

MAPPING PSYCHOSOCIAL RISKS (PSRs) LEGAL FRAMEWORK, COLLECTIVE AGREEMENTS,  
AND JURISPRUDENCE

# PSYCHOSOCIAL RISKS IN FRANCE

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# Premiss

- Occupational risk assessment in France:

- ❖ Framework-agreement of March 17th, 1975, on the improvement of working conditions
  - ✓ “work standards must not lead to a rhythm of work, an increase of muscular or intellectual effort, and an exposure to nervous tension which may result in an excessive fatigue”,
  - ✓ “the intellectual and psychological needs of employees must be met in the accomplishment of their work risk”
- ❖ Law of December 31<sup>st</sup>, 1991, promoting the prevention of occupational risks and transposing European directives relating to occupational health and safety into French legislation.

# Legal consideration in mental health in the workplace

- Law n°2002-73 of January 17th, 2002, of social modernisation :
  - ❖ Introduction of mental health in the employer's legal obligations to protect the worker's health;
  - ❖ Prohibition and prevention of bullying.
- ⇒ in the private and the public sectors
- Effect of focusing on bullying as the only identified psychosocial risk.

# Lack of attention on the other PSRs

- An interesting study in occupational psychology : **Rafaël Weissbrodt and al.**, « Preventing Psychosocial Risks: A Study of Employers' Perceptions and Practices », (2018) 73:1 Industrial Relations 174 ;
  - ❖ On how employers perceive and deal with these PSRs in companies (in Switzerland);
  - ❖ **Conclusion :**
    - ✓ a focus on measures related to the risk of personal integrity violations (bullying, violence, discrimination and exposure to traumatic events)
    - ✓ unawareness that the general working conditions improvements are measures to prevent PSRs.

# Lack of attention on the other PSRs (cont'd)

## ○ National statistical data :

- ❖ **22,6% of French workers consider themselves to be “tense” with high psychological demands and low decision latitude (Karasek model) ;**
- ❖ **50,6% of French workers feel they have a « lack of recognition ».**

DARES, Exposure to occupational risks, Psychosocial risks, by Béryl Manet and al, in Synthèse Stat, n°36, Paris, DARES, September 8th, 2020

- ❖ **at least 57% of workers are exposed to three of the six psychosocial risk factors** (work intensity, emotional demands, autonomy, social relations at work, value conflicts and insecurity of the work situation) **and 4% to all six factors simultaneously.**

DARES, Key figures on working conditions and health at work, in Synthèse - stat', n° 37, Paris, DARES, August 2021

# State of French Law after 2002

- Lack of recognition of other psychosocial risks in the law (other than bullying) ;
- In 2010, the Law of November 9<sup>th</sup>, 2010, has defined what difficult working conditions are, including a limitative list of occupational risk factors (L4161-1 Labour Code). However, psychosocial risk factors usually are left out, except when related to shiftwork or night work.
  - ❖ Potential explanations :
    - ❑ Difficulty to define legally what PSRs are exactly, due to the variety of the senses of this notion (confusion between their causes and their health effects) ;
    - ❑ Difficulty to assess them. Although there are indicators (absenteeism, frequency of work injury, turnover, resignation, use of the right of warning and withdrawal, etc.), there is no method for assessing PSRs.

# A variety of legal tools enabling the prevention of PSRs

- The evaluation of the risks to the health and safety of workers, "including in the organisation of work" since the Law of n°2021-1018 of August 2<sup>nd</sup>, 2021, aiming to strengthen prevention in occupational health ;
- The control of the employee's workload for those who work according to a days-per-year scheme and those who telework ;
- The right of warning and withdrawal

Subject to collective bargaining about the quality of life at work (or, failing that, an action plan or an annual consultation of staff representatives) :

- The right to disconnect ;
- The balance between professional and personal life ;
- The exercise of the right to expression of employees.

⇒ in the private and the public sectors



# The dynamics of collective bargaining

- In the private sector :
  - ❖ National interbranch agreement (NIA) on stress at work (2008) ;
  - ❖ NIA on bullying and violence at work (2010) ;
  - ❖ NIA on quality of working life (QWL) and professional equality (2013) ;
  - ❖ NIA for enhanced prevention and a renewed offer in terms of occupational health and working conditions (2020).
- ⇒ Several professional branches have also been active in negotiating conventional provisions.
  - ❖ The fourth health at work plan 2021-2025 (co-constructed with the social partners) (Action 2.3 “better assess and prevent PSRs”).



# The dynamics of collective bargaining (cont'd)

- In the public sector :
  - ❖ Agreement on the prevention of psychosocial risks in the civil service (2013) ;
  - ❖ Health at work plan in the civil service 2021-2026 (One of the items of the 2<sup>nd</sup> axis of the plan discusses “better integration of the preservation of the mental health of public servants into occupational health policies”) (social partners are involved in steering and monitoring the action plan).

# Some holes in the collective bargaining agreement net

- Some categories of workers are not included (e.g., self-employed workers) ;
- Some professional sectors are not covered by national interbranch agreements (e.g., non-profit sector) ;
- A diverse understanding of PSRs and actions to be implemented, according to professional sectors.

# Judge as a safeguard against abuses

- Since 2015, Employer's legal obligation to protect the worker's health is an increased obligation of means (Cass. Soc., November 25th, 2015, n°14-24.444). It mandates employers to take all the measures that a reasonable person would take in the same situation in order to prevent or reduce occupational risks.
- Initially, this obligation was invoked in one-on-one situations. Now, it applies to group situations as well (staff management methods (managerial harassment), human resources management tools or corporate reorganisation projects).
- However, the judiciary intervention has some limits :
  - ❖ In the lived experiences of psychological distress, the control by the judge is operated in hindsight (for the purpose of reparation);
  - ❖ Each case is a specific one.

# Towards a large legal framework to directly prevent PSRs ?

- A beginning of prescriptive provisions :
  - ❖ The ILO violence and harassment convention, 2019 :

Its article 9 uses the terms of PSRs : “take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health”).

⇒ The French Law, November 8<sup>th</sup>, 2021, has authorized the ratification of the convention.
- A new European “directive 89/391/EEC” concerning specifically all the aspects of work-related PSRs ?

# Towards a large legal framework to directly prevent PSRs ? (cont'd)

- Some inspiring legal initiatives :

- ❖ The Quebec Law, October 6<sup>th</sup>, 2021 (Bill 59 “modernizing the occupational health and safety regime”) :

As of April 6, 2022, employers will be required to implement, in each establishment employing at least 20 workers, a prevention program. This program must provide for the identification and analysis of risks that may affect the health of workers in the establishment, specifically **work-related psychosocial risks** (art 144 of the Law).

+ public health intervention.

- In other words, “let’s stop beating around the bush !”

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**Thank you for your attention  
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