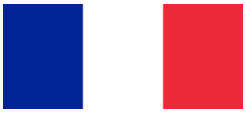
PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector - VS/2018/0041



POLICY PAPER: FRANCE

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In France, the equivalent of "personal and household services"[1] (PHS) straddles three collective bargaining branches: the private domestic employees (*salariés du particulier employeur*, **SPE**), the non-profit home-help branch (*branche de l'aide*, *de l'accompagnement, des soins et des services à domicile* **BAD**) and the branch of personal service enterprises (*entreprises de services à la personne*, **SAP**). What these have in common is that their activities are undertaken largely in the home environment[2] and that a number of them attract entitlement to tax and social benefits.[3] The activities are carried out largely by women, who also tend to be older than the average employee, are more likely to have an immigrant background and are in a more precarious situation than the rest of the employed population[4]. This situation is nevertheless far removed from that of domestic workers at the beginning of the twentieth century, who lived in with their employers and were deprived of many basic rights.

The purpose of this policy-brief is to elucidate the role played by social dialogue (that is, the dialogue between the organisations representing employers and employees at the branch level) in shaping the status of PHS personnel in France.

1. Collective actors and fragmented employment rights

The term "personal and household services" covers jobs that can be exercised under two main forms of relationship: **employment of an individual (natural person)** or **purchase of services from a service provider**, which in most of the cases in France, employ a worker.

When a householder (natural person) is the employer, households can either undertake the associated administrative formalities themselves or use the services of an agent, who assumes responsibility for managing the employment relationship in return for a fee although the householder remains the worker's formal employer. In either case, the worker is considered a private domestic employee ("*salarié du particulier employeur*", SPE), covered by a specific collective agreement.

When PHS clients pay a service provider, the person working at their home is either self-employed (0,40% of all hours worked in PHS) or salaried. In the latter case, their employer may be public or private, commercial or non-commercial. Each of these organisational types has its own employment statutes: staff of public-sector bodies are covered by civil-service law, employees of non-profit organisations by the Collective Agreement for the Non-Profit Home-Help Branch (*branche de l'aide*, *de l'accompagnement, des soins et des services à domicile* BAD)[5] and personnel in the commercial sector

[1] This is the English term most closely resembling the French *services à la personne*.

[2] Note that, per the extended professional accord of 12 October 2007 concerning the scope of personal service enterprises, the collective agreement for this branch also includes "group childminding" (crèches, kindergartens, etc.).

[3] Most notably, a tax credit as defined in Article 199-sexdecies of the French General Tax Code (*Code général des impôts*, CGI).

[4] Ledoux and Krupka, *Social Dialogue in personal and household services in France*, WORKING PAPER PHS QUALITY PROJECT 17th June 2020

[5] Full title: Collective Agreement for the Home-Help and Domestic Support, Care and Services Branch of 21 May 2010, extended by ministerial decree of 1 January 2012. This Agreement covers only non-profit providers. For the sake of brevity, in the text this is referred to henceforth as the "Collective Agreement for the Home-Help Branch" (BAD).

by the Collective Agreement for Employees of Personal Service Enterprises (*entreprises de services à la personne*, SAP).[6]

All **three collective agreements** (SPE, BAD and SAP) have been extended branch-wide, which means that they **apply to all personnel working in their fields** and not only to members of the signatory organisations[7]. Besides, all the workers covered by these agreements are covered by parts of the Labour Code, but the Labour Code does not apply fully to the SPEs (Table 1).

Table 1: Declared PHS workers by applicable employment statute.

