February 2025

FOCUS EMPLOYEE WELFARE BENEFITS

CAN THE INSURER SUSPEND THE PAYMENT OF DAILY SICK PAY ON THE BASIS OF A MEDICAL EXAMINATION ?

REMINDER OF THE APPLICATION OF ARTICLE 7 OF THE "ÉVIN" LAW

CLARIFICATION OF DEATH BENEFIT COVERAGE IN THE EVENT OF A CONTRACTUAL TRANSFER OF THE EMPLOYMENT CONTRACT

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THE INSURER SUSPENDS THE DAILY PROVIDENT BENEFITS HE WAS PAYING THE EMPLOYEE, BUT SHE OBTAINS AN INTERIM INJUNCTION ORDERING THE EMPLOYER TO PAY HER THESE SUMS ON THE BASIS OF THE COLLECTIVE BARGAINING AGREEMENT: THE FRENCH SUPREME COUR UPHOLDS THE DECISION.

In this case, the group provident insurance contract taken out by the employer allowed the insurer to suspend the payment of supplementary daily allowances on the advice of the medical expert. When the medical expert declared the employee fit to work, the insurer suspended the payment.

The employee then appealed to the industrial tribunal, which ruled in her favor: the insurer's suspension of compensation had occurred "outside the framework" of the applicable collective agreement.

The agreement provided for the payment of provident benefits to employees on sick leave, provided they were entitled to daily social security benefits, which was the case here. Consequently, the employer had committed a fault by taking out a provident contract that deviated from the provisions of the agreement.

This reasoning has been validated by the French Supreme Court, which has ruled that the group benefits contract taken out by the employer must comply with the provisions of the collective bargaining agreement (Cass. Soc., November 27, 2024, no. 22-17.392).

This solution is not new: the social chamber had already ruled that an employer who takes out insurance that does not guarantee the payment of a death benefit under the conditions set out in the collective bargaining agreement commits a fault which, if it causes damage to the employee, must be compensated (Cass. Soc., April 17, 2019, no. 17-27.096).

This reminder is an invitation to employers to ensure that their provident fund practices comply with the provisions of collective bargaining agreements. This reminder is all the more important given that any legal action brought by an employee against his employer on such topic is now subject to the five-year statute of limitations under ordinary law (Cass. Soc., June 26, 2024, no. 22-17.240).

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In principle, the termination or non-renewal of a group insurance contract has no effect on the payment of benefits acquired or accrued during its term (such as supplementary daily allowances and disability pensions).

In this case, the insured's pathology had led to his total incapacity for work, as confirmed by a medical certificate issued at a time when he had already terminated his membership of the group provident contract taken out through an association known as the "Madelin law". Nevertheless, the medical certificate stated that the pathology and resulting incapacity for work had occurred prior to termination.

The insurer argued that, at the date of termination of the membership, no absence from work had been reported, no claim had been made, and no benefits were being paid. They therefore considered that they were not obliged to cover this incapacity.

For the French Supreme Court (Cass. Civ. 2, November 7, 2024, no. 23-11.055), as for the lower courts, the application of the "Évin" law should in fact have led to the insured being covered, since the event giving rise to the disability, the initial pathology, had occurred prior to the termination date, at a time when cover was in force, even if the diagnosis had not been made until later.

It should be noted that the solution provided by this ruling could be transposed to group provident contracts taken out by employers for the benefit of their employees.

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In a decision dated September 11, 2024, the French Supreme Court (Cass. Soc., September 11, 2024, no. 22-10.204) ruled on the possibility for an employee to avail himself of the benefits attached to his employment contract in the event of a contractual transfer of the latter.

In this case, a company had taken out a death benefit contract with an insurer. An employee of this company died, and his heirs requested payment of this lump sum.

The insurer refused, however, on the grounds that the deceased's employment contract had been transferred to another company, which did not benefit from such coverage.

The lower courts followed this reasoning and dismissed the claim of the beneficiaries for payment of the death benefit.

However, the French Supreme Court overturned the lower court's decision: the transfer of the employee's employment contract did not meet the legal requirements of article L.1224-1 of the French Labor Code, which automatically transfers employment contracts in the event of a change in the employer's legal position (TUPE). The employee's agreement to the transfer of his employment contract should therefore have been obtained.

In the absence of the employee's agreement to the change of employer, the French Supreme Court ruled that the initial employment contract had not been terminated. The benefits attached to this contract, including death benefits, were therefore still in force and could be claimed by the employee's heirs.

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