

Newsletter

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NEWSLETTER #
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HEADLINE

Employer's Failure to Follow the Occupational Physician's Recommendations: The Employee Has an Automatic Right to Compensation!

📌 In principle, further to a decision dated 13 April 2016 (No. 14-28293), the existence and assessment of harm fall within the sovereign discretion of the trial court judges. In other words, an employer's failure to fulfill its obligations does not automatically entitle the employee to damages. The employee must prove the existence of the harm.

📌 However, the Court of Cassation has recognized **several exceptions**.

For example:

→ The mere finding that the employer breached its obligation by requiring an employee to work while **on sick leave entitles the employee to compensation** (Cass. soc., 4 Sept. 2024, No. 23-15944).

→ Similarly, a mere finding that the employer failed to fulfill its obligation to suspend all work **during maternity leave** entitles the employee to compensation (Cass. soc., 4 Sept. 2024, No. 22-16129).

🔗 Should the same apply **in cases where the employer fails to comply with the occupational physician's recommendations?**

📌 In a reversal of precedent, **the Court of Cassation has answered in the affirmative** in a decision dated 9 September 2026 (No. 25-11901).

📌 In the underlying case, the employer had allowed the employee, hired as a general-duty gas station attendant, to perform tasks on the service lane contrary to the occupational physician's recommendations. In fact, the physician had issued a recommendation against such tasks.

The employee alleged a breach of the duty of care and sought damages in this regard.

📌 Her claim was dismissed by the Court of Appeals, which held that:

- whilst the employer failed to establish that it had taken the necessary measures to prevent any harm to the employee's safety,
- the employee **neither alleged nor demonstrated** that compliance with the duty of care would have had any impact on her health.

🔗 The Court of Appeal's analysis was, in fact, consistent with a previous decision by the Court of Cassation, which held that in cases where an employer disregards the recommendations of the

occupational physician, the employee must provide proof of the harm that he or she personally suffered (Cass. soc. 9 Dec. 2020, [No. 19-13470](#)).

🔊 However, in its ruling **of 9 September 2026**, the Court of Cassation has reversed its previous case law and decided that, henceforth, **the mere finding that the employer failed to comply with the occupational physician's recommendations** regarding individual measures to adjust, adapt, or modify the workstation (...) **automatically entitles the employee to compensation.**

Failure to comply with the occupational physician's recommendations **inevitably results in a violation of the safety and health of the employee concerned.**

Consequently, the right to compensation is "automatic," and the employee is not required to provide proof of the harm suffered.

⚠️ However, this solution raises some questions... Indeed, under [Article L. 4624-6 of the French Labor Code](#), *"the employer is required to take into consideration the opinion and recommendations or proposals issued by the occupational physician (...). **In the event of a refusal**, the employer must notify the employee and the occupational physician in writing of the reasons for not acting on the recommendation."*

Therefore, if the employer has provided reasons for the refusal, is compensation still automatic?

➡ Logic would suggest a negative answer.

➡ Indeed, allowing automatic compensation in the event of a reasoned refusal would amount to prohibiting any refusal whatsoever, contrary to the plain language of Article L. 4624-6 of the Labor Code.

🚧 However, as the wording of the high court's ruling casts doubt on this question, caution is warranted.

[Read the decision: Cass. soc. 9 Sept. 2026, No. 25-11901](#)

» ARTICLES

Unfitness for Work and Consultation with the CSE: Replacing an Absent CSE Member Is Mandatory; Otherwise, the Dismissal Is Without Real and Serious Cause!

📌 When an employee is declared unfit for work by the occupational physician, the employer is under an **obligation to redeploy the employee**.

The employer must offer the employee another position appropriate to their abilities, within the company or, where applicable, within the companies of the group to which it belongs, located within the national territory, and whose organization, activities, or place of business allow for the transfer of all or part of the workforce ([Labor Code, Art. L. 1226-2](#) and [L. 1226-10](#)).

📌 This offer must take into account—**after consulting the Social and Economic Committee (CSE)**, where one exists—the written conclusions of the occupational physician and the physician’s recommendations regarding the employee’s ability to perform one of the existing roles within the company.

This CSE consultation is required even if the employer does not identify a redeployment position.

📌 Failure to consult the CSE, or failure to do so in accordance with the procedures, **deprives the termination of a real and serious cause** (Cass. soc. 30 Sept. 2020, [No. 19-11974](#); see, in cases of work-related causes: [Labor Code, Art. L. 1226-15](#))!

🔍 **What happens when only one regular member of the CSE has issued an opinion, while the other regular member is on leave and has not been replaced?**

🗣️ The Court of Cassation addresses this question in a decision dated 9 September 2026 ([No. 25-10985](#)).

🔴 It notes that, pursuant to Article [L. 2314-37](#) of the [Labor Code](#), when a regular representative is temporarily absent for any reason, he or she is to be replaced by an alternate representative elected from a slate submitted by the same labor union as that of the regular representative, with priority given to the elected alternate from the same category, who then becomes a regular representative until the return of the person they are replacing.