Employer type	Hours worked, 2016 (x 1m)	Percentage of all hours worked, 2016	Labour Code applies in full?	Applicable collective agreement
Private domestic employers (directly or through agent)	482	56%	**No** (employees are covered only by Part VII of Labour Code)	Collective Agreement for Private Domestic Employees (**SPEs**)
…of which : through agent	*50*	*6%*		
Public bodies	36	4.10%	**No** (employees are Civil Servants)	Public law
Non-profit associations	206	24%	**Yes**	Collective Agreement for the Home-Help Branch (**BAD**) (Non Profit)
For-profit enterprises, exc. self-employed	133	15.50%	**Yes**	Collective Agreement for Employees of Personal Service Enterprises (**SAPs**)
Self-employed	3	0.40%	**No**	Self-employed status
Total	**861**	**100%**		

Sources: the authors and Kulanthaivelu (2018).

Those who are **self-employed** are not affected by these regulations, but they currently make up only a very small part of the total workforce. Those who remain **unregistered** also lack the rights provided for in the statutes, but – although hard to enumerate – they also comprise only a small share of the total market compared with the situation in other countries; this is due to the very strong incentives to declare the workers through public instruments financing the demand.

In France, the **employment relationship very much depends upon the type of employer**. This situation is a product of historical factors, since three distinct employer types emerged prior to the end of the 2010s: **private domestic employers** (with their own agreement, SPE), **non-profit associations** (with the BAD agreement) and, later in the mid-1990's, **for-profit organisations** (with the SAP agreement). Besides, the social partners are also highly divided within all these branches. The various collective agreements fall under the auspices of different components federations of the national trade union confederations or different employer's associations. For example, CFDT Services and CGT Commerce negotiate the collective agreement for SPEs, whereas CFDT Public Health and CGT Social Action do that for the agreement in the non-profit home-help sector (BAD) (see table 2).

[6] Collective Agreement for Personal Service Enterprises of 20 September 2012, extended by ministerial decree of 3 April 2014.

[7] For some codicil of these agreements, several provisions have not been extended or have been removed from the extension and the relevant provisions of the Labour Code now apply in their place.

Table 2: Audience of representative social partners by collective agreement, 2019.

Collective agreement	Legal status of agreement	Trade union federations	Employers' organisation(s)
Private Domestic Employees (**SPEs**), 1999	Extended branch-wide in 2000	- CGT Commerce (39.24%) - CFDT Services (20.05%) - FGTA-FO (19.51%) - FESSAD UNSA (21.20%)	- FEPEM (100%)
Non-Profit Home-Help Branch (**BAD**), 2010	Approved in 2011, Extended branch-wide in 2012 (Approval of the Ministry of Social Affairs required before extension procedure)	- CFDT Public Health (47.42%) - CGT Social Action (38.46%) - FDTA-FO (14.11%)	- USB Domicile (100%), made up of: + ADMR + UNA + Adessadomicile + FNAAFP/CSF
Personal Service Enterprises (**SAPs**), 2012	Extended branch-wide in 2014	- CGT Commerce (15.63%) - CFDT Services (39.45%) - FDTA-FO (14.29%) - CFTC Public Health (30.63%)	- SESP (44.3%) - FEDESAP (32,3%) - SYNERPA (13.7%) - FFEC (9.8%)

Source: https://travail-emploi.gouv.fr/IMG/pdf/resultats_de_la_representativite_syndicale_par_branche_-_2017.pdf.

2. Different forms of legal protection

2.1. Applicability of statutes

1) SPEs

PHS personnel employed directly by individuals (SPEs) **do not benefit from most of the protective provisions in the Labour Code**. Specifically, Article 7221-2 states that *"only applicable"* to these employees are those provisions of the code pertaining to sexual harassment, psychological harassment, the Labour Day public holiday (1 May), paid holiday leave, special leave for family reasons and medical supervision. Case law has extended this list to statutory minimum wage,[8] severance pay[9] concealed work.[10] The jurisdiction of employment tribunals and collective bargaining has also been recognised as applicable to them.

