discrimination and intersectoral discrimination.

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[12] M.-T. Lanquetin, "Le principe de non-discrimination", *Dr. soc.* 2001, no. 2, pp. 186-190.
[13] Now Article L. 1132-1 of the Labor Code.
[14] Article L. 1132-1 of the French Labor Code prohibits any discrimination against an employee on the grounds of "origin, sex, morals, sexual orientation, gender identity, age, family situation or pregnancy, genetic characteristics, particular vulnerability resulting from his or her economic situation, apparent or known to the perpetrator, actual or supposed membership or non-membership of an ethnic group, nation or so-called race, political opinions, trade union or mutualist activities, elected office, religious beliefs, physical appearance, family name, place of residence or bank account, state of health, loss of autonomy or disability, ability to express oneself in a language other than French, status as a whistleblower, facilitator or person in a relationship with a whistleblower, within the meaning of the Directive.
[15] M.-T. Lanquetin, "Discrimination: la loi d'adaptation au droit communautaire du 27 mai 2008", *Dr. soc.* 2008, no. 7-8, pp. 778-788.
[16] J. Porta, "Discrimination, égalité et égalité de traitement. À propos des sens de l'égalité dans le droit de la non-discrimination", *RDT*, 2011, p. 290 and 354.
[17] Law no. 2008-496 of 27 May 2008 containing various provisions for adapting to Community law in the field of anti-discrimination.
[18] Cass. soc., 10 November 2009, no. 07-42.849.
[19] Article L. 1133-1 of the French Labor Code.

The legal definitions of discrimination are reproduced *in extenso* by certain national collective agreements in the care sector. This is the case in the 2021 NCC of individual employers and home based-employment des (Part II, chap.1st Art.9, 10), article 11 of which states that differences in treatment are authorized in the following terms: "The principles of equal treatment and non-discrimination do not prevent differences in treatment where they meet objective criteria: - an essential and determining occupational requirement; - where the objective is legitimate and the requirement proportionate".

French employment law prohibits discrimination. Non-discrimination implies equal treatment in many aspects of the employment relationship. Article L. 1132-1 of the French Labor Code stipulates that "no person may be excluded from a recruitment or appointment procedure or from access to an internship or period of in-company training, and no employee may be penalized, dismissed or subjected to a direct or indirect discriminatory measure in terms of pay, training, redeployment, assignment, qualification, classification, professional promotion, working hours, performance assessment, transfer or renewal of contract". The article also sets out an exhaustive list of prohibited criteria, including those relating to sex, morals and sexual orientation[20].

Article L. 1134-1 of the Labor Code makes it easier for employees to meet the burden of proof. It is up to the employee to present factual evidence suggesting the existence of direct or indirect discrimination. In the light of this evidence, it is up to the defendant to prove that its decision is justified by objective factors unrelated to any discrimination. The judge will form his or her opinion after ordering, if necessary, any investigative measures that he or she deems useful.

According to Article L. 1132-4 of the French Labor Code, any provision or action taken in respect of employees that disregards the provisions on non-discrimination is null and void. Wherever possible, the rule will result in the payment of damages, but also in the restoration of the situation prior to the discrimination.

1.1.1.1.3. Sexual harassment and gender-based harassment

The law prohibits two types of sexual harassment. The first consists of repeated comments or behavior with a sexual or sexist connotation, which either violate the dignity of the employee by being degrading or humiliating, or create an intimidating, hostile or offensive situation[21]. In a law passed on 2 August 2021[22], the legislator specified that this type of harassment should also be recognized in two cases: when the same employee is subjected to such comments or behavior by several persons, in a concerted manner or at the instigation of one of them, even though each of these persons has not acted repeatedly; and when the same employee is subjected to such comments or behavior, successively, by several persons who, even in the absence of concerted action, know that these comments or behavior constitute repetition[23]. The second form of sexual harassment is based on a single act of particular intensity, in that "any form of serious pressure, even if not repeated, exercised with the real or apparent aim of obtaining an act of a sexual nature, whether this is sought for the benefit of the perpetrator or for the benefit of a third party"[24].

[20] See *above.*
[21] Article L. 1153-1, 1° of the French Labor Code.
[22] Act no. 2021-1018 of 2 August 2021 to strengthen occupational health prevention.
[23] Article L. 1153-1, 1°, a and b) of the French Labor Code.
[24] Article L. 1153-1, 2° of the French Labor Code.

The legislator also intends to combat the "ordinary sexism" that employees may encounter, and since 2015 has prohibited sexist behavior[25]. Accordingly, no one may be subjected to sexist behavior, defined as any behavior related to a person's sex, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment[26]. The Conseil supérieur à l'égalité professionnelle entre les femmes et les hommes (Higher Council for Professional Equality between Women and Men) illustrates in a report[27] the manifestations of ordinary sexism by: sexist remarks and jokes; gender-based incivilities; policing of social gender codes; colloquial questioning; false seduction; benevolent sexism; sexist considerations on maternity or family responsibilities.

1.1.1.1.4. A balanced representation of women and men in management positions

A law passed on 25 January 2011 on the balanced representation of men and women[28] imposed a minimum quota of 40% women on boards of directors and supervisory boards. Quotas have shattered the inertia in terms of economic parity that prevailed in governance bodies. France now ranks first in the world in terms of the number of women on the boards of directors of major listed companies, with over 46% women by 2021. Parity on the boards of small caps, unlisted companies and especially SMEs remains limited. What's more, the law has not had the expected trickle-down effect: there are still too few women on executive and management committees.

In order to accelerate the participation of women in economic and professional life, the "Rixain" law of 24 December 2021[29] includes a number of measures aimed at achieving greater equality between women and men in companies. To this end, Article 14 introduces a requirement for balanced representation of women and men among senior executives and members of the management bodies of large companies, together with a requirement for transparency in this area.

It sets out new obligations for companies with at least 1,000 employees. From now on, these companies must calculate and publish any gaps in representation between men and women among their senior executives and members of their management bodies, every year by 1st March at the latest. They must then inform the Social and Economic Committee of the results and how they are to be published, and forward this information to the authorities.

From 1st March 2026, companies will have to achieve a target of 30% of women and men in senior management and 30% of women and men on management bodies. This target will rise to 40% from 1st March 2029: companies will then have two years to comply with these targets, failing which they will be subject to a financial penalty.

1.1.1.2. Measures to combat discrimination and promote equality

Anti-discrimination and professional equality law is made up of a number of measures that may appear disparate. An analysis of these means of action shows that they rely on similar levers to form a coherent system whose

[25] Law no. 2015-994 of 17 August 2015 on social dialogue and employment.
[26] Article L. 1142-2-1 of the French Labor Code.
[27] Conseil supérieur à l'égalité professionnelle entre les femmes et les hommes, *Le sexisme dans le monde du travail: entre déni et réalité*, 2015.
[28] Act no. 2011-103 of 25 January 2011 on the balanced representation of women and men on boards of directors and supervisory boards and on professional equality.
[29] Law no. 2021-1774 of 24 December 2021 aimed at accelerating economic and professional equality.

objective is to reduce inequalities. These measures can be analyzed in terms of institutions (1.1.1.2.1.), players (1.1.1.2.2.), sources (1.1.1.2.3.) and tools (1.1.1.2.4.).

1.1.1.2.1. Institutions

The **Rights Defender**. The Défenseur des droits replaces the Halde - High Authority to Combat Discrimination and Promote Equality (Haute Autorité de Lutte contre les Discriminations et pour l'Égalité) on 1st May 2011[30]. It is an independent administrative authority whose mission is to defend the rights of users of public services, defend and promote the rights of the child, combat discrimination and promote equality, ensure compliance with the code of ethics for security professionals and protect whistleblowers.

The **High Council for Professional Equality between Women and Men.** This is an independent consultative body reporting to the Prime Minister. Its mission is to ensure consultation with civil society and to lead the public debate on the broad outlines of policy on women's rights and equality. It contributes to the evaluation of public policies relating to gender equality by assessing the impact of legislation, collecting and disseminating gender equality analyses and formulating recommendations and opinions.

The **High Authority for Health**. This is an independent scientific public authority. In particular, it takes action **on** quality of life in the workplace and professional equality as part of the certification of establishments and, more specifically, the evaluation of regional experiments carried out as part of "clusters" on quality of life in the workplace, in conjunction with regional health agencies.

The **National Observatory on Violence in the Healthcare Environment** covers the public and private health and medico-social sectors, as well as community medicine. It collects, on a voluntary basis, reports of violence committed against individuals in healthcare establishments. It develops and disseminates tools and best practices, and encourages the coordination of players in the field.

1.1.1.2.2. The players

Preventing sexual harassment
French labor law contains a robust system for preventing sexual harassment. Employers must take "all necessary steps to prevent, put an end to and punish acts of sexual harassment"[31]. The duty of prevention applies regardless of the size of the company, failing which the employer may be held liable. It involves taking immediate steps to put a stop to the harassment as soon as the employer is aware of the facts, but also taking all the preventive measures required under the general health and safety obligation. The Labor Code requires all employers to inform employees, trainees and job applicants about sexual harassment. The contact details of the authorities and services competent to deal with sexual harassment must be made available to employees: the occupational physician or occupational health service, the labor inspectorate, the defender of rights, the referent provided for in article L. 1153-5-1 in any company employing at least 250 employees, the referent provided for in article L. 2314-1 of the Labor Code where a social and economic committee exists. This information is communicated by any means: posted on the premises, on the company's intranet site or sent by e-mail before each meeting.

[30] Organic Law no. 2011-333 of 29 March 2011: OJ, 30 March. Act n° 2011-334 of 29 March 2011: JO, 30 March.
[31] Article L. 1153-5 of the French Labor Code.

Preventive health and safety measures for workers
The French Labor Code requires employers to take "the necessary measures to ensure the safety and protect the physical and mental health of workers"[32]. To do this, they must plan prevention by integrating technology, work organization, working conditions, social relations and the influence of environmental factors into a coherent whole, in particular the risks associated with moral harassment, sexual harassment and sexist behavior[33].

The contact person for companies with at least 250 employees
In all companies employing at least 250 people, an employee adviser responsible for guiding, informing and supporting employees in the fight against sexual harassment and sexist behavior is appointed[34]. His or her duties include raising awareness and providing training for employees; referring employees to the relevant authorities (labor inspectorate, occupational health department and Human Rights Ombudsman); implementing internal procedures to encourage the reporting and handling of situations of sexual harassment or gender-based harassment; conducting an internal investigation following the reporting of sexual harassment within the company.

The Social and Economic Committee advisor
Article L. 2314-1 of the French Labor Code stipulates that the Social and Economic Committee must appoint an anti-sexual harassment and gender-based harassment officer from among its members for a period ending with the term of office of the committee's elected members.

1.1.1.2.3. Sources

Rules of procedure
The company's internal regulations must include a reference to the provisions of the Labor Code on sexual harassment and sexist behavior. In companies with at least 20 employees, the internal rules must set out the provisions relating to moral and sexual harassment and sexist behavior set out in the Labor Code[35].

Negotiation of company agreements in favor of professional equality
The legislator has made collective bargaining the central lever for getting companies to take action in favor of equal pay and equal opportunities, and has laid down public policy and “suppletive” provisions.

Thus, in companies where one or more trade union sections of representative organizations have been set up and where one or more trade union delegates have been appointed, the employer undertakes negotiations every year (or at least once every four years if a collective agreement on the frequency of compulsory negotiations has been concluded): negotiations on remuneration, in particular actual salaries, working hours and the sharing of added value within the company; negotiations on professional equality between men and women, in particular on measures to eliminate pay differentials, and the quality of life and working conditions. In the absence of an agreement providing for measures to eliminate pay differentials between women and men, the negotiations on actual salaries provided for in 1° of article L. 2242-1 of the Labor Code also cover the planning of measures to eliminate pay differentials and differences in career development between women and men. In the absence of an agreement on professional equality between women and men at the end of the negotiations referred to in 2°

[32] Article L. 4121-1 of the French Labor Code.
[33] Article L. 4121-2 of the French Labor Code.
[34] Article L. 1153-5-1 of the French Labor Code.
[35] Article L. 1321-2 of the French Labor Code.

of article L. 2242-1 of the Labor Code, the employer draws up an annual action plan designed to ensure professional equality between women and men.

In the absence of the above-mentioned agreement, or in the event of non-compliance with its stipulations, the employer shall, in companies where one or more trade union sections of representative organizations have been formed (and where at least one trade union delegate is present), initiate negotiations each year on professional equality between women and men and the quality of life and working conditions.

This annual negotiation covers in particular: the balance between personal and professional life for employees; the objectives and measures for achieving professional equality between women and men, in particular with regard to eliminating pay differentials, access to employment, professional training, career development and professional promotion, working and employment conditions, in particular for part-time employees, and job mix; measures to combat any discrimination in recruitment, employment and access to professional training.

Negotiation of branch conventions (NCC) or agreements (NCA)
According to article L. 2241-1 of the French Labor Code, the organizations bound by a branch agreement or, failing that, by professional convention or agreements, meet at least once every four years to negotiate on measures to ensure professional equality between women and men and on measures to remedy any inequalities observed, as well as on the provision of tools to companies to prevent and take action against sexual harassment and sexist behavior.

The branch collective agreements studied include the legal provisions on non-discrimination and professional equality and sometimes introduce specific measures, such as the appointment of an equal opportunities correspondent in companies (NCC for personal services companies of, 2012).

1.1.1.2.4. Tools

Calculation and publication of a professional equality index
Each year, companies with at least 50 employees must calculate and publish on their website the overall score of the gender equality index, as well as the score obtained for each of the related indicators. The index, calculated out of 100, is made up of 4 or 5 indicators, depending on whether the company has more or fewer than 250 employees: the gender pay gap; the gender pay gap in the distribution of individual pay rises; the gender pay gap in the distribution of promotions (only in companies with more than 250 employees); the number of female employees receiving pay rises when they return from maternity leave; parity among the 10 highest paid employees.

If the index is below 85 points, companies must set and publish improvement targets for each of the indicators. If the index falls below 75 points, companies must publish their corrective measures.

These measures, which may be annual or multi-year, and these objectives must be defined as part of the mandatory negotiations on professional equality or, in the absence of an agreement, by a unilateral decision of the employer after consultation with the Social and Economic Committee.

If the company fails to publish its results in a visible and legible manner, or fails to implement corrective measures, or if these measures are ineffective, the company is liable to a financial penalty representing up to 1% of its annual payroll.

The Equality and Diversity label
Created in 2004, the Gender Equality Label aims to promote equality and gender diversity in the workplace. Introduced in 2008, the Label Diversité aims to prevent discrimination and promote diversity in the public and private sectors. These State labels recognize good practice in recruitment and career development to promote gender equality, the prevention of discrimination and diversity in the workplace.

The assessment is based on a number of criteria, divided into 3 areas: actions taken by the company to promote equality in the workplace; human resources and management; and support for parenthood in the workplace. If it meets the criteria set out in the specifications, the application is submitted to a Professional Equality labelling committee for approval, which awards the label for a period of 4 years, with an interim control procedure.

1.1.2. Non-discrimination law in the civil service

Civil service law contains provisions relatively similar to labor law for combating gender discrimination, sexual harassment and sexist behavior (1.1.2.1.1.). To this end, public sector employers have obligations (1.1.2.1.2.) and means are provided to prevent acts of discrimination, harassment and sexist harassment (1.1.2.1.3.).

1.1.2.1. Combating discrimination and harassment

1.1.2.1.1. The principles of non-discrimination

The General Civil Service Code incorporates the provisions of a 1983 law[36], known as the Le Pors law, and includes a chapter on protection against discrimination. Article L. 131-1 prohibits any distinction between civil servants on the grounds of their ideas, origins, status or personal situation, and article L. 131-2 adds gender to the prohibited criteria.

Civil service law also uses the concepts of direct and indirect discrimination defined above. The inclusion of the objective concept of indirect discrimination in the general civil service regulations is intended to combat structural and systemic discrimination.

The General Civil Service Code expresses reservations by allowing that "separate recruitment for women or men may, exceptionally, be provided for when membership of one or other sex constitutes a determining condition for the performance of the duties"[37]. However, this is only possible for the job categories listed in a decree issued by the Conseil d'Etat, after consulting the Conseil supérieur de la fonction publique.

Civil service law approaches the principle of equality from the angle of respect for equal treatment, in particular when it comes to access to the civil service, in the organization and running of the entrance examination.

1.1.2.1.2. Sexual harassment and sexist abuse in the civil service

The General Civil Service Code also contains a specific chapter on protection against harassment. Thus, no public employee may be subjected to sexual harassment "consisting of repeated comments or behavior with a sexual connotation which either undermine their dignity by being degrading or humiliating, or create an intimidating,

[36] Law no. 83-634 of 13 July 1983 on the rights and obligations of civil servants.
[37] Article L. 131-4 of the General Civil Service Code.

hostile or offensive situation for them". The Code also defines sexual harassment as "any form of serious pressure, even if it is not repeated, exercised with the real or apparent aim of obtaining an act of a sexual nature, whether this is sought for the benefit of the perpetrator or a third party"[38].

In the chapter on protection against gender-based discrimination, the General Civil Service Code specifies that no public employee should be subjected to sexist conduct "defined as any conduct related to a person's gender, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment"[39].

1.1.2.2. Public employers' obligations in terms of equal treatment

- *The legal and contractual obligations of public employers regarding equal access for women and men to civil service bodies, job categories, grades and positions*.

In addition to complying with the rules on the chairmanship and balanced composition of competitive examination panels, action can be taken at school level to achieve greater gender diversity in competitive examination applications, lecturers or teachers, and awareness-raising initiatives aimed at employers to prevent or combat gender stereotypes when taking on trainees or as part of the placement process, etc. Public-sector employers undertake to combat gender stereotypes, particularly in their recruitment policies and practices, whether for permanent or contract positions, in order to ensure genuine gender diversity in their teams and to combat discrimination at all stages of recruitment. In this respect, particular attention must be paid to competition and vacancy notices, as well as to recruitment campaigns, which must be devoid of any gender stereotypes.

- *Obligations regarding measures to assess and address pay differentials between men and women.*

Regardless of their status, in order to guarantee equal rights in the career development of civil servants and equal pay. Although equal treatment for members of the same body or job category is guaranteed by the civil service statute, pay differentials between women and men persist for identical bodies, job categories and functions. The bonuses and allowances allocated to civil servants can only take account of the duties they perform, their professional results[40] and the collective results of the department to which they belong[41]. Particular attention should be paid to the situation of female- and male-dominated bodies, job categories and sectors, based in particular on the work of the Human Rights Defender in the context of the *Guide to non-discriminatory evaluation of female-dominated jobs*. Professional equality" action plans must include measures to reduce pay differentials. In particular, public employers will ensure that, for identical bodies and job categories or positions, they analyze all remuneration components and assess any bias in the systems for rating positions, allocating bonuses, including variable merit-based portions, or when an employee is on family leave (maternity leave, medical leave and illnesses related to pregnancy, adoption leave, paternity leave), overtime, a time savings account or part-time work. These compensation schemes are maintained for local authority civil servants during leave linked to parental responsibilities without prejudice to their modulation according to the professional commitment of the local authority civil servant and the collective results of the service.

[38] Article L. 133-1 of the General Civil Service Code.
[39] Article L. 131-3 of the General Civil Service Code.
[40] In the local civil service, we talk about professional commitment rather than professional results.
[41] Article L. 714-1 of the General Civil Service Code.

- *Transparency requirements for* remuneration *components*

This transparency obligation applies to public sector employees when they are recruited, whether through competitive or non-competitive examinations, directly or through mobility or career development. The elements of remuneration concerned are, in particular, the indexed pay scales, the criteria for awarding bonuses and any available information enabling their level to be assessed.

- *Obligations to close the career gaps between men and women in the civil service due to parenthood.*

The Government would like employees on parental leave or available to raise a child to retain all their rights to advancement to a higher step, up to a maximum of five years over the course of their career. The years spent in these positions, up to a limit of five years, will be treated as actual service in the body or job category for the purposes of assessing promotion rights. This measure has no impact on the pension rights of the employees concerned. In addition, parents will be able to take advantage of statutory leave to raise a child up to the age of 12. To give civil servants an alternative to parental leave, any civil servant on annualized part-time leave will be able to choose to accumulate the period not worked over a limited period of time. The aim is to smooth out the impact of the period of absence on the employee's pay. The provisions relating to promotion to a higher grade will be amended as part of the "civil service" bill in order to take into account the respective situations of women and men in the bodies, job categories and grades concerned when drawing up promotion tables by choice. In the event of imbalances in the pools of employees eligible for promotion, the action plans will have to specify the measures implemented to guarantee equal access for women and men to the promotion grades concerned. In addition, the tables for promotion by choice must specify the proportion of women and men among those eligible for promotion and those promoted. The implementation of these measures will be monitored by the relevant consultative bodies.

- *Obligations to provide support in situations of pregnancy, parenthood and work-life balance.*

The 2018 agreement stipulates that "family-related leave, working hours, childcare arrangements, housing and transport are all elements to be taken into account in the overall reflection on professional equality and in human resources management" and that "one of the obstacles identified to professional equality is an unbalanced distribution between women and men of tasks related to the family (children, ascendants) and of the time devoted to it, not only during the day, but also throughout life. The arrangements for leave granted when a child arrives at home can be rethought to encourage co-parenting and remove the obstacles, directly or indirectly, to women's careers". Recognizing co-parenthood is a key factor in promoting an equal sharing of responsibilities between the two parents, but also in supporting parenthood in all its aspects, and thus taking better account of changes in family structures and society. This is why the 2018 agreement decides to: 1. create a special leave of absence entitling a public employee spouse to attend 3 of the 7 compulsory medical procedures during and after pregnancy. 2. Secure the list of beneficiaries of the special leave of absence for childbirth, based on the model of paternity and childcare leave. 3. Exclude sick leave during pregnancy from the application of the waiting period. 4. Encourage the use of time savings accounts at the end of family leave. 5. To make the rules governing the use of parental leave more flexible. 6. Encourage new forms of work organization to promote professional equality and quality of life at work. 7. Promote access to crèche places for civil servants.

- *Obligations to step up the prevention of and fight against sexual violence, harassment and sexist behavior*

The action plans must include a focus on preventing and combating all forms of sexual and gender-based violence, setting out the timetable and procedures for implementing the measures defined in the circular of 9 March 2018 (initial and ongoing training for managers, staff representatives dedicated to preventing and combating sexual and gender-based violence, an information, communication and awareness-raising system for all staff, defining and implementing a system for reporting and dealing with sexual and gender-based violence, protecting and supporting victims)[42]. The action plans will also include indicators for monitoring the reporting and handling of cases. Public employers who are obliged to implement a multi-year action plan are required by law to set up a system for reporting, dealing with and monitoring gender-based and sexual violence. A charter for the operation of systems for reporting and dealing with situations of violence was drawn up in 2019 by the Directorate General for Administration and the Civil Service in order to ensure equal treatment of employees[43]. Finally, public employers are encouraged to extend the application of this system to violence and harassment of a non-work-related nature detected in the workplace. In close collaboration with those involved in prevention (in particular prevention or occupational medicine, staff social services, bodies dealing with health and safety issues in the workplace), public employers are required to take all measures aimed at providing support and assistance to employees who are victims of acts of sexual violence, harassment or sexist behavior. The victimized employee will not be moved during the administrative investigation, except at his or her express request, and the alleged perpetrator of the violence must be subject to precautionary measures to ensure the neutrality of the investigation and the protection of the victim. In accordance with the commitments made in the 2013 protocol, special attention must also be paid to staff who are victims of domestic violence, particularly in the context of social action and the provision of emergency accommodation or when examining requests for mobility.

1.1.2.3. Preventive measures in the field of professional equality

1.1.2.3.1. An agreement to promote professional equality

An agreement dated 30 November 2018[44] structures the policy in favor of professional equality in the civil service. This new agreement builds on the achievements of the previous agreement of 2013 and includes around thirty actions with ambitious advances for civil servants. It aims to strengthen the governance of equality policies, create the conditions for equal access to jobs and professional responsibilities, eliminate pay and career progression gaps, provide better support for pregnancy, parenthood and the work-life balance, and strengthen the prevention of and fight against sexual and gender-based violence. The implementation of the measures in the agreement by public employers is closely monitored by a six-monthly monitoring committee made up of the signatories. Some of the measures have been included in the law on the transformation of the civil service of 6 August 2019[45].

[42] Circular of 9 March 2018 on combating sexual and gender-based violence in the civil service NOR: CPAF1805157C.
[43] Direction générale de l'administration et de la fonction publique, Charte de fonctionnement des dispositifs de signalement et de traitement des situations de violences sexuelles, de discrimination, de harcèlement sexuel ou moral et d'agissements sexistes de 2019.
[44] Agreement of 30 November 2018 on professional equality between women and men in the civil service.
[45] Law no. 2019-828 of 6 August 2019 on the transformation of the civil service.

1.1.2.3.2. Professional equality action plans

The decree of 4 May 2020[46] defines the procedures for drawing up and implementing action plans relating to professional equality in the civil service. This structuring obligation applies to all ministries and their public establishments, to local authorities and their Établissements publics de coopération intercommunale with more than 20,000 inhabitants, and to all public establishments in the hospital civil service. The decree specifies the authorities responsible for drawing up the plans, the procedures for assessing compliance with this obligation and, where applicable, the procedure for imposing financial penalties of up to 1% of the total payroll of the employer concerned if the action plan is not implemented.

1.1.2.3.3. Balanced representation in social dialogue bodies

Since 2018, the rule has been that candidate lists must now be made up of a number of women and men corresponding to the proportion of women and men represented on the body concerned[47].

The rules of balanced representation apply when candidatures are submitted. They apply to all list ballots, for the election of social committees, joint administrative committees and joint consultative committees in each of the three civil service sectors.

1.1.2.3.4. Warning systems

Reporting procedures were introduced by a decree dated 13 March 2020[48] in accordance with the commitments made in the agreement of 30 November 2018. Public servants who believe they are victims of discrimination, moral or sexual harassment or sexist behavior, or who witness such practices, have special procedures for reporting them. These procedures include a procedure for receiving reports, a procedure for directing victims to the services responsible for providing them with support and assistance, and a procedure for directing them to the competent authorities to take any appropriate "functional protection" measures and to ensure that the facts in question are dealt with, possibly by conducting an administrative investigation.

1.1.2.3.5. Equality advisors

The introduction of equality officers is also one of the commitments made in the agreement of 30 November 2018. The role of the referents is to inform, raise awareness, advise employees and departments within their structure, participate in the assessment and diagnosis of the professional equality policy, and monitor the implementation of actions carried out by the administration to which they report. The introduction of referents within the State and its public establishments is governed by a circular dated 30 November 2019[49]. It requires each State administration to set up a network of equality referents, appointed within each department or service so that all public employees can contact a local equality referent, without prejudice to the introduction of pooling. It sets out the procedures for deploying equality advisors, their tasks, the organization of the system in the State civil service, how the advisors' work is to be coordinated with that of the other players involved in professional

[46] Decree no. 2020-528 of 4 May 2020 defining the procedures for drawing up and implementing action plans relating to professional equality in the civil service.
[47] Article 54 of Act no. 2007-483 of 20 April 2016 on professional ethics and the rights and obligations of civil servants.
[48] Decree no. 2020-256 of 13 March 2020 on the system for reporting acts of gender-based violence, discrimination, harassment and abuse in the civil service.
[49] Circular of 30 November 2019 on the establishment of Equality referents within the State and its public establishments.

equality, the procedures for implementing this obligation, and the procedures for informing civil servants about this system.

1.1.2.3.6. The Equality and Diversity label

The provisions of the Equality and Diversity label set out above for the private sector also apply to the civil service.

1.2. Comments on the presence of female workers in the care sector

Like education and social work, the healthcare professions are highly feminized. The feminization of the healthcare professions is a constant, as demonstrated by a 2005 study on "The feminization of the healthcare professions in France"[50]. It affects all professions in the health, social and personal care sectors. The latest figures for 2023 from the Caisse nationale de solidarité pour l'autonomie (CNSA) put the number of professionals in the personal assistance sector at 1,362,300, 87% of whom are women[51].

According to a 2019 survey[52] on the care sector, 86% of nurses are women; 88% of care assistants are women; 94% of home helps are women. In the home help, support, care and services sector, the proportion of female employees is estimated at 95%, according to amendment no. 59 of 2023.
The majority of employees are women (82.3% in 2015 according to the Dares), with few qualifications (only 7.5% have more than a baccalaureate, compared with 38.4% of all employed people) and an average age higher than that of the working population (46 compared with 41)[53].

Women's work in the care sector has been seen and organized as an extension of their activity within the family. Today, 67% of family careers are women[54].

With the exception of certain occupations such as nursing, these are often less skilled than other occupations (e.g. care assistant or home help). Female workers therefore have few or no qualifications compared with the working population as a whole, and this has an impact on their pay, which is lower than that of working women as a whole. Low pay is exacerbated by the use of part-time work and the fact that women are less likely to be found in management positions, which, as in many sectors, are monopolized by men[55].

1.3. Publication of statistics and databases on the care sector

Have any statistics or databases been published in your country on the care sector or on each of the professions within it, broken down by gender?

[50] S. Bessière, "La féminisation des professions de santé en France: données de cadrage", *Revue Française des affaires sociales*, 2005, no. 1, pp. 17-33.
[51] CNSA, *Les chiffres clés de l'aide à l'autonomie*, 2023.
[52] L. Chassoulier, F.X. Dewetter, S. Lemière et al. Dewetter, S. Lemière et al. IRES report Investing in the care sector - A gender equality issue, IRES, 2023.
[53] E. Kulanthaivelu, L. Thierus, "Les salariés des services à la personne: comment évoluent leurs conditions de travail et d'emploi ?", DARES Résultats, no. 038, p.1
[54] T. Blavet and Y. Caenen, "Les proches aidants: une population hétérogène", *Les dossiers de la DREES*, no. 110, 2023.
[55] CESE, *Les métiers de la cohésion sociale,* 2022.

Various institutions (INSEE, DREES, DARES) publish statistics and databases that have made it possible to calculate the proportion of women in care professions. However, the publications relate to specific professions or certain themes with different timeframes, which means that it is not always possible to obtain precise figures for the care sector as a whole or for the professions that interest us in this study (nursing, care assisting, home help). On the other hand, gender differences are common.

In the case of databases, do they present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?

The databases studied present aggregated data, mainly at national and regional level.

Are these databases public and freely accessible to everyone, or only to researchers?

Most databases are public and freely accessible. Some studies provide statistics to which explanatory databases are attached.

If databases exist, please provide links and/or indicate how to request them.

INSEE data
Insee Références, Femmes et hommes, l'égalité en question, Edition 2022.
https://www.insee.fr/fr/statistiques/6047751?sommaire=6047805&q=soin

DREES data
Drees, Les salaires dans la fonction publique hospitalière. In 2021, the average net salary increases by 2.8% in constant euros, Études et résultats, n° 1278, 2023.
https://drees.solidarites-sante.gouv.fr/sites/default/files/2023-09/ER1278.pdf

Drees, Près d'une infirmière hospitalière sur deux a quitté l'hôpital ou changé de métier après dix ans de carrière, Études et résultats, n° 1277, 2023.
https://drees.solidarites-sante.gouv.fr/publications-communique-de-presse/etudes-et-resultats/pres-dune-infirmiere-hospitaliere-sur-deux

DARES data
Dares, Portraits statistiques des métiers, 2023
https://dares.travail-emploi.gouv.fr/donnees/portraits-statistiques-des-metiers

Dares, Les métiers en 2030, 2023.
https://dares.travail-emploi.gouv.fr/publication/les-metiers-en-2030-le-rapport-national

Drees, Demography of the health professions
https://drees.shinyapps.io/demographie-ps/,

Drees, Statistique annuelle des établissements de santé (SAE).
https://data.drees.solidarites-sante.gouv.fr/explore/dataset/708_bases-statistiques-sae/information/

1.4. Description of statistics and databases

Data from the **Insee Références** survey**, Femmes et hommes, l'égalité en question, 2022**, show that working conditions in the nursing and midwifery professions are intensifying or deteriorating. 75% of working people say their work is intensifying or deteriorating, 87% of them women.

A study by **Drees on salaries in the hospital civil service**[56] has yielded some data. In 2021, the full-time equivalent net salary of women in the hospital civil service will average €2,459 per month, 19.6% less than that of men (€3,058). This gap is up by 0.5 points over one year, following a sharp fall the previous year (-1.5 points), as the Covid-19 bonus has mainly benefited occupations in which women are more heavily represented.

With equivalent status, the pay gap between women and men is much smaller, but persists: women earn on average 1.5% less among civil servants, 6.8% less among contract staff; the gap peaks at 14.3% among medical staff, as women are notably younger in this category. In total, for the same status, age, grade, hierarchical category and type of establishment, women receive 3.7% less than men, a gap that has increased by 0.3 points, following a 0.2 point drop in 2020. However, this gap cannot be interpreted as a measure of the differences in pay between women and men for the same job. Some of the residual differences are due to unobserved characteristics (seniority, experience, tasks performed, etc.). Furthermore, full-time equivalent pay is used to compare pay for an equivalent amount of work: it does not take into account differences in employment conditions (in particular the greater or lesser use of part-time work), which also contribute to differences in monthly earnings between women and men[57].

A Dares study from 2023 provides statistical portraits of the occupations we have chosen to study, which we present below.

