DARTEVELLE
DUBEST
BELLANCA
& ASSOCIÉS

SEPTEMBER 2022

TRAVEL RISK MANAGEMENT STANDARD

ISO 31030

DARTEVELLE DUBEST BELLANCA & ASSOCIÉS

ISO 31030 Travel Risk Management

Legal implications and risks for organisations

ISO 31030 ("ISO 31030") was published in September 2021 to complement the general ISO 31000 Risk Management Standard ("ISO 31000"). The ISO 31030 standard is the first truly global benchmark for travel risk management and provides a framework of good practice.

This paper aims to help corporates understand the ISO 31030's potential implications for an employer's travel security obligations and liabilities in the context of existing French law. Understanding ISO 31030 will help corporates, whose employees are required to travel, to consider the extent to which they are meeting their duty of care to their employees and others in the context of travel[1].

Nothing within this paper should be treated as legal advice. Each situation shall be assessed on a case-by-case basis, with the assistance of a legal counsel, when appropriate.

Objectives and key elements of ISO 31030

The ISO 31030 is geared towards providing organisations and more importantly, management, with the tools to identify, assess and manage travel risks for work-related travel. This approach has been defined as "Travel Risk Management" ("TRM"), i.e. "coordinated activities to direct and control an organisation with regard to travel risk"[2]. The ISO 31030 provides a structured and comprehensive approach to formulating a TRM programme with defined objectives as well as a TRM policy.

The ISO 31030 builds on the ISO 31000, which provides principles, a framework and a processfor managing all forms of risk[3], as well as on ISO 45001 (for an occupational health and safety management systems) which specifies the requirements for an occupational health and safety management system. This standard applies to all types of organisations, irrespective of their line of business or size[4].

Introduction

Before exploring French civil and criminal legal implications that may affect an employer in the event that an employee sustains damages, it is critical to elaborate clearly the employers' obligation.
Under French law, Article L. 4121-1 paragraph 1 of the Labour Code provides that the employer must take the necessary measures to ensure the safety and protect the physical and mental health of employees.

Thus, employers shall ensure the complete physical and mental safety of their employees.

As such, employers whose employees travel should have procedures in place to anticipate and limit the risk of accidents during business travel, as well as procedures for dealing with accidents.

In this regard, ISO 31030 provides a framework and tools for employers to set up procedures to prevent potential health and safety hazards to their employees while travelling on business.

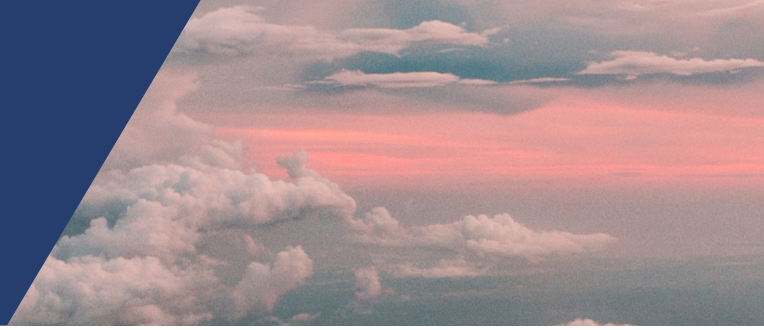
Thus, the employer's compliance with ISO 31030 is likely to have an impact on the assessment of his liability in the event that one of its employees suffers an injury while travelling on business.

For example, in response to the Covid-19 pandemic, ISO 31030 recommends that "where an individual or on-site assessment is considered appropriate, an organisation should use competent internal or external assessors".

Thus, the fact that the employer has, in compliance with ISO 31030, assessed and managed the risks associated with Covid-19 during an employee travel, taking, where appropriate, the highest safety standards of ISO 31030, could allow said employer to exonerate from liability in the event of employee's contamination.

Conversely, in the context of an assessment of the Employer's civil and/or criminal liability, its non-compliance with ISO 31030 (although not mandatory)

[1] ISO 31030 identifies various duty of care requirements for different employers. For instance: direct workers, supply chain workers, interns and guests of the organization, families and other travelling with the primary traveler, and students.
[2] See ISO 31030, paragraph 3.20, page 4.
[3] See ISO 31000
[4] See ISO 45001



could be held against him. Indeed, although ISO 31030 is not mandatory, it includes certain principles provided for in the Labour Code, which could undoubtedly be used against an Employer, for example in the event of Covid-19 contamination of one of his employees during a business trip.