Nonetheless, **many other areas of general labour law are not applying to SPEs,** including the provisions concerning employing enterprises and legal persons. Case law has established that all provisions of the Labour Code pertaining to the definition of effective work, working hours, part-time work, night work, overtime, rest periods, health and safety at work and economic redundancy do not apply to SPEs. They are also excluded from any official scrutiny of their working conditions, since the Labour Code states that, when work is performed in *"occupied dwellings, inspectors may enter only with the prior permission of the occupants".*[11]

However, **the collective agreement for SPEs**[12] and its codicils introduced employee's rights in a number of areas in which they were exempt from general Labour Code. On some points they even went beyond the statutory provisions of the Labour Code, especially for social protections in the broad sense of the term. But in certain cases, the social partners have **neglected to systematically track the evolution of general law** and **the balance of power between employee and employer representative**

[8] Court of Cassation, Social Division, 31 March 1982: Bulletin civil V, no. 242, p.178 (quoted by Géraldine Laforge 2003).
[9] Court of Cassation, Social Division, judgment no. 10-11.525 of 29 June 2011.
[10] Court of Cassation, Social Division, judgment no. 12-24.053 of 20 November 2013.
[11] Article L611-8, Labour Code.
[12] Adopted in 1999, extended branch-wide in 2000.

organisations puts the former at a disadvantage: certain aspects of labour law have not been "picked up" fully in the collective bargaining arena or have even remained far removed from general law[13].

2) Employees of service providers

French labour law has seen a series of reforms over the years, which have gradually transformed the hierarchy of standards[14]. Consequently, at present, a company agreement always takes precedence over a branch one except in a limited number of areas[15], namely: hierarchical minimum wages, job classifications, codetermination funds, professional training funds, complementary collective guarantees (mutual and provident funds), the terms and duration of trial periods, workplace gender equality, certain measures pertaining to working hours (minimum part-time hours, overtime premiums, etc.) and the total duration of fixed-term contracts. Nevertheless, the so-called "locking clauses" at branch level can prevent company or organisational agreements less favourable for employees. They could remain in effect after 1 January 2019 insofar as they cover a specific group of domains defined in law (known as "Block 2")[16] and have been confirmed by the social partners.

Faced with this upheaval in the hierarchy of standards, the social partners in the two PHS service-provider branches have responded in different ways: those in home help (BAD) have decided to "lock" a set of regulatory provisions, whereas all have been left "unlocked" for personal service enterprises (SAPs) when this report was written.

2.2. International regulations.

France hasn't ratified C189 and until recently, this convention was almost absent from the national debate. The first major mobilisation in France in favour of ratifying C189 was organised on June 17th 2017, when several organisations – an alliance of unions and non-profit associations- called a demonstration on Place du Trocadéro in Paris. On 16 June 2018, the same alliance organised a second gathering. In 2019, a petition was started by the unions to demand ratification of C189, but no further actions have taken place.

2.3. Workers' rights

Definition and remuneration of working hours

PHS personnel are subject to a vague definition of the dividing lines between work, non-work and overtime, especially for SPEs. The SPE's agreement still provides for three forms of remuneration at below the statutory minimum wage for "attendance" duties. These are:

1) hours of "**responsible attendance**", remunerated at 2/3 of the hourly rate of pay for effective work. These hours are defined as periods during which the employees are at the employer's homes and *"at liberty to use their time as they see fit, whilst remaining vigilant in order to be able to intervene if necessary"*

2) hours of "**night attendance**", remunerated at a rate of 1/6 of the contractual wage. The SPE collective agreement states that this is "compatible" with daytime employment.

3) "**nursing duties**", remunerated at 2/3 of the hourly wage for effective work. These require that the employee *"be close to the patient and available to intervene at any time. These duties are not*

[13] For example, the collective agreement still provides for a 40-hour working week, for instance, whereas general law (which is not applying to SPEs) has been moving towards 35 hours.

