

The anxiety-related damage extended to all harmful or toxic substances

An employee who provides evidence of exposure to a harmful or toxic substance generating a high risk of developing a serious disease and evidence of a personal anxiety-related damage resulting from such exposure may take action against his/her employer for failure by the latter to comply with its obligation to ensure the safety of its employees.

In a judgment dated September 11, 2019^[1], the *Cour de Cassation* (French Supreme Court) has extended the scope of application of the anxiety-related damage to all harmful or toxic substances. Previously, only employees exposed to asbestos were entitled to obtain compensation for their anxiety-related damage.

Indeed, the *Cour de Cassation* initially held that only employees who met the conditions for benefiting from the so-called “asbestos early retirement scheme” (i.e. a specific early retirement scheme implemented for asbestos workers)^[2] could seek compensation for their anxiety-related damage, defined as a situation of permanent concern with regard to the risk of developing at any time an asbestos-related disease^[3].

These were employees who had worked in one of the establishments mentioned in Article 41 of the 1998 Law and included in a list drawn up by ministerial order during a period when such establishments manufactured or processed asbestos or materials containing asbestos.

In April 2019, the *Cour de Cassation* reversed its decision and extended the possibility of claiming compensation for anxiety-related damage to all employees exposed to asbestos, i.e. even employees who were not eligible to the asbestos early retirement scheme^[4].

However, unlike employees benefiting from the asbestos early retirement scheme, other employees do not have a presumption of exposure. These employees must provide proof of their anxiety-related damage, and the employer’s failure to comply with its obligation to ensure safety must be established.

In a judgment issued on September 11, 2019 in a case concerning more than 700 mine workers in Lorraine, the *Cour de Cassation* went one step further by extending the right to compensation for anxiety-related damage to any employees exposed to harmful or toxic substances.

It considered that “in accordance with the ordinary rules governing the employer’s obligation to ensure safety, an employee who provides evidence of exposure to a harmful or toxic substance generating a high risk of developing a serious disease and evidence of a personal anxiety-related damage resulting from such exposure, may take action against his/her employer for failure by the latter to comply with its obligation to ensure the safety of its employees”.

Further clarification is required and further judgments on this subject are eagerly awaited. In particular, it will be interesting to obtain clarification on the very notion of “harmful or toxic substance”.

[1] Labor Chamber of the *Cour de Cassation*, September 11, 2019, n°17-24.879 to 17-25.623

[2] Article 41 of Law No. 98-1194 of December 23, 1998

[3] Labor Chamber of the *Cour de Cassation*, May 11, 2010, n°09-42.241 to 09-42.257

[4] Plenary Assembly of the *Cour de Cassation*, April 5, 2019, n°18-17.442

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