To understand the advantage for an employer to comply with ISO 31030, scenarios in which the latter may be civilly or criminally held liable having done the necessary due diligence to avoid any risk linked to the safety and security of his employees.

Employer's civil liability and ISO 31030

The ISO 31030 refers to the need for an employer to be cognisant of its duty of care to its employees. It defines "duty of care" as a "moral responsibility or legal obligation of an organisation to protect the travellers from hazards and threats"[5].

It shall be recalled that:

a. the legal duty of care arises from various sources of law (French Labour Code, French Criminal Code, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, etc.);
b. legal obligations linked to the employees safety, including insurance obligations, may differ between jurisdictions;
c. legal obligations shall be interpreted and applied on a case-by-case basis;
d. compensation paid to an employee by his employer in the event of the latter's liability is not the same as that paid by Social Security[6];
e. in case of doubt, employer shall seek legal advice to ascertain the scope and nature of his legal duty of care applicable in the specific situation.

In the French legal framework, an accident is deemed to be a work accident – i.e. a presumption of imputability ("*présomption d'imputabilité*") – when a damage occurs during the performance of the employment contract, in any capacity and in any place whatsoever[7].

As a general rule, the burden of compensation lies with the French social security.

Nevertheless, when an accident is due to the employer's gross negligence ("*faute inexcusable*"), the employee may seek additional compensation before the Social Security Affairs court ("*Pôle Social du Tribunal Judiciaire*")[8].

In this regard, a recent case has judged that "the breach by the employer of her/his duty of care regarding health and safety at work shall be considered as gross negligence when the employer knew or should have known the risk to which its employee was exposed but did not take sufficient measures to prevent it"[9].

In addition to this additional compensation, the employee may also claim, before the Social Security Affairs court, compensation for the damages caused by both physical and moral suffering endured[10/11]. If necessary, this additional compensation shall be paid by Social Security, who then asks the employer for repayment.

Once these judicial remedies have been exhausted, and only in presence of a wilful misconduct ("*faute intentionnelle*") of the employer or of one of its employees, the victim can hold either of them liable on the grounds of civil liability[12].

According to case-law, a wilful misconduct shall be characterised by a "voluntary act performed with the intention of causing bodily harm and which does not result from simple imprudence"[13].

However, when the employee's condition is not covered by the laws regarding work accidents or professional illnesses – for example because he is posted abroad – he can hold his employer liable on the grounds of contractual liability[14].

If an employee suffers damages while on a business trip, the employer will be liable if he cannot demonstrate that he complied with all its duties in respect to the health and safety of its employees under the French Labour Code, and if it is established that there is a causal link between the employer's fault and damage suffered by the employee.

Who owes the duty of care?

The corporate employer

When the employee is travelling on business, the presumption of liability lying on the employment relationship of any damage incurred by such employee is broadened. As a result, the employer is bound by a safety obligation throughout the time spent by the employee

[5] See the ISO 31030, paragraph 3.4, page 2.
[6] Article L.411-1 and following of the French Social Security Code. The employee is only compensated by the employer if the latter has committed inexcusable misconduct, otherwise the financial burden of compensation falls on Social Security.
[7] Article L.411-1 of the French Social Security Code states that: « a work accident, is considered to be an accident occurring as a result of or in the course of work to any person employed or working, in any capacity or in any place whatsoever ».
[8] Article L.452-1 of the French Social Security Code.
[9] French Cour de cassation, 8 October 2020, n° 18-26.677.
[10] Article L.452-3 of the French Social Security Code.
[11] And inter alia, the following harms: physical and moral harm endured, disfigurement, diminution of the enjoyment of life, harms deriving from the loss or diminution of chances to get a career advancement etc.
[12] Article L.452-5 of the French Social Security Code.
[13] French Cour de cassation 13 January 1966, civil IV, n° 63.
[14] French Cour de cassation, 7 December 2011, n° 10-22.875.

on site, unless such employer can demonstrate that the accident specifically occurred during leisure time[15].

The scope of the employer's duty of care is thus particularly broad since it concerns both the employee's place of work and the place where she/he is accommodated and, possibly, the activities she/he carries out if the latter are likely to expose her/him to an inherent risk to the country in which she/he is[16].

