

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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