However, in the present case, the Court of Appeals had found that the minutes of the CSE meeting showed that the regular member of the first electoral college was absent. Thus, only the opinion of the member present—that is, the regular member of the second electoral college—had been taken into account.

✦ Consequently, according to the Court of Cassation, the Court of Appeals had correctly concluded that the consultation with the CSE was irregular and that the termination lacked real and serious cause.

⚠️ This ruling is particularly harsh on the employer and raises significant practical difficulties!

➡️ It requires the employer to ensure in advance that **all regular members will be able to serve on the CSE**, and

➡️ failing that, it appears essential to **summon the alternate member who can replace the absent member**.

Read the decision: Cass. soc. 9 Sept. 2026, No. 25-10985

Severance Pay for Mutually Agreed Termination: Can a Company-Level Agreement Prevail Over the Industry-Wide Agreement?

📌 Under Article L. 1237-13 of the Labor Code, the amount of the specific severance pay for termination by mutual agreement may not be less than the **statutory severance pay**.

📌 The National Interprofessional Agreement (ANI) of 11 January 2008, as amended by Addendum No. 4 of 18 May 2009 and extended by decree of 26 November 2009, provides that the employee is to receive a specific severance pay, the amount of which may not be less than the statutory severance pay **or the collectively bargained severance pay** provided for in the applicable collective bargaining agreement.

💡 **Consequently, what should happen when the provisions of the industry-wide agreement and those of the company-level agreement provide for different calculation methods?** Should the company-level agreement take precedence?

👤 The **Court of Cassation has answered in the affirmative** in a decision dated 1 July 2026 (No. 25-14861).

📌 In this case, the national collective bargaining agreement for engineers and executives in the metallurgy industry, dated 13 March 1972, seemed to be applicable. The collectively bargained severance pay—calculated in accordance with this national collective bargaining agreement—proved to be more favorable than the statutory severance pay.

However, the employee relied on the calculation methods set forth in **the company-level agreement** dated 27 June 1972. Given the employee's length of service, these were more advantageous than the provisions of the industry-wide collective bargaining agreement.

- 📌 The Court of Appeals had ruled in favor of the employee.

- 📌 The employer then filed an appeal with the Court of Cassation. In the employer's view, the "collectively bargained" compensation referred to in the ANI referred to the provisions of the industry-wide collective bargaining agreement.

🗣️ However, **this is not the analysis of the Court of Cassation**, which, in a decision dated 1 July 2026 (No. 25-14861), applied Article L. 2253-3 of the Labor Code ("Block 3").

It thus held that:

➡ in matters other than those mentioned in Articles L. 2253-1 and L. 2253-2, **the provisions of a company-level agreement** entered into either before or after the effective date of the industry-wide agreement, or an agreement covering a broader territorial or occupational scope, **take precedence over those addressing the same subject matter in the industry-wide agreement** or the agreement covering a broader territorial or occupational scope.

➡ In the absence of a company-level agreement, the industry-wide agreement or the agreement covering a broader territorial or occupational scope applies.

📌 Consequently, in the event of a conflict, **the company-level agreement necessarily takes precedence!**

💡 In this case, the compensation provided for in **the company-level agreement was more favorable.**

However, the Court of Cassation's reasoning could also result in giving precedence to **calculation methods in the company-level agreement which are less favorable than those established by the national collective bargaining agreement.**

Read the decision: Cass. soc. 1 July 2026, No. 25-14861

Which Collective Bargaining Agreement Applies to a Company that is Part of a Group?

- 📌 The applicable collective bargaining agreement is the one governing the employer's principal business activity (Labor Code, Art. L. 2261-2).

→ Consequently, to determine the applicable collective bargaining agreement, trial courts must identify the nature **of the company's primary activity** and verify that this activity falls within the scope of the collective bargaining agreement invoked (Cass. soc. 27 Mar. 2024, No. 22-15519).

→ However, if employees perform a **distinctly different activity within an autonomous business unit**, the collective bargaining agreement pertaining to that activity should apply (Cass. soc. 5 Oct. 1999, No. 97-16995).

💡 But what happens when **the company is part of a corporate group**? Should the company's principal activity be assessed in light of the activities of the other companies in the group?

🔊 In a decision dated 9 September 2026 (No. 25-14690), **the Court of Cassation provides its analysis** regarding the collective bargaining agreement applicable to Amazon France Logistique.

📌 This company provides warehousing, order fulfillment, and shipping services exclusively on behalf of Amazon Group companies for the benefit of customers of the Amazon.fr website. Since 1 October 2019, it has been applying the **national collective bargaining agreement for road transportation and ancillary transportation activities**.

📌 A union (the CFDT Services Federation) filed a lawsuit in district court seeking an order requiring the company to apply the **collective bargaining agreement for distance-selling companies**. After having all its claims dismissed, the union filed an appeal with the Court of Cassation.