The civil liability of the employer towards its employee being personal, it cannot be delegated.

Therefore, an employer cannot exonerate himself from liability by demonstrating that he used the services of a third party to assess and prevent the risks associated with its employee's travel abroad.

Consequently, although it is reasonable for an employer to use the services of a travel agency to organise the business trip of its employee(s), it does not exonerate the employer from liability towards she/he/them in case of damages suffered during the trip.

For example, in the case of an employee who died in a terrorist attack in Karachi while being assigned by his employer to a third company, the judge held the employer liable for not having checked that its employees complied with the applicable safety instructions given by the third company[17].

Directors

The French Commercial Code provides that managers, directors and administrators of a company are liable for their management errors[18].

In this respect, case-law specified that the personal liability of a manager, with respect to third parties, can only be held if she/he has committed a particularly serious misconduct incompatible with the normal exercise of its statutory duties[19].

Under the provisions of the French Social Security Code, in order to obtain compensation before the Social Security Affairs court, the claimant must demonstrate that the misconduct was unequivocally intentional[20].

Thus, was found personally liable the manager who had deliberately failed to pay an insurance premium and had nevertheless allowed its employee to use an uninsured vehicle without informing her/him[21].

Parent companies

Since 2017, companies incorporated in France and that, at the end of two consecutive business years, have at least 5,000 employees (as a whole with their French subsidiaries' employees) or 10,000 employees (as a whole with their French and foreign subsidiaries' employees) are required, under the provisions of the French Commercial Code[22], to elaborate appropriate vigilance and risk prevention plans with regards to the conduct of their activities, especially in the area of health and safety at work.

As these provisions are recent, there is still no case-law (besides those relating to the jurisdiction).

However, any failure by a company in the fulfilment of its obligations under such provisions may result in such company held liable on the grounds of civil tort liability and sentenced to compensate damages that could have been avoided if it had properly fulfilled its obligations under such provisions[23]/[24].

[15] French Cour de cassation, 12 October 2017, n°16-22.481, concerning an accident that occurred in a discotheque.
[16] French Cour de cassation, 7 December 2011, n° 10-22.875.
[17] For example, in the case of a company whose employee died while on assignment with a subcontracting company, the court held the employer company liable without allowing him to exempt itself from liability by demonstrating that its subcontractor was responsible for the safety of its employee during the time of the assignment (Rennes Court of Appeal (France), 24 October 2007, No.06/06410).
[18] Article L.223-22 of the French Commercial Code (limited liability company), L.225-251 of the same code (limited company) and L.227-1 and L.227-8 (by reference to article L.225-251 of the same code (simplified joint stock company)).
[19] French Cour de cassation, 20 May 2003, n° 99-17092.
[20] Article L.452-5 of the French Social Security Code.
[21] French Cour de cassation, 4 July 2006, n° 05-13.930.
[22] Article L.225-102-4 and L.225-102-5 of the French Commercial Code, as specified by the French Conseil Constitutionnel's decision from 28 March 2017 (n°2017-750 DC). French legal theorists considers that these provisions should also apply to a sub-group with a French parent company, although the parent company is controlled by a foreign company, when the number of employees in the subgroup meets the provisions of Article L.225-102-4.
[23] the French Commercial Code.
[24] Initially, failure to comply with Article L.225-102-4 of the French Commercial Code was to be punished by a fine of up to 10 million euros, but this provision was censured by the French Conseil Constitutionnel because of the disproportion between the amount of penalty and the lack of a precise definition of the breach (French Constitutional Council decision n° 2017-750 Decision of 23-03-2017).

Conditions of the employer's liability

Obligation of the employer to ensure the safety of its employees

In France, Article L. 4121-1 of the French Labour Code provides that the employer shall take all necessary measures to ensure the safety of its employees and to protect their physical and mental health.

In that respect, the employer shall in particular comply with nine principles set out Article L. 4121-2 of the French Labour Code. Among those principles, is set the planning of "prevention by integrating, as a whole, work organisation, working conditions, social relations and the influence of environmental factors [...]".

To assess an employer's failure to ensure the safety of its employees, the judge may also refer to safety standards laid down by AFNOR[25], or by ISO standards if these have been incorporated into EU law.