In 2017-2019, the "**Healthcare assistants"** family of occupations will include 727,000 people, 91% of whom will be women. 20% will be under 30 and 27% over 50, and 60% will have a CAP, BEP or equivalent qualification. Among care assistants, 60% work on Saturdays, 56% on Sundays and 15% at night. Among full-time employees, 39% say they earn less than €1,500 net per month, and 0% say they earn more than €3,000. The median net full-time salary was €1,549 per month in 2017-2019. At the national level, the tension and recruitment difficulties in 2021 are very high among care assistants.

In 2017-2019, the "**Nurses, midwives**" job family will include 644,000 people, 85% of whom will be women, 20% of whom will be under 30 and 25% over 50, and 60% of whom will have a 2-year higher education qualification. Nurses and midwives account for 2.4% of national employment and 11.9% of employment in Mayotte, the region with the highest proportion. 16% of them work in the Île-de-France region, where they are most numerous. In this profession, 63% work on Saturdays, 57% on Sundays and 22% at night. Among full-time employees, 6% say they earn less than €1,500 net per month, and 7% say they earn more than €3,000. The median net full-time salary was €2,028 per month in 2017-2019. At national level, the tension and recruitment difficulties in 2021 are very high among nurses and midwives.

In 2017-2019, the "**Home helpers and domestic assistants"** occupation family included 558,000 people, 95% of whom were women, 11% under the age of 30, 48% over the age of 50 and 41% with a CAP, BEP or equivalent

[56] In 2021, the average net salary will increase by 2.8% in constant euros, Drees, "Les salaires dans la fonction publique hospitalière", *Études et résultats*, no. 1278, 2023.
[57] *Ibid*.

qualification. Home helps and housekeepers account for 2.1% of national employment and 3.9% of employment in Martinique, the region with the highest proportion. 12% of them work in Île-de-France, the region where they are most numerous. In this profession, 46% work on Saturdays, 35% on Sundays and 6% at night. Among full-time employees, 78% say they earn less than €1,500 net per month, and 2% say they earn more than €3,000. The median net full-time salary was €1,290 per month in 2017-2019. At national level, the tension and recruitment difficulties in 2021 are very high among home helps and household helps.

In the home help, support, care and services sector, the proportion of female employees is estimated at 95%, according to amendment no. 59 of 2023.

1.5. Legislation on the care sector and the professions

The presence of women has been taken into account in the lexicon used to describe the professions of nurse and care assistant, which is not the case for the professions of life auxiliary or home help, as the term is neutral. The texts applicable to these two professions use inclusive writing. The use of the terms "aides-soignantes" and "infirmières" in the feminine perhaps reflects the strong feminization of the care sector. It's difficult to say what is meant by "auxiliaires de vie" or "aides à domicile", as the term is gender-neutral.

Thus the public health code (art. 4311-1) uses the masculine and feminine to qualify the profession of nurse and the directory of health and autonomy professions uses inclusive writing and displays professions such as “caregiver and nurse”.
However, this attention to the significant presence of women in this sector of activity is not reflected in the name of the diplomas for access to these professions. Thus, there is the State Nursing Diploma (DEI) and the State Nursing Assistant Diploma (DEAS).
The use of the terms “caregivers” and “nurses” in the feminine form perhaps reflects the strong feminization of the care sector. It is difficult to say what is meant by “care assistants” or “home helpers”, because the term is neutral.

French law is characterized by the neutrality of legislation relating to the care professions, with legal requirements applying regardless of gender at all stages of the care worker's career, from conditions of access (1.5.1.) and the recruitment procedure (1.5.2.) to progression in the profession (1.5.3.).

1.5.1. Access conditions

The criteria used for recruitment are strictly based on the professional skills and/or aptitudes required to ensure equal access to employment for all. In very general terms, it was the Lyon-Caen law of 1992[58] that tried to make recruitment less subjective by specifying the methods authorized both when the job is offered and during the selection of the candidate. Title V of this law, on "Provisions relating to recruitment and individual freedoms", amends various provisions of the Labor Code. Articles L. 121-6 to L. 121-8 of the Labor Code expressly refer to job applicants.

[58] Law No. 92-1446 of 31 December 1992 on employment, the development of part-time work and unemployment insurance, OJ No. 1 of 1st January 1993. Law adopted following the report by Professor Gérard Lyon-Caen: *Les libertés publiques et l'emploi*, Rapport, La documentation française, 1992, n° 27.

The company must therefore have made an offer for a vacant job or a job to be created[59].

The rules governing the candidate selection procedure are set out in Article L. 120-2 of the Lyon-Caen Act (now Article L. 1121-1 of the French Labor Code), which states that "no one may restrict a freedom unless this is justified" by virtue of the principle of proportionality. This provision prohibits any restriction on labor law that is not justified by the nature of the task to be performed and not proportionate to the aim pursued.

Employers are required to publish their job offers on dedicated Pôle emploi or equivalent websites. Discriminatory references in job advertisements, such as gender, are prohibited, except in the case of certain types of civil service employment[60]. With this in mind, a number of articles have been added to ensure that recruitment methods and the information requested from employees are relevant. Article L. 1221-6 of the French Labor Code requires that the questions asked of an employee during a job interview must be directed towards one goal: assessing the employee's ability to occupy the proposed position. Questions relating to marital status, qualifications or the existence of a non-competition clause (which may give rise to civil liability) are permitted. Conversely, questions relating to private life, such as trade union membership, religion or pregnancy, are prohibited on the grounds of respect for privacy under article 9 of the French Civil Code. The Labor Code states that no employee may be discriminated against on the grounds of pregnancy[61]. This protection has been elevated to the level of a fundamental freedom by the social chamber of the Cour de cassation (French Supreme Court)[62]. It considers that the dismissal of an employee on the grounds of her pregnancy infringes the principle of equal rights between men and women guaranteed by paragraph 3 of the Preamble to the Constitution of 27 October 1946, and constitutes a fundamental freedom in the same way as the right to strike, the exercise of trade union activity or the state of health.

Lastly, employers are required to be transparent when using certain methods (audio-visual recording of the interview), so that candidates are informed before they are used.

Thus, the principle of non-discrimination implies, in particular in the drafting of external or internal job offers, that job titles mention both genders or are gender-neutral and are formulated in an objective and non-discriminatory manner, particularly with regard to the definition of recruitment criteria. These criteria must therefore be strictly based on the skills required and the qualifications of the candidates[63].

In addition to the existing legal and regulatory provisions, the conditions of access to the care professions are addressed within the framework of national branch collective agreements in order to provide guarantees of protection against unjustified differences in treatment or even prohibited discrimination in recruitment, assignment, remuneration, vocational training and career development, regardless of gender, family status or pregnancy.

To this end, certain extended collective branch agreements specifically indicate the presence and importance of women in the total number of employees in the sector. By way of illustration, the national collective convention of individual employers and home-based employment branch stipulates that "the representative trade unions and professional organizations in the branch of individual employers and home-based employment may rely in

[59] J.-E. Ray, "Une loi macédonienne? Étude critique du titre V de la loi du 31 décembre 1992", *Dr. soc*, 1993, p. 110.
[60] Article L. 325-16 of the General Civil Service Code.
[61] Article L. 1132-1 of the French Labor Code.
[62] Cass. soc., 29 January 2020, no. 18-21.862, no. 116 FS-P+B.
[63] Article 2, paragraph 2, title VIII of the NCC for home help, support, care and services of 2010.

particular on the family employment observatory in order to assess the gender mix of jobs in the sector and any inequalities between women and men in access to employment and continuing vocational training"[64].

This particular attention to the presence of women in the personal services sector is reflected in the following terms: "Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector[65], the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms" and "the fact of making a job offer or a request for an internship or training conditional, refusing to hire, penalizing, to dismiss a person on the grounds of their origin, sex, family status, physical appearance, name, genetic characteristics, sexual orientation, age, state of health, disability, morals, political or trade union opinions and activities, membership or non-membership of a particular ethnic group, nation, race or religion, is punishable by criminal penalties under Articles 225-1, 225-2 and 225-4 of the French Criminal Code"[66].

The social partners in the personal services sector also stipulate that the employer must appoint an "equal opportunities correspondent" and consult the works council where one exists in the company. This "equal opportunities correspondent" is responsible for monitoring training and awareness-raising initiatives and for combating prejudice and stereotypes carried out by the employer. In companies with employee representatives but no works council, it is recommended that an "equal opportunities correspondent" be appointed from among the members of staff. The parties stress the important role of management in this area. Notwithstanding the employer's legal obligations, an assessment report is drawn up annually by the "equal opportunities correspondent". This report summarizes: recruitment procedures within the company, the distribution of new recruits with indications of gender, age and any cases of disability. This report is sent to the Works Council as part of the single annual report[67].

In civil service law, Order no. 2021-1574 of 24 November 2021 repealed the provisions of the special statutes of the territorial and hospital civil services[68] relating to conditions of access or recruitment[69], career management[70], and the promotion of civil servants[71], previously amended by the 2012 law containing various provisions relating to the civil service[72].

[64] Article 13 of the NCC individual employer and home-based employment of 2021.
[65] S. Bessière, "La féminisation des professions de santé en France: données de cadrage", *Revue Française des affaires sociales*, 2005, n° 1, pp. 17-33.
[66] Article 1, paragraphs 2 and 5, Part 3: Employment and career development policy, Chapter I of the NCC for personal services companies of 2012.
[67] Article 1st - 2 of the NCC for personal services companies of 2012.
[68] Law no. 86-33 of 9 January 1986 on the hospital civil service, amended by Law no. 2019-828 of 6 August 2019 on the transformation of the civil service, JORF no. 0182 of 7 August 2019.
[69] Loi portant statut de la fonction publique territoriale, article 34 et seq.; Statut de la fonction publique hospitalière and ordonnance n° 2020-1447 du 25 novembre 2020 portant diverses mesures en matière de santé et de famille dans la fonction publique, JORF n° 0286 du 26 novembre 2020.
[70] Loi portant statut de la fonction publique territoriale, article 48 et seq.; statut de la fonction publique hospitalière, article 2 et seq.
[71] Loi portant statut de la fonction publique territoriale, article 77 et seq.
[72] Act no. 2012-347 of 12 March 2012 on access to permanent employment and the improvement of employment conditions for contractual agents in the civil service, the fight against discrimination and various provisions relating to the civil service, JORF no. 0062 of 13 March 2012.

Conditions of access to care professions based on (diploma or professional aptitude)

It is interesting to be able to analyze more concretely the conditions of access to the care professions[73], in this case those relating to access to the professions of nurse, care assistant and home help, also known as life auxiliary. For example, there is a skills repertoire that describes and documents the skills required to work as a nurse[74] or care assistant[75].

Nurses and nursing assistants are classified as medical auxiliaries in the French Public Health Code. The profession of nurse is subject to specific regulations in the Public Health Code[76]. Thus, "any person who habitually provides nursing care on medical prescription or advice, or in application of the role assigned to him or her, is considered to be practising the profession of nurse. Nurses take part in various activities, particularly in the fields of prevention, health education and training or supervision"[77]. The profession of nurse may only be practised by persons holding a diploma, certificate or authorization as provided for in the Public Health Code[78].

Care assistants work in collaboration with nurses in health establishments or home services and may provide care within the respective limits of the qualification recognized as a result of their training. When the nurse is not present, the care assistant may carry out routine daily care related to a stabilized state of health or a stabilized chronic pathology which could be carried out by the person themselves if they were autonomous or by a career[79]. The profession of care assistant is carried out by holders of the diplôme d'État d'aide-soignant, the certificat d'aptitude aux fonctions d'aide-soignant or the diplôme professionnel d'aide-soignant[80].

Homecare professions are part of the medico-social sector. The Caisse nationale de solidarité pour l'autonomie (CNSA) has a broad definition of these professions[81], which include: home help, social auxiliary, care assistant, social and family intervention technician, etc. Home helpers are professionals who assist people who need help in their own homes. To work as a home carer, a diploma is required (Diplôme d'État Accompagnant éducatif et social or Auxiliaire de vie sociale, Bac Pro accompagnement, soins et services à la personne).

1.5.2. The recruitment procedure

In principle, it is the employer who chooses the job applicant. However, in the recruitment procedure, the principles of equal treatment and non-discrimination[82] do not preclude differences in treatment where they meet

[73] On the notion of carer in France: see our WP2 report, p. 20 et seq.
[74] Public Health Code, diplôme d'État d'infirmier, référentiel d'activités et de compétences, arrêté du 31 juillet 2009, annexe II, BO Santé - Protection sociale - Solidarités no 2009/7 du 15 août 2009, 9 p. [Accessed 4 December 2023].
[75] Référentiel de certification des Aides-soignants, Arrêté NOR SSAH2110960A - Annexe II 10 juin 2021, available on the Ministry of Health website, 11p. [Accessed 4 December 2023].
[76] Articles L. 4311-1 to L. 4314-6 of the French Public Health Code.
[77] Article L. 4311-1 of the French Public Health Code.
[78] Article L. 4311-2 of the French Public Health Code.
[79] Article R. 4311-4 of the French Public Health Code.
[80] Article L. 4391-1 of the French Public Health Code.
[81] CNSA, Les chiffres clés de l'aide à l'autonomie, 2023.
[82] For example, article 12.1 of the national collective agreement for private employers and home employment stipulates that: "... the criteria used for recruitment may not take into consideration the fact that the candidate belongs to one or other sex and must be strictly based on the professional skills and qualifications of the candidates for recruitment". In the same vein, NCC for private hospitals of 2002: Titre IV: Contrat de travail, chapitre Ier: Formalités de recrutement - embauche préalable: article 37. See also, Agreement of 12 June 2018 on quality of life at work and professional equality.

objective criteria such as an essential and determining occupational requirement, the objective of which is legitimate and the requirement proportionate[83].

During the job interview, the employer may only ask for written or oral information directly related to the job or work placement in question, in order to assess the applicant's skills and suitability for the job.

Employers must not take a woman's pregnancy into consideration when refusing to hire her or terminating her probationary period[84].

Similarly, under civil service law, civil servants are recruited by competitive examination, unless otherwise stipulated[85]. Under civil service law, the recruitment procedure is subject to the conditions governing the organization of competitions. Candidates for competitive examinations must meet these conditions as well as those set out in the specific statute of the body to which they are applying on the closing date for applications, unless otherwise specified in the specific statute of the body concerned[86].

In the hospital civil service, the competitions mentioned in section 1 are opened, under the conditions laid down by the specific statutes: 1° Either by the competent State authority, at national, regional or departmental level; 2° Or by the appointing authority. The specific statutes may also provide for these competitions to be opened and organized within a region or department on behalf of several establishments among those covered by article L. 5, by the appointing authority of the establishment with the largest number of beds[87]. The number of posts put up for competition is equal to the number of posts declared vacant for this competition[88].

Finally, during the recruitment procedure for civil servants, the public employer asks applicants to provide data relating to their training and social or professional environment, in addition to the data required to manage the recruitment process, in order to produce studies and statistics on access to jobs. The collection and processing of this data is subject to strict regulations[89].

Where the specific statutes of the job categories so provide, candidates for competitions for access to category A job categories who are declared suitable by the selection board are appointed as trainees by the Centre national de la fonction publique territoriale[90]. At the end of their initial training period, set by the specific statutes of the job categories, students are entered on a list of suitable candidates drawn up in application of the provisions of paragraph 1 and published in the Official Journal[91]; they are then appointed to the posts filled. Hospital civil service competitions give rise to the drawing up of a list ranking in order of merit the candidates declared suitable by the selection board[92].

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[83] Article 11, Part II, Chapter I of the NCC of individual employers and home-based employment branch of 2021.
[84] Article 2, para. 3, Title VIII of the NCC for the home help, supports, care and services branch of 2010.
[85] Article L. 320-1 of the General Civil Service Code.
[86] Article L. 325-34 of the General Civil Service Code.
[87] Article L. 325-32 of the General Civil Service Code.
[88] Article L. 325-33 of the General Civil Service Code.
[89] Article L. 325-21 of the General Civil Service Code: This data may only be that mentioned in article 6 of law no. 78-17 of 6 January 1978 relating to information technology, files and civil liberties. This data is not disclosed to the members of the jury. The list of data collected as well as the procedures for collecting and storing this data are set by decree in the Conseil d'État, following a reasoned and published opinion from the Commission nationale de l'informatique et des libertés.
[90] Article L. 325-44 of the General Civil Service Code.
[91] Article L. 325-45 of the General Civil Service Code.
[92] Article L. 325-47 of the General Civil Service Code.

The procedure for recruiting contract staff must also comply with certain legal requirements. The recruitment of contract staff to fill permanent posts is decided following a procedure that guarantees equal access to public posts. The competent authority publishes the vacancy and the creation of these posts under the same conditions as the recruitment procedure for civil servants[93].

In addition, it is specified that "no measure concerning, in particular, recruitment, tenure, remuneration, training, assessment of professional value, discipline, promotion, assignment or transfer may be taken in respect of a public servant taking into consideration the fact that: 1° he has been subjected to or refused to be subjected to conduct contrary to the principles set out in Articles L. 131-1, L. 131-2 and L. 131- 3; 2° They have lodged an appeal with a hierarchical superior or taken legal action to ensure that these principles are respected; 3° Or they have witnessed conduct contrary to these principles or reported it..."[94]. In the performance of their duties, no distinction may be made between civil servants on the grounds of gender[95].

However, the Order of 2021 on the General Civil Service Code provides that "separate recruitment for women or men may, exceptionally, be provided for when membership of one sex or the other is a determining condition for the performance of the duties"[96]. In such cases, the list of bodies for which separate recruitment for men or women may be organized is drawn up after consultation with the Conseil supérieur de la fonction publique de l'État and the relevant social committees. The procedures for these separate recruitments are set after consultation with the relevant social committee. The terms and conditions of the physical tests and the separate ratings according to the sex of the candidates referred to in Article L. 325-16 are set after consultation with the competent social committee[97].

1.5.3. Progression in the profession

In France, in the healthcare sector, career development follows salary development, both in terms of how it is determined and how much it is paid. A reference coefficient is set for each group of professions in order to determine the basic salary under the collective bargaining agreement, to which may be added any technical supplements linked to the employee's supervisory role or qualifications. A promotion allowance and a seniority bonus may be added to this salary, which may be increased by the technicality supplement.

Generally speaking, career progression or the employee's development in the profession is linked to the gradual acquisition of technical skills and competencies through seniority in the profession. Seniority refers to periods of actual or equivalent work. For example, the national collective agreement for private not-for-profit hospital, care, cure and nursing establishments[98] provides for 5 levels in its classification grid: junior, confirmed, senior and expert employees.

- The entry level is for managers with no experience in the job and up to and including the 3rd year in the job.
- The junior step is for executives with between 4 and 8 years' experience in the job.

[93] Article L. 332-21 of the General Civil Service Code. These provisions do not apply to: 1° Senior posts whose appointment is left to the Government's decision, as mentioned in article L. 341-1; 2° The posts of Director General of the departments mentioned in 1° and 2° of article L. 343-1; 3° The posts covered by 1° and 2° of article L. 6143-7-2 of the Public Health Code.
[94] Article L. 131-12 of the General Civil Service Code.
[95] Article L. 131-2 of the General Civil Service Code.
[96] Articles L. 131-4 and L. 325-31 of the General Civil Service Code: "A decree of the Council of State sets the list of job categories, positions or bodies for which separate recruitment for men or women may be organized in application of article L. 131-4".
[97] Article L. 325-24 of the General Civil Service Code.
[98] Article 08.01.1, Part IV, Title VIII of the NCC for private not-for-profit care and nursing establishments of 1951.

- The senior step is for executives with between 9 and 13 years' experience in the job.
- The senior step is for managers with experience in the job between 14 years and 19 years inclusive.
- The expert level is for managers with 20 or more years' experience in the job.

Once they have been recruited, managers are automatically promoted to the next step in their profession. The length of the steps may be reduced in order to anticipate the transition to the next step. Any such advance must respect the principle of equal treatment or, failing that, be based on objective and relevant factors.

The technical supplement is calculated on the basis of the reference coefficient plus any additional remuneration linked to management, qualifications and/or the job itself. It is determined as follows:

- entry-level executive: no top-up;
- junior executive: 5% of base salary converted into points;
- senior manager: 10% of base salary converted into points;
- senior executive: 14% of base salary converted into points;
- expert manager: 17% of base salary converted into points.

In addition, a career allowance (as referred to in article 8 of amendment no. 2002-02 of 25 March 2002) may be provided for. In any event, taking into account the duration of their work and their seniority in the company, the remuneration of part-time employees is proportional to that of employees who, with the same qualifications, hold an equivalent full-time job in the establishment or company.

We also note that "career prospects and vertical mobility for care assistants, particularly towards nursing posts, remain limited, as they are subject to training at a nursing training institute (IFSI) and to passing the entrance examination"[99].

In the civil service, there are two aspects that determine the career path of care workers. The first is gender balance in appointments. According to the General Civil Service Code, at least 40% of each sex must be appointed to public posts in each calendar year: 1° Senior posts; 2° Other State management posts; 3° Management posts in State public establishments; 4° Management posts in the regions, départements, municipalities and public establishments for inter-municipal cooperation with more than 40,000 inhabitants and the Centre national de la fonction publique territoriale; 5° Management posts in the hospital civil service. The number of persons of each sex to be appointed in application of this rule is rounded down to the nearest whole number. This obligation does not apply to renewals in the same post or to appointments to the same type of post[100].

The second aspect concerns the balanced advancement of men and women in the profession. Firstly, advancement to a higher step is granted automatically and continuously from one step to the next on the basis of seniority. Civil servants are assessed by a grading system[101], which also contributes to their advancement through the ranks. The grade is the title that confers on its holder the right to occupy one of the jobs that correspond to it[102]. The hierarchy of grades in each body or employment category, the number of steps in each grade, the rules for advancement to a higher step and promotion to a higher grade are set out in the specific

[99] Clersé-CGT report, *op. cit.* p. 241.
[100] Article L. 132-5 of the General Civil Service Code.
[101] Article 76 of the 1984 local and regional civil service regulations, amended by law no. 2014-58 of 27 January 2014: "The local authority's assessment of the professional value of civil servants is based on an annual professional interview conducted by the direct line manager, which results in a report being drawn up. The joint administrative committees are informed of this report; at the request of the person concerned, they may ask for it to be reviewed".
[102] Article L. 411-5 of the General Civil Service Code.

statutes[103]. Under penalty of nullity[104] of the public servant's appointment, "the grades of each body or employment framework are accessible by means of competition, internal promotion or advancement, under the conditions laid down by the specific statutes. They may, where appropriate, be accessible by direct integration or by external promotion"[105]. Similarly, under civil service law, "promotion to a higher grade shall take account of the respective situations of women and men in the bodies, job categories and grades concerned, within the framework of the management guidelines laid down (...)"[106]. The Government must submit a report to the Common Council for the Civil Service on the measures implemented to ensure professional equality between women and men. This annual report, the implementation procedures for which are defined by decree, includes data on recruitment, the number of women on juries, training, working hours, professional promotion, working conditions, pay and work-life balance. This report is then submitted to Parliament[107].

In addition, public servants, like candidates for public office, are also protected against harassment. Thus, no measure concerning recruitment, tenure, remuneration, training, assessment of professional merit, discipline, promotion, assignment or transfer may be taken in respect of a civil servant on the grounds that the latter: 1° Has been subjected to or refused to be subjected to acts of sexual harassment as referred to in article L. 133-1, including, in the case mentioned in 1° of this article, if the comments or behavior have not been repeated, or the acts of psychological harassment mentioned in article L. 133-2; 2° Has lodged an appeal with a hierarchical superior or taken legal action to put an end to these acts or acts; 3° Or because he has witnessed such acts or acts or has reported them..."[108].

1.6. Legislation and collective agreements on professional classification in the care sector

Pursuant to article L. 2141-1 of the French Labor Code, the organizations bound by a branch agreement or, failing that, by professional agreements, meet at least once every five years to negotiate "*on the need to revise classifications, taking into account the objective of professional equality between women and men and job diversity*".

The NCC for the home help, support, care and services of 21 May 2010 includes a section on classification and pay systems.

Here is an example of a classification grid relating to the conditions for promotion to the upper echelons for employees in the response sector.

Chapter II Classification grids

Article 13

Intervention channel: employee

[103] Article L. 411-6 of the General Civil Service Code.
[104] Article L. 411-8 of the General Civil Service Code.
[105] Article L. 411-7 of the General Civil Service Code.
[106] Article L. 132-10 of the General Civil Service Code.
[107] Article L. 132-11 of the General Civil Service Code.
[108] Article L. 133-3 of the General Civil Servant Code. See also article L. 135-1 of the Civil servant general Code, on the public servant as whistleblower.

13.1. Conditions for promotion
In the category of support staff, the conditions for advancement to level 1 are as follows:

Step 1 **Taking on the basic tasks of the job**	**An employee who is in the process of acquiring the basic tasks of the job and who does not perform the essential acts of daily life (cf. art. 5.1).**
Step 2	**Upgrading to step 2**
Mastery of all the main tasks of the job	**At the end of 48 months' practical experience in the job; or having completed 42 hours of training in step 1, linked to the main tasks of the job and having 1 year's practical experience in degree 1 step 1.**
Step 3	**Upgrading to step 3**
Perfect command of all aspects of the job, including unusual situations	**To have completed 105 hours of training in step 2, enabling them to work with a public as described in article 5.1 a, or to have 4 years' experience in step 2, and to have been assessed by management as having perfect mastery of all the duties of the job, as having the ability to adapt to unforeseen situations, and as having the ability to take the initiative and report back, in accordance with the assessment grids defined in the joint guide provided for in article 11.**

In the category of support staff, the conditions for advancement to level 2 are as follows:

Step 1	**Upgrading to degree 2 step 1**
Taking on the basic tasks of the job	**An employee who is in the process of acquiring the basic tasks of the job and holds a diploma related to the job performed, or a grade 1, step 3 employee with at least 4 years of practice in essential acts of daily living with a public as described in article 5.1 a.**
Step 2	**Upgrading to step 2**
Mastery of all the main tasks of the job	**At the end of 48 months' practice in the job of Level 2, Step 1, or having completed 70 hours of training in Level 1, in line with the tasks of the job and having 1 year's practice in Level 2, Step 1.**
Step 3	**Upgrading to step 3**

Perfect command of all aspects of the job, including unusual situations	**To have completed 105 hours of training in step 2, enabling them to provide enhanced social or health support, or to have 4 years' experience in step 2, and to have been assessed by management as having perfect mastery of all the duties of the job, as having the ability to adapt to unforeseen situations, and as having the ability to take initiative and report back, in accordance with the assessment grids defined in the joint guide provided for in article 11.**

Article 13.2 Basic full-time salary for level 1 and 2 employees in the intervention sector, by step

Intervention channel: employee level 1			Intervention channel: employee level 2		
Step 1	Step 2	Step 3	Step 1	Step 2	Step 3
Coef. 291	Code 304	Code 324	Coef. 344	Coef. 359	Code 383

The NCC for individual employers and home-based employment of 15 March 2021 provides for a job classification grid for employees, drawn up taking into account the diversity of activities carried out in the home of the private individual employer and the desire of the social partners to develop and enhance employees' skills. It forms the basis of the minimum wage scale applicable to the employee. This job classification grid enables individual employers and employees to determine the benchmark job performed and the corresponding minimum wage level.

The NCC for private hospitals of 18 April 2002 introduced a new classification system to replace the old classifications in previous collective agreements.

The NCC for personal services companies of 20 September 2012 also provides for a classification system for salaried staff drawn up taking into account the diversity of the activities or professions concerned, but also their common characteristics linked mainly to the place of performance chosen by the beneficiary of the service and the particular suggestions that arise from it.

The NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951 do not contain a classification system, but address them in subsequent riders.

There is no gender bias in the classification systems of the NCCs studied. However, classifications are a means of reducing pay inequalities between women and men and promoting job diversity.

1.7. Litigation or disputes in the media in France over "job classification" in the care sector and gender discrimination

To our knowledge, there has never been a job classification dispute in the care sector of sufficient importance to warrant media coverage.

1.8. Provisions specific to employment contracts in the care sector in legislation or collective agreements

Do legislation or, where applicable, collective agreements contain specific provisions on employment contracts in the care sector that differ from employment contracts in other production sectors? If so, do you consider that there is gender bias in employment contracts? (If so, please explain)

The answers to this question will relate exclusively to recruitment. We have created paragraphs on vocational training and job classification (8bis), on promotion and criteria development (8 ter), a paragraph on the means put in place by the partners to combat discrimination and promote gender equality (8 quater) and finally a paragraph on harassment (8 quinquies).

French legislation does not contain specific provisions on employment contracts in the care sector. Only branch and/or company collective agreements may have to do so. Thus, almost all the national collective agreements studied[109] emphasize the "special context" of the home (of the employer/user) as the place where the worker is employed, the duty of accountability and the requirement of loyalty on the part of staff, in particular to prevent the abuse of the weakness of people receiving care. Confidentiality and professional secrecy clauses can be found in most collective agreements applicable to care workers[110]. The regulations are geared more towards protecting users than healthcare workers[111]. In addition, all national collective agreements for public or private hospitals, whether commercial or not-for-profit, emphasize "the needs of the service" or "the requirements of the service" in order to provide for additional constraints or particular hardships (organization of working hours, timetables and distribution, duty roster with notice period) for employees, sometimes in return for compensation in the form of time off in lieu or allowances (as in the case of weekly days off or additional days of holiday)[112]. Failure to comply with these special clauses may result in penalties that are often particularly severe[113]. In the public sector, entire chapters (Chapter II, Book I^{er}, Title II) are devoted to the issue of preventing conflicts of interest and criminal offences (art. L. 122-1 to L. 122-25) as well as to the issue of employee liability (Chapter V of the same title: art. L. 125-1 to L. 125-2). However, these specific contractual clauses are in no way directly or indirectly associated with sex.

1.8.1. Recruitment

The choice of recruitment is a matter for the employer. However, the employer must comply with a certain number of rules or general principles of labor law and civil service law[114]. Article L. 1142-1 of the French Labor Code sets out the prohibitions on job offers and recruitment: "No one may:
- 1° Mentioning or causing to be mentioned in a job advertisement the sex or marital status of the candidate sought. This prohibition applies to all forms of advertising relating to recruitment, regardless of the nature of the employment contract envisaged;

[109] Excluding the NCC for private not-for-profit hospital establishments.
[110] NCC for personal services companies, section 3; article 1 and 2 - article 8, al. 2 titre IV, chapitre II of NCC for the home help, support, care and services branch; article 05.02.1 of NCC for private not-for-profit hospitals.
[111] On this subject, see article 8, paragraphs 3 and 4, title IV chapter II of NCC for the home help, support, care and services..
[112] See article 31, title IV of NCC of establishments and services for the maladjusted and disabled; article 05.01.2 of the NCC for private not-for-profit hospitals.
[113] Article 05.02.2 of the NCC for private not-for-profit hospitals : Miscellaneous prohibitions.
[114] Article L. 332-21 of the General Civil Service Code.

- 2° Refusing to hire, transferring, terminating or refusing to renew an employee's employment contract on the grounds of sex, marital status or pregnancy on the basis of different selection criteria according to sex, marital status or pregnancy;
- 3° Take any measure on the basis of sex or pregnancy, in particular with regard to pay, training, assignment, qualification, classification, professional promotion or transfer".

When it comes to recruitment, collective agreements usually refer *in extenso* to the legal prohibition and the principle that the criteria used for recruitment must be strictly based on the professional skills and qualifications of the candidates for recruitment[115]. Collective bargaining agreements then go into more detail on the job offer (1.8.1.1.), recruitment conditions (1.8.1.2.) and stereotypes (1.8.1.3.).

1.8.1.1. The job offer

In the NCC for the home help, support, care and services branch of of 2010, the principle of non-discrimination implies, in particular in the drafting of external or internal job offers, that job titles mention both genders or that they are gender-neutral and present objective and non-discriminatory wording, particularly with regard to the definition of recruitment criteria.

The 2012 NCC for personal services companies stipulates that the text of the job advertisement must only include: the job title; the profile sought; details of how working hours will be organized; *and* pay conditions.

An agreement of 12 June 2018 on quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002 was concluded to develop the conventional policy on equal treatment. Accordingly, company managers undertake to comply with the following measures: verification of neutrality in the drafting of job offers; dissemination of all job offers internally and to staff representative bodies; requirement for the offer to contain elements relating to the job description, the qualification requested (including certification) and the conditions of employment (full-time/part-time, permanent/ fixed-term contract, remuneration, etc.).

1.8.1.2. Conditions governing recruitment

The NCC for the home help, support, care and services branch of of 2010 states that during the recruitment interview, the employer may only request written or oral information that is directly related to the performance of the job or training period concerned, in order to assess the applicant's skills and suitability for the job. Employers must not take a woman's state of pregnancy into consideration in refusing to hire her or in terminating her probationary period. Employers undertake to build partnerships with players likely to make vacancies accessible to as many people as possible and to broaden the range of applicants in order to remedy the imbalances observed. Staff representatives will make proposals for action to reduce these imbalances.

The 2012 NCC for personal services companies requires each company in the personal services sector to implement a recruitment procedure that eliminates any risk of discrimination and promotes professional equality. In order to ensure equal access to employment for all, recruitment criteria must be strictly based on required professional skills and/or aptitudes. The NCC stipulates the principle of equal access to night work, which in France has given rise to a conflict with European Union law (see introduction), in the following terms: "The employer may

[115] Article 12-1, Part II, Chapter II of the NCC individual employer and home based employment of 2021; NCC for home help, support and care services of 2010; Article 37 of NCC for private hospitals of 2002.

not take gender into consideration: - to hire an employee for a job involving night work; - to transfer an employee from a day job to a night job or vice versa; - to take specific measures for night workers or day workers with regard to vocational training" (article 7, title 1st). Given the specific nature of night work, the employer must ensure that the conditions of access to and organization of training are adapted to enable night workers to benefit from training. Where appropriate, the employer may propose temporary changes to the employee's working hours.

