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Starting point of the timeline for sanctioning employees and knowledge of wrongdoings by the immediate supervisor: The French Supreme Court recalls the principle

In two decisions issued on June 23, 2021, the *Cour de Cassation* (French Supreme Court) recalled that “*the employer having knowledge of an employee’s wrongdoings*” means not only the holder of the disciplinary power but also the employee’s immediate superior, even if the latter does not hold this power himself/herself.

The employer’s power to sanction is strictly regulated by French legislation and case law.

Pursuant to Article L. 1332-4 of the French Labor Code, no employee’s wrongdoing alone can give rise to disciplinary proceedings after a period of two months from the day the employer became aware of such wrongdoing.

Judges had already been asked to rule on the definition of “knowledge of the wrongdoings” and had specified that it was the accurate information of the reality, nature and extent of the facts alleged against the employee^[1].

There was still some doubt as to who was to be identified as the “employer” having knowledge of these facts.

In two decisions issued on June 23, 2021, the *Cour de Cassation* recalled the notion of “employer”

when it comes to disciplinary matters.

Initially, the employer was considered to be the “person having the power to sanction”. In practice, this was the legal representative of the company or his/her delegate, who is generally the Human Resources Director. In other words, it was only from the moment the employer or the HR Director became aware of the employee’s wrongdoing that the two-month period for sanctioning the relevant employee or summoning him/her to an interview prior to a possible dismissal started to run^[2].

However, the *Cour de cassation* has broadened the definition of “employer” to include persons who may have knowledge of wrongdoings and thus trigger the two-month period, as it recalled in its decisions of June 23, 2021. As such, the time limit for summoning the employee to an interview also starts to run from the moment the immediate supervisor of the relevant employee becomes aware of the facts, regardless of whether he/she expressly has the power to sanction.

In the first decision issued on June 23, 2021, an employee had denigrated his company to customers during a meeting held on April 6, 2012. His immediate supervisor, who also attended this meeting, did not inform the company’s management of this incident until April 17, and the decision was then taken on June 7, 2021 to summon the employee to a preliminary interview, i.e., one day too late^[3].

The case adjudicated by the *Cour de Cassation* in the second decision was a little more complex. The employee had committed a fault on December 30, 2012 and his immediate supervisor had been notified of this incident the next day. On January 4, 2013, the same employee received a warning for unjustified absences. Subsequently, on January 17, 2013, the immediate supervisor notified the management of the incident that had occurred on December 30 and the employee was immediately summoned to a preliminary interview.

For the *Cour de Cassation*, the employer who, having knowledge of various actions committed by the employee that it considered as wrongful, chose to sanction only some of these actions, cannot subsequently order a new disciplinary measure to sanction the other actions that occurred prior to the first sanction^[4].

It should be understood that when the immediate superior is aware of wrongdoings, the mere fact of sanctioning another wrongful action that occurred later exhausts the employer’s disciplinary power for all the previous wrongdoings, regardless of the fact that the employer (management) was not informed of the incident until after the sanction had been imposed. In this case, the immediate supervisor had knowledge, prior to the first sanction, of the wrongful actions that had taken place on December 30, 2012,

In these two decisions, summoning the employee after the two-month limitation period had lapsed made the dismissal unjustified, with all the consequences for the company.

It is therefore important to ensure that each employee’s immediate supervisor effectively reports any fact that could be considered as wrongful and lead to a disciplinary sanction within a two-month period.

[1] Labor Chamber of the *Cour de Cassation*, February 17, 1993, No 88-45.539

[2] Labor Chamber of the *Cour de Cassation*, June 28, 1990, No. 88-43.674

[3] Labor Chamber of the *Cour de Cassation*, July 23, 2021, No 20-13.762

[4] Labor Chamber of the *Cour de Cassation*, July 23, 2021, No. 19-24.020

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