[14] especially with Labour Act of 8 August 2016 and the so-called Labour Ordinances of 22 September 2017 (also known as the "Macron Ordinances")) for organisations (SPEs are not concerned by this)

[15] listed in Article L2253-1 of the Labour Code

[16] "Ordonnances Macron: l'accord d'entreprise a la primauté" [Macron Ordinances: the company agreement takes precedence"], RF Social 178, October 2017.

compatible with a full-time day job. The employee remains close to the patient and does not make use of a private room."[17]

By contrast, the extended provisions of the two other collective agreements (BAD and SAP) do not include such arrangements.

Definitions of a series of other rights

- **Working hours.** Definitions of working hours (duration of a full-time working week, legal regimes for part-time, Sunday working) also differ widely between the collective agreements, the SPE one being less protective for the employees than the two other ones.
- **Travels between clients / employers**. For **SPEs**, by definition, the period between interventions on behalf of two different employers is **not considered as working time** and neither the travel time itself nor the expenses incurred are reimbursed by the employers. Travel time for employees of service providers (ie belonging to **BAD and SAP**) can theoretically be considered **effective working time**, notwithstanding whether the employer is a non-profit association or a company, but **this categorisation is subject to certain conditions**. In addition, the applicable **mileage allowances system** differs depending upon the situation: €0.35/km in the BAD [18] and €0.22/km[19] in the SAP. Here again, though, specific company agreements may provide for a different – and even a lesser – amount.
- **Social protection**. As workers, PHS personnel have automatic basic social-security cover for sickness. They are also covered by a supplementary sickness insurance, incapacity for work and disability insurance, which have been negotiated by the social partners of the three branchs.
- **Training.** The three collective agreements under discussion all include professional training policies funded through dedicated levies over and above those provided for by law. Adding the compulsory levy and the additional agreed levy for professional training leads to 0,35% of levy for professional training for the **SPEs**, 2,04% for the workers of the **BAD** and 1,40% for those of the **SAP** (in organisations of 11 or more employees, for already 3 years).
- **Unemployment and pensions**. An important proportion of SPEs employees fail to validate their entitlement to unemployment benefit. The situation is better for employees of service providers[20]. When it comes to Social Security pension entitlements, the differences between SPEs and staff employed by service-provider organisations are even more significant. However, the social partners in the SPE branch have included provisions for a **supplementary pension scheme in their collective agreement**[21], but in 2018, the average quarterly pension paid out under this plan was just €336.15, or €112 per month[22].

3. Conditions for collective bargaining and the existence of the social partners in the three branches

The conduct of the social partners in PHS cannot be understood without taking into account the constraints and resources that directly affect their ability to participate in social dialogue.

[17] Article 6, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.
[18] Collective Agreement for the Home-Help and Domestic Support, Care and Services Sectobranch, effective 2019: Article 14.3, Chapter 1, Title V.
[19] Collective Agreement for Personal Service Enterprises, codicil of 31 January 2019.
[20] See Ledoux and Krupka, *Social Dialogue in personal and household services in France*, WORKING PAPER PHS QUALITY PROJECT 17th June 2020 for further explanations here.
[21] Article 27, Collective Agreement for Private Domestic Employees.
[22] IRCEM (2019), *Déclaration de performance extra-financière 2018* [Non-Financial Annual Statement, 2018], p. 12:https://www.ircem.eu/wp-content/uploads/2019/07/Groupe-IRCEM_Rapport_RSE_2018_DER.pdf, accessed on 5 December 2019.

3.1. Approval and extension of collective agreements

The **"rules of the game"** for extending collective agreements branch-wide are **not the same** and contractual **freedom** is severely constrained **in the case of home helps (BAD).** Agreements covering home helps (BAD) must be approved by the Ministry of Solidarity and Health before they can be extended by the Ministry of Labour to apply branch-wide.[23] In order to avoid approvals being refused, once a year the **Ministry of Solidarity summons the social partners and outlines what overall payroll bill it will accept in the coming year**. This procedure should oblige local authorities financing the home based care demand to finance non-profit organisations for home-based social care in such a way that they are able to respect those agreements. The debts of these provider organisations can indeed be recovered by local authorities. This approval procedure therefore serves as a very strong constraint on the social dialogue in BAD, whereas it does not apply to the other two agreements (SPE and SAP) even though the activities they govern are funded indirectly from the public purse (but the employer's debts can't be recovered by local authorities in SPE and SAP).

