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Employees' exposure to chemicals classified as carcinogenic, mutagenic or toxic to reproduction ("CMR chemicals") may lead to a temporary suspension of activities onsite

Circular DGT n° 2007/15 of December 6, 2007

The temporary suspension of activities procedure provided for under Article L.231-12 (II) of the French Labor Code (Articles L.4721-8 and L.4731-2 according to the new codification applicable as from May 1, 2008) was introduced by the Law of January 17, 2002. It strengthens the powers vested to the Labor Inspection Authorities with respect to the supervision of measures intended to protect employees likely to be exposed to CMR chemicals.

Decree n° 2007-1404 sets forth the mentions to appear in the administrative notification to suspend activities and Circular n° DGT 2007/15 of December 6, 2007 describes the conditions of implementation of this procedure created in the framework of the prevention against chemical risks.

1. Provisions of the French Labor Code (new codification):

Art. L. 4721-8: *"Before ordering a temporary suspension of activities pursuant to Article L. 4731-2, when, after a control performed by a competent body at the request of a labor inspector in the condition set forth in Article L. 4722-1, the labor inspector finds that the employees are in a dangerous situation resulting from an exposure to chemicals classified as carcinogenic, mutagenic or toxic to reproduction at a level in excess of the concentration limit value set forth in a Decree adopted in application of Article L. 4411-2, he/she sends a formal notice to the employer officially requesting the latter to remedy this situation.*

The formal notice is drafted in the conditions set forth by applicable regulations.

The labor control officer may enforce these provisions if he/she has been granted a power of attorney from the labor inspector to whom he/she reports”.

Art. L. 4731-2: *“If, at the end of the period of time set forth in the formal request notified pursuant to Article L.4721-8 and after verification by a body mentioned in said Article that the level of concentration of the chemicals classified as carcinogenic, mutagenic or toxic to reproduction exceeds the applicable concentration limit value, the labor inspector may order the temporary suspension of the concerned activities.*

The labor control officer may enforce these provisions if he/she has been granted a power of attorney from the labor inspector to whom he/she reports.

2. Additional information set forth in Circular DGT n° 2007/15 of December 6, 2007:

The procedure set forth in the French Labor Code includes a mandatory preliminary phase. Before imposing the sanction and suspending the activities, the labor control officer must formally request the employer to remedy the dangerous situation if technical controls have revealed that the level of concentration of a CRM chemical was persistently higher than the applicable occupational exposure limit defined for that chemical.

2.1. The concerned chemical agents:

This procedure can only be applied with respect to chemicals classified as class 1 or class 2 carcinogenic, mutagenic or toxic to reproduction chemicals according to the classification of the European Union (Article R.231-56 of the French Labor Code) for which statutory and compulsory occupational exposure limits have been set and are listed in Article R.231-58 of the French Labor Code.

It should be noted that asbestos, even though it is classified as a class 1 CMR chemical with statutory and mandatory occupational exposure limits, does not fall within the scope of application of the temporary suspension of activities procedure because it is addressed in a specific regulation.

2.2. Competence:

The implementation of the temporary suspension of activities procedure falls within the sphere of competence of the labor inspector, not of the labor control officer. The latter may however enforce the aforementioned provisions and implement the procedure if he/she has been granted an explicit written power of attorney published in the Register of the *département* (territorial subdivision) where he/she works.

2.3. The applicable procedure:

2.3.1. The mandatory preliminary phase:

The mandatory preliminary phase includes the following steps:

- Obligation to measure the level of CMR chemical concentration and compare the same with the applicable occupational exposure limit;
- The existence of a dangerous situation is established if the occupational exposure limit value is exceeded for one or several employees;
- Formal request to the employer to remedy the situation by immediately taking temporary measures to protect employees and by preparing a medium and long-term plan of action;
- The employer has the obligation to immediately inform the employees of the prevention services of the Regional Sickness Insurance Fund;
- The labor control officer fixes the time-line within which the situation is to be remedied and expresses his/her comments on the proposed plan of action.

The Employer may appeal against the formal request before the summary judge of the competent First Instance Court. This appeal shall not have suspensive effect.

2.3.2. The suspension of activity phase:

If it is established that the dangerous situation is persistent and if a second report reveals that the occupational exposure limit value is exceeded, the labor control officer may, after hearing the manager of the site, order the temporary suspension of the activities by issuing a written and reasoned decision.

The Employer may appeal against the decision to suspend the activities before the summary judge of the competent First Instance Court. This appeal shall not have suspensive effect.

2.3.3. The resumption of activity phase:

The company head informs in writing the labor control officer of the measures taken to remedy the dangerous situation. This notification is considered as a request for authorization to resume activities.

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