For example, the ISO 20345 standard being incorporated in EU law[26], the demonstration, by the employer, that he had equipped its employee (who slipped in a cold store) with safety shoes compliant with the ISO 20345 standard, can contribute to exonerating him from liability"[27].

Risk assessments

ISO 31030 integrates the risk assessment related to business travels into the overall risk assessment related to employees' health and safety.

In France, this global assessment is provided for in Article L. 4121-3 of the French Labour Code.

An employer can be exonerated from its liability if it can demonstrate that it had complied with its obligations under Article L. 4121-3 of the French Labour Code, and particularly the fact that it had effectively carried out an upstream risk assessment and taken adequate measures to prevent all risks[28].

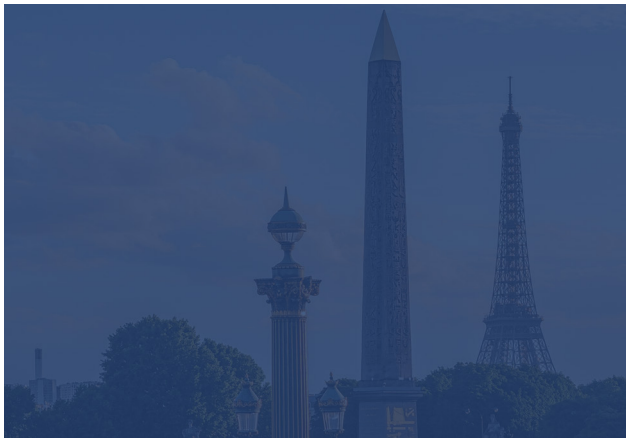
For example, an employer has been found liable for a damage suffered by its employee in Abidjan (Ivory Coast), because it had not responded to the fears expressed by the latter about the working place, had not taken into account the danger faced by its employee, and had not taken any protective measure to prevent the foreseeable damage[29/30].

On the other hand, the French Cour de cassation held that the employer was not liable, even though its employee suffered a panic attack on 24 April 2006, if it had taken into account the violent events to which the Air France employee had been exposed on his return from New York on 11 September 2001 and had ensured that the employee was taken care of by medical staff, had offered the opportunity of psychiatric consultations and had given him access to regular medical check-ups[31].

Thus, even if the employer's liability is presumed when an employee suffers damage in the course of its professional activity, the employer is allowed to exonerate itself from liability by demonstrating that not only had it complied with all its legal and regulatory duties but also that it had correctly assessed the risks and taken the necessary measures to prevent the identified risks.

It is common practice that mere compliance with the regulations is not in itself automatically sufficient to exonerate an employer from liability, which makes even non-mandatory standards of significant importance.

In this respect, ISO 31030 appears to be a new tool for the employers to demonstrate their exoneration from liability in the event of damage suffered by one of their employees while travelling on business, to the extent that the provisions of this standard are more precise than the legal regulatory requirements of the French Labour code, providing in particular for the drafting of a risk mapping specifically incurred in the event of business travel as well as the traceability of the measures taken in this respect.



[25] These standards are technical and have been given regulatory value (Article 17 of the French Decree n° 2009-967) and often concern the use of specific work instruments. For example, the NF D35-386 standard imposes safety rules on ethanol-fuelled appliances.
[26] Regulation (EU) 2016 /425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment.
[27] Court of Appeal of Aix En Provence, 10 January 2020, n°19/07784.
[28] French Cour de cassation, 25 November 2015, n°14-24.444; Court of Appeal of Lyon, 24 November 2021, n°18/07583.
[29] French Cour de cassation, 7 December 2011, n°10-22.875, concerning an employee posted in Ivory Coast, who was assaulted in her vehicle while her companion was withdrawing money, even though she had repeatedly alerted her employer of the increased dangers faced by French citizens in Abidjan before the assault.
[30] It should be noted that this failure could be established negatively, if the employer did not take all the normal steps to prevent the risk from occurring.
[31] French Cour de Cassation, 25 November 2005, n°14-24.444.

Causal link

The claimant is required to demonstrate, in addition to her or his loss and a breach of her/his employer's obligations under safety at work regulations (duty of care), a causal link between the loss and the alleged breach[32].

By way of exception, this causal link is presumed for certain categories of employees[33].