3.2. Representativeness of collective actors

The quality of social dialogue depends upon the kinds of actors empowered to negotiate or to block agreements due to their representativeness. For this reason, the **new system of trade union and employer representation implemented gradually since the reforms of 2008 and 2014** plays a decisive role in social dialogue. The presumption of representativeness is now established using "audience measurements", with different criteria for trade unions and employer organisations. At the same time, we can also imagine that this new system influences social dialogue practices – to the extent that the positions adopted by the various social partners in collective bargaining can impact their electorate (trade unions) or their membership (employers' federations) and therefore their future audience during the next electoral cycle[24]. As table 2 shows, the social partners considered as representative are very fragmented.

3.3. Codetermination funds

The content of those agreements also depends upon the capabilities of the various actors involved and the resources available to them, their knowledge of the sector and the possibilities provided by the law and their proficiency as negotiators and representatives. The generation of capacity and resources can even determine social dialogue but it can also be a result of the agreements.

Since 2014-2015, a national codetermination fund has been set up to help fund both kinds of organisation. This arrangement does not preclude the social partners from obtaining additional sectoral funds, however. The social partners in the three studied fields of negotiation **have negotiated additional branch funds**. Their contribution rates are very different, though: 0.22% in the SPE branch, 0.04% in BAD and 0.10% in the SAP branch. Here we see the effects of the ministerial approval required for the BAD agreement, which makes it more difficult to impose levies. These codetermination funds

[23] Article 3146, Social Action and Family Code. This need for ministerial approval of agreements and conventions in the medical-social sector, introduced in 1975, is justified by the use of public money to fund the structures involved

[24] At the sector level, **a union's "audience"** is established by its performance in staff representative and council elections. In the case of small and medium-sized enterprises and SPEs, however, there is a specific electoral procedure with online and postal voting. On the **employers' side,** representativeness depends on audience, which is measured by the number of companies that are voluntarily members of the organisation or by the number of persons they employ who are covered by the French social security system.[24] In practice, this means an organisation must represent either at least 8% of employers or the employers of at least 8% of workers in a sector in order to be recognised as representative.

are also used differently in each branch, although in all cases roughly 50% overall goes to the employer block and 50% to the union side. None publicly reports details of their spending, but they are meant to increase the structuration of the sector, a better knowledge or the agreements and the development of social dialogue.

3.4. Public policy instruments financing the demand

Several public-policy instruments (social security benefits, fiscal benefits, VAT rates, National insurance exemptions, vouchers) help support demand for PHS. These instruments are delivered under the condition of declaring the work and services provided. These contribute towards developing the market. The majority of social partners defend these various arrangements, highlighting the fact that they have made it possible to formalise employment in this domain, to legalise previously informal work, to allow a mostly female workforce to better combine family and working life and to meet new needs on the part of employing households.

5. Role of social partners by branch

5.1. Private domestic employment (SPE)

In the SPE branch, the social partners, although not very representative, have managed to sign a set of accords making it possible to include a set of rights in the collective agreement and its codicils from which these workers were excluded in the Labour Code. This "catch-up" remains incomplete, however. In all areas related to the definition and regulation of effective work and working hours, in particular, boundaries are still quite porous and remote from those found in general law. Advances in social protection are easier to adopt since they are based indirectly upon a form of socialisation, thanks to all the existing benefits available: first and foremost reduced taxation. By contrast, the regulation of actual work seems much more difficult to negotiate because the employers' federation remains committed to preserving what it calls "the specifics" of employment by households.

