

CONSIDERATIONS REGARDING TO THE EUROPEAN FRAMEWORK AGREEMENT REGULATING WORKPLACE STRESS

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ABSTRACT: *Taking into consideration the fact that stress could affect any job and any employee, having a bad influence even on the work relations created, on October the 8th, 2004, at the EU level, the social partners have adopted the Framework-Agreement on stress at work. The main purpose of this Agreement is essentially that of fighting against stress at work through prevention, control, reduction or removal of its effects.*

KEYWORDS: *stress at work, health and security in labour, integrated policies against stress.*

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1.1 On the 8th of October 2004 the European Union adopted the European Framework Agreement with regard to workplace stress¹ taking into consideration the followings:

- stress has the potential to affect any workplace and any worker, no matter the size of the establishment, work field, type of contract or employment relationship even if it doesn't make its presence felt at every workplace nor to all workers;
- the battle against workplace stress can increase the efficiency and it can improve health and safety at the workplace with emerging economical benefits for units, workers and for the society as a whole.

1.2 Pursuant to the Agreement, workplace stress is a state, which is accompanied by which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them, and it can be determined by various factors as such the content and organization of work, work environment, defective communication etc².

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¹ The Framework Agreement was adopted by the European Trade Union Confederation (CES), UNICE/UEAPME and CEEP, its text is published on the website www.etuc.org.

² Pursuant to the Explanatory Dictionary of the Romanian Language "STRESS, stresses, s. n. (med.) Name given to any environmental factor (or variety of factors) that produces an abnormal reaction to the human organism; e.g. harmful effect produced on the human organism by an environmental factor.

Undeniable, such phenomena can take place during the performance of individual labour contracts, acting as harmful phenomena, negatively influencing the employment relationship and preventing fulfillment of work related tasks.

Conceptually, the measures established by the draft agreement in order to fight workplace stress are incorporated in the field of health and safety at work.

In order to prevent or eliminate the effect of workplace stress the priorities provided in the Agreement are considering the following:

- the adoption of communication and management measures, meant to clarify the objectives of the unit and the role of each worker, to provide to workers and their teams an appropriate support from the management, a good responsibility and control ratio of their work, as well as to improve the organization, process, conditions and work environment;
- training managers and workers in order to increase the degree of consciousness and understanding of stress, it's possible causes and the modalities to deal with and/or to adopt to change;
- informing and consulting workers and/or their representatives in conformity with the legislation, collective contracts and national practice.

The prevention, elimination or reduction of workplace related stress can include a variety of measures which can be collective, individual or both at the same time. They can be put into practice under the form of specific measures which shall target the identified stress factors or – without identification – within an integrated anti-stress policy, which shall include prevention and action measures.

After implementation, anti-stress measures must be re-examined regularly by the employer, in order to evaluate their efficiency and to determine if the resources are used optimally, as well as to determine if they are still adequate or necessary.

If the unit doesn't have the necessary competence in order to adopt such measures it can request help from external factors.

2.1 Until present time, in the domestic legalliterature there is no analysis related to workplace stress. Moreover, the explanation consists in the fact that Romanian legislation doesn't have a definition for the notion of workplace stress.

Law no. 319/2006 with regard to health and safety at work³ mentions in its content about "physical and psychological integrity" of workers without detailing in any way what is understood from this concept and without including the stress effectively among risk factors that can affect the health of the workers⁴. There is certainly a gap difficult to accept.

As an exception, Law no. 284/2010, the framework law with regard to unitary payment of personnel paid from public funds⁵, which refers to "the activities that require mental strain", for which the employees are rewarded with compensations or bonuses⁶,

³ Published in the Official Monitor of Romania, part I no. 646 from July 26th 2006.

⁴ Pursuant to art 5 lt. n from the Law, health and safety at the workplace represent "all institutionalized activities which have as purpose providing the best conditions in performing process of work, defending life, physical and psychological integrity, health of workers and any other persons participating in the process of work".

⁵ Published in the Official Monitor of Romania, part I, no.877 issued December 28th 2010.

⁶ Is about:

-personnel which teaches simultaneous up to 2-4 classes of students which receive an extra pay;
-personnel with health facilities and medical-social facilities for the activities performed in neurovascular emergency units, wards and departments of neurology and neurosurgery which require high level of mental strain, as well as for the personnel from wards and compartments of infectious diseases, neonatology, delivery

contains, within its provisions, the reference made to stress, however without defining it. It is identified as a risk factor within the activities performed in special conditions, for which the employees receive an increase of up to 15 % of the base salary, fit to the time worked within the actual workplaces⁷.

Surprisingly, none of the multiple Government decisions (14 in total), that target health and safety at work, are referring to stress as a harmful factor that needs to be countered with appropriate measures.

Given the incidence of stress within employment relationships in France, social partners and the Labour Ministry adopted a series of measures, in order to prevent workplace stress, without including in the Labour Code any special provision in this respect⁸.

2.2 The Framework Agreement with regard to workplace stress is not assimilated by this instruction, as it were possible pursuant to art.153 TUE (as in the case of instruction 1997/81/CE of the Board with regard to the framework agreement for part time work concluded between the Union of Industrial and Employers Confederations of Europe (UNICE), European Trade Union Confederation and the European Centre of Enterprises, with Public Participation and of Enterprises of General economic Interest (CEEP)⁹ and the Directive 1999/70/CE of the Board with regard to the framework agreement CES, UNICE and CEEP upon determined work duration¹⁰).

It results that the Agreement can be implemented within internal realities, due to the taking over made by the social partners, not being, obviously, a legal absolute obligation for the EU member states. In other words, not being implemented by a directive, the Framework Agreement cannot impose the obligation for the member states to implement it in their national law. At the same time, it must be specified that the member states cannot oppose to the implementation of this Agreement by negotiated rules between social partners¹¹.

