

Employers have the obligation to ensure the safety of their employees who are on assignment or on travel in a foreign country

A quick look at the website of the French Ministry of Foreign Affairs and, in particular, at the travel advice Section of this website, is sufficient to understand that employees on assignment in a foreign country face multiple risks, such as crime, extreme weather conditions, terrorist attacks, epidemics, volcanic activity, conflicts, kidnappings, etc. The reality of these risks is regularly reported in the newspapers.

While large companies have implemented a real process to manage these risks and designed an appropriate safety policy, all companies, whatever their size, must implement all means necessary to ensure the safety of their employees on assignment in a foreign country. If they fail to do so, their liability may be sought.

The legal framework:

Article L. 4121-1 of the French Labor Code establishes the principle according to which the employer has the obligation to ensure the safety of its employees: *"The employer shall take the necessary measures to ensure the safety and protection of the employees' physical and mental health"*.

Article L. 411-1 of the French Code of Social Security stipulates that *"Shall be considered as an occupational accident any accident, whatever the cause thereof, that happens, because of or in connection with work, to any salaried employee or agent working in any capacity whatsoever or in any place whatsoever for one or more employers or business managers"*.

French case-law concerning occupational accidents to employees on assignment in a foreign country has significantly evolved in 2001, and then again in 2011. In a decision dated July 19, 2001 (n° 99-21536), the Labor Chamber of the *Cour de Cassation* (French Supreme Court) held that *“The employee on assignment is entitled to the protection afforded under Article L.411-1 of the [French] Social Security Code **during the whole term of the assignment** that he/she performs on behalf of the employer, **irrespective of whether the accident occurs in connection with a professional action or an action of everyday life**, unless the employer or the Health Insurance Fund provides evidence that the employee had interrupted his/her assignment for a personal reason.”* As such, it has been ruled that an employee who suffered a brain hemorrhage in his hotel room during a professional assignment in China had been the victim of an occupational accident.

In 2011, an expatriate living in Ivory Coast who had been physically assaulted outside her working time and working place sought compensation before a French Labor Court for the harm suffered, arguing that her employer had failed to meet its obligation to ensure the safety of its employees. The employee had repeatedly alerted her employer that she feared for her safety and requested her repatriation. As the employer had never provided any response to the employee, nor taken any safety measures, the court ruled that it had failed to meet its contractual obligation to ensure the safety of its employees.

To sum up, it could be said that the employer is responsible towards its employees located abroad -whether they are on assignment, on secondment or expatriates - for anything that can happen between their departure and their return.

Actions to be taken:

To try to limit its liability, the employer must absolutely:

1. Inform the employee:

To do so, the employer must collect all useful information, based on the risks of any nature whatsoever to which the employee will be exposed; the employee should not have to take any personal action in this respect. Such information must concern both the dangers arising from the geopolitical context (wars, kidnappings, outrages, terrorism) and health-related risks (infectious diseases, accidents, hygiene conditions), including information on any potential difficult access to healthcare (healthcare structures and medicines).

This information must also include the advice and warnings of the French Ministry of Foreign Affairs.

The employer must also collect the necessary cultural information so that the employee will not put himself/herself in danger by adopting a behavior deemed inappropriate in the host country.

This information must be delivered in writing to the employee before his/her departure.

2. Adopt the means required to protect the employees

The employee must also be informed of the safety instructions issued by the company that is required to take actions to ensure the protection of its employees: potential travel and accommodation restrictions, obligation to use a designated or approved driver or the transport system organized by the employer, etc.

Each assignment must be thoroughly examined in order to draw up a comprehensive inventory of all risks and to address these risks through appropriate means that guarantee the safety of the employee not only during his/her working hours but also in the everyday life.

For the whole duration of the assignment, the employer must remain vigilant and update, if necessary, the information intended for the employees. Similarly, it must adapt the safety measures to react to any change in the situation.

3. Provide for assistance and repatriation

The employer must, as the case may be, adapt its insurance policies to best guarantee the assistance to and the repatriation of its employees.

All these measures and precautions will – sometimes – help companies avoid liability if the risks occur. In addition, needless to say, risks incurred by employees assigned abroad form an integral part of occupational risks and must, therefore, be recorded and assessed in the Occupational Risk Assessment Sheet (*Document unique d'évaluation des risques professionnel*).

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