The agreement of 12 June 2018 on quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002, provides for various means of combating discrimination in recruitment: diversification of recruitment channels and submission of offers, in particular to operators of the public employment service; setting up mixed recruitment teams, where possible. To avoid certain selection biases and highlight skills that are sometimes not very visible, it is recommended that the use of certain types of *curriculum vitae* be promoted. The industry is therefore committed to promoting the use of a curriculum vitae (CV) that focuses on the substance of an application rather than its form. Furthermore, in the context of external recruitment or internal promotion, the social partners recommend ensuring that the *ratio of* women and men interviewed corresponds to that of the applications submitted, given equal skills. Recruitment criteria should always be based on qualifications, skills and experience. In addition, Pôle emploi, Cap emploi or any other recruitment intermediary responsible for selecting applications on behalf of a company will be asked to ensure a balanced selection of applications with regard to the proportion of women and men received. The sector's social partners encourage companies to distribute - electronically or on paper - to candidates interviewed for a job, a document setting out the respective rights and obligations of the parties (employers and employees) in terms of recruitment, as set out in articles 1221-6 to 1221-9 of the French Labor Code.

1.8.1.3. Stereotypes

The 2012 NCC for personal services companies devotes a large part of its preamble to the principle of non-discrimination and equal treatment. "Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector, the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms. A periodic report on this subject will be drawn up at branch level on the basis of information collected from companies in the sector".

The 2012 NCC for personal services companies requires companies to appoint an "equal opportunities correspondent" responsible for monitoring training and awareness-raising initiatives and for combating prejudice and stereotypes carried out by the employer. In companies with staff representatives but no works council, it is recommended that an "equal opportunities correspondent" be appointed from among the members of staff. The parties stress the important role of management in this respect. Notwithstanding the employer's legal obligations, an assessment report is drawn up annually by the "equal opportunities correspondent". This report summarizes: recruitment procedures within the company, the distribution of new recruits with indications of gender, age and any cases of disability. This report is sent to the works council as part of the single annual report. It will also be sent to the union delegates during the mandatory annual negotiations. The time spent at this meeting is not deducted from the delegation hours of the persons concerned. Where the company does not have a staff representative, employees may ask the employer directly about the systems in place in the company and the measures taken to combat discrimination and promote professional equality over the past financial year. More generally, all management staff in companies in the sector must be trained to manage human resources in a way that guarantees non-discrimination and promotes equality[116].

[116] Article 1, part III of the NCC for personal services companies of 2012.

The agreement of 12 June 2018 on the quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002, pursues the objective of improving the rate of gender diversity in jobs and promoting awareness of stereotypes among recruiters. The measurement indicators will be based on sex-disaggregated figures for the number of employees on fixed-term contracts (CDD) and open-ended contracts (CDI), distinguishing between full-time and part-time work.

1.8.2. Vocational training, job classification and gender

Job classification is one of the traditional subjects of collective bargaining at industry level in France. The industry agreements adopt classification grids, the purpose of which is to identify jobs in the sector by formalizing their description, to support employees in their professional development, to establish a hierarchy of jobs based on their content, *to* facilitate intra-sector mobility and professional equality as part of forward-looking management of jobs and skills initiated at national level and implemented at local level. None of the collective bargaining agreements applicable in the sector include gendered criteria in job classification.

Some partners see vocational training as a lever for ensuring equality in the workplace, and are working on measures to remedy the inequalities observed. For example, the NCC for individual employers and home based s of 2021 stipulates that since vocational training is an essential lever for ensuring equality between women and men in access to employment and in their career paths, employees must have equal access to all these schemes[117].

In the 2010 NCC for the home help, support, care and services branch, it is expressly stipulated that "training initiatives, both for individual professional development and to adapt to changes in the structure, must benefit both sexes, whether they are full-time or part-time employees, and regardless of their family situation". Two specific objectives are being pursued. On the one hand, the sector's structures undertake to maintain and develop, through training, the conditions guaranteeing respect for parity in the exercise of positions of responsibility. Secondly, in order to facilitate the return to work after an absence of more than 1 year due to parental leave, organizations are invited to develop the practice of interviews. For example, "after an absence of this nature, if it is necessary to update knowledge, this can be the subject of a training period. Companies must anticipate the need for employees to return to work and provide the necessary support"[118]. The period of absence of employees on maternity leave, adoption leave, parental presence leave or parental education leave is fully taken into account when calculating their rights under the Individual Right to Training (DIF).

In the agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002, the social partners undertake to ensure: - that the training courses on offer, and in particular the opportunities for access to certification, are aimed at both female- and male-dominated professions. Particular care will be taken to ensure that both sexes have balanced access to training leading to certification, regardless of working hours, so as to guarantee career development prospects for all employees, in the light of their needs and those of the company, with a view to strengthening gender diversity:
- organize the training (place and time) in such a way as to enable everyone to take part, particularly employees with special family constraints. In this way, companies will be able to measure any gaps in access to training.
- encourage the training of management and human resources professionals or those in charge of recruitment,

[117] Article 12.3, part II, chapter II of the NCC individual employers and home based employment of 2021.
[118] Article 4, Title VIII of the NCC for the home help, supports, care and services of 2010.

as well as managers, in the implementation of measures conducive to professional equality (in terms of recruitment, management, etc.). These training courses must in particular comply with the guidelines that the Conseil Supérieur de l'Egalité Professionnelle (CSEP) (Higher Council for Professional Equality) may formulate in this area". As in most of the NCCs, the measurement indicators will have to take into account the number of employees, broken down by gender, who are on training, full-time, part-time and/or working night shifts.

1.8.3. Promotion, career development and gender

The NCC for individual employers and home based employment of 2021 makes no provision for promotion, career development or gender, no doubt due to the fact that employers are private individuals, not companies, and therefore have only one employee[119]. As for the 2012 NCC of personal services companies, it merely stipulates that employees must not be discriminated against in the course of their careers and in their career development within the branch, whether in terms of access to training or promotion, pay or professional mobility.

On the other hand, two agreements in the sector devote a fairly long section to this issue, in line with the signatories' concern for gender diversity in the workplace, which is undoubtedly the central problem in the professions covered in this sector, characterized by a very clear gender polarity between operational jobs and managerial and responsible positions. Gender equality in employment means that women and men should have the same opportunities for career development and access to positions of responsibility.

Accordingly, the social partners of the 2010 NCC for the home help, supports, care and services reiterate their desire to eliminate any factor likely to prevent women and men from gaining access to managerial positions and positions of responsibility. They invite companies to take all necessary measures to achieve this objective, in particular:
- Examine the criteria used to define jobs that would exclude women or men from accessing them, even though they have all the skills required to do so. In particular, they will ensure that job titles do not lead to any gender discrimination;
- to ensure that women and men do not suffer any delay in their career progression as a result of periods of contract suspension such as maternity, adoption or parental leave. Support measures are taken before, during and on return from parental leave.
- to seek ways of enabling employees who so wish to maintain a link with them throughout the period of maternity leave or full-time parental leave, in order to facilitate the employee's return to work at the end of his or her absence;
- ensure that the way in which work is organized within the same function does not constitute a factor of discrimination in the allocation of tasks and opportunities for promotion;
- be particularly careful to ensure that any adjustments to working hours that may have been made, in particular to facilitate the reconciliation of private and family life, do not stand in the way of career development proposals;
- offer a specific interview after parental leave of at least 1 year to all employees concerned, in particular when they return to their jobs or to a job that is at least equivalent;

[119] However, the concepts of promotion and career development are less present in the collective agreement, as the primary objective of the existing employment relationship between a private individual employer and his employee is to meet a personal need of the private individual employer, which may not change over time. On the other hand, these two concepts are taken into account in the context of branch mechanisms, negotiated by the social partners, to recognize the loyalty of employees in the professional branch and encourage their development: introduction of a conventional indemnity for voluntary retirement (cf. appendix 4 to the collective agreement), professional training mechanism (appendix 2 to the collective agreement), job classification which provides for intra-sector mobility with salary enhancement in the event of a branch title.

- undertake to correct any discriminatory treatment; the structures undertake to correct it.

Furthermore, the sector's social partners consider that the choice of part-time work or any reorganization of working hours should not act as a brake on career development. Furthermore, when full-time positions become available, priority will be given to offering them to part-time employees who have the required qualifications and skills and who so request"[120].

The 2010 NCC for the home help, support, care and services sets up a communication mechanism at sector level to support the contractual job gender balance policy, with the aim of "developing a strong communication campaign on the image and representation of professions", with the aim of "reducing the imbalance between men and women". The NCC encourages the companies falling within its scope to also put in place internal and external communication to promote gender diversity and professional equality, highlighting the human, economic and social issues involved. The NCC recommends awareness-raising initiatives for "all local managers, in particular to avoid any discriminatory behavior[121]. The NCC draws companies' attention to the need to ensure that their external communications with care recipients "do not contain any discriminatory wording"[122]. Rider 59 of 2023 to the NCC adds that awareness-raising work can be carried out with the CSE when it exists or with the referent appointed within it, as well as with employees "to bring out concrete reflections on the obstacles to professional equality (for example, this could take the form of a questionnaire, one or more working groups, or be the subject of a discussion during a meeting on employees' right of expression) in order to bring out appropriate and, above all, shared corrective measures.

The rider of 12 June 2018 on the quality of life at work and professional equality of the NCC for private hospitals of 2002 adopts measures to encourage professional promotion and/or access to responsibilities:
- in particular by ensuring that women and men have equal access to information about internal mobility opportunities for higher-level jobs and for jobs in all of the company's business lines. The aim is to combat the "glass ceiling" and "glass partition" effects, while promoting professional diversity. Professional training will be used as much as necessary to facilitate these mobility opportunities;
- by taking into account training courses taken and/or certifications acquired at the end of a training course or as part of a validation of acquired experience (VAE), at the initiative of both employees and employers;
- making the most of the professional interview, introduced by the Act of 5 March 2014, to identify solutions for career progression and encourage employees to take on more responsibility.

Specific training courses to prepare for competitive examinations and/or diplomas leading to certification must be equally accessible to women and men, and to both full-time and part-time employees. In addition, employers undertake to ensure that, if necessary, following a career break of at least one year, women and men will be offered training to help them adapt to their previous or new job, or measures to help them return to work, so that they can resume their duties under the best possible conditions.

In order to promote equitable career development between women and men, the sector undertakes to avoid any negative impact on the career development of employees of companies who have taken parental leave (maternity, adoption, paternity, childcare, partial or total parental education leave), to identify the obstacles to career development for women and to promote the main levers that encourage career development for women. Indicators must take into account: the number of employees, by gender, who have benefited from preparation for a competitive examination and/or certifying diplomas, the percentage of women and men promoted from one

[120] Article 5, Title VIII of the 2010 NCC for the Home Help, Support, Care and Services Branch
[121] Ibid Article 6, Title VIII.
[122] Ibid Article 6.2, Title VIII.

year to the next by classification/professional category, the proportion of transfers away from home among the proposed transfers.

1.8.4. Means and scope for combating gender discrimination

Two original initiatives to combat gender discrimination have been taken by the social partners in the care sector. The first was to extend the scope of the measures to small structures with fewer than 50 employees, and the second was to set up an observatory in one of the branches.

1.8.4.1. Extending the scope of application to companies with fewer than 50 employees

Amendment 59 of 2023 to the NCC for the home help, support, care and services of 2010 extends the legal obligations in terms of gender equality applicable to structures with more than 50 employees to structures with fewer than 50 employees. This applies to the diagnosis prior to the implementation of a policy "in favor of equality through an action plan. This assessment must be carried out at least over the past 3 years on all the indicators listed in the rider (access to employment, training, professional development and/or access to responsibilities, pay, work-life balance). For example, with regard to access to employment, the rider reiterates the principle of neutrality and exclusivity of criteria (skills, experience and qualifications) and, during the recruitment interview, the prohibition on seeking information not directly related to the job or work placement. The aim is to improve the gender balance of jobs in organizations with fewer than 50 employees. The actions suggested relate to neutrality in the drafting of job offers, the introduction of a code of good conduct or recruitment processes that respect the rules of gender equality, increasing the proportion of men in "highly feminized" sectors and increasing the proportion of women in sectors with a high proportion of men. The rider recommends taking as indicators the rate of recruitment by gender (fixed-term/permanent contracts, full-time/part-time), the number of employees who have attended a training course or awareness-raising action on gender equality, and the number of women and men met during the final stage of the recruitment process before choosing the candidate.

As far as training is concerned, Rider 59 sets a target for organizations with fewer than 50 employees that at least 50% of employees should have benefited from job adaptation training after a break in employment of more than 6 months. The rider reiterates that the interview must be offered to all employees after a period of interruption (maternity leave, full-time or part-time parental leave, adoption leave, care-giver leave, period of part-time work after maternity or adoption leave, sabbatical leave, sick leave of more than 6 months, trade union mandate). To assess the rate of access to training by gender, the agreement requires companies to use at least two of the following three indicators: the number of men and women who have received training, the number of hours of training per scheme per gender and per sector, and the number of employees who have received training or job adaptation after a break in employment of more than six months, broken down by gender.

Rider 59 stresses that gender diversity depends on the opportunities offered for career development and access to responsibilities. To this end, the text requires companies with fewer than 50 employees to ensure that women and men are offered the same opportunities for internal mobility to higher-level jobs in line with the positions available within the structure (job titles without gender discrimination, support measures across the board at the end of periods of interruption, attention to work organization methods that may be factors in discrimination in the distribution of tasks, attention to the personal and/or family situation of employees and to flexible working hours, etc.). The rider reiterates that part-time work or working time arrangements must not be a hindrance to career development. In order to assess the rate of career development by gender, the addendum requires companies with fewer than 50 employees to calculate the indicator of the percentage of women and men on

permanent contracts who have benefited from career development from one year to the next (change of sector, category, level), distinguishing between full-time and part-time employees.

1.8.4.2. The creation of a forward-looking observatory for trades and qualifications

The agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002 sets up the prospective observatory or trades and qualifications in the private hospital branch (observatoire prospectif des métiers et des qualifications de la branche de l'hospitalisation privée) as a means of promoting professional equality, measuring the impact of actions implemented in companies and identifying good practices. The observatory has two functions: to assess the actions taken by companies in the light of the QWL indicators and to put forward proposals to guide the branch's policy in terms of methodology. Among the indicators, the industry agreement specifies: equal treatment of men and women; job diversity; reconciliation of personal and professional life; and respect for professional equality. The prospective observatory or trades and qualifications in the private hospital branch will also collect gender-specific data, by sector of activity, relating to the following elements: the general percentage of women in the sector; the gender mix within the sector; the breakdown of employees and their average gross annual remuneration by remuneration bracket according to the jobs defined by the national collective agreement for private hospitals of 18 April 2002; the breakdown of employees by socio-professional category according to the nature and type of employment contract (permanent, fixed-term, subsidized contract, apprenticeship, etc.) and according to working hours (part-time, full-time, etc.); the breakdown of employees by professional category according to the nature and type of employment contract (permanent, fixed-term, subsidized contract, apprenticeship, etc.) and according to working hours (part-time, full-time, etc.).) and according to working hours (full-time or part-time); the distribution of employees by age bracket; the distribution of employees in terms of access to vocational training (number of hours of training, nature of the training followed and nature of the beneficiary's employment contract and socio-professional category) as well as in terms of promotion. The observatory must draw up a three-yearly report which will be presented to the standing joint negotiating committee. The collective agreement for the sector of private individual employers and home-based employment stipulates that the social partners will rely on the Observatory of Family Jobs (Observatoire des emplois de la famille) to assess the gender mix of jobs in the sector and any inequalities between women and men in access to employment and continuing vocational training. Where appropriate, they should, as part of collective bargaining at branch level in the sector of individual employers and home employment, recommend measures to remedy the inequalities observed.

1.8.5. Bullying, sexual harassment, violence and gender

With two exceptions, harassment and violence are relatively little understood by NCCs in the care sector in general.

The agreement of 12 June 2018 on quality of life at work and professional equality in the NCC for private hospitals of 2002 devotes 2 articles to this. The legal obligations of the employer are recalled and the recommendations of the ANI of 20 March 2010 are repeated. The signatories of the 2018 agreement suggest that awareness-raising, communication, information and training initiatives be undertaken for prevention purposes. It is suggested that companies draw up a reference charter after consultation with the CSE, include a provision on this in the internal regulations, and put in place "an appropriate procedure for identifying, understanding and dealing with harassment and violence in the workplace", which could be based on discretion to protect the dignity and privacy of each individual, making information anonymous to parties not involved in the case, an investigation to follow

up complaints, a mediation procedure, disciplinary action for false accusations, and external assistance including occupational health services.

Rider 59 of 2023 to the NCC for the home help, support, care and services branch of 2010 states that employers must prevent moral and sexual harassment likely to occur in the course of work, including in the homes of beneficiaries, by relying on a range of players. It recommends displaying the texts relating to the fight against moral and sexual harassment. In the event of a report, the employer must refer the matter to occupational medicine and take the necessary action by setting up an alert and investigation procedure, and take all appropriate sanctions in the event of proven harassment. The rider states that the employee will be offered support, such as psychological counselling through the platform set up by the industry.

1.9. Litigation or legal disputes concerning "employment contracts" in the care sector and discrimination based on sex

Has there been any media coverage in your country of legal disputes or conflicts concerning "employment contracts" in the care sector and gender discrimination? If so, please summarize or comment on the case(s).

Working conditions in the care sector can be a subject of concern and debate, and conflicts can arise. However, as far as we know, there is very little case law in the area of sex discrimination and a study of the French press does not reveal any disputes in this area. progression.

This silence and lack of recourse to rights is consistent with the results of the survey conducted by the he Human Rights Defender (Défenseur des droits) on the perception of discrimination in the personal services sector[123]. The consequences of discrimination on any grounds (gender or origin) affect these people's professional lives and their health. 22% have decided to resign or negotiate a contractual termination for this reason (compared with 16% of the working population), 17% have been made redundant or had their contract not renewed (compared with 7%). From a health point of view, anger, fear, sadness and shame sometimes affect these people long after the event: almost 70% of people who have experienced discrimination feel that they went through a period when their mental health deteriorated (sadness, fatigue, depression, fear, feelings of isolation). It is therefore understandable that, compared with the working population as a whole, few care workers seek redress: 17% have gone to the occupational health service or GP, 12% have spoken to the trade union, 87% have alerted the Labour Inspectorate (compared with 13%), or have taken their case to court (3% compared with 9%)[124].

1.10. Wage provisions in legislation or collective agreements in the care professions

Do the legislation or, where applicable, the collective agreements contain wage provisions for each of the professions in the care sector which differentiate them, in terms of structure or amount, from workers in the general sector or in other production sectors?

[123] Défenseur des droits/OIT, Survey: Perception of discrimination in employment - 16e barometer: edition devoted to the personal services sector, 2022
[124] *Ibid*.

The principle of equal pay for men and women for equal work or work of equal value[125] has long been established in French law, dating back to a law passed in 1972. Although the pay gap has narrowed steadily over the last 25 years (from 22.1% in 1995 to 15.5% in 2021 for comparable working hours and jobs), significant differences remain due to the fact that women are more likely to work part-time, and to the gendered distribution of occupations and lower-paying jobs[126].

The NCC for private hospitals of 2002 stipulates that companies shall ensure, for the same work or for work of equal value, equal pay for men and women, in accordance with the provisions of article L. 3221-2 of the Labor Code. When examining economic trends and the employment situation in the sector, in application of article L. 2242-3 of the Labor Code, any situations revealed to be in contradiction with this principle will require appropriate measures to be defined in order to put an end to them[127]. More generally, the[128] collective agreement incorporates the provisions of the French Labor Code on the principle of professional equality[129] and on collective bargaining at company level. These elements are taken up in the agreement of 12 June 2018 on the quality of life at work and professional equality, which requires companies to guarantee the absence of illegitimate disparities in pay, i.e. not based on clear and objective factors (qualifications, professional experience, position, level of responsibility, tasks entrusted, results) between women and men placed in equivalent situations. Where necessary, companies must take steps to remedy any inequalities observed.

In the 2021 NCC for individual employers and home based employment, the social partners stress their commitment to the principle of equal pay for men and women for the same work or work of equal value, as defined by the legal provisions[130].

The signatories of the NCC for the home help, support, care and services of 2010 understand remuneration to mean the ordinary basic or minimum wage or salary and all benefits and accessories, in connection with the job held, and stipulate that the various elements making up remuneration are established according to the same standards for women and men. The NCC introduces clauses on the treatment of parental leave, with a view to avoiding unequal effects on professional or family life. Thus "the parties reiterate that maternity, paternity and adoption leave is considered as actual working time for the purposes of: determining seniority rights; allocating profit-sharing; calculating paid leave. The social partners wish to neutralize the financial impact that parental leave may have on pay trends between men and women. In particular, they agree that during or at the end of the period of suspension of the employment contract for maternity or adoption, employees shall benefit from the same general increases that may be granted within the structure to other employees in the same professional category"[131].

Rider 59 of the 2010 NCC for the home help, support, care and services also addresses equal pay in organizations with fewer than 50 employees. The partners invite them to draw up gender-disaggregated and anonymized pay reports based on the indicators listed in the agreement (basic annual salary, age, seniority in the job in the branch ; classification under the agreement, branch, category (employee, TAM, executive), level and step, level of diploma ; seniority in the job within the organization; working hours (full-time/part-time), absences due to family leave

[125] The notion of "equal value" is defined in article L. 3221-3 of the French Labor Code.
[126] See Insee Focus, March 2023, No. 292. Ph. Roussel, Femmes et hommes, l'égalité en question", ed. 2022, Insee.
[127] Article 78 of the NCC for private hospital of 2002.
[128] Articles 79 and 80 of the NCC for private hospital of 2002
[129] Article L. 2223-57 of the French Labor Code.
[130] Article 12.1, Chapter 2, Part. II of the NCC for individual employers and home based employment of 2021.
[131] Article 3 Title VIII of the NCC for individual employers and home based employment of 2021.

(maternity leave, parental leave, paternity leave, etc.), with the exception of parental leave.), with the exception of leave for sick children.

1.11. Litigation or disputes in the media concerning pay in the care sector and discrimination based on sex

Have there been any high-profile disputes or conflicts in your country over 'pay' in the care sector and gender discrimination?

There are very few high-profile cases of gender discrimination in the care sector. Whether in the nursing profession, the care assistant profession or the home help profession, the subjects that are repeatedly covered in most newspapers and media concern the training of care workers[132], remuneration[133], difficult working conditions[134], leading employers in both the private and public sectors to seek to retain care workers[135] and to question the conditions of their retirement[136].

In 2019-2020, the covid-19 epidemic caused an electroshock by highlighting the invisibilisation and lack of recognition of the care professions, which led carers to speak out more loudly[137]. This will lead to an increase in the salaries of care workers as part of the Ségur health package, the cost of which is estimated at 26,827 million euros in the private non-profit and for-profit sector and 16,500 million euros for public employers[138]. Nevertheless, this will not give rise to the fact that society has become partly aware of the paradox that exists

[132] Aides-soignants: les syndicats infirmiers contre la formation en deux ans (ouest-france.fr), *Ouest France*, published on 10 August 2023; Santé: les syndicats infirmiers vent debout contre une formation raccourcie pour les aides-soignantes (sudouest.fr), *Sud-ouest*, published on 18 September 2023. [Accessed 13 December 2023].

[133] Hôpital: la rémunération de nuit des infirmiers et des aides-soignants sera "majorée de 25%", annonce Elisabeth Borne (francetvinfo.fr), *France info*, published on 31 August 2023. [Accessed 13 December 2023]; Hôpital: Élisabeth Borne annonce 1,1 milliard d'euros par an de revalorisations pour les soignants (bfmtv.com), *bfmtv,* published 31 August 202. [Accessed 13 December 2023]; Revalorisation des soignants: "On veut être payés à hauteur de nos compétences et responsabilités", lance Thierry Amouroux, du Syndicat national des professionnels infirmiers (francetvinfo.fr), *France info*, published 31 August 2023. [Accessed 13 December 2023]; Revalorisation des soignants: le secteur privé dénonce un traitement inégalitaire (sudouest.fr), *Sud-ouest*, published 1st September 2023. [Accessed 13 December 2023].

[134] TESTIMONIALS: "92 residents for four or five care assistants", Ehpad staff warn of "difficult" working conditions (francetvinfo.fr), *France info*, published on 28 September 2023. [Accessed 13 December 2023].

[135]; Drees, Nearly one hospital nurse in two has left the hospital or changed profession after a ten-year career, Études et résultats, n° 1277, 2023. https://drees.solidarites-sante.gouv.fr/publications-communique-de-presse/etudes-et-resultats/pres-dune-infirmiere-hospitaliere-sur-deux [Accessed 13 December 2023].

[136] Réforme des retraites: "Neuf mois de travail en plus, est-ce que je tiendrai?", crainte une aide-soignante - Paris (75000) (lamontagne.fr), *La montage*, published on 31 August 2023. [Accessed 13 December 2023]. See also L. Chassoulier, Fr.-X. Devetter et al, *Investir dans le secteur du soin et du lien aux autres. Un enjeu d'égalité entre les hommes et les femmes*, Clersé-UMR 8019, Université de Lille, RRS-CGT, final report, January 2023, p. 142 which estimates that "64% of all (care assistants, nurses and home helpers) do not feel capable of doing this job until they retire (this is only the case for 42.8% of people in employment in the Working Conditions survey, Dares 2019) and it is even more true among the youngest in the sample (over 70% of under-30s)".

[137] For more on this, see: L. Chassoulier, Fr.-X. Devetter et al, *op. cit.* p. 105 et seq. which draws up the results of the consultation entitled "Mon travail le vaut bien" ("My job is worth it").

[138] *Ibid*, p. 56. The data for this work was taken from: Insee, Employment Survey 2019.

between the essential and vital social usefulness of front-line jobs[139], which include "care professions, the majority of which are occupied by women, and their particularly low levels of consideration and professional and salary recognition"[140].

The result is a lack of attractiveness in the care professions, leading to staff shortages and work overload. Caregivers see this as a lack of recognition or even abandonment of the elderly, particularly in the for-profit sector, against a backdrop of a trend towards privatization[141] of care in EHPAs[142].

1.12. Specific provisions on reconciling work and family life in legislation or collective agreements in the care sector

- Do legislation or, where applicable, collective agreements refer to the reconciliation of work and family life "for women workers" in the care sector in general or in each job in the care sector? If so, please summarize or comment.
- Have there been any court rulings in this area? If so, please summarize or comment.
- Do legislation or, where applicable, collective agreements provide for different provisions in terms of work-life balance for staff in each of these jobs in the care sector compared to ordinary workers or workers in other production sectors? If so, please summarize or comment on the case(s).
- Have there been any court rulings on differences in reconciliation between the care sector and other sectors? If so, please summarize or comment on the case(s).

Neither legislation nor collective agreements refer to reconciling work and family life "for women workers" in the care sector in general or for each job in the care sector. Nor are there any court rulings on the subject. Collective agreements provide for work-life balance arrangements for night workers of both sexes (1.12.1.). One agreement addresses the issue of reconciling work and family life in a global (societal) way, i.e. by placing work in a given territory with its constraints in terms of trade, transport, etc. (1.12.2.).

1.12.1. Night work and family and social responsibilities

The NCC for private not-for-profit hospital and nursing establishments of 1951 (not extended) stipulates that measures may be taken by establishments and services to facilitate the coordination of night work by night workers with the exercise of family and social responsibilities. When night work is incompatible with the following imperative family obligations: looking after a child, caring for a dependent person, the employee may request to be assigned to a day shift, provided that a position compatible with the employee's professional qualifications is available. For the same reasons, an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal.

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[139] First confinement: 392,000 "front-line" workers, the majority of whom are women - Insee Analyses Provence-Alpes-Côte d'Azur - 97 [consulted on 4 December 2023].
[140] *Ibid,* p. 247.
[141] L. Chassoulier, Fr.-X. Devetter et al, *op. cit*, p. 248. See also, M. El Khomri, *Plan de mobilisation nationale en faveur de l'attractivité des métiers du grand-âge* 2020-2024, report to the Minister of Solidarity and Health, 2019.
[142] Remember the Orpea Ehpad scandal revealed in Victor Castanet's book *Les fossoyeurs,* published by Fayard, 2022. More recently, the CGT denounced mistreatment in the Emera Ehpad group: Le groupe d'Ehpad Emera dans la tourmente judiciaire, deux ans après le scandale Orpea, *Le Monde*, published on 30 November 2023 [On line, consulted on 11 December 2023].

The 2012 NCC for personal services companies companies stipulates that, by virtue of the protection of social and family life, "an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. For the same reasons, any night worker may ask to be assigned to a day shift because of compelling family obligations. The employer must respond within a maximum of one month to any request for a change of assignment from a night shift to a day shift. As stipulated by law, the NCC must provide for transport arrangements, which is a point of attention in the case of work carried out at the beneficiary's home. In order to facilitate the transport of night workers, work schedules are organized in such a way as to enable employees who do not live at home or who do not have a motorized vehicle to use public transport. Exceptionally, and only with the employer's authorization, a taxi, the cost of which will be borne by the employer, may be requested by an employee who no longer has any means of transport to return home".

The NCC for home help, support, care and services of 2010 (extended) stipulates measures designed to make it easier for employees to combine night work with family and social responsibilities. Thus, in accordance with legal and regulatory provisions, when night work is incompatible with imperative family obligations (childcare, care of dependent persons), an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. Similarly, because of the pressing family obligations set out above, a night worker may request to be assigned to a day shift, provided that a position compatible with his or her professional qualifications is available. In order to enable each employee to reconcile family and professional life, a schedule is drawn up and given to each employee, indicating the weeks when he or she may be required to work at night. Rider 59 of 2023 on equality to the NCC of the home help, support, care and services branch of 2010 deals with working conditions and especially work-life balance. The signatories ask companies to take better account of workers' personal and family constraints, to study the organization of working hours for employees with particular personal or family responsibilities, and to study the introduction of schemes to contribute to childcare costs. To this end, the agreement recommends the following indicators: total number of employees likely to benefit from sick leave for children, by gender, number of days of sick leave granted, by gender, number of night workers broken down by profession, by working hours (full-time/part-time) and by gender.

1.12.2. The societal approach to work-life balance

The agreement of 12 June 2018 on quality of life at work and professional equality in the NCC on private hospitals of 2002 includes very pragmatic clauses for reconciling work/family/personal life on the organization of work. They recommend that companies:
- encourage the introduction of suitable meeting times, in particular to enable night workers to take part or to plan journeys in advance,
- facilitate the transition to day work, where this is envisaged, by measures to adapt the position,
- organize the work, in particular and as a minimum by respecting the notice periods for the management and modification of schedules,
- to improve working conditions and encourage employees working at night to combine their work with family responsibilities,
- to encourage and negotiate, through company agreements in companies with more than 50 employees, consideration of the impact of information and communication technologies in the management of working time, and in particular the right to disconnect, in order to ensure that their use respects employees' personal lives and rest periods;
- initiate discussions on the introduction of a time charter in companies with fewer than 50 employees or where company negotiations have failed;

- intervene, negotiate, enter into agreements or contracts with the various local stakeholders who have an impact on the company's environment (public transport timetables, childcare, school timetables, social landlords, etc.);
- encourage teleworking, within the framework of legal provisions and during the annual negotiations on the quality of life at work, as long as this is compatible with the employee's qualifications and the organization of his or her activity, while respecting the right to disconnect;
- organise and innovate services and adaptations in-house or through inter-company pooling to facilitate this reconciliation (company crèches, assistance with health expenses, company concierge services, etc.).

1.13. Statistics or databases published in your country on accidents at work or occupational diseases in the care sector as a whole or in each of the jobs in the care sector according to the sex of the workers.

After contacting CARSAT, we did not have confirmation of the existence or not of statistics or databases on work accidents or occupational illnesses resulting from the work of personnel in the care sector.

1.14. Statistics and databases on the proportion of male and female workers in the care sector workforce

Women's employment rates have risen sharply since 1975, making France one of the European countries with the highest rates in the 25-55 age group. However, this increase has been gradual over the generations and has not affected all women in the same way[143].

At ages between 30 and 50, the activity rate for women has risen sharply over the generations. By the age of 40, it had risen from 69% for the generation born in 1945 to 86% for the generation born in 1975, an increase of 17 percentage points. However, this increase was not fully reflected in a rise in the full-time equivalent employment rate, due both to the rise in the unemployment rate and to the growth in part-time employment. At the same age and for the same generations, the employment rate rose by only 15 percentage points and the full-time equivalent employment rate by 13 percentage points. The increase in women's participation in the labor market has therefore partly taken the form of part-time employment.

These general trends conceal major disparities according to level of qualification. For women with the lowest levels of education, the increase in participation rates has mainly taken the form of part-time jobs, since full-time equivalent employment rates have risen very little. For the most highly educated, on the other hand, the rise in activity rates was almost entirely reflected in full-time jobs: their activity rate rose by 13 percentage points and the full-time equivalent employment rate by 15 percentage points (at age 40 between the 1945 and 1975 generations). Their full-time equivalent employment rate has also risen faster than their employment rate (15 points compared with 13 points), reflecting less recourse to part-time jobs.

