

What to do in case of an occupational accident or a commuting accident?

What is an occupational accident?

An occupational accident is an accident suffered by an employee that arises out of or in the course of work.

The coverage of an occupational accident presupposes that an insured person suffers an accident whilst performing an insured activity, which leads to physical injury and/or damage to the vehicle.

The accident must moreover occur due to the performance of the contract of employment, i.e.:

- The employee's occupation is connected to the activity of the company that employs him/her;
- The employee is in a subordinate relationship with the employer.

If the accident occurred during working hours and at the workplace, it is presumptively attributable to work. In such a context, if the cause of the accident is unknown, it is up to AAA to provide proof that the harm is totally unrelated to work in order to refuse to cover the damages relating to the accident.

What is a commuting accident?

A commuting accident is an accident that occurs in the normal, direct way taken by the employee to go from his or her usual residence to the workplace and vice-versa.

A commuting accident refers also to an accident that occurred on the way:

- Between the main residence, stable secondary residence or any other place where the employee usually goes for family reasons, and the workplace;
- Between the workplace and the restaurant, canteen or in general the place where employees usually take their meals.

This way may not be the most direct when a detour is rendered necessary because of regular car pooling or to drop off or pick up a child who lives with the employee from a third person to whom the employee has to entrust the child in order to be able to work. Conversely, if the way was interrupted or diverted for personal reasons not related to the essential needs of everyday life, then the accident is no longer covered.

In any event, an accident that the employee caused or to which s/he contributed because of gross negligence (e.g. drunk driving, speeding, etc.) is not covered.

What are the employer's obligations in case of occupational accident / commuting accident?

When the employer is informed by the employee that an accident has occurred, he must proceed to report it to the *Association d'Assurance Accident (AAA)* [Accident Insurance Association] using the ad hoc form. This report must be filed immediately, if there were no bodily injuries, and at the earliest 8 days after the date of the accident if there were bodily injuries (in order to be able to answer correctly heading 4.08 "Return to work" on the form).

A copy of this report must be issued to the employee concerned. It is moreover advisable to keep another copy in the company's files. The AAA will send the necessary documents to the competent bodies, such as the Inspectorate of Labour and Mines (known by the French initials "ITM") and the competent social security organisation.

It is worth noting that the accident report is required even if the accident did not cause any work stoppage. Where appropriate, reported bodily injuries must be verified by a doctor.

In case of a severe accident, the employer must moreover report it immediately to the ITM. A severe accident is an accident that has caused a fatality, permanent damage or at least the following injuries:

- Fractures;
- Internal or external 3rd degree burns on more than 9% of the body surface area;
- Wounds with loss of substance;
- Traumas which, if not treated, could jeopardise the employee's survival.

The employer must moreover:

- Keep a list of occupational accidents that have led to incapacity for work for more than 3 days;
- Draw up the reports concerning occupational accidents suffered by his employees and forward them to the ITM as promptly as possible.

The information published in this article is valid only on the date of publication of said article.

Pursuant to Article 2, §2 of the Act of 10 August 1991, as the Legal Department of SECUREX Luxembourg SA is not authorised to practice law, it shall limit its action at all times to disseminating information and documentation.

Such documentation and information thus provided always constitute typical examples or summaries, are of indicative value, and lay no claim to being exhaustive. The addressee is solely responsible for the use and interpretation of the information or documentation referred to in this article, advice or acts he deduces as well as the results he obtains from them.