If this causal link is established, the employer may nevertheless be exonerated from liability if the accident is due to the victim's fault or to force majeure (i.e., if the accident results from circumstances that were unforeseeable, irresistible and external).

Although force majeure should be grounds for exemption from liability, it must be noted that, to our knowledge, such grounds have not been held for exemption in case-law yet.

The same does not apply to the victim's fault, although a distinction shall be made.

When the action is based on the employer's civil liability, and therefore on a simple misconduct, the victim's fault is grounds for exoneration.

It was thus held that the employee as claimant "could not validly hold his employer liable for not anticipating the risk" when, not only was the risk not foreseeable but the employee concerned had himself caused his own damage[34/35].

However, when the action is based on the gross negligence of the employer, only the gross negligence of the victim is likely to exempt the employer from its liability. The gross negligence of the victim is defined as "the voluntary fault of the victim of an exceptional gravity exposing its author to a danger he should have been aware of"[36].

A practical illustration

A French company sends an employee as a training manager in the international division located in Brazil. When the employee asks his manager whether he should take any specific medication during his trip, the manager says no.

Shortly after his return from Brazil, the employee is rushed to hospital because of a malaria attack.

The employee then sues the employer for not having warned him about the risks of malaria during his mission in Brazil.

It is certain that, in this scenario, the employer could be held liable, on the grounds of gross negligence. Indeed, if he had assessed the risks associated with its employee's travel, he would necessarily have been aware of the danger to which the employee was exposed, and could have taken the necessary preventive and informative measures to protect him[37].

It should be noted that the fault of the victim could be held as grounds for exemption if, despite the information given by the employer about the risks of contamination by malaria and the drugs provided to prevent it, the employee had knowingly decided not to take them without informing his employer.

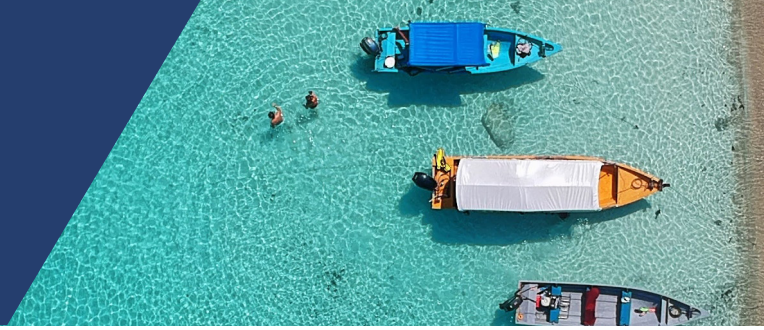
In the case where the company director knowingly chose not to inform its employee of the availability of malaria prevention drugs (e.g. to avoid the risk of the employee being sick due to the side effects of these drugs) it is likely that the company director would be charged guilty of a particularly serious wilful misconduct, incompatible with the performance of its duties as a company director and that its personal civil liability could thus be held[38].

Apart from this last scenario of wilful misconduct from the company director, ISO 31030 is a tool available to the employer that shall enable it, if necessary, to be exempted from liability.

Indeed, if risks as well-known as that of getting malaria in high-risk areas can be quickly assessed by the Employer, ISO 31030 enables companies to ensure, in the event of litigation, the traceability of the risk assessment and of the measures taken, particularly with regards to risks that are less well known and/or more difficult to anticipate.

This traceability is decisive, in the event of litigation, to enable the employer to exempt itself.

[32] The French Cour de cassation refused to hold an employer liable in the event of damage suffered by an employee but whose cause was undetermined (French Cour de cassation, 1 July 2003, n°02-30.542).
[33] Employees holding a fixed-term employment contract, temporary employees and trainees in a company who are victims of an accident at work or an occupational disease when they are assigned to workstations presenting particular risks to their health or safety and have not benefited from reinforced safety training (Article L.415-3 of the French Labour Code).
[34] Toulouse Court of Appeal, 4 December 2020, n°17/05168.
[35] In this case, the claimant had assaulted his colleague (with whom there were no previous disagreements) and the latter had responded with a physical assault.
[36] French Cour de cassation, 24 June 2005, n° 03-30.038.
[37] See, French Cour de cassation, 7 May 2009, n°08-12.998 where the facts were almost identical.
[38] French Cour de cassation, 4 July 2006, n° 05-13.930.