Women's growing participation in the labor market has also been strongly determined by the number of dependent minor children in the household. The increase in activity and employment was small for women without dependent children, as activity rates were already high. It was moderate for women with just one dependent child, and marked for women with two or more dependent children. Nevertheless, the presence of many children continues to be a major determinant of employment. At the age of 40, for the generation born in

[143] Henri Martin, *Population et Sociétés*, n° 606, Décembre 2022.

1975, the full-time equivalent employment rate is 70% for all women, but only 58% for women with three or more dependent children.

However, the latest available data shows that this increase in female employment is running out of steam. For women born after 1970, activity and employment rates are no longer increasing over the generations.
The gaps in activity and employment between women and men have therefore continued to narrow over the generations. However, the catching-up process, which was very rapid for the generations born between 1925 and 1970, is slowing considerably for the later generations. Whereas for the generations born before 1970 this was mainly due to an increase in the indicators for women, it is now entirely due to a reduction in the indicators for men.

Strong growth in activity and employment for men and women around age 60

At ages close to 60, the activity and employment rates for men fell sharply for the generations born between 1925 and 1940. This decline was the result of regulatory changes in the pension system and the labor market: development of early retirement and gradual cessation of activity schemes, exemption from job-seeking for the oldest unemployed, introduction of the age of 60 for entitlement to retirement, etc. For women, the effect of these changes was counterbalanced by increasing participation in the labor market, with the result that activity rates stagnated at the same ages and for the same generations. For the generations born after 1940, the trend was completely reversed. These generations have been affected by the gradual phasing out of early retirement schemes: job-seeking exemption was abolished in 2012 and early retirement schemes disappeared in 2005. These generations have also been affected by the various reforms of the pension system: extension of the insurance period required for payment of a full-rate pension (1993 and 2003 reforms), raising of the two age limits of the pension system (2010 reform), with the legal age of entitlement rising from 60 to 62 and the age of cancellation of the discount from 65 to 67. The participation rate at age 59 has thus increased by 33 percentage points between women born in 1925 and those born in 1955. For men of the same generation, the increase was 14 percentage points. Employment rates rose similarly, which shows that these reforms did indeed result in people staying in work for longer.

The increase in women's participation in the labor market is a contemporary development that is already well known and documented. So what do the most recent data tell us? Firstly, the increase is slowing down at the prime working ages (30-55). Secondly, for men, the trend already observed of a slow decline in participation in the labor market is continuing, so that today it is this decline that explains why activity and employment for men and women continue to converge. Lastly, these data show a strong increase in both labor force participation and employment at ages close to retirement. This observation, which applies to both men and women, can be explained both by the gradual phasing out of retirement schemes and by reforms to the pension system.

Statistical data: Summary of: ILO-WHO, Gender *pay gaps in the health and care sector. An analysis of the situation in the world in the era of COVID-19*, Study Report 2022.

The situation of women in the care and personal services sector is well known and studied by international institutions such as the ILO. According to the 2022 report, the sector is highly feminized worldwide - women account for around 67% of workers worldwide - and there is a significant degree of occupational segregation between women and men. Despite the high degree of feminization[144], there are gender inequalities in the health

[144] ILO-WHO, Gender *pay gap in the health and care sector. An analysis of the global situation in the era of COVID-19,* Study Report 2022, p. 7 which states that "Women are over-represented in the health and care sector, where approximately 7 out of 10 jobs are held by women. "The body of evidence indicates that the high degree of feminization of the health and care sector is a key

and care sector, particularly in terms of pay[145]. According to this report, the first of its kind to provide a global analysis of the gender pay gap across the sector, "women employees earn approximately 20% less than men in the health and care sector[146]. The narrowing of the gender pay gap after adjusting for concentration effects is explained by the fact that women are over-represented in the lower occupational categories (in terms of pay), where the gap is smaller. Men, on the other hand, are over-represented in the higher professional categories (in terms of pay) (doctors, for example), where the gender pay gap is greater."[147]. According to the same report, "the gender pay gap in the health and care sector is largely unexplained by the factors determining wages in the labor market". Drawing on data from 54 countries, which account for around 40% of the world's employees, the report breaks down the gender pay gap in the health and care sector into two parts: that which can be explained by differences in the work attributes of women and men, and that which remains unexplained by these differences. The first part, which includes age, level of education, working time arrangements and institutional sectors, can explain a small part of the gender pay gap observed in the sector. However, most of the pay gap between women and men remains unexplained by the data available on professional attributes". "Part of the unexplained gender pay gap can be attributed to the so-called "maternity pay gap" (a measure of the pay gap between mothers and women without children) and part can be attributed to the fact that the sector is highly feminized. In most economies, workers in highly feminized sectors are on average paid less than those in non-feminized sectors of the economy. Despite the increasing number of men who have joined the health and care sector in recent times, the high degree of feminization of the sector contributes to its undervaluation by society, with average pay being lower than in other sectors. This characteristic contributes significantly to the persistence of the overall gender pay gap in the economy as a whole".

"The gender pay gap in the health and care sector - expressed in its simplest form - is defined as the difference between the average wages of men and women in paid employment in the sector. This definition is in line with target 8.5 of UN Sustainable Development Goal 8 (Decent Work and Economic Growth), which aims to ensure "decent work and equal pay for work of equal value for all women and men" by 2030. One of the important measures of progress on this sustainable development goal is to equalize the "average hourly earnings of male and female employees, by occupation, age and disability status" (indicator 8.5.1) (UN, 2017)".

"The general principle of equal pay for work of equal value is defined in the Preamble to the ILO Constitution and enshrined in the ILO's fundamental Conventions. Equal pay for men and women was enshrined as early as 1951 in the ILO Equal Remuneration Convention (No. 100), which promotes the principle of equal remuneration for men and women workers for work of equal value in all sectors of the economy. Today, 71 years after its ratification, this Convention is more relevant than ever, given the significant pay gaps that remain one of the underlying factors of gender inequality in the world". This report is therefore in line with various global pacts and strategies, including the Global Strategy on Human Resources for Health to 2030 (WHO, 2016), The UN 2030 Agenda for Sustainable Development. The Five-Year Action Plan for Health Employment and Inclusive Economic Growth (2017-2021) (WHO, 2018), The ILO Global Commission on the Future of Work's2019 Working for a Better

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factor behind the lower pay of both women and men in the sector and contributes to the gender pay gap prevalent in the wider economy."

[145] See in particular M. Brynin, F. Perales, "Gender Wage Inequality: The De-gendering of the Occupational Structure", European Sociological Review, Vol. 32, No. 1, 2016, pp. 162-174; K. Leuze, S. Strauss, "Why do occupations dominated by women pay less? How 'female-typical' work tasks and working-time arrangements affect the gender wage gap among higher education graduates", *Erschienen in Work, Employment & Society*. 2016, 30(5), pp. 802-82; F. Ochsenfeld, "Why Do Women's Fields of Study Pay Less? A Test of Devaluation, Human Capital, and Gender Role Theory", *European Sociological Review*, Vol. 30, Issue 4, August 2014, pp.536-548; ILO, *Global Wage Report, 2018/19: What causes the gender pay gap*, Geneva, 30 December 2019, 174 pp.

[146] ILO-WHO Report, 2022, *op. cit.*, p. 16.

[147] *Ibid*.

Future report and the ILO Centenary Declaration for the Future of Work 2019 It further addresses one of the key areas related to gender equity in the global health workforce (WHO, 2019)[148].

In a large number of countries, the pay gap between women and men in the health and care sector is greater than in other sectors of the economy. This report shows that the difference between the gender pay gap in the health and care sector and that in other sectors is marginal. For example, in France the average hourly pay gap in the health and care sector is 14.1%, while in the rest of the economy it is estimated at 13.6%[149].

COVID-19 has had an impact on employment and remuneration in the health and care sector: "However, working conditions in this sector have deteriorated dramatically, particularly for workers on the front line of the fight against the pandemic (most of whom are women), whose risk of infection is also disproportionately high. While employment in the health and care sector had virtually recovered by December 2020 on average, this recovery lagged behind for certain types of workers in the sector, particularly women with low levels of education and in informal employment. The COVID-19 crisis disproportionately affected workers at the lower end of the wage scale, most of whom are women, so the average hourly wage (or monthly pay) of workers who remained in the sector appeared to have increased by the end of 2020. However, this is an artificial phenomenon and the fact is that the real total wage bill for the sector has fallen. Given the compositional effects in terms of the characteristics of health and personal care workers before and after the start of the pandemic, the gender pay gap appears to have narrowed only slightly between January 2019 and December 2020." The world is facing a general shortage of healthcare and personal assistance workers[150].

Conclusions/recommendations of the ILO-WHO report:

- collect and analyze sector-specific pay data with sufficient frequency to enable timely assessment of working conditions for health and personal care workers, and in particular to monitor the gender pay gap in the sector;
- Investing in decent jobs in the health and care sector... would help make the sector more resilient and able to meet the growing global demand for health and personal care services fueled by ageing populations around the world (but particularly in high-income countries);
- to tackle the explained part of the gender pay gap, we need to reduce the "gender segregation" (both horizontal and vertical)[151] in employment in the health and care sector. This can be done in a number of ways: by attracting more men into the intermediate professional categories of the health and care sector; by offering training and equal opportunities for upward mobility for women in the health and care sector; and by raising awareness among young girls and women of careers in STEM disciplines (science, technology, engineering and mathematics).

[148] ILO-WHO Report 2022, *op. cit.* p. 6-7.
[149] ILO-WHO Report 2022, *op. cit.* p. 16.
[150] Following on from the ILO-WHO report, in France, see the Clersé-CGT report mentioned above.
[151] ILO-WHO report, p. 4: "Gender segregation in employment refers to the tendency for women to work in different occupations and sectors than men. The literature distinguishes two main types of segregation: horizontal and vertical. Both types are considered to contribute to gender inequality and the gender pay gap".

1.15. Specific provisions for women on health and safety at work in legislation or collective agreements

Do the legislation or, where applicable, the collective agreements, for each of these professions in the care sector, include specific provisions for women in the area of health and safety at work? If so, please provide details.

The provisions of specific collective agreements on health and safety concern pregnant employees and are aimed either at reducing working hours (1.15.1.) or switching from a night shift to a day shift without loss of pay (1.15.2.) or parental leave (1.15.3.).

1.15.1. Reducing working hours for pregnant women

Certain agreements, outside of any legal obligation, provide for measures to reduce the effective working hours of pregnant women. This is the case of the NCC for private not-for-profit hospital and nursing establishment (not extended) which states that "pregnant women, from the first day of the 3e month of pregnancy, will benefit from a reduction of 5/35 of their contractual working hours. This reduction will be spread over their working days". This is also the case for the NCC for the home help, support, care and services of 21 May 2010 (extended), which envisages "a reduction of 1 hour per day worked without loss of pay at the end of the 3e month of medically certified pregnancy, for full-time employees. This measure applies to part-time employees on a pro rata basis. Subject to agreement between the employee and her employer, this reduction may be accumulated and taken in the form of a half-day or full day's rest. The same NCC stipulates minimum daily and weekly rest periods, as well as the daily breaks provided for in the Labour Code. It specifies that the lunch break of at least 1/2 hour "may under no circumstances include travel time for work". As for the NCC of establishments and services fort the maladjusted and disabled persons, Title IV (not extended), it stipulates that pregnant women (working full-time or part-time) benefit from a 10% reduction in their working week.

In the agreement of 12 June 2018 on quality of life at work and professional equality in the NCC for private hospitals of 2002**,** the social partners and employers undertake to promote the improvement of working conditions for pregnant employees in companies by implementing: adaptation to the workstation and/or reorganization of working hours in conjunction with the occupational physician if the pregnant employee's state of health so requires, communication on the pregnant employee's right to benefit from a 10% reduction in daily working hours with continued remuneration from the end of the 2e month of pregnancy, under the conditions set out in the national collective agreement for private hospitals of 18 April 2002. The same agreement includes clauses on breastfeeding, recalling the legal obligation[152] of employers with more than 100 employees to set up breastfeeding facilities in or near their establishments. In accordance with article L. 1225-30 of the French Labor Code, for a period of one year from the date of birth, an employee who is breastfeeding her child is entitled to one hour's breastfeeding time per day during working hours. Taking into account the specific time constraints in the professional field and to encourage the employee to breastfeed in the morning or evening, breastfeeding periods will be divided into one period of one hour or two periods of 30 minutes, which will be determined by agreement between the employee and the employer; failing agreement, this hour will be divided into two periods of 30 minutes, which will be placed in a way that generates three work sequences; these breastfeeding periods are paid.

[152] Article L. 1225-32 of the French Labor Code.

1.15.2. Night work and pregnancy

The NCC for private hospitals of 2002 (extended) devotes a very long article to night work, the use of which is justified by the need to ensure continuity of service[153]. It should be emphasized that the agreement in this branch incorporates certain legal provisions as they stand (definitions, medical surveillance, right to refuse night work on the grounds of incompatibility with family responsibilities, break times, transport conditions, change of assignment for pregnant women) and in other respects has appropriated the possibility offered by the law of derogating *in pejus*, going so far as to authorize certain aspects of night work to be organized at establishment level either by collective bargaining or, failing that, by referendum.

The NCC for private not-for-profit hospital and nursing establishment of 1951 (not extended) establishes a series of protections in various situations. For example, it recognizes the right of any employee who is medically pregnant or who has given birth to be assigned to a day job for the duration of her pregnancy and during the period of statutory postnatal leave, if she waives this, if she so requests. If the employer is unable to offer a day job, he must inform the employee or the company doctor, as the case may be, in writing of the reasons for not reassigning the employee. The employee's employment contract is then suspended until the start of her statutory maternity leave.

The 2012 NCC for personal services companies incorporates the legal provisions on the rights of pregnant women in relation to night work and adds, in view of the specific features of the sector and its work organization, that if the employer is unable to offer another job, it shall inform the employee and the occupational physician in writing of the reasons preventing the employee from being reclassified as a day worker. The employee's employment contract is then suspended until the date of commencement of the statutory maternity leave and possibly during the additional period following the end of this leave in application of the above provisions. During this period, regardless of the employee's seniority, she will benefit from guaranteed remuneration consisting of a daily allowance paid by the social security system and additional remuneration payable by the employer, in accordance with the same terms and conditions as those set out in the inter-professional agreement of 10 December 1977 appended to the law on monthly pay of 19 January 1978.

1.15.3. Leave, parenthood, family responsibilities and gender

In the agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002, the social partners ask companies in the branch to promote, particularly among men, paternity and childcare leave and the terms and conditions of the shared childcare benefit received during parental childcare leave.

[153] Article 53 of the CCN Hospitalisation privée à caractère commercial of 2002.

1.16. Summary and commentary of court decisions

Most often, disputes concerning carers relate to issues of discriminatory dismissal based on the health status of the care professional[154], equal treatment of disabled workers[155], equal pay resulting from changes to tasks[156], undeclared work[157], or refusal to allow practitioners with foreign qualifications to practize[158].

1.17. Specific provision on termination of contract distinguishing between men and women in each of these professions?

In France, there are no specific provisions on contract termination that differentiate between men and women in each profession. The only specific provisions concern the protection of pregnant women against dismissal under ordinary law. Article L.1225-4 of the French Labor Code establishes the principle that it is forbidden to terminate the employment contract of an employee who is medically certified to be pregnant during all the periods of suspension to which she is entitled in respect of maternity leave, whether or not she makes use of them, and in respect of paid leave taken immediately after maternity leave, as well as during the 10 weeks following the expiry of these periods. Under the French Labor Code, failure to comply with these provisions renders the dismissal null and void, giving the employee the option of requesting reinstatement or payment of damages.

1.18. Summary and comments on court decisions

There has been no court ruling on this matter.

1.19. Specific social protection provisions distinguishing between men and women in each of these professions

There are no specific social protection provisions that distinguish between men and women.

[154] CAA de Paris, 6e chambre, 17_01_2023, 21PA03731, Unédit au recueil Lebon - Légifrance; CAA de Douai, 2e chambre, 28_11_2019, 18DA01045, Unédit au recueil Lebon - Légifrance [Accessed on 15 November 2023].
[155] CAA de Nantes, 3e chambre, 22_12_2017, 16NT01136, Inédit au recueil Lebon - Légifrance [Accessed on 15 November 2023].
[156] Cass. soc., 10 November 2009, 07-45.528, Publié au bulletin - Légifrance; CAA de Nantes, 3e chambre, 20_10_2017, 15NT03737, Inédit au recueil Lebon - Légifrance [Accessed on 15 November 2023].
[157] Cass. crim., 20 June 2017, 16-83.669, Unpublished - Légifrance [Accessed on 15 November 2023].
[158] Conseil d'État, 5ème - 6ème chambres réunies, 31_03_2023, 461396, Unédit au recueil Lebon - Légifrance [Accessed 15 November 2023].

1.20. Legal disputes concerning the granting of social benefits to staff in the care sector which give rise to direct or indirect discrimination on the grounds of sex

To the best of our knowledge, there is no case law concerning the granting of benefits to staff working in the care sector that has given rise to direct or indirect discrimination on the grounds of sex.

1.21. Action by equality bodies

If there are equality bodies in your country, do you know if they have undertaken any action, reporting, monitoring or judicial activity in relation to the rights of women care workers? If so, please summarise or comment.

The Haut Conseil à l'Égalité entre les femmes et les hommes (High Council for Equality between Women and Men), the main institution for promoting gender equality, has not carried out any specific work relating to the rights of women care workers. On the other hand, the Conseil Économique Social et Environnemental (CESE), the Republic's third constitutional assembly, which participates in drawing up and assessing public policies, has carried out a number of studies and issued opinions on "The development of personal services" in 2007, and "Working at home with vulnerable people: linking professions" in 2020. In the field of research, the Institut de Recherches Économiques et Sociales (IRES), in association with the CGT trade union, carried out a study and published a report in January 2023 entitled "Investing in the care and support sector. Un enjeu d'égalité entre les hommes et les femmes".

In 2022, the Defender of Human Rights carried out a survey on "The perception of discrimination in employment in the personal services sector[159]. The health crisis of 2020 prompted this sectoral survey, as the pandemic highlighted the work of care professionals, so-called "front-line or essential" workers: home help employees. Working in or near people's homes, these professionals are subject to difficult working conditions, under-valuing of their jobs, unequal treatment and discriminatory harassment in the exercise of their professions. These conditions are poorly documented by institutions, as noted by the Defender of Human Rights, and by research.

Nearly a third of female personal services workers feel that they have witnessed discrimination or discriminatory harassment at work at least once, slightly less than the working population (41%). They say they observe such discrimination in their day-to-day work (61% compared with 53% of the working population). The types of discrimination cited were: different working hours or time slots (33%), patients considered more difficult (22%) or the number of hours worked per week (22%)[160].
As in the general working population, almost a quarter of employees in the personal services sector (23%) say they have already experienced discrimination or discriminatory harassment in the course of their job search or career. Nearly a third say they have experienced this on several occasions[161].

[159] Défenseur des droits/OIT, Survey: The perception of discrimination in employment - 16e barometer: edition devoted to the personal services sector, 2022. The results of this survey are corroborated by recent research published by L. Chasoulier, S. Lemière, R. Silvera, *Investir dans le secteur du soin et du lien aux autres*, Clersé-CGT, 2023, p.172 et seq.
[160] Défenseur des droits, Enquête, 2022, *op.cit*.
[161] *Ibid.*

The forms of discrimination considered to be most widespread are those linked to gender identity (52%), sexual orientation (50%), being a woman (35%) and economic insecurity (33%). This discrimination most often manifests itself when looking for a job. Family situation is also a major factor in exposure: people who are not in a couple report more discrimination than those in a couple and living in the same accommodation (28% versus 20%). Among employees with one or two children, those who are separated and mainly or exclusively responsible for looking after them report almost twice as much discrimination as those who have alternating custody or do not mainly look after them.[162] Nearly one in two employees born abroad have experienced discrimination or harassment, compared with one in five of those born in France[163].

As in other sectors, personal services reveal a close relationship between working conditions, social insecurity and discrimination, which points to systemic discrimination, particularly in the female-dominated care professions. Such discrimination is sometimes difficult to identify, and in any case has not, to our knowledge, given rise to any court decision[164]. However, when it comes to access to employment, discrimination is widespread (33% when recruiting), particularly when it comes from private employers who are not trained in recruitment methods and ask questions that may infringe the law. However, it is more in their day-to-day work that employees claim to be victims of discrimination (28%): 31% say that this discrimination relates to the choice of working hours, 22% to the number of hours allocated, 20% to having more "difficult" patients, 14% to being forced to do undeclared work or to work in remote locations[165].

These activities, which are not recognized as qualified, are often "in contact with dirt or filth" and in the service of people, are a breeding ground for sexist injunctions, sexual harassment and/or outright sexual assaults. 40% of employees have been confronted with stigmatizing remarks, and 25% with illegal requests during an interview for a job or promotion. The Ombudsman's survey found that employers had unlawful expectations, mainly in the form of incentives or pressure to change a candidate's appearance (hairstyle, make-up, etc.), to give up or postpone a planned pregnancy, or to gain or lose weight.

The aforementioned 2022 survey by the French Human Rights Ombudsman highlights the extent of sexist behavior, harassment and sexual assault, "an alarming finding" in the words of the Human Rights Ombudsman. The home as a workplace increases the risk of reproduction of social, racial and patriarchal domination, a legacy of the domesticity of the 19th century, of the imaginary image of the little maid, of prejudices about the sexual availability of the employee: 1/3 of female workers have been subjected to embarrassing remarks about their dress or appearance, 20% have received sexual remarks, writings or images in the course of their work and 8% have been pressured in their job to perform a sexual act. It was found that women working in personal assistance were overexposed to sexist and sexual violence compared to the working population as a whole: 1/5 of them had been subjected to light physical contact (compared to 18% of the working population as a whole), 1/6 had had their breasts, buttocks, sex or upper thighs touched at work (compared to 12%) and 8% had been forcibly kissed on the mouth[166].

The perpetrators of discrimination are varied: company management (40%), line managers (37%), work colleagues (28%) or users/patients (18%)[167].

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[162] *Ibid*.
[163] *Ibid*.
[164] These decisions are generally very rare; when they do exist, it's in sectors such as construction and public works.
[165] *Ibid*.
[166] *Ibid*.
[167] *Ibid*.

In addition, the guide produced by the Defender of Human Rights (Défenseur des droits) and the Conseil supérieur à l'égalité professionnelle (High Council for Professional Equality) highlighted the under-valuing of jobs involving a high proportion of women**.** However, "the right to non-discrimination, which enshrines the principle of 'equal pay for work of comparable value', requires the implementation of a proactive policy to raise the status of personal services jobs and, more broadly, female-dominated jobs, in terms of income, working conditions, social and legal protection, training and recognition in terms of status"[168]. More generally, the value of care professions is highlighted in studies by a number of bodies and institutions promoting professional equality and combating discrimination. The same findings are confirmed by the very recent Clersé-CGT report[169]. The second part of this report is based on a "Mon travail le vaut bien" ("My job is worth it") consultation[170] carried out among fifteen care and support professions, giving professionals the opportunity to talk about their perceptions and experiences at work.

In any case, the carers interviewed (nurses, care assistants) are generally "proud"[171] of their profession, but would like to see the adoption of a number of measures that they consider to be effective in promoting gender equality at work. By way of illustration, these include encouraging companies / administrations / local authorities / hospital establishments to evaluate their actions in favor of professional equality on an annual basis[172].

1.22. Compliance with international and European obligations on non-discrimination on the grounds of sex in the healthcare sector

Indicate whether the care sector in your country complies with international and European obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this area and indicate whether equal working conditions (e.g. pay) are expressly provided for in the care sector. In answering this question, please take into account the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, n. 100; the Non-Discrimination (Employment and Occupation) Convention, n. 111; the Workers with Family Responsibilities Convention, n. 156; the Maternity Protection Convention, n. 183; and the Domestic Workers Convention, n. 189.
At European level, the main directives are: Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

[168] Défenseur des droits, *Guide pour une évaluation non discriminante dans les emplois à dominance féminine*, 2013.
[169] L. Chasoulier, S. Lemière, R. Silvera, *Investir dans le secteur du soin et du lien aux autres*, Clersé-CGT, 2023, p. 172 et seq.
[170] Ibid, p. 105 et seq.
[171] See in particular L. Chasoulier, S. Lemière, R. Silvera, op. cit.
[172] Défenseur des droits, 10e baromètre, *op. cit*.

When it comes to promoting gender equality and combating discrimination, French law was first influenced by international human rights law. But the most decisive influence has been that of European Union law. The sources of non-discrimination law are thus numerous.

1.22.1. International human rights law on discrimination and equality

The first is the 1948 Universal Declaration of Human Rights. Then, in chronological order, ILO Convention No. 100 of 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified by France in 1952. *Self-executing,* its acceptance into French law was slow, however, because it clashed with the French conception of equality law. The first provisions were incorporated into the Criminal Code by the Act of 1st July 1972[173]. But article 416 of the Penal Code did not define the concept of discrimination. It merely provided for sanctions against any person who refused to supply a good or service, refused to hire someone or dismissed someone on the grounds of their origin. This trend was accentuated in 1975, when other forms of discrimination based on sex or family status were criminalized, etc.[174].

In the 1980s, France ratified ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation[175] and ILO Convention No. 156 concerning Workers with Family Responsibilities[176]. It has also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[177].

It was not until 1982, therefore, that French labor law began to take discrimination more widely into consideration. Article L. 122-45 of the Labor Code (now art. L. 1132-1) was gradually amended and supplemented to become the hard core of anti-discrimination legislation in employment relationships. The nullity of discriminatory provisions and acts has gradually become the sanction that ensures the effectiveness of this legislation.

The 1951 European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified in 1974[178]. It obliges States Parties to recognize the rights and freedoms it enshrines "for everyone within their jurisdiction", whether a foreigner or a national, and whether or not a national of one of the signatory States. Article 14 stipulates that the enjoyment of the rights and freedoms recognized in this Convention "shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". In addition, the 1961 Social Charter of the Council of Europe[179] was revised in 1996 and signed by France on 3 May 1996[180].

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[173] Law no. 72-cent 46 of 1st July 1972 on combating racism.
[174] The new Penal Code, which came into force in 1994, provides a definition of the concept.
[175] ILO Convention no. 111 of 25 June 1958 ratified on 15 April 1981, OJ 17 April; Publication Decree no. 82-726 of 17 August 1982, OJ 22 August; came into force on 28 May 1982. A. Perulli, "Du travail personnel", *RDT* 2023, p. 532, for whom "protection against discrimination extends to the entire employment relationship".
[176] ILO Convention 156 concerning Workers with Family Responsibilities of 23 June 1981, ratified by France on 16 March 1989. However, as with ILO Convention No. 189 on domestic workers, 2011, France has not ratified ILO Convention No. 183 on maternity protection, 2000, which does, however, make it possible to implement gender equality in the workplace.
[177] UN Convention of 18 December 1979; Approval Act no. 83-561 of 1 July 1983, OJ 2 July; Publication Decree no. 83-193 of 12 March 1984, OJ 20 March, entry into force 13 January 1984.
[178] Ratification Act no. 73-1227 of 31 December 1973, OJ 3 January 1974; Publication Decree no. 74-360 of 3 May 1974, OJ 4 May.
[179] Approval Act of 23 December 1972; Publication Decree of 4 Oct. 1974, OJ 9 October; entry into force on 8 April 1973.
[180] Entered into force on 1 July 1999, published in the Official Journal on 12 February 2000.

1.22.2. European Union law on discrimination and equality

Two provisions were enshrined in primary law: the prohibition of discrimination on grounds of nationality[181] and the prohibition of discrimination between male and female workers as regards pay[182]. These prohibitions of principle form part of the foundations of the Community[183].

The articles of the Treaty were supplemented by directives. Article 119 only referred to equal pay for male and female workers "for equal work". Faced with the difficulties associated with the scope of this concept, which was more restrictive than that referred to in ILO Convention 100, and with the conflicts it gave rise to, a Community social action program was drawn up concerning, in particular, equality between men and women[184]. An initial directive based on Article 100 of the Treaty extended the scope of equal pay to the concept of "equal value": this was Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women[185]. A second directive, 76/207/EEC of 9 February 1976, based on Article 235 of the Treaty, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, announced directives on social security. One concerned statutory social security schemes[186], the other occupational social security schemes[187].

Since the Maastricht Treaty, directives have been adopted either on the basis of Article 118a[188] or on the basis of the Agreement on Social Policy, itself annexed to the Maastricht Treaty[189]. In 1997, Directive 97/80/EC on proof in cases of discrimination based on sex summarized the case law of the ECJ in this area.

These various provisions resulting from the Treaty or secondary legislation have been constructively interpreted by the Court of Justice of the European Communities (ECJ)[190]. Since its judgment of 17 December 1970

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[181] Article 6 of the Treaty on European Union and Article 48 of the EEC Treaty.

[182] EC Treaty, art. 141 [formerly art. 119 EEC Treaty], but also Council Directive 75/117 EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women; Directive 76/207 EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Council Directive 79/7 EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

[183] For Article 119, see recital 12 of the G. Defrenne v SA de navigation aérienne Sabena aff. 43/75 *ECJ* 8 April 1976 *ECR* 455 et seq. On ECJ case law on equal treatment between men and women, see M. Darmon and J.-G. Huglo, "L'égalité de traitement entre les hommes et les femmes dans la jurisprudence de la *CJCE:* un univers en expansion", *RTD eur.* 1992, p. 1.

[184] OJEC, No C 13, 12 Feb 1974, p. 1.

[185] OJEC, No. L 45, 19 Feb. 1975.

[186] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

[187] Directive no. 86/378/EEC of 24 July 1986.

[188] Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

[189] Directive No. 96/34 on parental leave resulting from the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

[190] In particular by using the concept of indirect discrimination. For example, for discrimination on the grounds of sex, Directive 76/207 art. 2 par. 1; for discrimination on the grounds of nationality: Regulation 1612/68 art. 7 and Sotgiu ruling *CJCE* 12 February 1974 aff. 152-73 *Rec. CJCE* 164. See also J.-Ph. Lhernould, "Les discriminations indirectes fondées sur le sexe et la Cour de cassation", *RJS* 11/2012. Chron. 731; M. Miné, "Mise en œuvre des obligations des entreprises pour l'égalité professionnelle entre les femmes et les hommes", *RDT*, 2013, p. 109.

(*Internationale Handelsgesellschaft*), the Court has stated that fundamental rights form part of the general principles of law whose observance it is the Court's task to ensure[191].

As Marie-Thérèse Lanquetin points out, "the strength of Community law lies first and foremost in its primacy over national law. But even beyond the transposition of Community principles and standards, the national legal order is required to contribute to the implementation of Community law, since transposition itself is insufficient to satisfy the requirements of full application"[192]. Moreover, in the case law of the CJEU, the two conceptions of equality, based on generality and differentiation, are not in opposition, but are combined. Emphasis is placed on the link between the principle of non-discrimination and the fundamental principle of equality. For the Court, "the prohibition of discrimination is merely the specific expression of the general principle of equality which forms part of the fundamental principles of Community law; the principle requires that comparable situations must not be treated differently unless a difference is objectively justified"[193].

Parallel developments in European Union law and national non-discrimination law are giving rise to tensions. This sometimes takes the form of formal notices issued by the European Commission criticizing France for failing to transpose directives correctly. For example, during the parliamentary debates leading up to the adoption of the Act of 27 May 2008 containing various provisions adapting to Community law, reservations were expressed in the Senate. The bill's rapporteur felt that several provisions of the anti-discrimination directives were difficult to reconcile with certain fundamental rights principles of French law and entailed a risk of communitarianism.

This tension has continued in the jurisprudence[194]. For example, the national construction around the principle of "equal pay for equal work" may have seemed to weaken the fight against certain forms of discrimination, such as discrimination between men and women in terms of pay. Pursuing its construction around the national principle of equality, the Court of Cassation has even affirmed the existence of a principle of equal treatment in labour law, which has not been effective in combating discrimination[195].

In French law, the fight against discrimination began in the criminal field, but the number of cases was and remains low, as Evelyne Serverin already noted in 1994[196]. Until recently, there was very little litigation relating to discrimination before the civil courts, particularly in relation to equal pay for men and women. The shift in the burden of proof has changed the outlook. The issue of proof is not simply a procedural rule, but a substantive one. As a result, there has been an increase in civil litigation and a corresponding stagnation in criminal litigation[197].

The real issue is the existence and mobilization of the players themselves. Associations and trade unions[198] deal with some discrimination, but not all. In France, the Haute autorité de lutte contre les discriminations et pour l'égalité (Halde), created in 2004[199], plays an important role. This independent administrative authority has

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[191] See a later example, the Defrenne III judgment of 15 June 1978, paragraph 26, Case 149/77 [1978] ECR 1365.
[192] M.-Th. Lanquetin, "Discrimination", *Rép. Dalloz*, January 2010 (update: 2023, p. 28).
[193] ECJ, 19 October 1977, Rückdeschel, case 117/76, ECR 1753.
[194] R. Hernu, *Principe d'égalité et principe de non-discrimination dans la jurisprudence de la Cour de justice des Communautés européennes*, Bibliothèque de droit public, tome 232, LGDJ, 2003.
[195] Cass. soc., 10 June 2008, no. 06-46.000.
[196] E. Serverin, "L'application des sanctions pénales en droit du travail: un traitement judiciaire marginal", *Dr. soc.* 1994, p. 654.
[197] M. Plet and Y. Fromont, "Discrimination: quelle mise en œuvre devant les juges du fond?", *RDT*, 2012, Controverse, p. 463.
[198] Articles L. 1134-2 and L. 2132-3 of the French Labor Code.
[199] Law no. 2004-1486 of 30 December 2004 creating the haute autorité de lutte contre les discriminations et pour l'égalité, *JORF* no. 304 of 31 December 2004, *D.*, 2005, p. 134.

succeeded in raising the profile of the fight against discrimination and has led to a significant increase in the number of appeals based on the Anti-Discrimination Act of 16 November 2001[200]. Between 2005 and 2010, the number of complaints registered by the Halde rose steadily, from 1,410 to 12,467 over this period[201].

