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Hygiene and safety in the workplace Caution: danger for the employer!

The French Labor Code contains multiple provisions concerning hygiene and safety which are not strictly observed by companies, especially in small and medium-seized companies which often do not have time to supervise compliance with all applicable rules.

The evolution of case law must however prompt companies to more strictly monitor and gain better knowledge of such rules.

Thus, it is of primary importance to recall that in terms of safety, a company has an ***obligation de résulta***t and not only an *obligation de moyens*. With an *obligation de résultat*, the obligation of a party to a contract is to fulfill a specific obligation or to arrive at a specific result. With an *obligation de moyens*, the obligation of such party is to implement or use, to his/her best efforts, all necessary means in order to fulfill the obligation or achieve the result.

The *Cour de Cassation* (French Supreme Court) posed the principle according to which "*under the terms of the employment contract entered into with its employees, the employer is bound by an obligation to ensure safety, particularly with regard to occupational diseases contracted by the employee due to the products manufactured or used by the company; that the breach of this obligation is considered as an inexcusable fault within the meaning of article L.452-1 of the French Social Security Code, when the employer had* ***or should have been aware of the danger*** *to which the employee was exposed, and did not take the necessary measures to protect the employee against such dangers.*" (Labor Chamber of the *Cour de Cassation*, February 28, 2002)

When the employer fails to fulfil this obligation, the inexcusable fault could be retained by the court. The recognition of the inexcusable fault allows the victim of an occupational accident or disease to obtain complementary damages. Thus, it is beneficial for victim to ask for the recognition of this inexcusable fault.

However, pursuant to article L.452-4 of the French Social Security Code, **the perpetrator of an inexcusable fault is personally liable for the consequences of the fault.** As a consequence, the head of the company must be particularly vigilant in this matter.

As we regularly note, companies are particularly unsatisfactory in audit inspections, for example, neglecting

the obligation imposed under articles L.230-2 and R.230-1 of the French Labor Code and requiring them, **whatever the number of employees they have**, to establish or bring up to date **the *Document Unique d'Evaluation des Risques Professionnels* (Evaluation of Occupational Risks Document).**

It is obvious that the employer who had not carried out this obligatory evaluation of risks would be held liable should any accident or occupational disease arise.

Violations of the obligation to draw up and update this Evaluation of Occupational Risks Document expose the head of the company to the following penal sanctions:

- 5th class violation (maximum fine of 7,500 Euros);
- failing to communicate the Evaluation of Occupational Risks Document to the Labor Authority inspector:

  3rd class violation (maximum fine of 2,250 Euros) or obstruction if the violation is voluntary (maximum fine of 3,750 Euros);
- failing to communicate the Evaluation of Occupational Risks Document, this violation constitutes an obstruction (maximum fine of 3,750 Euros and/or imprisonment of a year or more).

Finally, in light of recent jurisprudence recognizing the suicide of an employee at his residence as an occupational accident (Criminal Chamber of the *Cour de Cassation,* February 22, 2007), companies must not neglect to prevent occupational hazards by taking a broad approach to these risks, including occupational stress.