

Bill 68: When And How Can An Employer Request A Medical Certificate



With the objective of reducing the administrative burden on healthcare professionals and thereby improving access to healthcare in the province, the Quebec National Assembly assented to [Bill 68](#), *An Act Mainly to Reduce the Administrative Burden of Physicians* (hereinafter referred to as “**Bill 68**”) on October 9. This bill amends an *Act respecting Labour Standards* (hereinafter the “**ALS**”) and an *Act to Promote Access to Family Medicine and Specialized Medicine Services*. This new legislation brings significant changes for employers, especially those who are self-insured, in managing employees on sick leave.

1. Managing Sick Leaves

As of **January 1, 2025**, employers will no longer be able to require their employees to provide a document attesting to the reasons for their absence due to illness (e.g. a medical certificate) to justify the first three (3) periods of absences due to illness lasting three (3) days or less over a twelve (12) month period. Bill 68 does not provide for any exception allowing the employer to request a document justifying the absence during these periods, regardless of whether the absence falls at a specific time of the year (for example, before or after a statutory holiday)¹. The objective of this amendment is to reduce the administrative burden on healthcare professionals, who would otherwise have to spend time writing medical bills for short-term absences.

This means that:

- Employers will be able to request a medical certificate from the 4th day of absence of the first three (3) absences over a twelve (12) month period;

and

- Employers will be able to request a medical certificate from the 1st day of absence of the 4th absence and beyond over a twelve (12) month period, provided that the “circumstances justify it” in accordance with the first paragraph of article 79.2 of the ALS. Indeed,

as is currently the case, the employer can only request it if the circumstances justify it – for example, in cases of incomplete information, activities incompatible

with the employee's condition, or suspected abuse.

It is important to remember that the employee is still required to inform the employer as soon as possible about their absence and the reason for it.² These amendments do not, therefore, give employees the right simply to be absent without giving a reason for their absence. Thus, the employer may still require, through its policies, that the employee provide certain information in the event of an absence, but cannot require the employee to present documentation to confirm a sick leave absence.

Furthermore, the Bill 68 does not alter the number of sick leave days that must be paid. As is currently the case, only the first two (2) days of sick leave must be paid under the employer's statutory obligations.³

2. Managing Absences Due to Family Obligations

As for absences due to family obligations, such as to fulfill obligations related to the care, health or education of the employee's child or spouse's child, or due to the state of health of a family member or a person for whom the employee acts as a caregiver, employers will no longer be able to request a medical certificate from an employee to justify such an absence. If circumstances warrant, the employer may still require any other document that can attest to the reasons for the family-related absence.⁴

That being said, Bill 68 does not change the employee's obligation to inform their employer of their absence as soon as possible and to take reasonable measures available to them to limit the duration and use of the leave.⁵

3. Changes in benefit plans

Amendments to *the Act to Promote Access to Family Medicine and Specialized Medicine Services* will also have a significant impact. These changes will apply to insurers within the meaning of the *Insurers Act*, as well as to uninsured benefit plans, whether or not they have a fund, and which provide coverage that may otherwise be obtained under a contract of insurance of persons. Self-insured employers will therefore be affected by the changes introduced by Bill 68.

Once the first regulation made under section 29.1 of Bill 68 comes into force and is adopted by the government⁶, insurers or administrators will no longer be able to compel an insured or beneficiary to receive medical services in order to claim reimbursement for services from a health or social services provider or reimbursement for a technical aid (e.g. cane, hearing aid, etc.).⁷

In addition, an insurer or benefit plan administrator will no longer be able, even indirectly, to require an insured, member or beneficiary to receive medical services at a predetermined frequency other than that deemed appropriate by the treating physician for the purpose of maintaining payment of a disability benefit⁸. These provisions will come into force on the date set by the government, which cannot be earlier than April 9, 2025.⁹

It should be noted that, if an insurance contract, insurance certificate or benefit plan contains a clause allowing the insurer or benefit plan administrator to require, contrary to the provisions of Bill 68, that the insured person receives medical services, it will be deemed that such a service has been required, it will be deemed to have contravened these new legal obligations¹⁰. These provisions will come into force on the date set by the government, which cannot be earlier than October 9, 2027. ¹¹

An insurer or benefit plan administrator who contravenes these new prohibitions will be liable to a fine of \$10,000 to \$1,000,000¹², as well as an administrative monetary penalty of \$5,000 imposed by Santé Québec¹³, and recovery by Santé Québec of the cost of a medical service covered by the Régie de l'assurance maladie du Québec (RAMQ) from the insurer or administrator.¹⁴

4. Key Point : What are the Consequences for Employers?

The legislative changes will require employers to adapt their policies for managing employee sick leave. Those who are self-insured will also need to adjust to the new legislative requirements.

It is important to note that Bill 68 does not prohibit the employer from asking the absent employee for the reasons for their absence, but rather prohibits the employer from asking the employee to provide a document justifying this absence during certain protected periods. In addition, the employer retains the right to request documentation to justify any absence not related to illness or family reasons when the employee cites other reasons for their absence.

Unionized employers will need to review the provisions of their collective agreements to assess how Bill 68 impacts existing provisions. Some employers may consider entering into discussions with the union to see how the collective agreement can be adjusted to meet the new requirements of Bill 68, while ensuring the continuity of operations.

Self-insured employers will also need to ensure that their insurance documents do not contain any clauses that run counter to the prohibitions in Bill 68. If they do, they will have to amend them to comply with the new obligations.

Our Labour and Employment team will be closely monitoring the development of these changes and their application by the courts in the coming months. For more information on this subject, or for advice on how to manage the impact of these changes on your operations, please do not hesitate to contact a member of our National Labour and Employment team.

Footnotes

1. See s. 7 of Bill 68.

2. S. 79.2, para. 1 ALS.

3. S. 79.7, para. 5 ALS.

4. See s. 8 of Bill 68.

5. S. 79.7, para. 4 ALS.

6. See s. 11 of Bill 68.

7. See s. 4 of Bill 68 (section 29.1 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*).

8. See s.4 of Bill 68 (section 29.2 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*).

9. See s.11 of Bill 68.

10. See s. 4 of Bill 68 (section 29.3 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*).

11. See s.11 of Bill 68.

12. See s. 4 of Bill 68 (section 29.15 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*).

13. See s. 29.9 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*.

14. See s. 29.8 of the *Act to Promote Access to Family Medicine and Specialized Medicine Services*.

To view the original article click [here](#)

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Authors: [Naomi-Edith Barandereka](#), [Loic Turner](#), [Caroline-Ariane Bernier](#)

McCarthy Tétrault LLP