The Act of 16 November 2001, which transposed Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, was not enough to convince victims of discrimination to lodge complaints; the HALDE has helped considerably in this respect, both by providing information on all forms of discrimination and by the assistance it provides to victims. In 2011, the HALDE's remit was incorporated into the Office of the Defender of Rights[202]. Since 11 December 2016, the role of this administrative body has been to direct to the competent authorities any person reporting a whistleblowing incident under the conditions laid down by law and to monitor the rights and freedoms of that person (protection of whistleblowers). More specifically, in the fight against discrimination, the Human Rights Defender has considerable resources at his disposal. Anyone who believes they have been the victim of discrimination may submit a complaint in writing to the Human Rights Defender, specifying the facts relied on in support of their claim and providing all relevant details[203]. In addition to the person who considers him/herself wronged or his/her beneficiaries, the Defender of Human Rights (Défenseur des droits) may be approached by political authorities (deputies, senators, French representatives in the European Parliament) as well as by any association that has been duly registered for at least 5 years at the date of the facts, and whose articles of association propose to combat discrimination or assist victims of discrimination[204]. In addition, the Human Rights Defender may also take action on his own initiative in cases of direct or indirect discrimination of which he is aware, or may be approached by the beneficiaries of the person whose rights and freedoms are in question. To this end, the Defender of Rights has a service for reporting and assisting victims of discrimination on any grounds and in any field, including those committed in employment relations, called the anti-discrimination platform.

International texts are much more inclusive than national texts, and the lists of discriminatory grounds are not exhaustive and/or use particularly encompassing criteria ("any other opinion", "any other situation")[205]. Some lists clearly highlight criteria in formal terms, as is the case with Convention no. 111 of the International Labour Organization (ILO), which adds to the first list of grounds set out in its Article 1 a), including "race, color, sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, which may be specified"[206]. In contrast, the lists of discriminatory grounds in domestic law are systematically exhaustive and do not formally show any hierarchy between the criteria.

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[200] Law no. 2001-1066 of 16 November 2001 on combating discrimination, *JORF* no. 267 of 17 November 2001 page 18311.
[201] V. E. Molinie, Annual Activity Report 2010, Halde, April 2011.
[202] The Défenseur des droits is an independent administrative authority, created by the constitutional amendment of 23 July 2008 and established by organic law no. 2011-333 of 29 March 2011; D. no. 2011-904 of 29 July 2011.
[203] However, the Human Rights Defender is not a party to the proceedings: Cass. soc. 2 June 2010, no. 08-40.628, no. 1158 FP-P+B+R. Cass. QPC, 2 February 2011, no. 10-20.415.
[204] Article L. 1134-2 of the French Labor Code.
[205] This is the case with article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and article 2 of the Universal Declaration of Human Rights of 10 December 1948.
[206] Convention no. 111 concerning discrimination (employment and occupation) of 25 June 1958, ratified by France on 28 May 1981: Law no. 81-357 of 15 April 1981 authorizing the approval of International Labor Convention no.111 concerning discrimination in respect of employment and occupation, *JORF* of 17 April 1981, p. 1087 and Decree no. 82-726 of 17 August 1982 publishing International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, adopted in Geneva on 25 June 1958, *JORF* of 22 August 1982, p. 2630.

2. Mapping discrimination against care workers on grounds of origin

2.1. Brief overview of national legislation to combat discrimination based on racial or ethnic origin, religion or belief, in the field of employment or occupation

The legal list[207] of criteria that may not be used to justify a decision under penalty of criminal sanctions[208] or nullity of the decision in question includes race, ethnic origin and religion.

Some of the grounds for discrimination are protected at the highest level by the 1958 Constitution (race, origin, religion and sex) and by the Preamble to the 1946 Constitution (trade union action or membership in paragraph 6, and even health in paragraph 11). These criteria are also found in European and international conventions and in French legislation, along with many other grounds.

According to article 1st of the 1789 Declaration of the Rights of Man and of the Citizen, "Men are born and remain free and equal in rights". This article sets out a precondition for State intervention, a postulate rather than an objective to be achieved[209]. This position is confirmed by the wording of Article 1 of the Constitution of 4 October 1958, which states that it is the State that "ensures the equality of all citizens before the law, regardless of their origin, race or religion".

Article 1st of the 1958 Constitution, as amended by the constitutional revision of 4 August 1995[210] states: "France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law without distinction of origin, race or religion. It respects all beliefs". This article is a transposition of the vision of equality introduced by article 6 of the 1789 Declaration of the Rights of Man and of the Citizen, under which the law "must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible for all public dignities, positions and jobs, according to their ability, and without any distinction other than that of their virtues and talents". For Professor Guy Carcassonne, it follows from these texts that nothing that constitutes the identity of individuals can be considered as "virtues" or "talents" and form the basis for a difference in treatment[211].

While French law sets out an exhaustive list of prohibited grounds for discrimination, Convention No. 111 of the International Labour Organization (ILO), ratified by France, adds to the first list of grounds set out in Article 1 a), which includes "race, color, sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment", sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or

[207] Article L. 1132-1 and article L. 1134-4 of the French Labor Code.
[208] Articles 225-1 to 225-4 of the French Criminal Code.
[209] M. Peyronnet, thesis, p. 40.
[210] Constitutional Act no. 95-880 extending the scope of the referendum, instituting a single ordinary parliamentary session, amending the system of parliamentary inviolability and repealing the provisions relating to the Community and the transitional provisions, *JORF* of 5 August 1995, p. 11744. The content of Article 1 was placed at the beginning of Article 2 prior to this amendment.
[211] G. Carcassonne, *La Constitution*, Paris, Seuil, 2005, p. 43.

occupation, which may be specified"[212]. International labor law, like international human rights law, is thus characterized by simply enumerative lists of grounds.

Race or origin are systematically among the first prohibited criteria cited in the list drawn up under French law. Other criteria also appearing in the list may be associated with it: "ethnic origin", "color" or "membership of a national minority" and, more indirectly, "place of residence", "surname", "language" and, more recently, "bank account". Several of these variations relating to origin can be found in all the texts.

The principle of non-discrimination does not protect certain groups of people, but each individual against arbitrary decisions based on a ground considered by the law to be a priori prejudicial to the principle of equality and unjustified. In this respect, the principle of non-discrimination cannot be considered as a categorical rule, because the grounds are not categories and cannot be used to establish any categorical advantage; on the contrary, they have been designed to eliminate a disadvantage. Belonging to a category is the reason, not the other way round. Any individual identified by the ground may rely on the principle of non-discrimination in the event of differential treatment based on that ground.

The criterion of religious discrimination has been the subject of much debate and clarification in recent years[213]. Article L. 1132-1 of the French Labor Code prohibits all discrimination based on employees' religious beliefs. The modern French State, founded on the separation of Church and State and on the cardinal principle of secularism, does not recognize any religion: it is not, in principle, up to the legislator, the judges[214] and even less to employers to determine what does or does not fall within the scope of religion and, more broadly, of beliefs or convictions that may be the subject of individual protection[215].

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[212] Convention no. 111 concerning discrimination (employment and occupation) of 25 June 1958, ratified by France on 28 May 1981: Law no. 81-357 of 15 April 1981 authorizing the approval of International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, JORF of 17 April 1981, p. 1087 and Decree no. 82-726 of 17 August 1982 publishing International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, adopted in Geneva on 25 June 1958, JORF of 22 August 1982, p. 2630.

[213] See in particular: CJEU, 14 March 2017, Bougnaoui and ADDH v Micropole SA, Aff. C-188/15: *Dalloz actualité*, 20 March 2017, obs. M. Peyronnet; Lexbase hebdo, ed. soc. no. 692, 23 March 2017, obs. Ch. Radé; *AJDA*, 2017, p. 551; ibid, p. 1106, chron. E. Broussy, H. Cassagnabère, C. Gänser and P. Bonneville; D., 2017, p. 947, note J. Mouly; *Dr. soc.* 2017, p. 450, study Y. Pagnerre; *RDT*, 2017, p. 422, obs. P. Adam; Constitutions, 2017, p. 249, chron. A.-M. Le Pourhiet; *RTD eur.* 2017, p. 229, study by S. Robin-Olivier; Rev. UE, 2017, p. 342, study by G. Gonzalez. and CJEU, 14 March 2017, Samira Achbita v/ G4S Secure Solutions NV, aff. C-157/15: Dalloz actualité, 16 March 2017, obs. M. Peyronnet; *Lexbase hebdo*, ed. soc. no. 692, 23 March 2017, obs. Ch. Radé; AJDA, 2017, p. 551; *ibid*, p. 1106, chron. E. Broussy, H. Cassagnabère, C. Gänser and P. Bonneville; D., 2017, p. 947, note J. Mouly; *Dr. soc.* 2017, p. 450, study Y. Pagnerre; *RDT*, 2017, p. 422, obs. P. Adam; Constitutions, 2017, p. 249, chron. A.-M. Le Pourhiet; *RTD eur.* 2017, p. 229, study by S. Robin-Olivier; *Rev. UE*, 2017, p. 342, study by G. Gonzalez; *JS Lamy*, 2017, n° 430-1, obs. H. Tissandier; *Sem. soc. Lamy*, 2017, n° 1762, p. 3, obs. G. Calvès: *ibid*, p. 6, obs. S. Laulom: *JCP S*, 2017, p. 1105, obs. B. Bossu.

[214] Cour de Paris, 4 December 1912, *D.,* 1914, Vol.2, p. 213, ruling on article 901 of the Civil Code in the case of spiritualism, considered that: *"all religious beliefs are essentially respectable, provided they are sincere and in good faith, and it is not for civil judges, whatever their personal opinions or beliefs, to mock, criticize or condemn them",* quoted *in id*.

[215] The protection of Article 9 of the European Convention on Human Rights has, for example, been granted to atheism (Commission EDH, 6 July 1994, Union des Athées contre la France, Req. n° 14635/89) or to veganism (CEDH, 12 Feb. 1993, *W. v. The United Kingdom*, Req. n° 18187/91. For more illustrations, such as animism and pacifism: Council of Europe/European Court of Human Rights, *Guide to Article 9 of the European Convention on Human Rights, Freedom of thought, conscience and religion*, 31 May 2018, p.10.

French law regularly adds to the legal list of prohibited grounds for discrimination. Among the grounds that may have an impact on or be associated with a person's origin is that of place of residence, which was added in 2014[216]. It was introduced into the law to take account of the situation of people living in the "suburbs", most of whom have an immigrant background. However, while the first victims are those who do not have the 'right' facial features, the people who live alongside them in certain large-city suburbs may also be excluded from employment by virtue of living in these areas. In this sense, place of residence is a criterion that makes it possible to capture a social exclusion that is universal in nature, even if it is particularly significant for people of foreign origin.

Article 7 of the EC Treaty (now, after amendment, Article 12 EC) generally prohibits any discrimination on grounds of nationality; Article 48 of the EC Treaty (now, after amendment, Article 39 EC) applies the fundamental principle of non-discrimination and provides in paragraph 2 that the free movement of workers within the Community implies the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration[217] and other conditions of work. Article 7 of Regulation No 1612-68 of 15 October 1968 on freedom of movement for workers within the Community provides that any clause in a collective or individual agreement or other collective regulation which lays down or authorizes discriminatory conditions in respect of workers who are nationals of other Member States, in particular as regards pay, shall be null and void. These texts, which are directly applicable in the legal order of any Member State, confer on the persons concerned individual rights which the national courts must safeguard and which take precedence over any national rules which conflict with them. The Charter of Fundamental Rights of the European Union prohibits "any discrimination based on any ground such as race, color, ethnic or social origin, genetic features, language, religion or belief..."[218]. Paragraph 2 of Article 21 of the same Charter stipulates that "within the scope of application of the Treaties and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited" between Community citizens. Although French law does not include nationality as a prohibited criterion for discrimination, EU law applies to nationals of the Member States.

Prohibition of discrimination and equal access to employment

Generally speaking, the prohibition of discrimination is one of several constitutional provisions. The first concerns the right to obtain a job, as set out in paragraph 5 of the Preamble to the 1946 Constitution, which is accompanied by the right for everyone not to "suffer prejudice in their work or employment on account of their origins, opinions or beliefs". But in order not to be discriminated against in one's job, it is still necessary to have had access to it. The second provision on this point is Article 6 of the DHR, cited above. Admittedly, this provision refers explicitly to public posts, which are the responsibility of the State, but the new paragraph of Article 1st of the Constitution argues for a broader understanding of this provision. It should be remembered, however, that nationality is not a criterion for discrimination under French law, which means that certain jobs are closed to nationals of non-EU countries[219].

Prohibition of discrimination and equal conditions of employment

Despite legislation and public policies, inequalities in access to employment are still very significant and the reduction of certain inequalities, such as those between men and women, is stagnating in most OECD countries[220].

[216] Article 15 of Law no. 2014-173 of 21 February 2014 on programming for the city and urban cohesion, *JORF* of 22 February 2014, p. 3138.
[217] Cass. soc., 10 December 2002, no. 00-42.158.
[218] Article 21, paragraph 1 of the Charter of Fundamental Rights of the European Union, Nice, 7 December 2000.
[219] On the conditions of access to the civil service and the private sector, in this case jobs closed to foreigners: see question 2.
[220] OECD, *Report 2017: Achieving Gender Equality: The Hard Fight*, ed. OECD, published on 23 February 2018.

Several studies, including the benchmark TeO "Trajectoires et Origines" survey carried out by INED in 2008[221], have demonstrated the persistence of inequalities in access to the labor market linked to origin. In 2016, a survey - on a smaller scale - carried out by France Stratégie confirmed that "gaps in the labor market linked to gender, migratory origin and place of residence remain considerable in France: women, people of immigrant background and residents of certain disadvantaged neighborhoods experience difficulties in accessing employment and poorer quality integration into the labor market, in terms of both employment contracts and wages"[222]. In 2020, the work of the French Human Rights Ombudsman[223] showed that, in France, real or supposed origin was the second most common criterion for discrimination after gender: 11% of individuals stated that they had experienced one or more instances of discrimination because of their origin or the color of their skin over the last five years.

Provisions on non-discrimination and the employment rights of foreign nationals

In application of the principle of non-discrimination, labor regulations apply in their entirety to foreign workers in terms of access to employment, performance of the employment contract and termination of the contract. Article 1132-1 of the Labor Code explains this in the following terms: "No person may be excluded from a recruitment procedure or from access to an internship or period of in-company training, and no employee may be penalized, dismissed or subjected to any direct or indirect discriminatory measure, in particular with regard to remuneration, profit-sharing measures or the distribution of shares, training, redeployment, assignment, qualification, classification, professional promotion, transfer or renewal of contract on the grounds of (...) his or her origin) origin[224], ability to express oneself in a language other than French, actual or supposed membership or non-membership of an ethnic group, nation or so-called race, religious beliefs, place of residence or bank account (...)[225]. Discrimination on any of these grounds is punishable under criminal law (articles 225-1 to 225-4 of the Criminal Code)[226]. Any person who believes that he or she has been the victim of direct or indirect discrimination in these areas may bring the matter before a court based on facts from which it may be presumed that such

[221] C. Beauchemin, Ch. Hamel, P. Simon and Fr. Heran, *Trajectoires et origines: enquête sur la diversité des populations en France*, coll. Grandes enquêtes, Paris, Ined éditions, 2016.

[222] C. Bruneau, Cl. Dherbecourt, J. Flamand and Ch. Gilles, "Marché du travail: un long chemin vers l'égalité", *France Stratégie*, 2016.

[223] Défenseur des droits, *Report - Discrimination and origins: the urgent need for action*, June 2020.

[224] It should be noted that there is a legal obstacle to the hiring of foreigners in France. On jobs closed to foreigners and legal restrictions on foreigners working in France, see below.

[225] Article L. 1132-1 of the French Labor Code.

[226] Article 225-1 of the French Criminal Code. (Article 225-1 Amended by Law no. 2022-401 of 21 March 2022 - article 9). Any distinction made between natural persons on the basis of their origin, sex, family status, pregnancy, physical appearance, particular vulnerability resulting from their economic situation, whether apparent or known to the perpetrator, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, morals, sexual orientation, gender identity, age or political opinions, shall constitute discrimination, their trade union activities, their status as a whistleblower, facilitator or person in a relationship with a whistleblower within the meaning, respectively, of I of Article 6 and 1° and 2° of Article 6-1 of Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life, their ability to express themselves in a language other than French, their actual or supposed membership or non-membership of a specific ethnic group, Nation, alleged race or religion". "Discrimination also constitutes any distinction made between legal persons on the basis of origin, sex, family status, pregnancy, physical appearance, particular vulnerability resulting from the economic situation, apparent or known to the perpetrator, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, morals, sexual orientation, gender identity, age, political opinions, trade union activities, the status of whistleblower, facilitator or person in a relationship with a whistleblower, within the meaning, respectively, of I of Article 6 and 1° and 2° of Article 6-1 of the aforementioned Act 2016-1691 of 9 December 2016, the ability to express oneself in a language other than French, the actual or assumed membership or non-membership of a specific ethnic group, nation, alleged race or religion of the members or certain members of these legal entities".

discrimination exists. In the light of these facts, it is up to the defendant to prove that the measure in question is justified by objective factors unrelated to any discrimination. There is relatively little case law to provide an overview here. In a decision of 17 December 2019, the Conseil des prud'hommes de Paris recognized the existence of systemic racial discrimination in a company operating in the building and public works sector: it was found that a pyramid system of occupational assignment on the basis of origin had been put in place on a Paris construction site: claimants employed as laborers were assigned to the most arduous manual tasks, while supervisory staff of North African origin were responsible for monitoring the proper performance of the work on behalf of the employer[227]. In a decision of 18 January 2012, the Cour de cassation ruled that it was racial discrimination for the deputy manager "to inform the employee that she could not hire her immediately because the management had told her that it "did not trust North African women", so that she could not be recruited until a fortnight later when the manager was away on holiday[228]. In another decision on 10 November 2009, the French Supreme Court ruled against a company for racial discrimination when it asked an employee to change his first name from Mohammed to Laurent[229].

2.2. Overview of legislation on the rights and duties of "foreign nationals": Nationals of non-EU countries (entry and work conditions, conditions for family members entering the country, etc.)

Concerning national legislation on foreigners or migrants, please indicate briefly whether it contains provisions on non-discrimination and on the employment rights of foreigners. (Asylum seekers, refugees and rejoiners)

2.2.1. Entry and work conditions

In France, immigration law came into being with the Ordinance of 2 November 1945. Under the aegis of the Ministry of Labor, the State created the National Immigration Office (Office national de l'immigration -ONI), which was responsible for the "*recruitment*" and "*introduction*" of migrant workers needed to rebuild the country[230]. The ordinance set out the conditions for the entry of foreign nationals (starting with the requirement for workers to have a work contract or permit), listed the various residence permits, set out the penalties for illegal residence (including for helpers), laid down the rules for deportation and provided for the possibility of acquiring French nationality.

The reception of refugees in France is governed by the law of 25 July 1952 on the right of asylum, which sets out the conditions for applying the Geneva Convention (27 July 1951) ratified by France.

In 1974, President Giscard d'Estaing decided to suspend labor immigration. However, family reunification and applications for asylum continued to be the gateways to France. Since then, immigration has become a central

[227] Conseil des prud'hommes de Paris du 17 décembre 2019, *Revue de droit du travail*, 2020, obs. Guiomard, p. 137. *Droit ouv* 2020, obs. Isidro, p.227 and Poulain, p. 232.
[228] Cass. soc. 18 January 2012, *Dalloz Actu*, 26 January 2012, obs. Siro.
[229] Cass. soc. 10 November 2009, *RDT*, 2010, obs. Aubert-Montpeyssen, p.169.
[230] On the history of immigration law from 1945 to 2000, see J. Barou, *Europe, terre d'immigration. Flux migratoires et intégrations*, PUG, Grenoble, 2001. M. Blanc-Chaléard, *Histoire de l'immigration,* La Découverte, Paris, 2001. I. Daugareilh, F. Vennat, *Migrations internationales et marché du travail,* Chronique sociale, 2004.

issue in public debate and in political promises and programs in France. Both left-wing and right-wing governments are converging on tougher conditions for entering and staying in France.

This law was first codified in two stages the order of 24 November 2004 created the Code for the entry and residence of foreign nationals and the right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile -Ceseda) and brought together the provisions on immigration and asylum. The Ceseda repealed and replaced Order no. 45-2659 of 2 November 1945 on the conditions of entry and residence of foreign nationals in France. It came into force on 1st March 2005. The regulatory part was published on 15 November 2006. A new codification came into force on 1st May 2021. Legislators are legislating in droves, at the risk of "overloading": the press reports that no fewer than 29 laws were passed between 1980 and 2022. A law is passed every 17 months, and the last one to be adopted in December 2023 is the subject of an appeal for unconstitutionality.

With regard to the employment of non-EU foreign nationals in France, the main legal source is the combined provisions of Law no. 2018-778 of 10 September 2018 for controlled immigration, an effective right of asylum and successful integration, Decree no. 2020-1734 and Order no. 2020-1733 of 16 December 2020 amending the regulatory part of the Ceseda (code governing the entry and residence of foreign nationals and the right of asyl – Ceseda), the Labor Code [231] and the Social Security[232]. This right is characterized by a number of reasons for entry and residence, each corresponding to a specific legal regime (students, refugees, stateless persons, employees, seconded workers).

With regard to access to employment for foreign nationals, Article L. 5221-1 of the Labor Code establishes the principle that foreign nationals must hold an official document (passports and visas) and a work permit[233]. To this end, the system of residence and work permits for non-EU workers is set out in Articles L. 313-7-6 and L. 313-20-4 et seq. of the Ceseda. Two general observations should be made. Firstly, French law compartmentalizes the legal regimes for residence, which has repercussions on the conditions for access to employment. Secondly, French law applies the general rule of priority to national/Community employment based on the opposability of the employment situation in the profession and in a given region, which restricts access to the labor market to foreigners and consequently to obtaining a work permit (2.2.1.1.). In addition, even before the Second World War, France had a set of regulations prohibiting foreigners from certain jobs. These regulations were partly reformed under pressure from Community law and cannot therefore be applied to nationals of Member States. However, they continue to apply to third-country nationals (2.2.1.2.).

2.2.1.1. Work permit

We are going to present the implementation of the principle of work authorization according to the foreign national's residence permit (2.2.1.1.1.) and the conditions for obtaining said authorization, which is issued by the Prefect (2.2.1.1.2.). The relevant legal provisions apply subject to bilateral agreements providing for more favorable arrangements.

[231] See article L. 5221-2 of the French Labor Code on work permits and article L. 1242-2 et seq. on fixed-term contracts.
[232] Article L. 412-8 of the French Social Security Code.
[233] The seat of the question is in the Act of 7 March 2016 on the rights of foreign nationals in France: art. L. 422-10 to 14 of the Ceseda. To this must be added the reform of the regulations relating to work permits: Decree no. 2021-360 of 31 March 2021 relating to the employment of a foreign employee, JO 1st April 2022 (amending the Labor Code, article R. 5121-1 et seq.) and Order of 27 April 2021 issued in application of article R. 431-1 Ceseda.

2.2.1.1.1. Implementation of the work permit requirement

Pursuant to article R. 5221-1 of the Labor Code, in order to carry out paid employment in France, the following persons must hold a work permit when employed in accordance with the provisions of this code: 1° Foreign national who is not a national of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation; 2° Foreign national who is a national of a Member State of the European Union during the period of application of the transitional measures relating to the free movement of workers. A foreign national authorized to reside in France may not engage in paid employment in France without first obtaining the work permit referred to in 2° of article L. 5221-2 of the Labor Code.

The application for a work permit is made by the employer. However, if it concerns an employee temporarily seconded by a company not established in France, it is made by the principal established in France, in the cases provided for in 1° and 2° of article L. 1262-1, or by the user company in the case provided for in article L. 1262-2. The request may also be made by a person authorized to do so by a written mandate from the employer or the company. All new employment contracts are subject to an application for a work permit.

The work permit may be limited to certain professional activities or geographical areas. Authorization issued in mainland France confers rights only in mainland France. In order to examine the application for authorization to work, the administrative authority may exchange all information and documents relating to this application with the bodies involved in the public employment service mentioned in article L. 5311-2, with the bodies managing a social protection scheme, with the establishment mentioned in article L. 767-1 of the Social Security Code and with the paid leave funds provided for in article L. 3141-32 (article L. 5221-7 of the Labor Code).

This authorization is granted automatically to the following persons:

A work permit is automatically granted to foreign nationals authorized to reside in France for the purpose of concluding a fixed-term apprenticeship or professional training contract. This authorization is automatically granted to unaccompanied foreign minors in the care of the child welfare authority, subject to presentation of an apprenticeship or professional training contract. The work permit may be withdrawn if the foreign national has not been issued with a medical certificate within three months of it being issued (art.L.5221-5 of the Labor Code).

There are a number of exceptions to this condition:
1° Foreign nationals entering France to work in an employed capacity for a period of three months or less in a field included on a list established by decree;
2° Foreign practitioners holding a diploma, certificate or other evidence of formal qualifications allowing them to practize in the country in which the diploma, certificate or evidence of formal qualifications was obtained, on presentation of the decision by the Minister for Health to assign them to a health establishment, as provided for in articles L. 411-2 and L. 4221-12 of the Public Health Code, as well as, on a transitional basis, the doctors, dental surgeons, midwives and pharmacists mentioned in article 83 of law no. 2006-1640 of 21 December 2006 on the financing of social security for 2007, on presentation of the decision by the Minister of Health to assign them to a health establishment, as provided for in the same article 83.

By virtue of Article R. 5221-2 of the French Labor Code, the work permit provided for in Article R. 5221-1 is not required:
1° Nationals of Member States of the European Union, of other States party to the Agreement on the European Economic Area and of the Swiss Confederation, under the conditions laid down in Articles L. 233-1 and L. 233-4 of the Ceseda (Code on the Entry and Residence of Foreigners and the Right of Asylum), and members of their

families holding a residence permit bearing the words "family member of a Union citizen", in application of Article L. 233-5 of the same Code;
2° An employee seconded under the conditions set out in articles L. 1262-1 and L. 1262-2 of the same code and working on a regular and habitual basis for an employer established in the territory of a Member State of the European Union, another State party to the Agreement on the European Economic Area or the Swiss Confederation;
3° The holder of the resident's card referred to in article L. 414-10 of the Ceseda;
4° The holder of a temporary or multi-annual residence permit bearing the wording "private and family life", issued in application of articles L. 423-1, L. 423-2, L. 423-7, L. 423-13 et seq.; L. 425-9; L. 426-5, L. 433-4, L. 433-5 and L. 433-6 of the same code or a long-stay visa valid as a residence permit mentioned in 6° and 15° of article R. 431-16 of the same code;
5° The holder of a temporary residence permit bearing the wording "private and family life", issued in application of article L. 426-12 of the same code from the first day of the second year following issue, or in application of article L. 426-13 provided that they have been residing in France for at least one year;
6° The holder of a multi-annual residence permit bearing the wording "talent passport" issued in application of articles L. 421-9, L. 421-11, L. 421-13, L. 421-14, L. 421-15, L. 421-20 and L. 421-21 of the same code or a long-stay visa valid as a residence permit mentioned in 10° of article R. 431-16 of the same code;
7° The holder of a multi-annual residence permit bearing the wording "talent (family) passport" issued in application of Articles L. 421-22 and L. 421-23 of the same Code or of a long-stay visa valid as a residence permit mentioned in 10° of Article R. 431-16 of the same Code;
8° The holder of a multi-annual residence permit bearing the words "salarié détaché - detached employee - ICT" or " salarié détaché - detached employee" mobile ICT" issued in application of articles L. 421-26 and L.421-27 of the same code respectively, or of a long-stay visa valid as a residence permit mentioned in 11° of article R. 431-16 of the same code;
9° The holder of a residence permit bearing the words "salarié détaché- detached employee ICT (family)" or "salarié détaché- detached employee- mobile ICT (family)", issued in application of articles L. 421-28 and L. 421-29 of the same code respectively, or of a long-stay visa valid as a residence permit mentioned in 11° of article R. 431-16 of the same code;
10° The holder of a temporary residence permit bearing the wording "ICT trainee (family)" issued in application of article L. 421-32 of the same code or a long-stay visa valid as a residence permit mentioned in 12° of article R. 431-16 of the same code;
11° The holder of a temporary or multi-annual residence permit bearing the wording "student" or "student-mobility program", as well as, when admitted to another Member State of the European Union, the holder of the mobility notification, issued in application of articles L. 422-1, L. 422-2, L. 422-5, L. 422-6 and L. 433-4 of the same code or the long-stay visa valid as a residence permit bearing the wording "student" or "student-mobility program" mentioned in 13° of article R. 431-16 of the same code, for a secondary salaried professional activity, up to a limit of 60% of the annual working time (964 hours);
12° The holder of a temporary or multi-annual "student" residence permit covered by articles L. 422-1, L. 422-2, L. 422-5, L. 422-6 and L. 433-4 of the same code or the long-stay visa valid as a residence permit bearing the word "student" or "student-mobility program" mentioned in 13° of article R. 431-16 of the same code who, as part of their course of study, has signed an apprenticeship contract validated by the relevant department;
13° The holder of a temporary residence permit for "seeking employment or setting up a business" issued in application of articles L. 422-10 and L. 422-14 of the same code, or a long-stay visa valid as a residence permit bearing the same wording;
14° The holder of a multi-annual residence permit bearing the words "beneficiary of subsidiary protection" or "family member of a beneficiary of subsidiary protection".

15° The holder of a multi-annual residence permit bearing the words "beneficiary of stateless status" or "family member of a beneficiary of stateless status";
16° The holder of a temporary residence permit or a temporary residence document bearing the words "authorizes its holder to work";
17° The holder of a visa valid for more than three months as referred to in 4° of article R. 431-16 of the same code;
18° Foreign nationals who have entered France to engage in paid employment for a period of three months or less;
19° A foreign practitioner meeting the conditions mentioned in 2° of Article L. 5221-2-1; 20° An employee who is a national of a Member State of the European Union, during the period of application of the transitional measures;
21° Personal services and domestic employees during the stay in France of their private employers;

2.2.1.1.2. Conditions for obtaining a work permit

Under article R.5221-20 of the French Labor Code, the conditions for obtaining a work permit relate both to the job itself and to the employer.

- Regarding the proposed job:
a) Either the job is on the list of occupations in short supply provided for in Article L. 421-4 of the Ceseda and drawn up by a joint order of the Minister for Employment and the Minister for Immigration;
b) Or the vacancy for this job has been previously published for a period of three weeks with the organizations contributing to the public employment service and it has not been possible to satisfy it with any application meeting the characteristics of the job offered;

- With regard to the employer:
a) It complies with the social security reporting obligations associated with its status or activity;
b) He has not been convicted of any criminal offence relating to illegal employment or failure to comply with general health and safety rules, and the authorities have not established any serious shortcomings on his part in these areas;
c) It has not been subject to an administrative penalty imposed for failure to comply with its obligations regarding the secondment of foreign nationals not authorized to work;
3° The employer, user or host company and the employee satisfy the regulatory conditions for carrying out the activity in question, where such conditions are required;
4° The remuneration offered complies with the provisions of this code on the minimum growth wage or the minimum remuneration provided for by the collective agreement applicable to the employer or host company and is at least equal to 1^{e} times and a half the minimum wage (R>€2518.42).
5° If the foreign national holds a residence permit bearing the wording "student" or "student-mobility program" and has completed his or her course of study in France, or if he or she holds a residence permit bearing the wording "seeking employment or setting up a business", the job offered is consistent with the qualifications and experience acquired in France or abroad.

Residence permits and access to work for beneficiaries of international protection. The three categories of foreign nationals concerned are exempt from having to apply for a work permit. They are:

- Foreign nationals who have been granted refugee status are issued with a ten-year residence permit[234]. Once they have applied for a resident's card, and while awaiting the issue of this card, refugees have the right to exercise the profession of their choice under the conditions set out in article L. 414-10[235].
- Foreign nationals who have been granted subsidiary protection are issued with a multi-annual residence permit for a maximum period of four years[236]. They have the right to exercise the profession of their choice. A multi-annual residence card bearing the words "family member of a beneficiary of subsidiary protection", identical to the card issued to the main beneficiary, is issued to family members[237].
- Foreign nationals who have been granted stateless status are issued with a multi-annual residence permit bearing the words "beneficiary of stateless status" for a maximum period of four years. This card is issued when the foreign national is first admitted to the country[238]. A multi-annual residence permit bearing the words "family member of a person with stateless status" is issued to family members[239]. Foreign nationals who have been recognized as stateless may apply for family reunification under the same conditions as foreign nationals who have been granted refugee status[240]. They may take up the profession of their choice.

2.2.1.2. Jobs closed to foreigners

According to a survey published in 2019 by the Inequalities Observatory (Observatoire des inégalités), five million jobs remain closed to non-European foreigners, i.e. 1 job in 5[241]. It should be noted that nurses are among the professions where only French qualifications are allowed (nurses outside hospitals)[242].

