

Burnout: Compensation to the employee for emotional distress



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On November 12 2012, in the case captioned: “*R.L.A c/ HSBC Bank Argentina S.A. s/ despido*” (“*R.L.A v. HSBC Bank Argentina S.A. on dismissal*”), the National Court of Appeals in Labor Matters admitted the Plaintiff’s claim for emotional distress of ARS 700,000 on the grounds of the exhaustion suffered by the Plaintiff for work overload and pressure.

In this case, an executive officer of HSBC Bank was dismissed and paid compensation, but shortly afterwards, he filed a complaint for psychological and emotional injury on the grounds of alleged work overload followed by exhaustion due to the constant pressure exerted on him.

The First Instance Labor Court admitted the claim but HSBC Bank appealed the judgment stating that the health problems argued by the Plaintiff were not work-related.

Courtroom VII of the National Court of Appeals in Labor Matters confirmed the First Instance Court decision based on the following grounds:

- The forensic medical board established that the Plaintiff’s negative emotional condition was not temporary and that the disabling consequences adversely affect and hinder the development of the Plaintiff’s future project, causing uneasiness, lower self-esteem and depression.
- The effects mentioned above had the negative consequence of invalidating the Plaintiff for his future job as an accountant, and also precluded him from hiring and training employees under his charge.
- As required by the applicable law, the employer has the burden of detecting in the pre-occupational exam if the employee has predisposition to any health condition or to suffer a harmful event, and therefore, to provide for the necessary means to prevent such circumstances.

The burnout syndrome consists in an excessive exhaustion of energy, loss of ideals and friendliness at the workplace.

Below are the most relevant causes of burnout:

- 1) Work-related elements that increase personal susceptibility: Such as age (lack of experience), sex and personality.
- 2) Improper professional training: Such as the demand of excessive theory and less practical contents, among others.
- 3) Unhealthy place of work: Small rooms without natural or other sources of light, for example.
- e) Social factors: They are related to the difficult interpersonal work environment.

Burnout may be slight, moderate, serious or extreme, but in all cases it includes, to a lesser or greater extent, the same symptoms such as headaches, insomnia, gastrointestinal problems, fatigue

and general body pain, and, in psychological terms, reduced motivation to go to work and carry out daily activities, difficulty to concentrate, depression, irritability, frustration, and negativism, among others.

In view of the above, and considering the case law extension of the employer's duty of safety, which encompasses the duty to provide the necessary means to prevent work-related psychological injury, it is important for employers to verify compliance with such duty in order to minimize exposure to labor contingencies.

To such end, it is advisable to put in place human resources policies tending to prevent and detect these pathologies, including pre-occupational exams intended to know in detail the candidate's personality, take the necessary measures to prevent a hostile work environment, monitor that the tasks assigned to the employees are according to their category, and generate a proper communication channel between the employees and the human resources area to early become aware of such pathologies. All of this, with the purpose of taking the necessary action in order to comply with the employer's duty of safety, safeguarding the employee's health and reducing the employer's exposure to labor claims.