Possible New Restrictions On Employers' Right To Require Medical Certificates

Quebec is currently facing a major shortage of physicians. To remedy the situation, several ministers in the CAQ government announced in early 2024 that significant changes would be implemented to reduce physicians' administrative burden. And so, on May 31, 2024, Minister of Labour Jean Boulet introduced Bill 68, *An Act mainly to reduce the administrative burden of physicians*.

The provisions of the Bill

In its current form, the new Act would comprise 13 sections, many of which would introduce major amendments to the *Act respecting labour standards*[1](ALS) by restricting the right of employers to require documents attesting to the reasons for certain absences.

Under the current legislation, an employer may be entitled to require a document from an employee who misses work owing to sickness in order to assess the reasons for the absence, its duration, or the employee's ability to return to work. This is because, under the terms of a contract of employment,[2]every employer is entitled to expect their employee to fully perform the work agreed upon.In addition, there is a consensus in case law that the supporting document provided to an employer should typically indicate a specific medical diagnosis, an estimated duration of absence (prognosis) and other details relevant to handling the employee's absence.

In keeping with these principles, the existing section 79.2 of the ALS provides that an employer informed of an absence owing to sickness, an organ or tissue donation, an accident, domestic violence, sexual violence or a criminal offence may request that the employee furnish a document attesting to any one of these reasons where the circumstances warrant it, particularly as regards the duration of the absence or its repetitive nature. According to arbitral jurisprudence[3] and that of the Administrative Labour Tribunal[4] (ALT), unwarranted refusal to provide such a document may constitute valid grounds for imposing an administrative or disciplinary measure, depending on the circumstances.

That said, if Bill 68 were to come into force, it would drastically change the status quo.

The Bill would introduce an additional paragraph to section 79.2 of the ALS specifying that: ". . . no employer may request the document referred to in the first

paragraph for the first three periods of absence not exceeding three consecutive days taken annually.” In other words, it would be prohibited for an employer to require a supporting document, including a medical certificate, for the first three short-term absences (less than four days) that may occur during the same calendar year. For the time being, the Act does not provide for an exception in cases where absences are excessive or otherwise questionable.

Conditions under which employers will be entitled to require a medical certificate

Under the Bill, employers retain the right to require a medical certificate where the absence is likely to last four consecutive days or more. What is more, the provision does not deny employers the right to investigate situations that appear questionable. The aforementioned prohibition would also apply to employers whose employees are governed by the *Act respecting labour relations, vocational training and workforce management in the construction industry.*[5]

Furthermore, the Bill includes an amendment to the provisions relating to family or parental leave and absences. The third paragraph of section 79.7 of the ALS would be amended so as to prevent employers from requiring a medical certificate to justify such absences. However, this amendment in no way affects their right to require any other type of documentation, particularly as regards obligations relating to daycare services or educational institutions.

Where an offence is committed, the penal provisions already included in sections 139 to 147 of the ALS will apply. As these amendments are of public order and take precedence over any contract, policy or collective agreement, any measure imposed on an employee that would contravene any of these new obligations may be deemed invalid or result in a prohibited practice complaint.

The Bill will affect insurers and employee benefit plan administrators

The Bill also introduces new restrictions on insurers and employee benefit plan administrators. They may no longer be entitled to require that an insured, a participant or a beneficiary receive a medical service, such as a consultation, in order to reimburse the cost of services or a technical aid, or to continue paying disability benefits.

Conclusion

Bill 68 has not yet been debated and the National Assembly has not yet assented to it, but the existing version of the Bill—including the proposed amendments to the ALS—could come into force as early as January 1, 2025.

Footnotes

1. CQLR, c. N-1.1.

2. *Civil Code of Québec,* CQLR, c. CCQ-1991, art. 2085.

3. See in particular the case law cited in Linda Bernier, Guy Blanchet and Éric Séguin, *Les mesures disciplinaires et non disciplinaires dans les rapports collectifs du travail*, 2nd ed. Cowansville, Éditions Yvon Blais, loose-leaf, updated to May 30, 2024, paras. 1.055 et seq.

4. See in particular : *Marchessault* et *CPE Les Petits Adultes*, 2019 QCTAT 1632, paras. 37–38; *Labourdette* et *Protecteur du citoyen*, 2019 QCTAT 4831, para. 52.

5. CQLR, c. R-20.

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.

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