Law no. 2017-86 of 27 January 2017 on equality and citizenship contains five articles devoted to "jobs subject to a nationality condition". For example, one article extends the exemption from the nationality requirement to holders of the French state diploma of dental surgeon, in the same way as holders of the diploma of doctor of dental surgery (art. 197 amending article L. 4111-1 of the Public Health Code).

In the healthcare professions (doctors, dental surgeons and midwives)[243], the nationality requirement has been abolished for holders of a French diploma or equivalent issued by an EU Member State. A complex system of exceptional authorizations also exists for foreign doctors and French doctors with foreign qualifications.

With regard to the (French) diploma requirement, the preamble to the national collective agreement BAD 2020, Title 2 on jobs, states that: "...certain jobs require the employee to hold a specific diploma in the regulated professions and cannot be filled by unqualified staff". The same article lists the diplomas or professional

[234] Article L424-1 of the Ceseda.
[235] Article L424-2 of the Ceseda.
[236] Article L424-9 of the Ceseda.
[237] Article L424-11 of the Ceseda.
[238] Article L424-18 of the Ceseda.
[239] Article L424-19 of the Ceseda.
[240] Article L. 582-5 of the Ceseda.
[241] Observatoire des inégalités, Report on inequalities in France, 2019.
[242] *GISTI,* Listes des emplois fermés aux étrangers en 2022. [Online consulted on 12 December 2023]. See the list in the appendix to the Goldberg Report on the proposed law to abolish nationality requirements restricting foreign workers' access to certain liberal or private professions (AN Doc. No. 2594, 9 June 2010). See also the report drawn up by the Inequalities Observatory (Observatoire des inégalités) in September 2011: "5.3 million jobs remain closed to non-European foreigners". [On line, consulted on 12 December 2023].
[243] The nationality requirement is maintained for pharmacists and veterinary surgeons. To practize these professions, you must be French or a national of an EU or EEA Member State or the beneficiary of a reciprocal agreement.

qualifications recognized or accepted as equivalent. The *final* article of the preamble states that "All French social work qualifications and diplomas may be replaced by an equivalent European qualification or diploma in accordance with the provisions of articles L. 461-1 to L. 461-4 of the of social action and families Code. The candidate must have the language skills required to practise the profession in France".

2.2.2. Overview of French legislation on the rights and duties of non-EU foreign nationals. Forms of employment and application of employment legislation to foreign nationals in all sectors of activity (no specific provisions for workers in the care sector)

In the performance of their employment contracts, foreign workers are subject to the same rules as French workers in terms of working hours, overtime, public holidays, remuneration, application of collective agreements, profit-sharing and supplementary pensions. The same applies to collective bargaining law[244]. The following section describes how this principle of equality is applied to various aspects of the employment relationship and social risk cover.

- Temporary work and residence in France

Temporary work regulations apply to foreign workers. Since the law of 20 November 2007, a temporary employment contract may be submitted in support of an application to enter France by a foreign worker who is a first-time immigrant[245].

- Part-time work

The regulations governing part-time work apply to foreign nationals without restriction. With regard to working hours, any change in the distribution of working hours between the days of the week or the weeks of the month must be notified to the employee, subject to a notice period[246]. Failure to comply with this notice period will result in the part-time contract being reclassified as a full-time contract, even if the employee is a foreign student holding a temporary residence permit. In order to avoid this requalification, the employer may not invoke the argument that, as a foreign student may not carry out a salaried activity on an ancillary basis in excess of 964 hours per year, the employer's failure to comply with the notice period may not result in the employment contract being requalified. Since it was found that the working hours varied constantly and that the agreed working hours were frequently exceeded, without the employer proving compliance with the contractual notice period, it must be considered that, given the proven uncertainty of his working hours, the foreign employee was obliged to remain permanently at the employer's disposal[247].

- Salary rights

The legal minimum wage (SMIC) is set by decree and applies to all workers regardless of their administrative status (legal or illegal in the case of foreign workers)[248].

[244] Article L. 2261-22 of the French Labor Code.
[245] Article L. 5221-4 of the French Labor Code.
[246] Articles L. 3123-11, L. 3123-24 and L. 3123-31 of the French Labor Code.
[247] Cass. soc., 27 March 2019, no. 16-28.774, no. 535 FS - P + B.
[248] See I. Daugareilh, G. Santoro, H. Traoré, *Conditions de travail et d'emploi des travailleurs du care en France,* WP2 report for the European CARE4CARE project, 2024, pp. 56-57.

- Vocational training rights
The principle of equal treatment of nationals and foreigners applies in the area of vocational training. The right to training is linked to the status of employee. Foreign nationals, once they have been authorized to work, can therefore benefit from this right, which applies to all workers[249].

- Right to leave to acquire nationality
All employees are entitled to half a day's unpaid leave, with justification, to enable them to attend their French citizenship ceremony. This leave cannot be refused by the employer if it is requested by the employee[250].

- Elections to the Conseils des prud'hommes (industrial tribunal): Foreign workers are eligible to vote for the appointment of labor tribunal councilors. However, they are not eligible; only workers of French nationality are eligible[251]. As this is a judicial activity, it falls within the sphere of the State's sovereign power and is therefore closed to any person of foreign nationality.

- Exercising trade union functions and non-renewal of work permit: A foreign employee delegate, who is notified by the employer that his employment contract can no longer continue due to the non-renewal of his provisional work permit, is "outside the scope" of article L. 2421-3 of the Labor Code relating to the dismissal of employee delegates (the employer therefore does not have to comply with the special dismissal procedure: authorization from the labor inspector, etc.)[252].

- Social protection rights of foreign workers:
Social security law is a state-based right subject to the principle of territoriality for liability and entitlement to benefits, operating on the principle of equality and non-discrimination[253]. Access to social protection for foreign workers from outside the EU is generally conditional on residence in France, legal residence and, in the case of non-contributory social security benefits, nationality and length of service. Foreign nationals must therefore have regular and stable residence in order to be affiliated to a social security scheme and receive social security benefits.

- Subject to the general scheme
Traditionally, the provisions of Articles L. 8252-1 and L. 8252-2 of the French Labor Code treat foreign employees "from the date of their recruitment" as if they were duly hired employees with regard to the employer's obligations.

Legally resident foreign workers are subject to the general scheme under the same conditions as nationals. To qualify for benefits, foreign nationals must be resident in France, subject to more favorable international agreements.

The required insurance periods must have been completed in France, unless bilateral agreements provide for the aggregation of periods completed in France and in the country of origin. In any event, if the foreign worker fulfils

[249] Article L. 6111-1 et seq. of the French Labor Code.
[250] Article L. 3142-75 of the French Labor Code.
[251] Articles L. 1441-1 and L. 1441-16 of the Labor Code.
[252] Cass. soc., 10 Oct. 1990, no. 88-43.683, no. 3762 P.
[253] See WP2 report, p. 15.

the conditions required for the award of a benefit, refusal to award this benefit on the basis of the insured person's nationality alone is not justified under the European Convention on Human Rights[254].

Thus, the employee benefits from the application of the provisions relating to pre- and post-natal employment bans and breastfeeding, the provisions relating to working hours: working time, rest and holidays, the taking into account of seniority in the company, training rights, payment of salary and related benefits and various indemnities in the event of termination of the employment relationship.

- Entitlement to family benefits

In principle, foreign nationals are entitled to family benefits, but under different conditions depending on whether or not the family is resident in France. Other conditions relate to residence in France of the recipient and the child; the condition of effective and permanent responsibility for the child; the condition of lawful residence and the condition relating to the entry into France of the foreign child. However, workers temporarily seconded to France to work and their dependents are not entitled to French family benefits[255].

This last condition was referred to the Human rights Defender. In its Deliberation No. 2007-247 of 1st October 2007 on the origin/regulation of public services, the administrative authority considered that "the claimant, of Algerian nationality and legally resident in France with a ten-year residence permit, has been refused payment of family benefits for his three children who entered the country outside the family reunification procedure. Following the example of all the national and international courts, the High Authority considers this refusal to be discriminatory under the provisions of the European Convention on Human Rights"[256]. It therefore recommends that the competent Minister "amend Article L 512-2 of the Social Security Code and delete Article D 512-2 of the same Code, and asks to be informed of the action taken within four months. The HALDE also asks to be heard in the appeal before the Social Security Court"[257].

- Right to unemployment

The right to register as a jobseeker is only available to foreign nationals under certain specific conditions, in this case when the foreign national holds a residence permit eligible for unemployment benefits[258]. Foreign nationals may be registered as jobseekers with Pôle emploi, which checks[259] that they hold one of the residence permits provided for in Article R. 5221-47 of the Labor Code[260]. The Conseil d'Etat had also ruled that a foreigner who is

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[254] Cass. soc., 14 Jan. 1999, no. 97-12.487, no. 119 P + B + R; Cass. soc., 13 July 2000, no. 99-11.358; Cass. soc., 31 Jan. 2002, no. 00-18.365, no. 461 FS - P.

[255] Article L. 512-1 of the French Social Security Code.

[256] Défenseur des droits (Halde), Deliberation No. 2007-247 of 1st October 2007 on the origin / Regulation of public services.

[257] Ibid.

[258] Article R. 5221-48 of the French Labor Code.

[259] Article L. 5411-4 of the French Labor Code.

[260] This concerns:

1° The resident card (...) or the resident card bearing the words "long-term EU resident card" issued under 6° of Article L. 411-1 of this Code;

2° A temporary or multi-annual residence permit bearing the wording "private and family life", (...), or a long-stay visa valid as a residence permit (...);

3° A temporary residence permit bearing the wording "private and family life", (...) authorizing the holder to work from the second year following issue, or in application of article L. 426-13 of this code authorizing the holder to work provided they have been resident in France for at least one year;

4° The residence permit bearing the wording "talent passport" (...) or the residence permit bearing the wording "talent passport (family)" (...), as well as the long-stay visa valid as a residence permit corresponding to these reasons for residence;

not authorized to work cannot be regarded as a job seeker and therefore cannot legally be registered on the list of job seekers[261]. This principle found its first expression in the French Labor Code in 1992[262], in the provisions that now appear in article R. 5411-3, which state that "foreign workers must provide proof that their situation is lawful with regard to the provisions regulating the exercise of salaried professional activities by foreigners". Law no. 93-1027 of 24 August 1993 relating to immigration control and the conditions of entry, reception and residence of foreigners in France, known as the Pasqua Law, is the source of the current article L. 5411-4 of the Labor Code, under which the National Employment Agency, now Pôle emploi, is required to check the validity of residence and work permits when a foreigner is registered on the list of jobseekers. This authorizes Pôle emploi to access the files of government departments in order to carry out the necessary checks[263]. The Constitutional Council found no breach of the principle of equality between nationals and foreigners and no infringement of privacy[264].

5° A residence permit bearing the words "seconded employee ICT (family)" or "seconded mobile employee ICT (family)", (...), or a long-stay visa valid as a residence permit (...), provided that the holder has acquired entitlement to unemployment benefit;
6° A temporary residence permit bearing the wording "ICT trainee (family)" (...), or a long-stay visa valid as a residence permit (...), if the holder has acquired entitlement to unemployment benefit;
7° A multi-annual residence permit bearing the word "employee" (...);
8° The temporary residence permit bearing the wording "employee", (...) or the long-stay visa valid as a residence permit mentioned in 7° of article R. 431-16 of the same code, accompanied by the work permit;
9° The residence permit issued under article L. 233-4 of the same code to a national of a European Union Member State subject to transitional measures under its accession treaty, or the residence permit bearing the words "family member of a Union citizen", under article L. 233-5 of the same code;
10° The temporary residence permit bearing the wording "temporary worker", issued in application of article L. 421-3 of the same code or the long-stay visa valid as a residence permit mentioned in 8° of article R. 431-16 of the same code, when the employment contract, concluded with an employer established in France, has been terminated before its term, by the employer, for a reason attributable to him or for force majeure;
11° The holder of a temporary residence permit for "seeking employment or setting up a business" issued in application of article L. 422-10 or L. 422-14 of the same code or the long-stay visa valid as a residence permit bearing the same reference, mentioned in 14° of article R. 431-16 of the same code;
12° The temporary or multi-annual residence permit bearing the wording "student" or "student-mobility program", (...) as well as the long-stay visa valid as a residence permit bearing the wording "student" or "student-mobility program" mentioned in 13° of article R. 431-16 of the same code, benefiting from a work permit in application of 1° of II of article R 5221-3 of the present code, when their employment contract, in connection with their university course, has been terminated at the initiative of their employer or due to force majeure;
13° A multi-annual residence permit bearing the words "beneficiary of subsidiary protection" or "family member of a beneficiary of subsidiary protection", (...);
14° A multi-annual residence permit bearing the words "beneficiary of stateless status" or "family member of a beneficiary of stateless status", (...);
15° A temporary residence permit bearing the words "authorizes its holder to work";
16° The provisional residence permit issued under article L. 425-4 of the same code;
17° A receipt for the first application for a residence permit bearing the words "authorizes the holder to work";
18° A receipt for the renewal of a residence permit bearing the words "authorizes the holder to work";
19° A certificate of favorable decision bearing the words "authorizes the holder to work";
20° An extension certificate bearing the words "authorizes the holder to work".

[261] CE, 9 septembre 1996, M. S...., n°134139, C inédit au recueil Lebon.

[262] Decree no. 92-117 of 5 February 1992 on jobseekers and replacement income, and amending the Labor Code.

[263] Conclusions of A. Skzyerbak, Public Reporter, CE, 1ère and 4e chambre réunies, session of 1st March 2023, regarding a controversy on the legality of article R. 5221-48 of the Labor Code which identifies, among the documents authorizing a foreigner to work in France, those that allow registration on the list of jobseekers.

[264] Decision 93-325 DC of 13 August 1993. [Accessed on 12 December 2023].

It was a decree dated 11 May 2007[265] that restricted registration on the jobseekers list to holders of certain residence permits, through provisions that had no real connection with the main purpose of the decree, which was to modify the work permit system. Article R. 5221-47 of the Labor Code states that foreign workers must meet the conditions for registration set out in the section of the Labor Code dealing with jobseekers. Article R. 5221-48 gives a fairly long list of the residence permits required for this purpose, updated in line with reforms to the law on foreign nationals, the overall consistency of which is not self-evident[266]. This list now includes the temporary or multi-annual "student" or "student-mobility program" residence permit (or long-stay visa valid as a residence permit), with work authorization for salaried employment exceeding 964 h/year, if the employment contract, related to the student's university course, has been terminated at the employer's initiative or due to force majeure. In two recent decisions dated 1 March 2023, the Conseil d'État confirmed this rule, ruling that the fact that foreign nationals holding "student" (except in the cases mentioned above) and "entrepreneur/professional" residence permits are unable to register with Pôle emploi is not contrary to the principles of equality and non-discrimination guaranteed by article 14 of the European Convention on Human Rights, Article 1 of Protocol No. 12 to that Convention, Article 1 of the First Additional Protocol to that Convention, and ILO Convention No. 97[267].

If the residence permit is not renewed, the holder loses the right to unemployment benefit. In principle, when the residence permit expires, payment of benefits ceases unless the foreign national can provide proof that a receipt has been issued and sent to Pôle emploi. By way of derogation, there may be continuity of the right to reside and work for certain residence permits: between the expiry date of the residence permit, or the four-year multi-annual residence permit, and the decision taken by the administration on the application to renew the permit, the foreign national may prove that he/she is legally resident by presenting the expired permit, for a period of three months from the expiry date. During this period, they retain all their social rights and the right to work[268]. Only the general four-year multi-annual residence permit is affected by this presumption of continuity of the right to residence. Other multi-annual residence permits with a shorter period of validity (in particular those for students or for private and family life) are not, nor are temporary residence permits.

2.3. Brief commentary on the presence of migrant populations (EU and non-EU nationals) in employment in France

The following comments and information are taken from Insee surveys published in 2023.

The immigrant population in France will be larger in number and as a percentage of the total population in 2022 (10.3%) than in 1946 (5.0%), 1975 (7.4%), 2010 (8.5%) or 2018 (9.3%)[269]. Between the mid-1940s and the mid-1970s, immigration flows were predominantly male, filling the labor needs arising from post-war reconstruction and the post-war boom. In 1974, with the economic situation in a downturn, labor immigration was curbed and family immigration developed. Since then, the proportion of women in immigration flows has tended to increase, whether through family reunification or not. In 2022, 51% of immigrants were women, compared with 44% in 1975 and 45% in 1946. However, although women are still in the majority among new immigrants, their share has been falling in recent years (by 3 points in 2021 compared with the period 2006-2014).

[265] Decree no. 2007-801 of 11 May 2007 relating to work permits issued to foreign nationals, to the special contribution due in the event of employment of a foreign national without a work permit and amending the Labour Code.
[266] Conclusions of A. Skzyerbak, *op. cit.*
[267] CE, 1st March 2023, no. 456329; CE, 1st March 2023, no. 459364.
[268] Article L. 433-3 of the Ceseda.
[269] Insee, *Chiffres clés*, 10 July 2023.

In 2014, according to the employment survey, one in ten people aged between 15 and 64 living in mainland France was an immigrant. Half of working foreigners arrived in France before 1998. The working immigrants who have been in France the longest are from southern Europe (Spain, Italy, Portugal): 75% arrived before 1998. Immigrants from the Maghreb are equally likely to have arrived before and after 1998. By contrast, immigrants from other African countries arrived more recently: 60% after 1998. Immigration has become more feminized; women account for 58% of working-age immigrants who have arrived since 2007: in 2014, they are even more numerous, with 62% arriving before the age of 15, mainly for family reasons, compared with 28% of men who emigrate for work. Since 1998, the proportion of women declaring that they came to study has almost equaled that of men. The most common reasons for arriving in France are family reunification (61%), work (18%), study (11%) and international protection (5%). The level of education of immigrants has risen over the last thirty years: 33% of those who arrived after 1998 have a higher education qualification, compared with 21% of those who arrived before that date. At the time of their first job in France, 85% of immigrants who arrived at the age of 15 or over were employees (58%) or manual workers (27%). Only 7% were managers and 5% in intermediate occupations. 36% of immigrants felt they were overqualified for their first job in France in relation to their level of education, experience and skills. This feeling persisted over time, with 33% still considering themselves overqualified in their current job. This is the case for only 17% of non-immigrants.

In 2017, 35 of the 87 occupations (or professional families) had as many immigrants as in total employment, or even more. Most of these "immigrant" occupations are in the service sector (64%), but there are also occupations in construction (19%) and industry (17%).
Domestic help is the occupation that makes the most use of immigrant labour: 39% of jobs in this occupation are held by immigrants, almost four times the proportion of immigrants in total employment in France. The podium is completed by security guards and unskilled construction workers, who employ 28% and 27% of immigrants respectively.

According to a 2019 survey on the care sector, 86% of nurses are women and 2.1% are immigrants; 88% of care assistants are women and 9.6% are immigrants; 94% of home helps are women and 19% are immigrants.

Unlike the American, Canadian, Brazilian, Irish and British censuses, and in accordance with the legal framework in force in France, the French census does not include any self-declaration of membership of an "ethno-racial" group[270]. The issue of ethnic statistics in France is highly controversial. For some, ethnic statistics run the risk of undermining republican universalism, locking people into identity categories and essentializing them, constantly referring them back to their origins, or even racializing them. Instead of "helping to combat discrimination in this way, we would be reinforcing community allegiances"[271]. For others, it is a knowledge tool that is essential for measuring the extent of discrimination and social issues; "racial discrimination is not soluble in social inequality, it adds to it"[272].

The above-mentioned ethnic statistics are strictly regulated in France. Law no. 78-17 of 6 January 1978 on data processing, data files and individual liberties begins by stating, in Article 6, that the collection and processing of so-called "sensitive" data is prohibited in France, in particular data relating to the actual or supposed racial or ethnic origin of individuals: "It is prohibited to process personal data revealing the alleged racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership of a natural person or to process genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or

[270] S. Le Minez, *Insee Panorama d'une pratique ancienne, encadrée et évolutive,* Direction des Statistiques démographiques et sociales, 31 July 2020.
[271] *Ibid*.
[272] *Ibid*.

data concerning the sex life or sexual orientation of a natural person"[273]. In the same article, however, the law specifies that there are exceptions to this prohibition. These are set out in the conditions provided for in II of Article 9 of the RGPD (EU) 2016/679 regulation of 27 April 2016. This authorizes processing "for scientific or historical research purposes, or for statistical purposes" (in accordance with Article 89(1)). INSEE's work on sensitive data falls fully within the scope of this law and the 1951 Statistics Act. The Institute is not obliged to obtain the consent of individuals or to invoke the public interest, unlike other derogations which must be justified by the public interest (cf. the procedures set out in II of article 31 and article 32 of the law relating to data processing, files and freedoms). Furthermore, an important decision by the Constitutional Council in 2007 specifies what information relating to origins may be collected. Without going back over the entire history of the debate, it should be remembered that the subject of ethnic statistics gave rise to heated exchanges at the time of the discussion of the law of 20 November 2007 on immigration control, integration and asylum. At the time, the government wanted to add a new derogation for "studies measuring the diversity of origins" to the list of existing derogations allowing the collection of "sensitive" data, thereby amending the 1978 Act. This provision was rejected by the Council on the grounds that it was a "cavalier législatif" (i.e. an article of law unrelated to the more general purpose of the text of the law - see the Constitutional Council's decision of 15 November 2007). Nevertheless, the Constitutional Council subsequently felt the need to clarify its opinion on this issue, and in fact went back to the drawing board twice to explain its position, as the constitutional notebooks accompanying this decision show.

It is under this legal framework that public statistics surveys are authorizd, including questions on the country of birth and nationality (at birth and at the time of the survey) of respondents, but also of people living in the same household and of the respondents' relatives. These questions are asked in particular in the Employment survey, which is the most important in terms of the number of people surveyed - over 100,000 every quarter. Information on parents was introduced for the first time in 1999 in the census-based Family survey. It has been included in the Training and Professional Qualifications survey since 2003, in the Employment survey, which has been carried out continuously since 2005, in the Housing surveys since 2006 and in other official statistics surveys, such as the Générations surveys carried out by Cereq since 2001. These surveys provide information on the descendants of immigrants (people born in France who have at least one immigrant parent). This is a major development in official statistics in the field of ethnic statistics, which are based on objective data without perception bias. Thanks to this, we now know how many descendants of immigrants there are in France compared with other European countries, France being an old country of immigration[274] This information also makes it possible to study inequalities or 'statistical discrimination' on the labor market of immigrants and their descendants according to their different origins (cf. for example, a study on differences in employment rates from 2010 or a more recent one from 2019 on inequalities in employment and pay, or another study on integration after leaving the education system based on the Cereq Générations surveys). In addition to all these sources, there is of course a major survey by INED and INSEE on the diversity of populations in France, the Trajectoires et Origines (TeO) survey. As part of a set of questions on the various dimensions of origins and belonging, it also includes questions on feelings of belonging. These include: the link with the country of origin, the country of birth and the nationality of the parents at birth, religion, languages, self-image and the way others see them. This survey is authorized by the Constitutional Council and was recognized as being in the public interest by the CNIL in 2008. However, we have few or no statistics on migrants in the care sector. Those that do exist relate to doctors and nurses; none that we are aware of relate to care assistants and home helps.

[273] See the latest version of the 1978 Act, June 2019, for compliance with the RGPD.
[274] See the reference work: *Immigrés et descendants d'immigrés (Immigrants and descendants of immigrants*), Insee Références, 2012 and the latest update of the main data.

2.4. Brief commentary on the presence of migrant populations (EU and non-EU nationals) in the care sector in France

From the outset, as some authors have observed, jobs are compartmentalized, male and female employees do not do the same jobs, nor do they receive the same professional recognition, and the same is true for people's origins. Some employers keep workers from immigrant backgrounds out of the limelight[275], or confine them to arduous jobs[276], or restrict[277], as well as young people[278], access to stable jobs and confine them to temporary employment. Jobs are colored, aged and gendered[279].

As a reminder, in the Insee Enquête Emploi 2019 survey[280], we have the following figures concerning the place of migrants in the care professions selected for our research, i.e. nurses, care assistants and home helpers:
- Among nurses (public and private sectors combined): 86% are women and 2.1% are immigrants:
- Among care assistants: 88% are women and 9.6% are immigrants;
- Among home helps (auxiliaires de vie): 94% are women and 19% are immigrants. It is in this occupation that we see an over-representation of workers of foreign origin, well above the proportion of foreigners in the population (10% in 2022). However, for all three trades combined, the average percentage of foreigners is 10%, as the 2019 ILO report will also note. According to this report, "Caring for others, The future of decent work", the proportion of workers of foreign origin in health and social work in France would be 10%, whereas in the private sector as a whole the foreign population would be 12%[281].

2.5. Statistics or databases published in France on foreigners working in each of the professions in the care sector

- In which professions in the care sector are they most often employed?
- If statistics or databases exist, can they be used to establish the "nationality" or origin of foreign staff providing services in these sectors? What are the predominant nationalities?
- Do the databases also distinguish between men and women? If so, please describe what the statistics show.
- Are there databases for each profession, distinguishing between migrant workers, refugees and other categories of foreigners or migrants?

[275] V. CA, Paris, 11e ch. Cor., 17 October 2003, Assoc. du restaurant du Bal du Moulin Rouge, *Dr. ouv*, July 2004, obs. M. Miné.
[276] For example, "in Île-de-France, 69% of employees of cleaning companies and 66% of people employed by households are immigrants": J. Perrin-Haynes,,.
[277] Cass. soc., 15 December 2011, Airbus opération v. L., Fédération CGT de la Métallurgie et a., n°10-15.873, *Dr. ouv.*, August 2012, n°769, obs. V. Pontif.
[278] "The rate of insecure employment among 15-24 year olds rose from 17.2% in 1982 to 51.6% in 2014. "For young people with few qualifications, insecure employment has become an airlock into employment, in which some remain trapped for a large number of years": Observatoire des inégalités, "L'évolution de la précarité de l'emploi selon l'âge", 7 October 2016.
[279] M. Peyronnet, thesis, p. 195.
[280] L. Chassoulier, F.X. Dewetter, S. Lemière et al. Dewetter, S. Lemière et al. IRES report Investing in the care sector - A gender equality issue, IRES, 2023.
[281] ILO, *Caring for others, The future of decent work*, ILO 2019, p. 223: Figure 4.15.

- Do these databases present aggregated data, micro-data or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?
- Are these databases public and freely accessible to everyone, or only to researchers?
- If published databases exist, please provide links and/or indicate how to obtain them.

The characteristics of the care worker labor market[282] show that this is a sector with a high female employment rate. Overall, according to an ILO survey carried out in 2019, foreign workers in France account for 10% of workers in the health and social work sector, compared with 12% in the workforce as a whole, as indicated above[283].

On the other hand, as mentioned above, foreign nationals are over-represented among home helps[284]. As a reminder, around 249,000 people work in the home help sector as employees of associations (153,000) or for-profit private companies (96800)[285]. Of these, 14.5% were foreign-born, compared with 5.5% of the employed population in 2015 and 19% in 2019. These figures are confirmed by an ILO study which estimates that "migrant workers are generally employed in occupations that require the fewest qualifications"[286].

2.6. Description of available statistics or databases

- Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender and nationality of this staff.
- Indicate whether these statistics or databases distinguish between migrants in general, refugees or other categories of migrants.

The above statistics do not distinguish between different categories of migrants.

2.7. Published statistics or databases on national, EU or third country care workers, distinguishing on the basis of race, ethnic origin, religion or language

- Do these databases present aggregated data, micro-data or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?
- Are these databases public and freely accessible to everyone, or only to researchers?
- If published databases exist, please provide links and/or indicate how to obtain them.

[282] See report by I. Daugareilh, G. Santoro, H. Traoré, *Les conditions de travail et d'emploi des travailleurs du Care en France*, WP2, 2024, p. 22 et seq.
[283] ILO, *Caring for others, The future of decent work,* 2019 Report, p. 223. Figures based on ILO calculations using microdata from labour force and household surveys: Figure 4.15. Proportion of workers of foreign origin in health and social work.
[284] Dares, *Les salariés des services à la personne: comment évoluent leurs conditions de travail et d'emploi*, Dares Analyses, 2018, no. 38.
[285] Source: URSSAF Caisse nationale, 2021 annual report based on APE code 8810A.
[286] ILO, *Caring for People, The Future of Decent Work, op.cit*. On nurses, p. 194 et seq.

We are not aware of any statistics or data on the participation of care workers on the basis of race, technicality, religion or language.

2.8. Describe the statistics or databases you have found, i.e. summarise and comment on the data found on the participation of workers in the care sector on the basis of race or ethnicity, religion and language

We are not aware of any statistics or data on the participation of care workers on the basis of race, technicality, religion or language.

2.9. Disputes or mediatised conflicts concerning the race or ethnic origin, religion or language of staff employed in the care sector

We are not aware of any such disputes or conflicts.

2.10. Statistics or databases published in France on formal and informal employment rates in the care sector

- Are there databases for each profession, distinguishing between formal and informal employment and/or between foreigners and immigrants?
- Do you know whether these statistics or databases distinguish between migrant workers, refugees or other categories of foreigners or migrants?
- Do these databases also distinguish between the sexes?
- Do these databases present aggregated data, micro-data or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?
- Are these databases public and freely accessible to everyone, or only to researchers?
- If published databases exist, please provide links and/or indicate how to request them.

We have not had access to such statistics, if they exist.

2.11. Description and commentary on statistics or databases on the participation of migrant workers in the care sector in the formal or informal economy

We are not aware of any statistics or databases concerning the participation of migrant workers in the care sector, whether in the formal or informal economy.

2.12. Statistics or databases published in France on the possible presence of "undocumented" or "irregular" immigrants (without authorisation to reside or work in your country) likely to be employed in the care sector

- Do these databases also distinguish between men and women?
- Do these databases present aggregated data, microdata or both (aggregated data: data at national or regional level; microdata: individual data, collected but not published, only available to researchers)?
- Are these databases public and freely accessible to everyone, or only to researchers?
- If published databases exist, please provide links and/or indicate how to obtain them.
- Comment on any statistics or databases you have found concerning the participation of irregular or regular migrants in the care sector. If you have found any statistics.

Unlike the criterion relating to gender, origin is both more difficult to capture and can only concern a limited number of people. A person's origin can be very complicated to determine and, furthermore, the collection of this type of data is only authorized under the conditions already described above[287]. For example, it has been observed that there are a large number of reports on equality between women and men and that its progress is measured year after year, whereas there are strong reservations about ethnic origin. The lack of data on the ethnic composition of French society means that it is impossible to shed light on the true extent of the discrimination experienced by these people, who therefore have no means of effectively challenging the public authorities.

2.13. Measures taken in France to facilitate migrants' access to work, particularly in the care sector. Existence of staff shortages in the care sector in France

Foreign nationals can work in the French civil service. However, depending on their nationality, the conditions of access and the status (civil servant or contract employee) to which they are entitled vary.

- Conditions of access for foreign workers to the civil service
Under French law, "access to the “corps, cadres d'emplois and emplois” is open, under the conditions laid down in this code, to nationals of: 1° a Member State of the European Union; 2° a State party to the Agreement on the European Economic Area; 3° the Principality of Andorra; 4° a State for which an agreement or convention in force has so provided"[288]. Foreign nationals from a European country can thus gain access to the French civil service by competitive examination, secondment or contract.

- Access by competition
Nationals of EU Member States may take a competition for access to the French civil service under the same general conditions applicable to nationals[289] in application of European Community law prohibiting discrimination based on nationality within the Community.

[287] M. Peyronnet, *La diversité: étude en droit du travail,* PhD thesis, University of Bordeaux, 2018, p. 216.
[288] Article L. 321-2-1° of the General Civil Service Code.
[289] Decree no. 2020-311 of 22 March 2010 on the recruitment of European nationals in the civil service; Circular of 15 April 2011 on the recruitment and reception of European Economic Area nationals in the French civil service.

In order to meet the nationality requirement, non-EU nationals must have obtained French nationality no later than the date of the 1re competition test. However, some posts are open to all candidates without any nationality requirement. These include university professors, lecturers and hospital doctors.

In addition to the nationality requirement, diplomas, training or experience in another European country may be accepted as equivalent to the diploma, training or experience required to take the competition. Competitive examinations usually require a certain level of diploma. This level of diploma is specified in the specific regulations and generally applies to all the rules governing recruitment, promotion, pay, etc. for all civil servants who are members of the same body or job category in each body or job category (brevet, Certificat d'aptitude professionnelle, Brevet d'études professionnelles, baccalauréat, master's degree, etc.).

In the case of a competitive examination or specific recruitment for a regulated profession, i.e. professions whose practice is subject to authorization by a competent authority and the possession of a diploma or specific training (social worker, nurse, care assistant, etc.), you must have the relevant diploma.

The Human rights Defender (Défenseur des droits) has not questioned the principle of requiring foreign nationals to have a diploma in order to enter certain professions. In fact, the High Authority for the Promotion of Equality and the Fight against Discrimination considers that "the requirement to hold a diploma issued in France, in a Member State of the European Union, or an equivalent diploma, is objectively justified and that it constitutes a guarantee of the level of training. The initial condition of holding a French diploma has been extended to include diplomas issued in Member States in application of European directives since the 1970s. These directives, which were incorporated into Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, established common training standards, a necessary condition for the mutual recognition of diplomas between Member States. There is no such harmonization of training in non-EU countries"[290]. The Defender of Rights therefore considers it justified to introduce knowledge assessment procedures for professionals holding diplomas issued outside the European Union, in the absence of a bilateral agreement. Moreover, these procedures must allow access to the profession, in particular by taking into account professional experience in France, so as not to have a discriminatory effect[291]. In this respect, Decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in competitions for access to civil service bodies and employment frameworks goes in this direction, as it provides for procedures for the examination, by commissions, of diplomas issued outside the European Union and of skills acquired[292]. If there is a prior examination of diplomas, the date taken into account is that of the 1re meeting of the selection board responsible for choosing the candidates, unless otherwise specified in the special regulations, defined as all the rules applicable in terms of recruitment, promotion, remuneration, etc., to all civil servants who are members of the same body or employment framework to which the candidate belongs.