Potential relevance to criminal law liability

While Article L. 4741-1 of the French Labour Code punishes an employer or its delegate with a fine of 10,000 euros for violating its obligations relating to the preservation of the employee's safety and the prevention of risks, the criminal liability of natural and legal persons who are employers may also be held especially on the legal basis of the French Criminal Code.

In this respect, it should be noted that natural[39] and legal persons might be held criminally liable for breaching their safety obligations and duty of care, provided that, in the case of the latter, it is demonstrated that the offence was committed on their behalf, by their bodies or representatives[40/41].

For the employer to be liable, it is not always necessary for the employee to have actually suffered injury or death as a result of the employer's failure.

Two types of offences must be distinguished:

a. endangering the life of others: this offense does not require, for the offence to be constituted, that the failure of the employer to fulfil its safety obligation has had real consequences on the employee; the mere possibility of damage caused to the employee is sufficient to define the offence[42].

   Regarding the endangering of life offense, the deliberate breach of a particular duty of care or safety required by law or regulation[43] is a constituent part of the infringement.

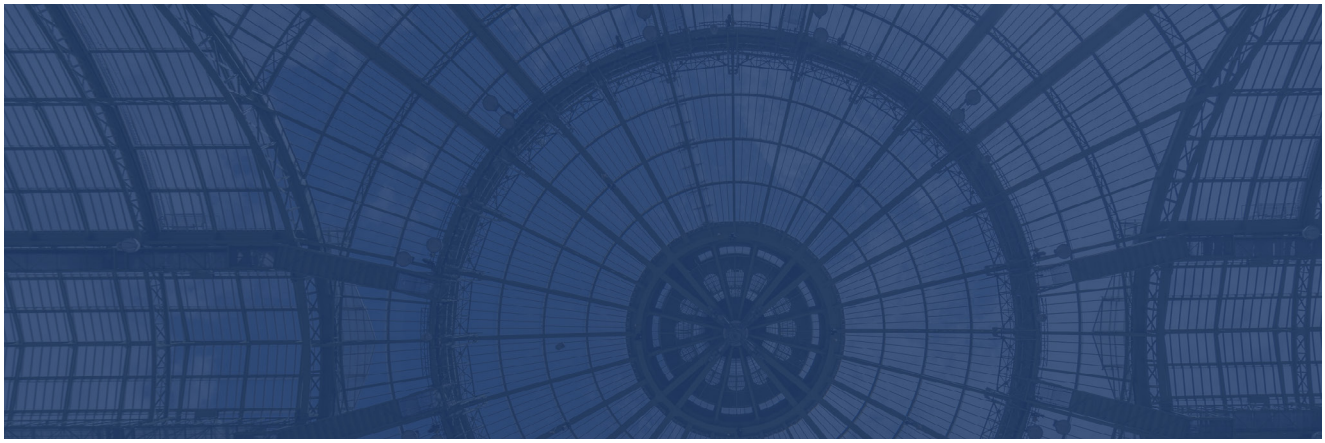
   Under these conditions, although the ISO 31030 standard cannot prevent the characterisation of the offence of endangering the life of others, which is based on a violation of the applicable regulations, it should nevertheless make it possible to limit the risk of such an offence from being committed insofar as the employer is required, by the application of this standard, to take an inventory of the regulations likely to be applicable and to take appropriate measures taking account of this regulation.

b. unintentional injuries or manslaughter[44]: these are offenses which the damages suffered by the employee is proven.

   In cases of unintentional injury or manslaughter[45], the conditions for criminal liability are much broader, so that implementation of the ISO 31030 could have a decisive effect.

   In essence, the criminal offence of manslaughter and unintentional injury is defined by the combination of three elements:

- a result: the death or injury of the victim;
- a fault: determined according to a scale of seriousness, which can range from simple carelessness to a violation of a particular safety obligation provided for by the current law in force;
- a distinct causal link between the fault and the damage: this link may be direct or indirect.



[39] In this respect, it should be observed that a director can be exempted from liability by showing that he or she had granted a delegation of powers (French Cour de cassation, 11 March 1993, n° 90-84.931.

[40] Article 131-38 of the French Criminal Procedure Code also specifies that « maximum fine applicable to legal persons is five times the fine applicable to natural persons ».

[41] Article 121-2 of the French Criminal Code.