Since the declared employment of salaried workers by households is very dependent upon social fiscal expenditure, however, the legitimacy of this type of instrument is indefensible if the forms of employment it supports are themselves illegitimate. The social partners therefore pay particular attention to the efforts being made to establish what they call a dynamic of "professionalisation".

5.2. Non-profit organisations (BAD)

In BAD, the social partners have little room for manoeuvre and depend very much upon a favourable political climate. For example, the adoption, approval and branch-wide extension of a major agreement on wages for home help signed in 2002 was only made possible by strong political support in the wake of the implementation of the elderly care allowance (*Allocation Personnalisée d'Autonomie*). This hidden hand of the State behind collective bargaining and the functioning of the non-profit associations in this branch explains why certain codicils to the collective agreement even go as far as to make public funding a condition for their implementation[25].

5.3. For profit organisations (SAP)

The employer's federation of the SAP branch have been inspired by the SPE, they also tried to devise instruments not used in general law during the negotiations of the SAP collective agreement. Nevertheless, Trade Unions were enough professionalised in this branch, so that they had the capacity to block some of the proposed agreements, may it be during the negotiations or through trials. For

[25] one such is Codicil 36 which is both justified by public policy and conditional upon public funding (Codicil no. 36-2017 of 25 October 2017).

example, negotiations centred on an attempt to introduce a form of flexible part-time contract were blocked by trade unions and finally never introduced[26]. Another provision– concerning night attendance –had to be cancelled after a trial initiated by a trade union (the CGT).

Neither the provisions introduced into the collective agreement nor their subsequent cancellation on appeal would have been possible without codetermination funding and the professionalization of social dialogue, which requires expert intervention. In addition, codetermination funding has allowed the social partners to finance numerous studies in order to better understand the branches they represent.

6. Recommendations

1) **Closer harmonisation with general law.** As we have seen, a large number of provisions of the Labour Code do not apply to SPEs. A systematic review should be carried out in order to find out whether these exceptions are still in the interests of those workers and their employers. The time may now have come to reduce the standard working week from 40 hours to 35 or perhaps to better delineate various work. In the event of night attendance, for instance, shouldn't time slots for this work and its definition bring closer that of effective work in the Labour Code – in particular when "clients" are confined to their bed or chair and have moderately to severely impaired mental function, making them likely to require substantial nocturnal care? Is the attendance category "nursing duties" in the SPE agreement still really necessary?

2) **Ratification of ILO Convention 189.** This tool could serve as a lever to make work in PHS more attractive.

3) **Allow home visits by labour inspectors, with procedures that take into account the specificities of domestic work.** The Labour Inspectorate plays a key role, alongside the courts, in the enforcement of labour law. This control cannot be based upon administrative documents alone, but also requires checks in situ of occupational health and safety risks.

4) **Transparency of codetermination funds.** Whilst the institutionalisation and professionalisation of the social partners are undoubtedly linked to the capacity and resources they are allowed for social dialogue, we would suggest to the associations managing the branch codetermination funds to publish activity reports for the sake of accountability to their contributors concerning their use of the funds.

5) **Consider the socialisation of travel arrangements for service providers.** Given the difficulties surrounding reimbursement of the travel expenses incurred by workers and in order to enhance their value, particularly in rural communities where services are less developed, a vehicle-loan system financed by the National Solidarity Fund for Autonomy (*Caisse Nationale de Solidarité pour l'Autonomie*, CNSA) could perhaps be considered.

6) **Procedure for the approval of collective agreements in medical-social sectors.** The procedure for approval of the BAD collective agreement is currently being called into question, but it is arguable that the two other branch we have considered also receive public financial support through tax credits and other benefits. A general review of the situation should nevertheless be carried out, since the actors involved are in competition with each other but are subject to different legal regimes.

7) More generally, social partners and the state may **work together to ensure a better enforcement of the rules adopted through the social dialogue**. If these rules provide minimal rights, workers and employers do not always respect them.

[26] with a defined minimum number of working hours and an option for the worker to take on additional work above that threshold if they wished.

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