It should be noted, however, that under French law, basic civil service social workers such as auxiliaires de vie sociale, also known as home helps, are recruited without competition by local authorities or municipal social action centers. They come under the local civil service.

[290] Défenseur des droits (Halde), Deliberation No. 2009-139 of 30 March 2009: Employment, nationality.
[291] Défenseur des droits (Halde), Deliberation no. 2005-36 of 27 February 2005.
[292] Decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in civil service competitions.

In any event, the so-called sovereignty posts[293], defined as posts in a sovereign sector (justice, home affairs, budget, defense, foreign affairs, etc.) and determined according to the nature of the duties and responsibilities performed, are only accessible to French nationals. As a result, foreign nationals from the European Union "do not have access to posts and may not under any circumstances be given functions whose duties cannot be separated from the exercise of sovereignty or involve direct or indirect participation in the exercise of the prerogatives of public authority by the State or other public authorities"[294].

In its opinion issued on 1st December 2008 on jobs closed to foreigners, the Advisory Committee of the Human Rights Defender emphasized that "the closure of millions of jobs to third-country nationals and the resulting discrimination in recruitment for hundreds of thousands of other jobs go a long way to explaining why INSEE statistics (...) show that non-European foreigners in France are twice as likely to be victims of unemployment and insecure employment as French and European nationals. As a result, unemployment and job insecurity are very high in working-class neighborhoods, where most non-European foreigners are concentrated. The Advisory Committee would like to see the abolition of any distinction between workers who belong to the European Union and those who do not"[295].

In accordance with Article 39 of the Treaty establishing the European Community, freedom of movement implies the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work. In addition to freedom of movement for workers, Community law guarantees equal access to employment for nationals and Community nationals. In the public sector, equal access to employment for nationals and nationals of Member States becomes the rule, with the exception of jobs linked to national sovereignty or the exercise of prerogatives of public authority by nationals.

According to the Court of Justice of the European Communities, the exception to the principle of equal access to employment between nationals and Community nationals is to be interpreted strictly, there is no need to distinguish between the public and private sectors, and the focus must be on the nature of the employment.

While Community law allows Member States to reserve for their own nationals jobs related to national sovereignty or the exercise of public authority, Community law does not prevent Member States from recognising the right of non-EU nationals to equal access to employment on their territory. In addition, since the Treaty of Amsterdam, asylum and immigration issues fall within the remit of the European institutions and are no longer solely a matter for cooperation between Member States. Thus, the Council extended the equal treatment in employment enjoyed by Community nationals to their family members who are third-country nationals, by Directive 2004/38 of 29 April 2004 (Articles 23 and 24).

Community law also provides for the right to equal access to employment for long-term non-EU residents. However, Member States retain some room for manoeuvre in this area and may derogate from this principle under the conditions set out in the above-mentioned directive. Directive 2003/109/EC of 25 November 2003

[293] Article 5 *bis* of Law no. 83-634 of 13 July 1983 on the rights and obligations of civil servants specifies that public posts "whose remit is either separable from the exercise of sovereignty, or does not involve any direct or indirect participation in the exercise of prerogatives of public authority by the State or other public bodies" are open to nationals of other European Union Member States. A circular issued by the Prime Minister on 19 September 2005 and by the Minister for the Civil Service on 20 September 2005 clarified these provisions, based on an opinion issued by the Conseil d'État on 31 January 2002 and on the case law of the Court of Justice of the European Union.

[294] Article L. 321-2-2° of the General Civil Service Code.

[295] Défenseur des droits (Halde), Deliberation No. 2009-139 of 30 March 2009: Employment, nationality.

confers this right on third-country nationals who are long-term residents, defined as persons who have resided legally and continuously in the territory of a Member State for five years (article 11).

However, this directive allows Member States to "maintain restrictions on access to employment or to activities as self-employed persons where, in accordance with [their] national legislation or Community law in force, such activities are reserved to its nationals or to citizens of the European Union or of the European Economic Area" (Article 11-3(a)).

The French State has incorporated provisions harmonizing long-term resident status into the Code on the Entry and Residence of Foreigners and the Right of Asylum, but has not transposed the principle of equal treatment between nationals and residents who are nationals of third countries in terms of access to employment. The Council notes, however, that despite the expiry of the deadline for transposing these two directives in 2006, the principle of equal access to employment has not been transposed into national law for family members and long-term residents.

Ultimately, in the opinion of the Defender of Rights, there is no reason to call into question the reservation for nationals of jobs, in both the public and private sectors, involving the exercise of national sovereignty or prerogatives of public power. However, the Human Rights Defender states that "with the exception of jobs linked to the exercise of national sovereignty or prerogatives of public power, the principle of restricting access to certain jobs on the basis of nationality is not justified"[296].

- Access by secondment

With the exception of sovereignty posts[297], non-EU nationals have access to the civil service bodies and job categories[298] that correspond to the functions they previously held, particularly in another European country. When European nationals are seconded, they are paid by their French host administration[299]. To this end, they benefit from the social protection and pension schemes applicable to the positions they hold in this administration.

- Access by contract

Foreign nationals from the European Union can be recruited under contract (CDD or CDI) as members of the French civil service.

Non-EU foreign nationals can be recruited under contract (fixed-term or open-ended contract) as civil servants in the French civil service. There is no nationality requirement to be recruited as a contract employee in the three civil services. However, foreign nationals must hold a valid residence permit. There is also a diploma requirement, as most competitive examinations to become a civil servant require a certain level of qualifications. As a candidate under contract, it may be required that the foreign national hold the diploma that would be required of a civil servant to occupy the same post.

In addition, in the care sector, the jobs of care assistant and nurse are regulated professions, i.e. professions that can only be practised with the authorization of a competent authority and the possession of a specific diploma or

[296] Défenseur des droits (Halde), Deliberation no. 2009-139 of 30 March 2009, 6 p.
[297] Article L. 321-2-2° of the General Civil Service Code.
[298] Article L. 411-1 to L. 411-9 of the General Civil Service Code: A group of civil servants subject to the same set of rules, known as special status, laid down by decree, and who occupy the same jobs.
[299] Article L. 513-16 of the General Civil Service Code.

training[300], and applicants for employment must have the corresponding diploma. Like nationals, foreign nationals holding a foreign diploma must apply for their diploma to be recognized for access to the healthcare professions.

- Conditions of access to the private healthcare sector

For access to the healthcare professions, the nationality requirement has been abolished for holders of a French diploma or equivalent issued by an EU Member State. A complex system of exceptional authorizations also exists for foreign doctors and French doctors with foreign qualifications. In addition to the diploma requirement, the general rules on physical fitness and experience apply equally to national and foreign applicants. However, as far as the employer is concerned, discrimination on the grounds of ethnic origin in particular is prohibited.

In addition, to facilitate access for migrants legally resident in France, exemptions from the work permit requirement have been granted for occupations in short supply**.** The sectors of activity identified as experiencing recruitment difficulties are listed by job family at national level. This is the case for nurses and care assistants in the care sector in France**.** Under French law, "In accordance with article L. 414-13, when the foreign national's application concerns a profession and a geographical area characterized by recruitment difficulties, the residence permits provided for in articles L. 421-1 and L. 421-3 are issued without reference to the employment situation"[301].

The list of occupations in short supply is set out in the Order of 1st April 2021 relating to the issue, without opposition to the employment situation, of work permits to foreigners who are not nationals of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation. According to the aforementioned decree, the employment situation or the absence of a prior search for candidates already present on the labor market cannot be invoked against an application for a work permit submitted by a foreigner who is not a national of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation wishing to work in a profession in one of the professional families and a geographical area characterized by recruitment difficulties..."[302]. According to the most recent data available, the occupations most in demand in certain regions of France include those dedicated to the care sector, such as care assistants[303], nurses[304] and home helps and household assistants[305].

France has also signed bilateral agreements with certain countries on the management of migratory flows[306]. These agreements allow foreign workers from the signatory countries to enter, reside and work in France in

[300] See Référentiel des compétences *op. cit*, in report I. Daugareilh, G. Santoro, H. Traoré, *Les conditions de travail et d'emploi des travailleurs du Care en France*, WP3, Part 1, 2024.

[301] Article L. 421-4 of the Ceseda. This provision appears in a sub-section entitled "Common provisions" applicable to TDS for professional reasons. Similarly, students at the end of their studies who wish to work in France are, under certain conditions, issued with a temporary residence permit for a period of six months, renewable once, at the end of which they may obtain a residence permit as an employee without having to prove that they are in employment. Foreign students must have obtained a diploma at least equivalent to a Master's degree, or one that appears on a list established by decree, from a nationally accredited higher education establishment. They must also have an employment contract, either open-ended or fixed-term, in line with their training and with pay above a threshold determined by decree and adjusted, where appropriate, according to the level of the diploma concerned.

[302] Article 1st of the Order of 1st April 2021.

[303] V0Z60: Corsica; Grand Est; Hauts-de-France; Occitanie; Pays de la Loire.

[304] V1Z80: Bourgogne-Franche-Comté; Grand Est; Hauts-de-France; Ile de France; Normandie; Occitanie.

[305] T2A60: Centre-Val de Loire; Occitanie; Pays de la Loire.

[306] Source: official website of the Ministry of the Interior: Bilateral agreements relating to professional mobility / Bilateral agreements / Europe and International - General Directorate for Foreigners in France - Ministry of the Interior (interieur.gouv.fr) and Légifrance [Accessed on 5 December 2023].

certain sectors of activity, without any restrictions on their employment status. The sectors thus opened up generally take account of the shortage occupations referred to in the aforementioned decree. This is the case, for example, with bilateral agreements on professional immigration between France and non-EU countries, particularly African countries. Similarly, some bilateral agreements include lists of short-staffed occupations that differ from those provided for under ordinary law (list annexed to the Order of 1st April 2021, ex. Order of 18 January 2008).

More concretely, there are two types of agreement: those for the concerted management of migratory flows (7 of which have been signed between France and African countries) and those relating solely to professional migration (3 in number) (it should be noted that this can be broader than just short-staffed occupations).

Agreements on the concerted management of migration flows (AGC)	***Agreements relating solely to professional migration***
Benin: *16 trades listed: Article 16 of the agreement of 28 November 2007*	***Mauritius****: agreement of 23 September 2008 (with list of professions)*
Burkina: *64 trades listed in appendix II of the agreement of 10 January 2009 (annual quota: 500)*	
Cape Verde*: 44 trades listed in Annex II to the agreement of 24 November 2008 (annual quota: 500)*	***Russia****: agreement of 27 November 2009 (mainly concerns young professionals and skilled workers)*
Democratic Republic of Congo*: 15 trades listed: article 223 of the agreement of 25 October 2007*	
Gabon*: 9 trades listed: appendix I to the agreement of 5 July 2007*	
Senegal*: 108 trades listed in Annex IV of the agreement of 23 September 2006 (annual quota: 1,000)*	***Georgia:*** *agreement of 12 November 2013 (with list of professions)*
Tunisia: *79 trades listed in Annex I to the agreement of 28 April 2008 (annual quota: 3,500)*	

When the Immigration Bill was being examined at the end of 2023, there were heated debates and differences of opinion about whether it was appropriate, or even necessary, to create a "short-staffed occupations" residence permit. The plan was to facilitate the regularization of undocumented workers by granting them a residence permit to combat labor shortages in recognized shortage sectors, including the care sector. But the right-wing opposition managed to get a majority to remove this measure from the bill".

2.14. Equal rights for migrants with residence and work permits in the care sector

Take into account the provisions of European law, according to which workers who are third-country nationals enjoy equal treatment with workers who are nationals of the Member State in terms of working conditions or social security (art. 12 of Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing

in a Member State). Similarly, if your country has ratified them, ILO Conventions No. 97 (revised) on migrant workers, 1949, and No. 143 on migrant workers, 1975.

The 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force on 1st July 2003, guarantees the international protection of migrant workers. The text aims to promote the rights of migrant workers in all countries and throughout the migration process of foreign workers and members of their families, and recognizes the rights of all migrant workers, including those in an irregular situation. To this end, and over and above strictly professional rights, foreign workers and their families enjoy human rights, including freedom of movement, freedom of thought, opinion, religion and conscience, freedom of expression, protection against arbitrary administrative action, enjoyment of the same rights as nationals before the courts, the right to the same treatment as nationals as regards working and employment conditions and remuneration; the same applies to social protection guarantees and the education of children. Like several European countries, France has not yet ratified this Convention[307]. One of the reasons for this is that the Convention makes no distinction between legal and illegal aliens. French law makes a distinction between these two situations, even though it should be emphasized from the outset that undocumented migrants enjoy certain employment rights and social protection[308] (see question 24 below), which is partly called into question by the new immigration law.

Legally resident foreign workers enjoy equal social rights with nationals, which is in line with France's international commitments to the ILO. French law also complies with ILO Convention No. 118 on Equality of Treatment in Social Security of 28 June 1962 and Convention No. 97 on Migration for Employment (Revised) of 1949[309]. However, Convention No. 143 on Migrant Workers (Supplementary Provisions) of 1975 has not been ratified by France.

In terms of European Union law, in 2015 France transposed Directive 2011/98/EU of 13 December 2011 on equal treatment for nationals and non-EU workers as regards working conditions and social security[310].

In addition, France has signed bilateral social security agreements that deal exclusively with the right to social protection for migrants, and other bilateral agreements or treaties which, even if they do not deal specifically with social protection, may contain provisions guaranteeing equal treatment as regards social benefits[311].

[307] Ratification of the International Convention on the Protection of the Rights of All Migrant Workers. Written question no. 13901 to the Minister for Europe and Foreign Affairs - 15e legislature, on the Senate website, published on 27 February 2020 [Accessed on 15 December 2023].
[308] Articles L. 8252-1 to L. 8252-4 of the French Labor Code.
[309] While excluding an important part - Annex II of the said Convention relating to the recruitment, placement and conditions of work of migrant workers recruited under arrangements for collective migration made under government supervision
[310] Law no. 2015-925 of 29 July 2015 on the reform of the right of asylum, JORF no. 0174 of 30 July 2015; Law no. 2015-993 of 17 August 2015 adapting criminal procedure to European Union law.
[311] See in particular the establishment agreements with the Central African Republic, Gabon, Mali, Senegal and Togo; declaration of principle of 19 March 1962 relating to economic and financial cooperation between France and Algeria, part of the "Evian Agreement".

2.15. Reference to migrant or foreigner status in "labor" legislation or, where applicable, collective agreements in France in each of the professions in the care sector

Some collective agreements applicable to the care sector refer to the status of foreign workers of the person working in the professions covered by these agreements. Originally, these provisions were designed to enable workers from the French overseas territories to travel to the French overseas territories during their holidays. For example, the collective agreement for the home help sector states: "In accordance with the legal and regulatory provisions and in order to allow workers from the overseas departments and territories working in mainland France and vice versa, as well as foreign workers whose country of origin is outside Europe, to go to this department or country, they are granted, at their request, every other year, the possibility of adding to their paid holidays the days of reduced working hours as well as a period of unpaid absence and the fifth week of paid holidays[312]. This request must be made at least 3 months before the start date of the leave. The total duration of this period of absence may not exceed 60 consecutive calendar days. A written certificate specifying the authorized duration of their absence is issued to the employees concerned at the time of departure. In the same spirit, other collective agreements in the healthcare sector do not specifically mention foreign workers. This is the case with the national collective agreement for private commercial hospital establishments, which states that "... Staff from overseas departments and territories working in mainland France may accumulate paid leave over 2 years"[313].

To a different extent, the national collective agreement for private employers and home employment stipulates that "if the employee is of foreign nationality, outside the European Union, the private employer shall also check with the relevant department of the prefecture of the place of work whether the employee holds a valid authorization to work in France"[314].

2.16. Summary and comments on court decisions

To our knowledge, there has been no court ruling on this subject.

2.17. Specific mention in legislation on foreigners or immigration in France (for example, on residence or work permits, family reunification, permit renewal, etc.) of professions in the care sector? Summary and commentary of court decisions

French legislation on immigration to France includes a special system for care professions, which are among the so-called short-staffed professions for which it is not necessary to examine the employment situation as part of the work permit procedure (see above).

[312] Part IV, Chapter V, Leave - Workers from French overseas departments and territories and foreign workers, article 24-2 of the NCC for home help, support, care and services.
[313] Article 58.2 of the NCC for private hospitals 2002: Titre IV, chapitre 1: report des congés. In the same vein, see article 09.03.2 NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951.
[314] Article 42-2 paragraph 2 of the NCC for individual employers and home-based employment 2021, chapter: recruitment and employment contract (formalities linked to recruitment: declaration of the employee's employment).

2.18. Rights of migrants holding residence permits and authorisation to work in the care sector (in each of these professions). Equal rights with other workers in other production sectors

Migrants holding residence and work permits in the healthcare sector, as in any other sector, enjoy equal rights with other workers, as specified above in question 14.

2.19. Summary and commentary of court decisions on indirect discrimination concerning irregular migrant workers

French case law has highlighted the concepts of indirect discrimination, discrimination by association and discrimination without the requirement of comparison. These correspond to cases where people suffer multiple forms of discrimination, but where the prejudicial situation cannot be precisely proven due to the absence of comparable situations that would make it possible to establish the more favorable treatment of other people at work. In this way, the Cour de cassation and the CJEU, often by taking into account the structural dimension of indirect discrimination, get around the difficulties of comparability by looking at the real effect of the apparently neutral rule or decision which is applied unfavorably to a minority of more vulnerable employees.

In the case of a Cape Verdean domestic worker in an irregular situation who was dismissed without compensation and without recourse after nine years of loyal service, the High Court focused on the brutal and abusive nature of this decision, which is often experienced by these undocumented workers of African origin[315]. The judges approved the classification of indirect discrimination, which, without saying so, characterizes multiple discrimination: "The existence of discrimination does not necessarily imply a comparison with the situation of other employees; having noted that the exploitation by Mr X... and Ms Y... of Ms Z...'s status as a foreigner, illegally present on French territory, did not necessarily imply a comparison with the situation of other employees; having noted that the exploitation by Mr X... and Ms Y... of Ms Z...'s status as a foreigner did not necessarily imply a comparison with the situation of other employees". who was in France illegally and not entitled to any claims, had resulted in the "employee" being denied her legal and contractual rights and in a totally disadvantageous situation compared with domestic employees who were covered by employment legislation, the Court of Appeal, which deduced from this that Mrs Z. had suffered clear indirect discrimination on the grounds of her origin, legally justified its decision on this count...". The observations made by the lower courts on the context in which multiple discrimination arises show that the one-off disregard for the protection of employment law is linked to an abuse of rights regularly suffered by people working illegally[316].

[315] Cass. soc., 3 Nov. 2011, no. 10-20.765.
[316] Ibid. See also M. Mercat-Bruns, "Le jeu des discriminations multiples", *RDT*, 2013, no. 4, pp. 254-257.

2.20. Provisions in collective agreements favouring the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their country of origin, ethnic origin, etc.

Of the six collective agreements studied, only three include provisions to promote the integration of foreign workers. The NCC for private hospitals of 18 April 2002 stipulates in article 42 of title IV: Employment contract; chapter 1st: Recruitment formalities - Hiring that "All open-ended contracts shall be formalized for the person concerned by a written and signed employment contract, drawn up in French and given to the latter within a maximum of 8 working days. If the employee is a foreigner, a translation of the contract will be drawn up, at his request, in his language of origin".

The NCC for the home help, support, care and services of 21 May 2010 stipulates in Article 24.2 "Workers from French overseas departments and territories and foreign workers" relating to the employer's obligation under Title IV on individual employment relations; Chapter V. Events occurring in the employment relationship that "In accordance with the legal and regulatory provisions and in order to allow workers from the French overseas departments and territories working in mainland France and vice versa, as well as foreign workers whose country of origin is outside Europe, to go to this department or country, they are granted, at their request, 1 year out of 2, the possibility of adding to their paid holidays the days of reduced working hours as well as a period of unpaid absence and the 5th week of paid holidays. This request must be made at least 3 months before the start date of the leave. The total duration of this period of absence may not exceed 60 consecutive calendar days. A written certificate specifying the authorised duration of their absence shall be issued to the employees concerned at the time of departure".

The NCC for personal services companies of 20 September 2012 stipulates in its Article 5 entitled "Priority audiences in the branch" of Part 3: Employment and career development policy; Chapter II. Continuing vocational training that "The social partners define two main categories of priority audiences within the professional branch as part of the implementation of the various continuing vocational training schemes (training plan, professionalization period and individual right to training). It is specified that these groups are given priority with regard to the actions that are themselves given priority in this agreement.
- 1ère priority: in order to reduce inequalities in access to training and qualifications, the social partners have designated the following as major priority groups in the sector: unqualified workers, young people and older workers, irrespective of the size of the company. - 2nd priority: the social partners also consider employees in middle management and executives to be priority groups, in order to promote the development of their skills in the light of changes in the professions in which they work.
For these groups, the social partners recognize the following objectives as national priorities: 1. for unskilled workers, young people and older workers (referred to above): to facilitate access for these employees to continuing vocational training by developing the literacy approach, the fight against illiteracy, and initiation and improvement in the French language".

The NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951, the national collective bargaining agreement for establishments and services for maladjusted and disabled people of 15 March

1966 and the NCC for individual employers and home-based employment of 15 March 2021 do not contain any provisions to promote the integration of foreign workers[317].

2.21. Mediated conflicts between migrant workers in the care sector and care recipients in terms of non-discrimination on the basis of ethnicity, religion or nationality

We have no knowledge of this type of conflict.

2.22. Statistics or databases published in France on the wages of migrant workers in the care sector

- Have any statistics or databases been published in your country on the professional classification of migrant workers in the care sector?
- Do these databases present aggregated data, microdata or both (aggregated data: data at national or regional level; microdata: individual data, collected but not published, only available to researchers)?
- Are these databases public and freely accessible to everyone, or only to researchers?
- If published databases exist, please provide links and/or indicate how to request them.

To our knowledge, there is no specific study on the wages of migrant workers in the care sector. The only statistics that come close to this topic are to be found in an INSEE study from 2023, which provides a general analysis of the wages of immigrants and immigrant descendants: INSEE, *Immigrés et descendants d'immigrés*, 2023.

2.23. Description of statistics or databases on job classification and wages of migrant workers in the care sector

To our knowledge, there are no statistics or databases on the job classification and wages of migrant workers in the care sector.

[317] However, the social partners have decided to have the collective agreement for the individual employers and home-help sector translated into several languages (English, Spanish, Arabic and Portuguese) to give foreign employees a better understanding of the provisions of the agreement that apply to them. In addition, to meet the challenges facing the sector - which will need to recruit almost 800,000 employees between now and 2030 to replace those retiring and to meet the needs of an ageing population in terms of additional manpower - the FEPEM and the social partners have launched Lab Migration, a laboratory for experimentation and innovation on migration in the private-sector employer sector. This new initiative is a response to the need for human resources (home helps, childminders, domestic assistants, etc.) to be filled throughout France. It is a way of attracting immigrant populations to the homecare sector, and securing recruitment for individual employers. The trial began in Marseille. Launched in March 2022, it came to fruition on 18 October 2022 with the signing of a protocol of intent bringing together all the players involved in the project. A second trial in the Ile-de-France region is also under way.

2.24. Rights of irregular migrants (without residence or work permits) with regard to employment in the care sector in France

First of all, it should be emphasized that in France, foreign nationals who are illegally resident and working enjoy identical rights, regardless of the sector of activity or profession in which they are employed. There is therefore nothing specific on this point for workers in the Care sector. Secondly, it should be pointed out that the concept of undocumented migrants refers to people of foreign nationality residing in France without a residence permit, including European Union citizens (and assimilated persons) residing in France without the right to reside there. Although EU nationals and people of equivalent status are not required to have a residence permit, they may not have the right to stay in France and may therefore be in an irregular situation. Although the term "undocumented" is usually used for people from third countries, there is a common set of rights for undocumented EU nationals and undocumented third-country nationals. However, EU nationals enjoy rights by virtue of their European citizenship.

For a long time, it was an offence for a foreign national to enter and/or reside in France illegally (without a visa or residence permit). The Act of 31 December 2012 abolished the offence of illegal residence in order to comply with EU law. Instead, however, it created the offence of remaining in the country illegally, which arises when the person fails to comply with a removal order or when it has not been possible to enforce the order despite being placed in detention or assigned to a residence permit[318]. Evading or attempting to evade the enforcement of a removal order is punishable by 3 years' imprisonment[319]. In order to combat illegal employment, the law has amended the amount of the administrative fine imposed on any employer who employs a foreign worker who is not authorised to work in France, as well as a foreign worker in possession of a work permit, in a professional category, profession or geographical area other than those mentioned on his or her work permit. The new amount of this fine will be no more than 5,000 times the hourly rate of the guaranteed minimum (MG = €4.15 since 1-1-2024), i.e. a maximum of €20,750 in 2024 and increased in the event of repeated offences up to a maximum of 15,000 times this rate, i.e. a maximum of €62,250 in 2024[320]. The fine is applied as many times as there are foreign workers concerned. This fine is in addition to the administrative penalties already in place and the criminal penalties also amended by the new Immigration Act[321].

Finally, foreign workers without a residence or work permit enjoy both human rights (2.24.1.) and rights resulting from their professional activity (2.24.2.). Undocumented workers do not have a right to regularization, but they may have recourse to the applicable law (2.24.3.).

[318] Evading the enforcement of a removal order is punishable by 3 years' imprisonment. Assisting unauthorized entry, movement or residence is a criminal offence, except for family members and persons who act without any direct or indirect consideration: "when the act in question has not given rise to any direct or indirect consideration and has consisted of providing legal, linguistic or social advice or support, or any assistance provided for exclusively humanitarian purposes". Article L.823-1 of the Ceseda.

[319] Article L. 824-9 of the Ceseda.

[320] Pending publication of the decree setting out the conditions of application, see article 34 of law no. 2024-42 of 26 January 2024 amending article L. 8253-1 of the French Labor Code.

[321] Article 34 of law no. 2024-42 of 26 January 2024 amending articles L. 8254-2 and L. 8256-2 of the French Labor Code.

2.24.1. Personal rights

2.24.1.1. Right of association and trade union rights

The French law of 1st July 1901 on the right of association does not lay down any nationality or residency requirements for membership of an association or for setting one up. There is therefore nothing to prevent an illegal foreign national from being a member of an association, including a founder member, a member of a trade union, or even holding a trade union office (trade union delegate, staff delegate). The only restriction in French law concerns the position of employee representative (conseiller prud'homal), which is only open to people of French nationality.

2.24.1.2. Right to health and social benefits

In most cases, an impoverished person living in France is entitled to health cover even if he or she is not in employment and/or does not have a residence permit. Unlike French nationals, who are covered exclusively by health insurance, foreign nationals may be covered by 3 different schemes, each exclusive of the other. Depending on whether they are legally resident in France or not, and how long they have been in the country, people who have been in France for a long time are covered either by:

- health insurance (possibly with supplementary cover) if they have a legal right of residence, with a few exceptions. Only people who are legally resident (since the law of 24 August 1993) in the sense strictly defined by the Social Security Code can benefit from health insurance. An exhaustive list of residence permits was set out in the decree of 10 March 2017. In addition, a period of 3 uninterrupted months' presence in France (with or without a visa, with or without a residence permit) is required, subject to exceptions (in particular by virtue of bilateral agreements). Exceptions to these conditions of regularity and/or length of residence are accidents at work and occupational illnesses (see below).

- State medical aid (AME) for illegal residents on low incomes. Under immigration law, AME is a benefit for foreign nationals residing illegally. AME is granted under two conditions:

1. You must be on French territory in conditions that are not purely occasional and that present a minimum of stability (Council of State opinion of 8 January 1981). This therefore excludes people passing through France without any plans to settle, including some who have come to France for medical treatment.
2. You must be residing in France illegally for more than 3 consecutive months.

These conditions therefore exclude from AME people who are legally resident within the meaning of immigration law. As a result, a person who is legally resident but does not hold one of the documents entitling them to health insurance is excluded from all health cover, as they are not eligible for either health insurance or the AME/DSUV[322] (Conseil d'État decision of 31 December 2021).

Foreign nationals who are in France illegally and who do not meet the conditions for AME (resources above the ceiling, illegal status for less than 3 months) may, under certain conditions, receive (one-off) financial coverage only for "urgent care" provided by a public or private hospital participating in the public service and "whose absence would jeopardize the prognosis of life or could lead to a serious and lasting deterioration in the state of health".

[322] Urgent and life-saving care.

The AME is a means-tested entitlement (x<9719 euros over the last 12 months, i.e. an average of 810 euros/month for a single person). Entitlement is for one year. The first application for AME must be made in person at the counter of the local health insurance center, which poses problems of time and accessibility (a single location for the department). Retroactive coverage is limited to 90 days. The care covered is the same as for insured persons with social security, with the exception of exhaustively listed treatments (PMA, spa treatments, etc.). Cover therefore includes consultations with a doctor in a town doctor's surgery, procedures carried out in a hospital (public or private) and any resulting prescriptions, pharmaceutical costs, laboratory tests, dental care, paramedical procedures, abortions, etc. However, from 1st January 2021, during the first 9 months of the AME, certain hospital treatments (services or procedures) relating to non-severe pathologies will not be covered. Coverage is at 100% of the social security rate.

The urgent and vital care scheme (DSUV) applies to illegal residents who are ineligible for the AME because they have recently arrived in France or are above the income threshold. This scheme provides funding for care, the absence of which could lead to a serious and lasting deterioration in health. The DSUV must be applied for by the hospital in the case of care provided to foreign nationals residing in France who have no other means of covering their healthcare costs (no right to health insurance, no right to the AME, no private insurance). This is one-off funding from the State, subsidiary and retroactive (1 year), to ensure that hospitals are not left alone with an irrecoverable debt when they have provided essential emergency care to people with no health insurance[323]. According to the law, this means "all care the absence of which could lead to a serious and lasting deterioration in the state of health", which goes beyond a vital emergency. Beneficiaries may therefore be people who are in France illegally, but who have been there for less than 3 months, or asylum seekers during the first 3 months of their presence in France.

Finally, there are health care and prevention centers that are accessible without health insurance, including maternal and child protection centers. There are also health care access points (PASS) in public or private hospitals providing a public service, specialized public health services and centers run by NGOs or the Red Cross.
Voluntary termination of pregnancy is also subject to separate protection.

2.24.1.3. Direct debit rights

French law recognizes the validity of the principle of declaring a postal address[324]. People who declare a personal address (with a third party or an accommodation facility) to the public authorities and social organizations are not required to produce supporting documents (apart from exceptions such as obtaining a residence permit). This principle of declaring one's address is valid for access to all social rights - including AME - and in particular prohibits paying bodies and tax authorities from requiring proof of address. If a person considers that they do not have an address where they can receive their mail, because they do not feel that they are living there on a stable basis, they can apply for administrative domiciliation. This is a matter of right (with the CCAS, CIAS) for foreigners in an irregular situation if they are applying for the AME, legal aid or the exercise of their civil rights.

[323] Article L. 254-1 of the French Social Action and Family Code.
[324] Article R. 113-8 of the Relations between the public and the administration Code.

2.24.1.4. Right to a bank account

Anyone residing in France who does not already have a bank account is entitled to open an account with the bank of their choice. There is a right to an account. There is no legal requirement that a person must be legally resident in France in order to have access to a bank account. Such a requirement would be illegal[325].

2.24.2. Rights attached to the exercise of a professional activity

2.24.2.1. The principle of prohibiting the recruitment or continued employment of a foreigner in an irregular situation

Article L. 8251-1 of the French Labor Code establishes the principle of prohibiting the employment of foreigners without a work permit in the usual terms of a public policy provision: "No one may, directly or indirectly, hire, retain in his service or employ for any period whatsoever a foreigner who does not hold a permit authorizing him to work in France". This provision applies in all its rigor, including in the case of a pregnant woman, whose legal protection prohibiting or limiting dismissal cannot take precedence over the public policy provision[326]. Consequently, it is also forbidden to enter into a contract for the provision of services with "an employer who uses the services of a foreigner not authorized to work (article L. 8251-2 of the Labor Code).

As a work permit under French law is valid only for a given profession and region, "it is also forbidden for any person to employ or retain in his service a foreigner in a professional category, profession or geographical area other than those mentioned, where applicable, on the permit provided for in the first paragraph" (Article L. 8251-1 para. 2 of the French Labor Code).

2.24.2.2. The effects of the principle of the relative nullity of the employment contract of an illegal foreign national

If a foreign national is recruited without a work permit, the contract is null and void. However, this is a relative nullity that only has effect for the future. For this reason, a foreign employee employed in breach of the provisions on work permits is treated, from the date of his or her recruitment, as if he or she were a legally employed employee with regard to the employer's obligations defined by the Labor Code on the following subjects (art. L. 8252-1 of the Labor Code):
1° the prohibition on prenatal and postnatal employment and the conditions relating to breastfeeding, set out in Articles L. 1225-29 to L. 1225-33 of the French Labor Code;
2° the application of legal and contractual provisions relating to working hours, rest periods and holidays;
3° the application of legal provisions relating to health and safety at work;
4° taking into account seniority in the company.

