

Covid-19 and Amazon: Employers must involve staff representatives in the assessment of the risks and the preparation of the resulting health related measures

On April 24, 2020, the Versailles Court of Appeals handed down an insightful decision concerning the implementation of employee protection measures by employers in the current health context and lockdown imposed by the Government on March 16.

Ruling on an appeal lodged by the American giant Amazon against the order issued by the Nanterre Judicial Court on April 14, 2020, the Versailles Court of Appeals upheld the order in that it provided for a mandatory obligation to implement a comprehensive national health and safety prevention plan for employees, with prior consultation with staff representatives. This decision is in line with the need to reconcile the necessity to maintain a business activity with the preservation of employees' health.

This decision implies communicating the prevention plan to employees, who must be trained in the perfect implementation of such plan, as well as updating the so-called occupational risk assessment sheet (*document unique d'évaluation des risques*

professionnels, i.e. a document that must record the risks related to the activities of the company) for each of Amazon's sites in France.

In the current Covid-19 health crisis, some Amazon employees have exercised their right of withdrawal. In addition, several alerts for serious and imminent danger were triggered, as employees considered that the measures taken by Amazon's management were insufficient to effectively protect their physical and psychological health.

Union Syndicale Solidaires (a trade-union) then summoned Amazon before the Nanterre Judicial Court in order to have the warehouses cease their business activity due to the gathering of more than 100 people simultaneously in a closed environment, or, as a subsidiary measure, at least reduce the activity to the sole receipt of goods, preparation and dispatch of orders for food, hygiene and medical products.

By order dated April 14, 2020, the Nanterre Judicial Court ordered Amazon to carry out, with the assistance of staff representatives, an assessment of the health risks and to implement the resulting measures. Pending the effectiveness of these measures, the business activity was to be reduced to the online marketing of products considered essential, subject to a penalty payment of 1,000,000 euros per day of non-compliance and per established infringement.

Following the appeal lodged by Amazon, the Versailles Court of Appeals upheld the order of the Nanterre Judicial Court in that it ordered Amazon, with the active participation of staff representatives, to carry out an assessment of the occupational risks inherent in the Covid-19 epidemic, and to implement measures resulting therefrom. Pending such implementation, the business activity has been limited to the receipt of goods and the preparation and dispatch of orders for basic products, including computer and office supplies which are essential for telework.

What lessons can be drawn?

First of all, it should be noted that the argumentation of *Union Syndicale Solidaires*, based on the violation of the prohibition of gatherings of more than 100 persons simultaneously, was dismissed by the Court of Appeals. This argumentation was based on Ministerial Order dated March 14, 2020^[1] and Decree dated March 23, 2020^[2]. The Court rightly pointed out that not only was Amazon's business activity not affected by this restriction, but above all that the Government had provided for the continuation of the business operations of companies that could not use telework, under strict compliance with the rules for the protection of the health and safety of employees. Consequently, this argument cannot apply to companies that continue to carry on their business activity, even if the conduct of such activity require the gathering of more than 100 persons in a closed environment, provided that the obligations relating to the assessment of risks and the introduction of protective measures have been duly complied with.

In addition, the Versailles Court of Appeals stressed the need for a sufficient and proportionate risk assessment and the implementation of appropriate health measures, pointing out incidentally the various (insufficient) measures taken by Amazon. The assessment must, as stated above, be carried out in collaboration with the employees and their representatives and address the psychosocial risks, in particular the stress caused by the need to continue working despite public authorities' orders to stay at home.

This necessarily entails a close collaboration with staff representatives, failing which employers risk being summoned – in the same way as Amazon was – for breach of their obligation to ensure the safety of their employees and to preserve their health. For companies which, like Amazon, operate several sites, the assessment of the risks and necessary measures must be carried out according to the specific features of each site: a general assessment for all sites would be insufficient and could be challenged. The Versailles Court of Appeals specified that the risk assessment would be of higher quality and more rigorous if the employer used external consultants to address medical, technical and organizational issues.

Consequently, employees must be informed of, and trained in, the preventive measures adopted by their employer. For example, simply broadcasting slides on television screens in the break room and company's cafeteria is not enough to satisfy the obligation to provide information, which must be individualized according to the relevant workstations.

While no general ban on the use of e-commerce emerges from this decision, employers' attention should be drawn to the need to pay particular and scrupulous attention to the preparation of a risk assessment plan and related measures, in close partnership with staff representatives, in order to be fully in line with the applicable labor and employment provisions in this respect. Enhanced vigilance is needed in the context of the forthcoming general resumption of business activities scheduled for May 11, 2020. Indeed, employers who fail to do so would run the risk of having their employees invoke their right of withdrawal, thereby delaying the necessary resumption of business operations. As such, the above is both a health and an economic imperative.

[1] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041722917&categorieLien=id>

[2] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=id>

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