Taking into account that, by Law no. 62/2011 of the social dialogue¹², the national unique collective labor contract¹³ was terminated, from a practical point of view, it seems

rooms and medical laboratories, which are performing in dangerous conditions, an extra pay (up to 25% from the base salary);

-judges from High Court of Cassation and Justice from the appeal courts, courts of law, specialized courts of law, judges, prosecutors with such courts, members of Superior Council of Magistracy, legal personnel working for magistrates, assistant magistrates with the High Court of Cassation and Justice, judicial assistants, specialized auxiliary personnel, forensics expert staff and auxiliary expert staff, forensics expert staff within the National Forensic Science Institute and forensic laboratories, officers and judicial police agents, as well as the specialists within National Anticorruption Directorate, Terrorism and Organized Crime Investigation Directorate, evidentiary hearing personnel benefits of increase of salary for risk matters and neuropsychological strain of up to 25% (...) applied to the base monthly salary, respectively the monthly base allowance.

⁷ It's the case of medical units, health and social units and social services personnel.

⁸See B. Hess-Fallon, A-M. Simon, *Memory Aid. Employment Law - 2011*, 21st edition, Ed. Dalloz, Paris, 2010.

⁹ Published in the JO L14 issued January 20th 1998, p.9-14.

¹⁰Published in the JO, L175 issued July 10th, p.43-48.

¹¹ See I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, ediția a III-a revăzută și adăugită, Ed. Universul Juridic, București, 2014, p. 70; A. Țiclea, *Tratat de dreptul muncii. Legislație. Doctrină. Jurisprudență*, ediția a VIII-a, revizuită și adăugită, Ed. Universul Juridic, București, 2014, p. 246-247.

¹²Republished in the Official Monitor of Romania, part I, no.625 from august 31st 2012.

¹³In art. 37, the national unique collective labor contract established that "in order to prevent and diminish the level of workplace stress, the employer together with the signatories of the collective labour contract shall make

impossible to implement by a general binding agreement, the regulations contained in the European Framework Agreement. Also, this example shows the truth that renunciation of the national unique collective labor contract brought negative effects on multiple levels.

Legally speaking, the implementation of clauses from the Framework Agreement by the social partners can be done only by including in the collective labour contracts concluded for the field of activity some adequate clauses (in all 29 fields of activity established by Government Decision nr. 1260/2011¹⁴). In the same manner they can incorporate such provisions for collective contracts for units and groups of units.

The fact that, pursuant to the European Agreement, social partners can be involved, doesn't mean that in the situation in which workplace stress exists it couldn't be regulated with specific effects and by the individual labour contract.

2.3 Apart from collective will of social partners or individual will (agreement of employer and employee) nothing is opposing that, admitting the importance of clauses from the Framework Agreement, the state can regulate the issue of the elimination of the stress occurred at the workplace. It is an option which, from our point of view, would be useful¹⁵.

Given this kind of regulation, the lawmaker should consider the following highlights provided by the Framework Agreement:

- Stress is not a disease itself; however, prolonged exposure to stress reduces efficiency at the workplace and causes health problems.
- Stress can be produced also by external factors, external environment, bringing changes in behavior and workplace efficiency;
- If emerges from work environment, its identification must be performed by assessing multiple factors as:
 - o Organization and work processes (arrangements for the type of work, degree of autonomy, adapting work depending on employees skills, correct dimensioning of work regulations etc.);

the necessary effort in view to implement to unit level the management standard for handling workplace stress, in the following manner:

1) With regard to the content of work:

- a. when grounding work regulations for employees the following shall be considered: number of work hours stipulated by the law and the applicable collective labour contracts;
- b. level of competence, skills and abilities of the employees shall have to be in accordance with the position held;
- c. workplace conditions have to be ergonomically adapted to fit employees;
- d. the employees shall be informed and consulted and shall receive all the necessary information in order to allow them to understand their responsibilities according to their job description.

2) With regard to control upon performed work:

- a. The employer shall encourage the employee to use its skills and initiatives at the workplace;
- b. Together with the unions and, if the case employees representatives, the employer shall set a set of incentives in order to motivate the employees in fulfilling at their best their work tasks.

3) With regard to manage the activity at the workplace, by the means of the collective labour contracts applicable, the time intervals and practical modalities of informing the employees with regard to the modifications incurred or ongoing, related to work conditions.

4) With regard to employment relationship, via the Committee on Health and safety at work and of the paritary commission, the information related to the worst workplace practices shall be assessed and corrective measures shall be imposed."

¹⁴Published in the Official Monitor, part. I no. 933 issued December 29th 2011

¹⁵We mention that there are established legal regulations in Denmark, Czech Republic, Slovakia and Hungary.

- Work conditions and work environment (exposure to noise, heat, dangerous substances, abusive behaviors etc.);
- Communication (incertitude with regard to what the employer expects from the employee at its workplace, possible changes in the future etc.); and
- Subjective factors (which have repercussions: emotional pressure, the impression that the employee cannot meet standard expectations at the workplace, perception of lack of support from the colleagues etc.).

Either by enactment or by collective negotiation, workplace stress must be approached from a double perspective:

- firstly, as health and safety measures taken at work, reach through preventing, eliminating or reducing its effects;
- secondly, by taking it into consideration, if it is the case of special work conditions and the payment of a stress extra pay (in the public sector by means of express legal regulations and in the private sector by collective or individual contractual regulations).

The aforementioned measures, differentiated from unit to unit would come to meet the needs of an obvious reality: a growing number of employees have a decrease of efficiency due to workplace stress.

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