However, the rules on dismissal do not apply to the termination of an employment contract by a foreign employee on the grounds of irregularity of employment[327]. While the irregularity of a foreign worker's situation constitutes

[325] TA Paris 16 March 2005, no. 050280519; Halde, deliberation no. 2006-245, 6 November 2006.
[326] Cass. soc. 15 March 2017, n°15-27928 P., *Dr. soc.* 2017, p. 566, obs. Mouly.
[327] Cass. soc. 13 November 2008, *D.* 2009, AJ 3016.

a real and serious cause justifying the termination of the employment contract, excluding the application of the provisions relating to dismissal and the award of damages, it does not in itself constitute serious misconduct. If the employer wishes to refer to serious misconduct other than the illegal residence status, it must make express reference to this in the letter of dismissal[328]. Similarly, a foreign worker who is not in possession of a residence permit authorizing him to work as an employee in France is not treated in the same way as a regularly employed employee with regard to the rules governing the transfer of employment contracts, i.e. the continuation of the employment contract by the purchaser of the company[329].

Under Article L. 8252-2 of the French Labor Code, a foreign employee is entitled to the following benefits for the period of unlawful employment:
1° Payment of salary and related benefits, in accordance with the provisions of the law, collective bargaining agreements and contractual provisions applicable to his employment, less any sums previously received in respect of the period in question. In the absence of proof to the contrary, the sums due to the employee correspond to an employment relationship presumed to have lasted three months. The employee may provide proof by any means of the work carried out; where applicable, the employer shall bear all the costs of sending the unpaid remuneration to the country to which the employee has left voluntarily or has been deported. The sums thus due to the undocumented foreign national are paid by the employer within thirty days of the offence being detected. If the foreign national is placed under administrative detention or under house arrest or is no longer on national territory, these sums are deposited within the same period with a body designated for this purpose, and then paid back to the foreign national. If the employer fails to meet its obligations, the body will recover the sums due on behalf of the foreign national.
2° In the event of termination of the employment relationship, to a fixed indemnity equal to three months' salary, unless application of the rules set out in articles L. 1234-5, L. 1234-9, L. 1243-4 and L. 1243-8 or the corresponding contractual stipulations lead to a more favorable solution. The Labor Court hearing the case may make an interim order for payment of the lump-sum compensation provided for in 2°.

If the foreign national has been employed illegally as a result of undeclared work (failure to comply with the obligation to hire beforehand, failure to issue a pay slip or mention of a lower number of hours on the pay slip, willful failure to declare wages and contributions to URSSAF), he or she will benefit either from the provisions of article L. 8223-1 of the French Labor Code, which entitles him or her to a lump-sum payment of 6 months' salary, or from the rights mentioned above, whichever is more favorable.

Notwithstanding the benefit of these rights, foreign workers without a work permit may apply to the courts for additional compensation if they are able to establish the existence of a loss that has not been compensated under these provisions.

A foreign employee employed without a work permit benefits from the legal provisions relating to the protection of wage claims relating to insurance and wage privileges for the sums due to him in application. Like all employees, they are among the super-privileged creditors in the event of the company's safeguarding, reorganization or compulsory liquidation proceedings.

Without prejudice to any legal proceedings that may be brought against them, employers who have employed a foreign worker without a work permit shall pay a special contribution for each foreign worker without a work permit. The amount of this special contribution is determined under conditions laid down by decree in the Conseil

[328] Cass. soc., 13 November 2022, n°21-12 125 B; Cass. soc., 4 July 2012, *Droit ouv*, 2012, p. 736, obs. Bonnechère.
[329] Cass. soc. 17 April 2019, n°18-15321 P, *Droit ouv*, 2019, p. 625, obs. Mouly.

d'Etat. The Office français de l'immigration et de l'intégration is responsible for establishing and paying this contribution. It is collected by the State.

Representative trade union organizations may take legal action on behalf of foreign employees to enable them to recover their aforementioned rights without having to prove that they have a mandate from the person concerned, provided that the latter has not declared his or her opposition. The person concerned may always intervene in the proceedings brought by the union.

Any person who, directly or through an intermediary, recruits, keeps in their service or employs for any period whatsoever a foreigner who does not hold a permit authorizing him/her to work as an employee in France, in breach of the provisions of the first paragraph of article L. 8251-1, is punishable by five years' imprisonment and a fine of 15,000 euros. The fine is applied as many times as there are foreign nationals concerned. This does not apply to an employer who, on the basis of a fraudulent document or one fraudulently presented by a foreign national in employment, without the intention of participating in the fraud and without knowledge of the fraud, makes a declaration to the social security bodies, makes a single declaration of employment and checks with the relevant local authorities the document authorizing the foreign national to work in France.

2.24.2.3. Right to strike

The right to strike is a constitutionally protected right of all workers, regardless of their administrative status. However, undocumented workers who take part in collective action run the following risks:
- his administrative situation legally places him as the perpetrator or accomplice of an offence against the right of residence and not as a victim enjoying legal protection (except in cases of exploitation or trafficking in human beings)[330].
- by revealing their administrative situation, they expose themselves to penalties under immigration law[331].
- by denouncing its working and employment conditions, it is jeopardizing its presence in the country.

In France, undocumented workers, like all workers, have the right to strike; regularization being a lawful reason for strike action and occupation a means of exercising this right.

The right to strike, a right for everyone

The right to strike is enshrined and protected by the French Constitution and by the courts of all jurisdictions, which recognize it as a fundamental right[332]. Any restrictions on this right must be provided for by law and "justified and proportionate" to a legitimate aim[333]. No text makes the right to strike conditional on legal residence. Restrictions based on the national origin of workers cannot be introduced by law, as they would infringe the right

[330] I. Daugareilh, "La pénalisation du travail irrégulier en droit européen", *in* Laurence Dubin (ed.) *La légalité de la lutte contre l'immigration irrégulière par l'Union européenne*, Bruylant, 2012, pp. 265-288.
[331] The penalty will be the withdrawal of the residence permit for foreign nationals in possession of a legal residence permit who work without a work permit (article L.313-5 al.2 of the Ceseda).
[332] Constitutional Council, no. 79-105 DC of 254 July 1979, Grandes décisions du Conseil constitutionnel, no. 19. Conseil d'État Ass. 7 July 1950, Grands arrêts de la jurisprudence administrative, no. 65. Soc. Cass. of 5 March 1953, Grands arrêts du droit du travail, no. 186.
[333] French Constitutional Court, no. 2007-556 DC, 16 August 2007; CE 27 October 2010, no. 343966, *AJDA*, 2010, p. 2026.

not to be discriminated against under Article 14 of the ECHR"[334]. Finally, according to the Constitutional Court, "while the legislature may adopt specific provisions for foreigners, it must respect the fundamental rights and freedoms of constitutional value recognized for all those residing in the territory of the Republic"[335], which includes the right to strike.

The right to strike is therefore one of the rights available to foreign workers, regardless of their administrative status. All that is required is that the action be concerted or collective.

Regularization, a hybrid professional and political demand

The right to strike must be exercised in support of professional demands. This is the legal definition of a strike under French law, and provides legal protection against any sanction. The Court of Cassation has interpreted the concept of industrial action broadly. The legality of movements led by undocumented workers seeking regularization is based on the following elements: 1. By addressing the public authorities (which could be assimilated to a political demand) and their employer, undocumented workers seek to obtain the issue of a work contract or a promise of employment" and the payment of the employer's lump-sum contribution. 2. The aim of the application for regularization is to gain access to the right to equal treatment with other employees. Taking these factors into account, the Court of Cassation has accepted that a strike may have professional demands that go beyond the employer and are in fact directed at the government, "the employer's ability to satisfy the employees' demands being irrelevant to the legitimacy of the strike"[336].

2.24.3. The right to regularization through work

There is no right to regularization in France. Foreign workers in an irregular situation therefore have no right to regularization. However, the CESEDA sets out and organizes provisions governing the conditions under which foreign nationals can have their administrative situation regularized.

In France, there is a history of collective regularizations of undocumented workers linked to the right to strike and trade union rights. In the 1980s, for example, undocumented workers in the clothing sector who were union members and organized within the CFDT forced the government to regularize their situation. In 1991, rejected asylum seekers who were members of the CFDT, CFTC and CGT forced the trade unions to take a stand in favor of their regularization. In March 1996, at the time of the occupation of the churches of Saint Ambroise and Saint Bernard in Paris, the movement of undocumented migrants was supported by several trade unions (CGT, CNT, FSU, SUD, etc.).

The right of assembly and the right of expression are enshrined in the ECHR (articles 10 and 11). The right to be supported by or belong to a trade union is protected by ILO Conventions 87 and 98, which specify that these rights may not be discriminated against and must be accessible to all workers. And the French law of 1st July 1901 on the

[334] According to the terms of the ECHR judgment of 16 December 1996, Gayguzuz v/Austria, no. 17371/90. See I. Daugareilh, "La convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et la protection sociale", *Revue Trimestrielle de Droit européen*, 2001, n°1, p.123-137.
[335] Const. 13 August 1993, no. 93-325.
[336] Cass. soc. 15 February 2006, Bull. civ. V, no. 65; Soc. cass. 23 October 2007, RTM, no. 06-17802, *Droit ouv*, 2007, p. 579. See also CA Paris, Pôle 06, chamber 1, 12 April 2010, no. 09/22358 quoted by S. Slama, "Travailleurs sans papiers: un droit de grève 'bridé'", *Droit ouv*, 2011, no. 750.

right of association lays down no condition of nationality or residency to be a member of an association or to set one up. There is therefore nothing to prevent an illegal foreign national from being a member of an association, including a founder member, a member of a trade union, or even holding a trade union office (trade union delegate, staff delegate). The only restriction in French law concerns the position of labor tribunal councilor, as described above.

Nor is there anything to prevent undocumented migrants from expressing themselves freely - provided, of course, that they respect the limitations on this right (prohibition of incitement to racial hatred, no defamation, etc.) - and by any means that are not disproportionate. Being an active member of a collective, association or trade union is a right that is not linked to a residence permit.

In addition to trade unions and groups often set up as part of collective action, various associations speak out on behalf of undocumented migrants: Amnesty International, la Cimade, Comité contre l'esclavage moderne, Fasti, Ligue des droits de l'homme, le mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), Médecins du monde, etc.

Under French law, regularization on the grounds of work has certain characteristics that do not make it an easy option. It is governed by the Valls circular of 28 November 2012, which was ultimately revised in 2018[337]. It falls within the discretionary power of the competent administrative authority (the Préfet). The Conseil d'État does not consider the circular to be a source of law; they are "merely general guidelines intended to enlighten prefects (...) without depriving them of their discretion"[338]. French law on regularization is therefore complex, vague and subject to varying interpretations by the prefectures. Individual applications are examined on a case-by-case basis and take a relatively long time to process. This is why, by resorting to strike action, undocumented workers are seeking a collective solution.

The circular requires foreign workers to have been resident and working in France for a minimum period of time. The application must include an employment contract or a promise to take on the job, as well as an undertaking by the employer to pay the tax to the French Office for Immigration and Integration. To demonstrate the reality and duration of the professional activity, pay slips (or universal employment cheques for domestic workers) may be submitted, including if they have been drawn up retrospectively by the employer, or any other means of proof of the activity, including, where applicable, a certificate from the employer. If these elements are met, the administrative authority may issue either a temporary residence permit marked "employee" or "temporary worker"[339]. Under this procedure, the employment situation[340] cannot be invoked.

The circular provides for special cases: foreign nationals who have been participating for 12 months in social and solidarity economy activities supported by a State-approved organization, foreign nationals working on a temporary basis or foreign nationals with a series of short-term contracts such as home workers, provided they meet the same conditions of length of residence and length of service. The circular excludes seasonal foreign workers.

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[337] Circular No. NOR INTK1229185C of 28 November 2012 on the conditions for examining applications for residence lodged by illegal foreign nationals under the provisions of the Ceseda.

[338] Conseil d'État, 4 February 2015, n°383267, 383268, Recueil *Lebon, AJDA* 2015, p.191, Chron. L. Lessi and L. Dutheillet de Lamothe, *Dalloz*, 2016, p.336. B. Bourgeois-Machureau, *RFDA*, 2015, p.471.

[339] If the promise of employment is an employment contract either for more than 12 months or for a shorter period (at least 6 months).

[340] This is one of the criteria for an administrative work permit under article R.5221-20 of the Labor Code, which forms the basis of France's economic immigration policy.

Exceptional admission on the basis of employment therefore concerns workers who are already employed or who are going to become employed. Neither the law nor the circular require undocumented workers to have been employed, but to have actually worked for a certain length of time. Moreover, the range of possible proof ranges from pay slips to employment cheques to bank transfers.

However, what the law and the circular do not provide for is regularization for the purpose of self-employment. This means that undocumented foreign platform workers are doubly disadvantaged by immigration law and platform law. The legal presumption that platform workers are independent prevents them from exercising their right to exceptional regularisation through work.

The use of aliases both to work in traditional companies and with platforms creates a dependency on others that can give rise to a debt that leads to abuse and waivers of rights. Shouldn't compliance with the duty of care imposed on parent companies and principals by the French law of 27 March 2017 in respect of their activities abroad be required on national territory so as not to allow these situations of relocation[341], which enable social dumping to be practised by playing on the vulnerability of workers because of their origin and their ultra insecure administrative status, to be outlawed?

2.25. Summary and commentary of court decisions

To our knowledge, no legal action has been taken on this issue. However, one case received media coverage during the debate on the immigration bill. A Beninese nurse's aide in a nursing home threatened with deportation was offered a residence permit[342].

2.26. Measures adopted by the State during the Covid 19 pandemic to enable "undocumented" foreign staff to obtain a residence or work permit on a permanent or exceptional basis

The only measure taken by the French government in relation to essential workers who have enabled the country and French society to maintain essential services was the so-called Shiappa circular of 14 September 2020, which accelerated and facilitated the naturalization process for the foreign workers concerned. But these were only workers whose residence and work status were legal.

[341] See E. Terray, "Le travail des étrangers en situation irrégulière ou la délocalisation sur place" in E. Balibar, M. Chemillier-Gendreau, J. Costa Lascoux, E. Terray, (dir.) *Sans papiers: l'archaïsme fatal*, La Découverte, Paris, 1999, p. 9.

[342] Une Béninoise, aide-soignante en Ehpad et menacée d'expulsion, se voit proposé un titre de séjour: (lefigaro.fr) Immigration: "C'est le projet de loi de la honte", juge Sophie Binet (france.info), *France info*, published on 11 December 2023 [Online, accessed 13 December 2023].

2.27. Measures taken by the State after the Covid 19 pandemic to enable "undocumented" foreign staff employed "in the care sector" to obtain a residence or work permit

No measures have been taken concerning undocumented workers in any sector. The only so-called essential undocumented workers to have obtained temporary regularization are the workers at the Frichti meal delivery platform following their strike in June 2020.

2.28. Reports or studies by bodies promoting equal treatment or combating racial, ethnic or religious discrimination in France on the rights of migrant workers in the care sector

Only one survey was carried out in 2022 jointly by the Defender of Rights and the ILO on discrimination in the care sector (see conclusion). With regard to the prohibited ground linked to the national origin of workers, the results of the survey provide the following information[343]:
- the multidimensional and systemic nature of the discrimination suffered, which is interwoven and cumulative with other forms of professional inequality, hostile attitudes in employment and relationships of domination specific to this sector of activity.
- the lasting effects of discrimination on victims (professional, emotional, psychological and social).

Certain grounds for discrimination are identified more often by women working in the sector: physical appearance (58% think that people are often discriminated against because of their physical appearance, compared with 49% of the working population), origin or skin color (56%, compared with 53%). Other criteria are associated with origin: nationality (45%), difficulty speaking French (41%) and religion (40%). The other forms of discrimination considered to be widespread are those linked to gender identity (52%), sexual orientation (50%), being a woman (35%) and economic insecurity (33%). These forms of discrimination are most often encountered when looking for a job.

The criterion of foreign origin is the one most often invoked in cases of discrimination in recruitment[344]. The following are examples of decisions by the High Authority against Discrimination (Haute Autorité de lutte contre les discriminations)-HALDE-.

- Halde Deliberation No. 2008-83 of 28 April 2008 Origin - Education - Access to training - Recommendation
"The High Authority was informed of a refusal to register for the competitive entrance examination for training as a nursing auxiliary based on the failure to take into account residence permit application receipts. The legitimate aim of this requirement may be to ensure that applicants remain in France on a long-term basis. However, people who have been granted refugee status are automatically entitled to a residence permit, and the refusal to grant them one must therefore be considered unjustified and discriminatory. The HALDE recommends that the conditions for entry to the nursing auxiliary competitive examination be adapted.

"Indirect discrimination occurs when an apparently neutral provision, criterion or practice is liable to place natural or legal persons at a particular disadvantage because of a prohibited criterion, in this case nationality or origin,

[343] Défenseur des droits/OIT, Survey: Perception of discrimination in employment - 16e barometer: edition devoted to the personal services sector, 2022.
[344] Défenseur des droits, Rapport annuel d'activité, 2016, p. 96: The criterion of foreign origin accounts for 20% of referrals to the Défenseur des droits on issues of discrimination in recruitment.

unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The requirement to present a valid identity document when registering for a competition in order to register an application is an apparently neutral provision. However, the rule laid down by A excluding residence permit application receipts is likely to disadvantage non-Community nationals in this situation who, by assumption, are obliged to apply for a residence permit and receive a receipt while waiting for their application to be processed. Until the administration's decision, these people are excluded from any possibility of taking the competitive entrance examination for training as a care assistant at A. This situation therefore constitutes indirect discrimination on the grounds of national origin in terms of access to training. It is therefore necessary to assess the objectives pursued by this measure and the means implemented to achieve them". Thus, "the HALDE Council asked its Chair to bring this decision to the attention of the Minister of Health, Youth, Sports and Community Life, the Minister of the Budget, Public Accounts and the Civil Service and the Minister of Immigration, Integration, National Identity and Mutually-Supportive Development, so that they may establish a general rule on the recognition of residence permits for access to training and competitive examinations".

- Halde Deliberation No. 2009-139 of 30 March 2009: Employment - nationality "In light of the report of the Advisory Committee on closed jobs, the Council notes that, with the exception of jobs linked to the exercise of national sovereignty or prerogatives of public power, the principle of restricting access to certain jobs on the basis of nationality is not justified. It recommends the removal of this restriction in principle and reserves the right to carry out a detailed study of the relevance of maintaining the nationality condition for each job".

However, according to the deliberations of the **Human Rights Defender (Halde, 2009)**, **"**Restrictions on access to employment for foreigners are at two levels: the requirement to hold a French diploma or one issued by a Member State of the European Union, and the nationality requirement. The principle of the diploma requirement for foreign nationals to access certain professions should not be called into question. The HALDE Council considers that the requirement to hold a diploma issued in France, in a Member State of the European Union, or an equivalent diploma, is objectively justified and that it constitutes a guarantee of the level of training.

The initial requirement to hold a French diploma has been extended to include diplomas issued in Member States in application of European directives since the 1970s. These directives, which were incorporated into Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, established common training standards, a necessary condition for the mutual recognition of diplomas between Member States".

"There is no such harmonization of training with non-EU countries. Accordingly, the Board believes that the existence of knowledge assessment procedures for professionals holding diplomas issued outside the European Union is justified in the absence of a bilateral agreement. Moreover, as the AMF previously pointed out in deliberation no. 2005-36 of 27 February 2005, these procedures must allow access to the profession, in particular by taking into account professional experience in France, so as not to have a discriminatory effect. In this respect, decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in competitions for access to civil service bodies and employment frameworks is consistent with this, as it provides for procedures for the examination, by commissions, of diplomas issued outside the European Union and of skills acquired.

On the other hand, the nationality requirement does not enjoy the same legitimacy. According to the March 2000 report by the Groupe d'étude sur les discriminations (GED), around 30% of all jobs are partially or totally closed to foreigners, representing almost 7 million jobs. The nationality requirement for access to employment affects both the public and private sectors. It should be noted, however, that the majority of closed jobs are in the public

sector (the estimated number is 5.2 million). This is because permanent posts with statutory guarantees are inaccessible to non-EU nationals in all three civil services (State, hospital and local).

According to the above-mentioned GED report, a number of positions in public hospitals have been opened up to non-EU nationals either to make up for the shortage of manpower or to attract foreign talent. Non-EU foreign nationals are therefore part of the workforce and are recruited to carry out the same tasks as civil servants, but under precarious statutes that do not allow them to hope for career development".

With regard to the recruitment of foreign healthcare staff, the problem may arise with regard to the recognition or equivalence of diplomas, which are necessary to practise the healthcare professions, in this case the professions of nurse and care assistant. Foreign workers who can prove that they have a diploma obtained in France or recognized by French legislation are eligible for recruitment under the same conditions as French applicants. Once recruited, foreign workers, like all employees, must not suffer any discrimination in the course of their careers or in their career development within the industry, whether in terms of access to training or promotion, pay or professional mobility[345].

2.29. Actions or reports by bodies promoting equal treatment or combating racial, ethnic or religious discrimination in France on the rights of persons, whatever their nationality, working in the care sector

The Human Rigths Defender (Défenseur des droits) carried out a survey in 2022 on "The perception of discrimination in employment in the personal services sector"[346]. Considered to be "new figures in unskilled employment"[347], women working in personal services are at the crossroads of inequalities linked to gender, social class and national origin. Studies on this sector reveal a close relationship between working conditions, social insecurity and discrimination, which refers more broadly to systemic discrimination issues, particularly in the highly feminized cleaning and care professions[348]. The discrimination criteria most cited by female employees in the personal assistance sector are physical appearance (58% think that people are often discriminated against in France because of their physical appearance, compared with 49% for the working population as a whole) and origin or skin color (56% compared with 53%) (...). As with the working population, other criteria that may be related to origin are also frequently cited: 45% of respondents in this sector believe that people are often discriminated against in France because of their nationality, 41% because of their difficulties in expressing themselves in French and 40% because of their religion[349].

With specific regard to personal services workers of foreign origin who are perceived as non-white, sociological research[350], particularly on home helps, has documented the prevalence of racial prejudice and discrimination

[345] For an illustration, see ILO, *Caring for People, The Future of Decent Work*, 2019 Report, particularly on nurses, see p. 194 et seq.
[346] Défenseur des droits/OIT, Survey: The perception of discrimination in employment - 16e barometer: edition devoted to the personal services sector, 2022. The results of this survey are corroborated by recent research published by L. Chasoulier, S. Lemière, R. Silvera, *Investir dans le secteur du soin et du lien aux autres*, Clersé-CGT, 2023, p.172 et seq.
[347] Défenseur des droits, 15e baromètre de la perception des discriminations dans l'emploi. Focus sur le secteur des services à la personne, *op. cit*.
[348] *Ibid*, p. 15.
[349] *Ibid*, p. 8.
[350] See in particular: Ch. Avril, *op. cit*; C. Ibos, *Qui gardera nos enfants? Les nounous et les mères,* Flammarion, 2012.

(linked to origin and nationality) in this sector of activity, particularly in large cities[351]. The results of this work were confirmed by the Human Rigths Defender in its 2022 survey of the personal services sector[352]. In particular, it shows that the profile of immigrant workers or those from overseas France is different from the rest of the working population in the sector: some of them are better qualified and sometimes worked in skilled jobs before migrating. When they are recruited as home helps or once they are in their jobs, female candidates often undergo implicit selection tests that "white candidates" do not face: they are less often employed full-time, because they are subject to an implicit "trial period", they are more likely to be assigned elderly people deemed to be more "difficult", they are subject to increased surveillance and are more easily dismissed than their white colleagues[353]. The complexity of renewing a residence permit also encourages harassment, exploitation and modern slavery among undocumented domestic workers[354]. Lastly, employees in the sector are often confronted with racist comments or prejudice, whether from the organization's staff or from the beneficiaries of the services. Observation of recruitment interviews with childminders shows the decisive role played by origin and skin colour in professional assessment (North African women are perceived as strict but responsible, African women as nonchalant but maternal, Colombian women as docile but devious, etc.)[355].

To combat discrimination on the grounds of origin, across all sectors of activity, many workers are in favour of the measure consisting of "evaluating recruitment procedures to ensure that candidates from ethnic minorities have as much chance of being called for interviews or hired as other candidates with the same skills and qualifications"[356].

2.30. Please comment on whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Indicate whether the worker's employer (including migrant workers) can be held liable for such situations

There is no legislation on harassment specific to domestic workers. As we indicated previously, the French legislator prohibits two types of sexual harassment: The first consists of repeated comments or behaviors with sexual or sexist connotations, which either undermine the dignity of the employee due to their degrading nature or humiliating, or create an intimidating, hostile or offensive situation against him. The second form of sexual harassment is based on a single act of particular intensity in that sexual harassment is considered "any form of serious pressure, even not repeated, exercised with the real or apparent aim of obtaining an act of a nature sexual, whether it is sought for the benefit of the perpetrator or for the benefit of a third party.
On the other hand, domestic workers risk being confronted, more than other employees, with a problem of proving harassment due to the solitude of exercising their profession.
Traditional accepted means of proof such as the testimony of work colleagues or emails are not used by employees working in the homes of people in a dependent situation; and audio recordings made clandestinely

[351] Racial discrimination is much less common in rural areas, where most home carers are perceived as white.
[352] Défenseur des droits, 15e baromètre, *op. cit.*, p. 14.
[353] Ch. Avril, *Ambiance raciste dans l'aide à domicile*, *op. cit*.
[354] D. Mouchenik, *La vie chez soi. Petits récits et réflexions engagées sur le soutien à domicile en France,* Michalon ed, 2022, p. 119-125.
[355] C. Ibos, *Qui gardera nos enfants? Les nounous et les mères*, *op. cit.* p. 42. See also D. Mouchenik, op. cit. pp. 146-148.
[356] Défenseur des droits, 2e baromètre, 2009, p. 36. According to which 88% of civil servants and 86% of private sector employees believe they are in favor.

are not admissible before an industrial tribunal because they are contrary to the principle of fairness of proof in labor law.

2.31. Mechanisms in the legislation to combat cases of exploitation in the workplace of undocumented or irregular migrant workers. Possibility for irregular migrants to denounce or have access to the courts in cases of exploitation and labour exploitation. Possibility of obtaining a residence permit provided for by the legislation in the event of exploitation (Take into account directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals)

France has ratified ILO Conventions 29 and 105. The ILO Member States have overwhelmingly adopted the Protocol of 2014 to the Forced Labor Convention, 1930, and the Forced Labor (Supplementary Measures) Recommendation, 2014 (No. 203), which complement the Forced Labor Convention, 1930 (No. 29), and existing international instruments by providing specific guidance on effective measures for the prevention, protection, remedy and elimination of all forms of forced labor.

According to the ILO, forced labor can be imposed on adults and children by state authorities, private companies or individuals. It can be observed in all types of economic activity such as domestic work, construction, agriculture, garment manufacturing, sexual exploitation, forced begging, etc. in all countries. The Forced Labor Protocol explicitly reaffirms the definition of forced labor, which includes the following three elements:
1. Work or service refers to any type of work, whatever the activity, industry or sector, including within the informal economy.
2. The threat of some form of punishment refers to a wide range of constraints used to force someone to work.
3. Lack of consent: the expression "offered voluntarily" reminds us that a worker must consent to an employment relationship in a free and informed manner and that he or she is free to leave the job at any time. This is not the case, for example, when an employer or recruiter makes false promises to get the worker to take a job he or she would not otherwise have accepted.

Under French law, the offence of trafficking in human beings is defined in Article 225-4-1 of the Criminal Code as follows:
" I. - Trafficking in human beings is the act of recruiting, transporting, transferring, harboring or receiving a person for the purpose of exploitation in any of the following circumstances:
1° With the use of threats, coercion, violence or deception against the victim, his or her family or a person having a habitual relationship with the victim;
2° Or by a legitimate, natural or adoptive ascendant of that person or by a person who has authority over him or abuses the authority conferred by his position;
3° Or by abuse of a situation of vulnerability due to age, illness, infirmity, physical or mental deficiency or pregnancy, apparent or known to the perpetrator;
4° In exchange for or by the granting of remuneration or any other benefit or promise of remuneration or benefit".

The exploitation referred to in the first paragraph of this I is the act of placing the victim at his or her disposal or at the disposal of a third party, even an unidentified third party, in order either to enable the commission against the victim of the offences of procuring, assault or sexual molestation, reduction to slavery, submission to forced

labour or services, reduction to servitude, removal of one of the victim's organs, exploitation of begging, working conditions or accommodation contrary to the victim's dignity, or forcing the victim to commit any crime or offence.

Trafficking in human beings is punishable by seven years' imprisonment and a fine of €150,000.
The law governing the entry and residence of foreign nationals in France recognizes the rights of victims of human trafficking, which are presented to them by the police or gendarmerie when they lodge a complaint against the perpetrators of this offence:
1° The possibility of admission to residence and the right to take up a professional activity as provided for by Article L. 425-1;
2° The reception, accommodation and protection measures provided for in articles R. 425-4 and R. 425-7 to R. 425-10;
3° The rights referred to in Article 53-1 of the Code of Criminal Procedure, in particular the possibility of obtaining legal aid to assert their rights[357].

The police or gendarmerie service will also inform the foreign national that he/she may benefit from a period of reflection of thirty days, under the conditions laid down in article R. 425-2, to decide whether or not to benefit from the possibility of admission to the residence permit referred to in 1°. This information will be given in a language that the foreign national understands and in conditions of confidentiality that will ensure the foreign national's trust and protection. This information may be provided, supplemented or developed for the persons concerned by non-profit private law organizations specializing in support for prostitutes or victims of human trafficking, in assistance for migrants or in social action, designated for this purpose by the Minister responsible for social action.

Any foreign national to whom a police or gendarmerie service provides the information mentioned in article R. 425-1 and who chooses to benefit from the thirty-day reflection period provided for in the same article will be issued with a receipt of the same duration by the Prefect or, in Paris, by the Police Prefect, in accordance with the provisions of article R. 425-3. This period runs from the date of issue of the receipt. During the reflection period, no deportation decision may be taken against the foreign national in application of article L. 611-1, nor may it be enforced.

The reflection period may be interrupted at any time and the receipt referred to in the first paragraph withdrawn by the territorially competent Prefect, if the foreign national has, on his or her own initiative, renewed links with the perpetrators of the offences referred to in article R. 425-1, or if his or her presence constitutes a serious threat to public order. A receipt issued on application for a residence permit may be issued to a foreign national who requests to benefit from the reflection period provided for in article R. 425-1 and who is reported as such by a police or gendarmerie service. This document authorizes the holder to work[358].

During the reflection period provided for in article R. 425-2, foreign nationals are entitled to work and to vocational training. They may also benefit from:
1° The asylum seeker's allowance provided for in Chapter III of Title V of Book V;
2° Social support to help them access their rights and regain their independence, provided by one of the organisations mentioned in the last paragraph of article R. 425-1;
3° In the event of danger, police protection for the duration of the criminal proceedings.

[357] Article R. 425-1 of the Ceseda.
[358] Article R.425-3 of the Ceseda.

Care provided abroad is reimbursed under the conditions set out in the fourth paragraph of article L. 251-1 of the French Social Action and Family Code (Code de l'Action Sociale et des Familles)[359].

In accordance with article R. 425-5 of the Ceseda, a temporary residence permit bearing the wording "private and family life" is issued by the territorially competent prefect to a foreign national who meets the conditions defined in article L. 425-1. The same temporary residence permit may also be issued to a minor of at least sixteen years of age who meets the conditions set out in this article and who declares that he or she wishes to work in an employed capacity or undergo vocational training. The application for a temporary residence permit must be accompanied by a receipt for the foreign national's complaint or a reference to the criminal proceedings involving his or her testimony. In accordance with article R. 425-7 of the Ceseda, this card entitles the holder to:
- the exercise of a professional activity and vocational training, in application of the provisions of article L. 425-1.
- entitlement to social protection, under the conditions set out in article L. 160-1 of the Social Security Code; if the foreign national does not meet the conditions set out in this article, the cost of the care provided to him or her is covered under the conditions set out in the fourth paragraph of article L. 251-1 of the Social Action and Family Code;
- asylum seeker's allowance;
- social support to help them access their rights and regain their independence, provided by one of the organizations mentioned in the last paragraph of article R. 425-1 of the Ceseda;
- in the event of danger, police protection for the duration of the criminal proceedings.

[359] Article R.425-4 of the Ceseda.

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Abbreviations

AJFP : Actualité juridique Fonction publique
AJF : Actualité juridique Famille
AJDA : Actualité juridique de droit administratif
Droit ouv. : Revue droit ouvrier
Dr. soc. : Revue droit social
JCP S : JurisClasseur périodique – Edition Sociale
RDT : Revue de droit du travail
RFDA : Revue française de droit administratif
Dr. soc. : Revue droit social
RTD eur. : Revue trimestrielle de droit européen
Sem. soc. Lamy : Revue Semaine sociale Lamy
JCP S : Jurisclasseurs périodique sociale
GISTI : Groupe d'information et de soutien des immigrés
Cons. Const. : Conseil constitutionnel
Cass. soc. : Chambre sociale de la Cour de cassation
Cass. crim. : Chambre criminelle de la Cour de cassation
CJCE : Cour de justice des communautés européennes
CJUE : Cour de justice de l'Union européenne
CEDH : Cour européenne des droits de l'homme
CA : Cour d'appel
TA : Tribunal administratif
Lebon : Recueil des décisions du Conseil d'Etat
Jurisprudence consultée sur le site Légifrance [Consulté le 15 novembre 2023]

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