[42] Article 223-1 of the French Criminal Code. Nevertheless, the employee must have been exposed to an imminent risk of death or injury resulting in permanent mutilation or permanent disability

[43] Ibid.

[44] Respectively, articles 222-19 and 222-20 as well as article 221-6 of the French Criminal code.

[45] In the case of a slight injury, the offence is defined according to the same technique, the magnitude of the damage (as assessed by the duration of the victim's total incapacity to work) having only an impact on the quantum of the maximum sentence incurred by the perpetrator.

The liability regime differs whether it concerns a natural person or a legal person[46].

There are a certain number of rules and essential principles to hold someone criminally liable:

a. For natural persons:
   - all persons, regardless of their office functions, may be held criminally liable for their own misconduct, taking into account the nature of the office functions performed, the skills and resources at the disposal of the employee;
   - corporate officers are criminally liable not only for their personal misconduct, but also for the misconduct of the company's various employees, which naturally broadens the scope of their potential criminal liability;
   - in the event of a validly granted delegation of powers, the delegate of powers is liable, instead of the delegator, for faults committed within the scope of the delegation;
   - delegation of power has no effect, as such, on criminal liability;
   - criminal liabilities can be cumulative, but there is no obligation on the prosecuting or investigating authorities to investigate all potential liabilities. There is therefore a significant degree of discretion, which leads judges, in some cases, to only consider the main perpetrators, and in others, on the contrary, to look for a very broad range of liability, according to a wide variety of factors and criteria (nature of the case, media exposure, available investigation resources, arguments put forward by the various parties, personality of the judge, etc.).

b. For legal persons
   - In the case of legal persons, in general there is no criminal liability of the entity. A director or representative usually holds only the legal person he or she directs or represents liable.
   - However, it is depending on the question at hand and in reality casuistry, as illustrated by a recent decision of the French Cour de cassation, which is the subject of much discussion.

The French Cour de cassation held a holding company criminally liable for the acts of three employees, considered to be de facto representatives of the parent company, due to a transversal structure specific to the company and the assignments entrusted to them, by upholding the ruling of the Court of Appeal, according to which : the matrix organisation, although lacking legal personality, entailed hierarchical links within the business groups and geographical areas, such that a double hierarchy was superimposed on each employee, on one hand de jure, within the subsidiary which paid them and, on the other hand, de facto within the matrix organisation, which was responsible for the recruitment procedure of the consultants and that this double hierarchy linked, de facto, to the company on behalf of which the parties involved in the process were acting.

This example illustrates the specific nature of criminal law, which, beyond the major principles mentioned

[46] For natural persons: Under article 221-6 of the French Criminal Code, the act of causing, under the conditions and according to the distinctions provided for under Article 121-3, by clumsiness, carelessness, inattentiveness, negligence or failure to comply with a particular safety obligation or duty of care required by the law or regulations, the death of another person is considered as manslaughter punishable by three years' imprisonment and a fine of 45,000 euros. In the event of a deliberate breach of a particular safety or duty of care obligation required by law or regulation, the sentences are increased to five years' imprisonment and a fine of 75,000 euros. In addition, there may also be additional sentences by the court, (a ban on holding a public office or exercising the professional or social occupation in the course of or in connection with which the offense was committed). Article 121-3 establishes a special criminal liability regime for natural persons, which is more restrictive than the general law, and which differs based on the nature of the causal link between the fault and the damages:
(i) If the wrongful act is in direct causal link to the damages, a simple fault of duty of care, negligence or regulatory breach is sufficient to hold the criminal liability of the employer, on the condition however that it is also proved that the perpetrator did not carry out the normal due diligence taking into account, if necessary, the nature of its tasks or its functions, its competences as well as the power and means at his disposal. The assessment of the wrong doing is therefore done in consideration of the official duties of the incriminated person and the means at his disposal;
(ii) In the event of an indirect causal link, meaning that the natural persons did not directly cause the damages but created or contributed to the situation that permitted the damages to occur or did not take the necessary measures to avoid the damages ,they are only criminally liable if it is proved that they:
- either deliberately breached a particular duty of care or safety obligation required by law or regulation;
- either committed a manifest negligence, which exposed others to a particularly serious risk that they should have been aware of.

