

# Road traffic risk is an occupational risk that should not be overlooked

## The road traffic risk is the first cause of fatal occupational accidents.

Work-related road traffic accidents – so-called at-work accidents (*accidents de mission*) that are considered as occupational accidents, to which must be added commuting accidents – result in more than 5 million days of absence from work. The human and financial cost is thus huge. While the road traffic risk has long been neglected, notably in small- and medium-sized businesses, it is important to keep in mind that this risk, just like any other occupational risk, must not only be assessed but also addressed by companies in the framework of their obligation to ensure the safety of their employees.

### 1. Reminder of the principles

#### 1.1 The employer's obligation to ensure the safety of its employees

Articles L.4121-1 et seq. of the French Labor Code set forth the general principles that govern employers' obligation to ensure the safety and to protect the health of their employees.

Employers have the obligation to:

- take steps to **prevent** occupational risks and physical strain at work;
- provide **information** and **training**;
- put in place an adequate **organization** and the **necessary means**.

As such, they must in particular:

- avoid risks;
- assess the risks that cannot be avoided;
- combat risks at source;
- adapt work to man;

- develop an overall coherent prevention policy;
- take all necessary protective measures;
- provide appropriate instructions to employees.

Consequently, wherever an employee is led to use a vehicle - whether his/her own personal vehicle or a company vehicle - such vehicle automatically becomes *de facto* a professional tool in relation to which the employer's civil and criminal liability can be incurred.

All the principles and obligations recalled above therefore fully apply with respect to road traffic risk.

## **1.2 The employer's civil and criminal liability**

### **1.2.1 Criminal liability**

In the context of its obligation to ensure the safety of its employees, the criminal liability of the employer can be incurred if a road traffic accident occurs during working time.

Here are a few examples:

The employee of a courier company died in road traffic accident. The findings of the judicial investigations showed that the way rounds were organized prompted employees to take risks and to commit multiple traffic violation offenses. As a result, the employer was convicted of **manslaughter**.

The employee of a construction company was the victim of fatal road traffic accident after having lost the control of his vehicle. The judicial investigations showed that the loss of control was due to a lack of tire maintenance and to an excessive loading. In this case also, the employer was convicted of manslaughter.

Pursuant to the French Criminal Code, manslaughter is punishable by up to three years of imprisonment and a fine of 45,000 Euros maximum.

Even if the criminal liability of the employee is incurred, this does not release the employer from its own criminal liability.

### **1.2.2 Civil liability**

If one of its drivers causes a road traffic accident, the employer will necessarily have to bear financial consequences since its insurer, as per the provisions of the Law of July 5, 1980 known as the "Badinter" Law, must offer an additional indemnification to every road traffic accident victim. As such, this will indeed undoubtedly have an impact on the employer's insurance costs.

The company will also be financially sanctioned if it is established that it has committed an inexcusable fault within the meaning of Article L.452-1 of the French Social Security Code. Since the so-called "asbestos"

decisions rendered by the *Cour de Cassation* (French Supreme Court) on February 28, 2002 that enshrined the principle according to which employers are bound by an *obligation de résultat*<sup>11</sup> - and not by an *obligation de moyen* - with respect to safety at work, the sole fact that company did not achieve the expected result (i.e. to ensure safety) is sufficient to make it liable and to establish the existence of an inexcusable fault. The finding of inexcusable fault allows the employee victim of a work-related accident to obtain additional indemnities for the damage suffered.

## **2. Practical implementation of the aforementioned principles to the at-work road traffic risk**

An at-work road traffic accident is an accident that occurs during a travel required for the performance of the employment agreement. It is an occupational accident as the employee is acting under the authority of its employer during his/her mission. The road traffic risk is thus definitively an occupational risk.

### **2.1 Assessment of the road traffic risk**

Just like any other occupational risk, the road traffic risk must be assessed in the Occupational Risk Assessment Sheet (*Document Unique d'évaluation des risques professionnels*), a document that is mandatory in any company that has employees, irrespective the size of the workforce, pursuant to Decree n° 2001-1010 dated November 5, 2001. It should be recalled that this Occupational Risk Assessment Sheet must be reviewed and updated at least once a year (Article R 4121-2 of the French Labor Code).

This assessment includes several steps:

- Identification of the risk: the company must take an inventory of the employees likely to be sent on missions involving a travel by car, of the vehicles used for such travels and of the mileage driven.
- Identification of the number of road traffic accidents that occurred and analysis of the evolution of such number.
- Analysis of the travel organization (travel planning and planning tools - employees' autonomy or lack of autonomy in the preparation of the travels).
- Analysis of the management of the vehicle fleet, including the review of the vehicle condition, the review of the safety equipment and the analysis of the load carriage.
- Analysis of the employee information policy: rules applicable to the use of cell phones during travel and prohibitions imposed in this respect, analysis of the needs for information. It should be specified that in case of a serious accident, the employee's phone records for the month preceding the accident will be checked during the judicial investigations. This may enable to ascertain the liability of the company if it is established that it has contributed, directly or indirectly, to encouraging its employees to abusively use their phone while driving.
- Analysis of the management of the skills of the employees required to travel: driver license check policy, training of the drivers, managerial and medical follow-up.

## 2.2 Implementation of an action plan

Once the assessment is completed, the company must take the measures necessary to avoid or, at the very least, reduce risk exposure.

Such an action plan can include the following measures:

- Reduce the number of travels when an alternative option is available (videoconference, teleworking, etc.);
- Limit the travel time: prohibition to travel beyond a given distance or beyond a given length of time (obligation to sleep on the travel location, choice of another means of transport);
- Improve the preparation of the travels (e.g. take into account the necessary breaks, streamline the rounds);
- Improve the vehicle equipment (e.g. speed limiter, electronic breathalyzer, overload indicator, braking system);
- Control the safety equipment and the vehicle condition;
- Properly layout vehicles that carry loads;
- Prohibit the use of cell phones, including with a hand-free kit or Bluetooth system, while driving;
- Improve drivers' skills: provide specific training for long distance drivers.

Specific measures will probably have to be taken in relation to vehicles that belong to employees. Even though these are personal vehicles, a company that let its employees drive in a vehicle in a poor condition can incur liability.

Company should therefore put in place a specific management approach for this type of vehicles.

It is in the company's best interests to lay down precise rules on driving policy, vehicle maintenance and reporting of anomalies or difficulties, and to appropriately train and inform its staff in order to be regarded as having complied with its obligations to prevent and manage this occupational risk.

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[1] In respect of health and safety at work, companies have under French law an ***obligation de résultat*** and not only an ***obligation de moyens***. With an ***obligation de résultat***, a party must fulfill a specific obligation or arrive at a specific result. With an ***obligation de moyens***, the party must simply implement or use, to his/her best efforts, all necessary means in order to fulfill a specific obligation or achieve a specific result. In other words, concerning safety and health at work, the employer will be presumed liable from the sole fact that a professional risk occurred and caused harm to its employees.



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