

The national multi-industry agreement on work-related stress: giving it the force of law and the practical consequences for companies

The National Multi-Industry Agreement (NMA) dated July 2, 2008 on stress in the workplace has been given the force of law by Decree dated April 23, 2009, published in the Official Journal of May 6, 2009. The terms of this agreement now apply to all companies regardless of their staff size.

This means that companies, that feel particularly inexperienced with this type of problem, must now take into account stress in the workplace. For them, stress is a question of eminently subjective factors that are personal to the employee whose origin is especially difficult to determine. They therefore often rush to the conclusion that this type of issue does not fall within the scope of the employer's responsibility and that they are powerless to handle it. However, as demonstrated below, stress at work falls squarely within the scope of the employer's civil, and even criminal, liability as they are obligated to implement concrete and objective measures against it.

The NMA dated July 2, 2008 was entered into following the adoption of laws on stress in the workplace at the European level: the European framework agreement on work-related stress dated October 8, 2004 and a European framework agreement on harassment and violence at work dated April 26, 2007.

The provisions of the French Labor Code

While the Labor Code may define certain terms and provide recommendations, it does not impose a new obligation on the employer. It should be recalled that the mental health of employees has been expressly mentioned in the French Labor Code since 2002 (Law no. 2002-73 dated January 17, 2002).

In fact, Article L.4121-1 of the French Labor Code states:

*"The employer **shall take the necessary measures** to ensure the safety and protection of the employees"*

physical and mental health.

These measures include:

1. **Actions** to prevent work-related risks;
2. **Actions** to inform and train;
3. **Putting in place** an organization and means that are appropriate.

The employer shall ensure that these measures are adapted to take into account any change in circumstances and are aimed at improving existing situations”.

As such, the mental health of employees is an integral part of the company’s obligations in terms of safety, which are the same general obligations as those with regard to physical health. Consequently, the general provisions set forth in Article L.4121-1 of the French Labor Code are applicable to the work-related stress towards which, based on the language of this Article, employers can no longer remain passive.

Case law with regard to safety in the workplace

With regard to safety at work, since the so-called “asbestos” decisions rendered on February 28, 2002, it has been established that “*by virtue of the employment contract binding the employer to the employee, the employer owes him an obligation to guarantee safety*”, and “*that breach of this obligation is deemed an inexcusable fault*”, for which the employer will be liable.

It has recently been acknowledged that suicides at the workplace, and then suicides taking place outside of the workplace but that are linked to employment, are work-related accidents. This should prompt companies of all sizes and in all sectors of activity to fully take into account the psychosocial risks that exist and to address such risks in their policies as part of their obligation of work-related risk prevention.

The provisions of the NMA dated July 2, 2008

Purpose of the agreement:

- Increasing awareness of and understanding on work-related stress by employers, employees and their representatives;
- Drawing attention to the signs likely to indicate that there are problems of work-related stress ;
- Provide a framework to detect, prevent, avoid and cope with the problems of work-related stress.

Identifying work-related stress and recommendations:

“Stress occurs when an imbalance exists between a person’s perception of the constraints imposed upon him/her by his environment and his/her perception of the resources he/she has to face them”.

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The NMA expressly states that any stress in the workplace is not necessarily linked to work. It also identifies certain signs that may indicate that work-related stress exists in the company, such as absenteeism, employee turnover, or an elevated number of work-related accidents. The list of signs set forth in the NMA is not exhaustive.

To identify stress, there **must** be an analysis of the work organization, working conditions and environment, communication as well as subjective, personal factors.

*“Once the problem of stress is identified, the company **must** take action to prevent, eliminate, or at least reduce, it. **It is the employer’s responsibility to determine what measures are appropriate.** Employee representative organizations, or if there are none, the employees, participate in the implementation of these measures”.*

The NMA makes reference to Articles L.4121-1 to L.4121-5 of the French Labor Code, thereby reminding not only the employers but also the employees of their respective obligations regarding the prevention of occupational risks, including stress at work: employers must take appropriate measures and employees must comply therewith.

The NMA stipulates that the measures to prevent, eliminate or reduce stress-related risks can include collective measures, personal measures or both. They can also include actions aimed at improving the work organization, working environment, communication, team support, training of all concerned persons on the prevention of stress as well as the information of / consultation with the employees’ representatives.

Companies that have not yet addressed the issue of work-related stress are, therefore, strongly encouraged to implement a risk identification approach, which is the first step of a comprehensive prevention plan. The people to be primarily involved in the design and implementation of a risk identification and management policy are the employees’ representatives (notably the Hygiene, Safety and Working Conditions Committee), the occupational physician, the Regional Sickness Insurance Fund and an external consultant. Employers and employees can indeed feel responsible for creating work-related stress. This is the reason why the intervention of a specialized external consultant may be helpful.

Feel free to contact our Labor and Employment Department should you have any questions or wish further information on the above.

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