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Latest news in French labor and employment

In recent weeks, the *Cour de Cassation* (French Supreme Court) has issued a number of rulings providing useful clarification on issues that are important to companies and their corporate officers.

These rulings concern *inter alia* the employer's inexcusable fault, the signature of mutual separation agreements, harmful management practices and serious misconduct, and automatic compensation for breach of the employees' right to rest.

Inexcusable fault

The *Cour de Cassation* has reiterated that wherever the employer is aware of a risk situation, only the effectiveness of the measures taken can rule out the existence of an inexcusable fault by the employer[1].

As such, an employer's failure to comply with its legal obligation to ensure the safety of its employees and to protect their health constitutes inexcusable fault "*whenever the employer was or should have been aware of the danger to which the employee was exposed, and did not take the necessary measures to protect him/her*".

In the matter at hand, an emergency doctor had been assaulted by a patient in the outpatient care unit.

The employer could not have been unaware of the risk of physical attack to which staff members were exposed in the outpatient care unit as a surge in violent acts within this unit had been reported as early as in 2015.

No concrete measures had been implemented.

Inexcusable fault was, therefore, necessarily established.

It should be recalled that, under Articles L. 452-1 of the French Social Security Code and Articles L. 4121-1

and L. 4121-2 of the French Labor Code, failure by an employer to comply with its legal obligation to ensure the safety of its employees and to protect their health constitutes an inexcusable fault wherever the employer was or should have been aware of the danger to which the employee was exposed and failed to take the necessary measures to protect him/her.

Mutual separation agreement signed on the day of the pre-termination meeting

The *Cour de Cassation* has ruled that the parties to a mutual separation agreement do not have to respect any minimum period of time between the pre-termination meeting and the signing of the mutual separation agreement[2].

Only proof of a vitiated consent would make it possible to annul the mutual termination agreement signed by the parties.

By ruling so, the *Cour de cassation* has made a strict interpretation of the conditions governing the validity of a mutual separation agreement, as the breach of only some of these conditions results in the agreement being null and void, i.e., the holding of a pre-termination meeting, the handing over of one of the copies of the agreement, and compliance with the 15-day cooling-off period.

Any breach of the other provisions governing mutual separation agreements will result in such agreement being null and void only if it is established that consent had been vitiated.

Harmful management and serious misconduct

The *Cour de Cassation* confirmed its case law according to which management practices that are harmful to the health of employees justify a dismissal for serious misconduct[3].

As such, the characterization of moral harassment is not required for the serious misconduct to be established.

Indeed, the employer has the obligation to ensure the safety of its employees as per Article L. 4121-1 of the French Labor Code.

Consequently, serious misconduct is established whenever the health and/or dignity of employees is at stake.

Right to rest and “automatic harm” principle

The mere finding that the provisions governing the right to daily rest have been breached automatically entitles the relevant employees to compensation[4].

As such, the employee does not need to demonstrate that he/she has suffered a harm.

It should be recalled that, in a decision issued on April 13, 2016, the *Cour de Cassation* abandoned the so-called “*automatic harm*” [5] case law principle.

Henceforth, to obtain compensation, an employee must demonstrate that he/she has suffered a harm and that there exists a causal link between this harm and the employer's breach[6].

However, the Labor Chamber of the *Cour de Cassation* has gradually accepted certain exceptions to this principle, in particular with respect to working hours, thereby allowing employees to obtain compensation without having to prove that they have suffered a harm.

Consequently, whenever non-compliance with the provisions governing the maximum weekly working time of 48 hours[7] or the maximum daily working time of 10 hours[8] is established, employees do not have to prove that they have suffered a harm to be entitled to compensation.

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[1] 2nd Civil Chamber of the Cour de Cassation, February 29, 2024, No. 22-18.868

[2] Labor Chamber of the *Cour de Cassation*, March 13, 2024, No. 22-10.551

[3] Labor Chamber of the Cour de Cassation, February 14, 2024, No. 22-14.385

[4] Labor Chamber of the *Cour de Cassation*, February 7, 2024, No. 21-22.809

[5] Case-law principle according to which non-compliance by the employer with one of its obligations automatically entitles the employee to compensation

[6] Labor Chamber of the *Cour de Cassation*, April 13, 2026 No. 14-28.293

[7] Labor Chamber of the *Cour de Cassation*, January 26, 2022, No. 20-21.636

[8] Labor Chamber of the *Cour de Cassation*, May 11, 2023, No. 21-22.281