

Labor & Employment Client Service Group

From Bryan Cave, Paris

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Indemnification for Work from Home

The French Supreme Court determined in a landmark decision dated April 7, 2010 that the employee's use of his home to carry out his work, at the employer's request, was an intrusion into his private life, which must be indemnified (Cass. Soc., n°08-44.865).

Indemnification and reimbursement

Pursuant to the court's decision, if an employee accepts the employer's request to work from home (which the employee may not be forced to do), he is entitled to indemnification for this specific submission, as well as to the reimbursement of expenses resulting from the occupation of his home for professional purposes. The court also indicated that if this indemnification is included in the global compensation paid to the employee, the employer must be able to specifically identify it and define its amount contractually. Otherwise, the employer may be required to pay an additional indemnity. Indemnification may vary depending on the surface area of the home was used for professional purposes.

This case involved salespersons who were asked to work from home when they were not visiting customers. No specific provisions regarding this work from home had been provided in their initial employment agreements or in the applicable collective agreement. The employees signed amendments to their contracts, which specified only that their lump sum remuneration included indemnification for work from home, without precisely setting forth the amount thereof. Reference was also made in the case to certain other employees in a different professional category who received separately identified indemnification. The Supreme Court ruled that a different professional category could not justify the difference in treatment.

How does this impact remuneration?

Since work from home is becoming more and more frequent, this case will have a major impact on how companies in France remunerate their employees. We have recently noted, for instance, an increased number of requests for indemnification by employees of our clients working from home. Certain companies have negotiated specific company-wide agreements on work from home (e.g., Renault, Alcatel Lucent, France Telecom, Atos Origin), providing for payment of a global monthly indemnity according to the number of days worked at home. However, up until now, employers often tended only to provide for reimbursement of the expenses resulting from work at home

(e.g., telephone and internet costs), as well as working tools (e.g., lap top computer, cell phone) but they usually did not pay employees a specific indemnity for the professional use of the home.

In this regard, the National Inter professional Agreement on work from home dated July 19, 2005 (*ANI sur le télétravail*) does not refer to work-from-home indemnification. It provides only for the supply of work equipment and the reimbursement of costs linked to work from home, in particular communication costs. As regards privacy, it states only that the employer must respect the employee's privacy and must determine, together with the employee, the hours when he may be contacted.

How to determine which employees are concerned?

Indemnification should benefit employees who carry out work from home on a regular basis which they could carry out in the company's premises. One may, however, be able to distinguish between those employees who request to work from home and those who are asked to do so by their employer (in particular, to diminish office space costs). In the first case, if the employee is working from home at his own request and for his own convenience, it could well be argued that the employer who accepts such request owes no indemnification, other than reimbursement of costs. However, if an employer's existing office space cannot accommodate the employee, then it may well be difficult not to provide for any indemnification for the use by the employee of his home to carry out his work. In any event, the employee will need to accept to work from home.

Advice to our clients

We would advise clients to provide for such indemnification specifically and contractually. The indemnity allotted should be able to be considered as a professional expense (and not as compensation subject to social charges), provided that it corresponds to the value of the fixed and variable costs related to the provision of private space for a professional purpose (*arrêté* dated December 20, 2002). In order to meet this condition, employers may well need to embark on the difficult task of adapting the amount of the indemnity allotted to each employee concerned to his situation.

For further information on this topic, please direct your queries to your Bryan Cave contact or:

Kathie Claret

Office: Paris

Direct Dial: +33 1 44 17 77 15

Email: kathie.claret@bryancave.com

Sarah Delon-Bouquet

Office: Paris

Direct Dial: +33 1 44 17 77 25

Email: sarah.delon-bouquet@bryancave.com

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