In a nutshell, as far as natural persons are concerned, if the fault is a direct cause of the damages, an ordinary negligence is defined. If the fault only contributed to the realisation of the damage, a gross negligence is required for the offense to materialise.
The criminal debate therefore revolves around two major questions:
- What wrongful acts have been committed, either with reference to the applicable health and safety regulations or with reference to acting diligently?
- What is the causal relationship between the wrongful act and the damages?

For legal persons: Under 121-2 of the French Criminal Code, legal persons are criminally liable for offenses committed on their account by their corporate bodies or representatives. Legal persons are therefore criminally liable for infringements committed by their corporate directors or by persons with the necessary competence, authority and means, having received a delegation of powers, de jure or de facto.
Criminal law is not limited to legal representation only, and the judge can pursue the de facto managers of a company, beyond the de jure managers, or even the legal person on whose behalf a given natural person actually acted, which may not only be the one that it is statutorily managing, but for instance, an affiliate.
As a general rule, a mere employee does not hold the legal person criminally liable for his wrongful act . Only de jure or de facto managers, and the delegates of powers de jure and de facto are likely to hold the liability of the legal person on behalf of which they acted.
However, the legal person can be held liable whenever it is proved that it had simply failed to comply with the safety regulations or that it has acted recklessly or negligently.
The legal person can also be held liable even when the causal link between the perceived non-compliance and the accident is only indirect. . The legal person does not enjoy the benefits of the preferential regime for natural persons stated under Article 121-3 of the French Criminal Code.
In a nutshell, any wrongful act of its directors or representatives, de jure or in de facto, with a direct or indirect causal link to the accident, is likely to hold the legal persons' criminal liability.
The legal person shall be sentenced to a fine, equal to five times that of the natural person, either, in the case of manslaughter, a fine of 225,000 euros or a 375,000 euros fine in the case of a deliberate violation of a particular safety or duty of care obligation required by the law or regulations. In addition, the court may also hand down one or more of the following additional sentences (ban on professional activities, confiscation, etc).

above, is essentially a body of law based on facts and which, on a case-by-case basis, will carry out a specific analysis and a correlative research for criminal liabilities.

The fact that the employer can demonstrate that it not only respected all the provisions of the French Labour Code relating to health and safety at work but also all the provisions of the ISO 31030 standard before sending its employee on a trip abroad could, thus, allow him to be exempted from its criminal liability by demonstrating that all the necessary steps have been taken to prevent the damage from occurring, whether in terms of identifying the risk incurred, its assessment or prevention.

In addition to the duty of vigilance under the French Commercial Code (see see fifth paragraph of section on "Who owes a duty of care? / The corporate employer" above), the ISO 31030 provides employers with the tools to implement risk identification and assessment, through risk mapping, at group level, thus covering all subsidiaries, irrespective of where they are located.

The application of the ISO 31030 at group level would thus make it possible to ensure uniform security of the proceedings that could be filed against the employer

Issues of the ISO 31030 standard

Although the reference to ISO standards is, to date, rarely used in France as a legal reference, an evolution is underway. Indeed, concerning the identification of conflict-of-interest situations, the Practical Guide published by the French Anti-Corruption Agency (AFA) in November 2021 expressly refers to the ISO 37001 standard on anti-corruption, and in particular to the implementation of anti-corruption management procedures. Such procedures are based, like those listed in the ISO 31030 standard, on the identification and assessment of risks, in particular through risk mapping.

Thus, if the ISO standards relating to risk prevention are expressly adopted as a reference for assessing possible failures by companies to meet their obligations, compliance with these standards could enable an employer to exempt itself from liability, in particular by demonstrating that it has taken all measures in its power to avoid the risk incurred.

In this context, compliance with the ISO 31030 standard could thus be invoked by an employer whose liability is sought, under civil and/or criminal law, in order to demonstrate that she/he had taken all the necessary precautions to avoid the occurrence of damage.

For further information, please contact Frédéric Bellanca, Dartevelle Dubest Bellanca AARPI, on fbellanca@ddbavocats.com, +33 (0)1 43 12 55 80.

Frédéric Bellanca, Partner
Email: fbellanca@ddbavocats.com

Fabrice Dubest, Partner
Email: fdubest@ddbavocats.com

Bérénice Poirier, Associate
Email: bpoirier@ddbavocats.com

DARTEVELLE
DUBEST
BELLANCA
& ASSOCIÉS

www.ddbavocats.com