🔗 **The union** argued that the company's business activity should be assessed "by taking into account its corporate purpose, the activity actually carried out, and, **where applicable, its integration in an integrated economic chain.**"

🔗 In its view, the company's business is exclusively focused on carrying out a distance-selling process that is structured, organized, and operated by the Amazon group, notably Amazon EU.

🔗 Thus, according to the union, **Amazon France Logistique is structurally part of a distance-selling business**.

🔊 However, **the Court of Cassation does not share this analysis**. In its view, the Court of Appeals was not required to determine whether the logistics activity was integrated into a chain of distance-selling activities.

🔴 Since the appellate court had found that the company's main activity—carried out on behalf of legally distinct third-party companies—was logistics, an activity separate and independent from the buying and selling activities on the Amazon.fr website, it correctly concluded that **this company was not covered by the collective bargaining agreement for distance selling and e-commerce but rather by that for road transportation and ancillary transportation activities**.

💡 This ruling is **consistent with Article L. 2261-2 of the Labor Code** and should be welcomed.

Read the decision: Cass. soc. 9 Sept. 2026, No. 25-14690

> BRIEFS

Pay Transparency Bill Presented to the Council of Ministers!

🔔 The bill transposing the Pay Transparency Directive of 10 May 2023 ([Directive 2023/970](#)) was **presented to the French Council of Ministers on 10 September 2026**.

While this text is still subject to change, the main thrust of the reform is now known.

📌 **Pay transparency from the recruitment stage:** Starting at the recruitment stage, employers will be required to inform job applicants of the proposed salary or a salary range.

📌 **Strengthened right of employees to information** regarding their pay and the average pay levels within their job category.

📌 **A ban on clauses** prohibiting **an employee from disclosing information** about their own compensation.

📌 Clarification and definition of the concept of **“equal work.”**

📌 Replacement of the current **gender equality index** with a system based on the seven new indicators set forth in the European Directive of 10 May 2023.

📌 In cases of unjustified pay gaps, implementation of **corrective measures**.

📌 Strengthening **of remedies and penalties**. In particular, the administrative authority could impose financial penalties of up to 1% of the total payroll, or even more in the event of a repeat offense.

📌 The **rules of evidence** will be adjusted in favor of the employee.

⚠️ **It is therefore time for companies to take concrete steps to prepare for its implementation**, which entails:

- providing **training** for themselves and their managers,
- **auditing** compensation practices,
- **identifying** areas of risk, and
- preparing **the necessary corrective measures!**

[Read the legislative brief](#)

[Read the press kit](#)

Protected Employees: A New DGT Guide on the Termination and Transfer of Employment Contracts

 A new guide on administrative decisions regarding the termination or transfer of employment contracts for **protected employees** is now available on the French Ministry of Labor's website. It replaces the September 2019 guide.

 All the fact sheets have been updated. Some have been modified, and two new fact sheets have been added. They cover:

- The **legality/admissibility of evidence**.
- **Acts committed outside the scope of the employment contract**: the employee's professional duties and personal life.

 The Ministry's webpage specifies that this guide is intended for all **employees, employers, and legal professionals** and serves as a valuable tool for **Ministry of Labor officials**: labor inspectors, all decentralized units of the Pôle T, heads of regional inspection units, and regional support services...

Read the [guide on administrative decisions regarding the termination or transfer of employment contracts for protected employees](#)

Limits on Sick Leave

 The duration of sick leaves prescribed or extended on or after **1 September 2026** is now capped.

 Under Article R. 162-1-7-1 of the French Social Security Code, the duration of sick leaves prescribed by a physician, dentist, or midwife is capped at:

- **31 days** for an initial prescription
- **62 days** for an extension.

Read Decree No. 2026-498 of 12 June 2026

TO GO FURTHER: THINK FIDAL TRAINING!

Pay Transparency: Prepare for the New Requirements Today

Are you ready for pay transparency?

Fidal Formations now offers a comprehensive solution:

E-learning - Pay Transparency: What Role Does the Manager Play?

In just 30 minutes, this interactive course enables managers to:

- understand the challenges of pay transparency;
- grasp their role in this new context;
- adopt best practices for evaluation and communication;
- respond objectively and consistently to employees' questions.

A short, remote-access format that can be rolled out immediately to the entire management team.

 **View [the brochure](#)**

 **Watch the teaser: www.legalmedia.fidal.com**

Pay Transparency, Gender Equality: It's Time to Take Action!

Designed for executives, HR directors, HR managers, payroll managers, legal professionals, and compensation specialists, this training helps participants understand the new obligations arising from the directive and the proposed legislation, analyze their impact on the company, and develop a tailored action plan.

Course outline:

- Key points to anticipate;
- Employees' right to information;
- New indicators to be disclosed;
- Analysis and justification of pay gaps;
- Implementing corrective actions;
- Hands-on workshops on real-world scenarios.

This one-day training session is provided throughout France by Fidal experts.

 Explore [the program and upcoming sessions](#)

 **For more information or to request a demo: infos@contact.fidalformations.fr**

 Explore all training courses now at www.fidalformations.fr

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