

What Medical Information Does Your Employer Have The Right To Know About You Before Making a Claim?



In an arbitral award dated July 17, 2015, arbitrator Christian Brunelle upheld a grievance alleging that a school board (the “**Employer**”) abusively exercised its rights in the way it handled a teacher’s disability insurance claim. The arbitrator found that the Employer breached the collective agreement by requiring the teacher to submit three forms, namely medical disability reports (“**MDRs**”), to prove that she was disabled, in addition to the medical certificates she had provided to the Employer.

Facts

The grievor had been an elementary school teacher since 2007. On September 5, 2013, her doctor prescribed six weeks’ medical leave for a pregnancy-related adjustment disorder with anxiety and ADHD, as indicated on the medical certificate she submitted to the Employer on that date. The obstetrician also indicated that the period of prescribed leave could last several months. Upon receipt of the medical certificate, the Employer asked the teacher to give her obstetrician a MDR form for completion. The information requested on the form included the following:

- medication (name and prescribed dose);
- physiotherapy / occupational therapy (start-date and frequency);
- psychotherapy (start-date and frequency);
- examinations or tests (results);
- surgery;
- hospitalization (name of institution), etc.

When the grievor’s medical leave period was extended, the Employer insisted that she provide two additional MDR forms and undergo a medical examination.

Arbitrator’s reasons

The arbitrator concluded that the initial medical certificate provided by the grievor adequately informed the Employer of the nature of her disability and its duration, and thus satisfied the requirements of clause 5-10.34 of the collective agreement. The MDR form was therefore superfluous, in the arbitrator’s view, and the information requested on the MDR form regarding proposed treatments was not essential for determining the grievor’s ability to return to work. In addition, the clause of the

collective agreement at issue must be interpreted in light of the intention of the parties which, according to the arbitrator, was to limit the amount of personal information obtainable by the Employer. Moreover, such a limitation complied, in the arbitrator's view, with the requirements of Quebec's *Charter of Human Rights and Freedoms*² (the "**Charter**") for the protection of privacy rights.

The arbitrator did acknowledge however that in certain *exceptional* situations, the Employer must obtain such information in order to comply with its own obligations involving "respect for democratic values, public order and general welfare". The goal being pursued must be "legitimate and important" and the MDR form must be the most appropriate means for achieving it. In addition, a context-specific analysis of each disability situation must be undertaken, as opposed to the systematic use of the MDR form, so that the intrusion into the employee's privacy be "the least intrusive possible".

The arbitrator rejected the Employer's contention that the grievor was not discriminated against, since she was treated the same way as any other teacher making a disability claim. The arbitrator countered that the Employer could not simply treat everyone in the same fashion, but must take into account the differences specific to each employee, as the Employer had not shown that adapting its way of proceeding to each individual situation would constitute excessive hardship. In requiring the grievor to complete an MDR form immediately upon receiving her medical certificate, the Employer showed that it was not taking into account her individual situation (namely her handicap resulting from an adaptive disorder and anxiety related to her pregnancy). By doing so, the Employer breached its reasonable accommodation obligation under both the Charter and the collective agreement, which adversely affected and harmed the grievor.

Conclusion

This award must be put into perspective, particularly in light of arbitral awards.

Arbitrator Brunelle had decided, somewhat alarmingly, that the MDR form is invasive and cannot be used as a general and uniform management tool without adapting it to the individual circumstances of each case.

Improperly applied, this decision could deprive employers of a useful tool whose primary purpose is to ensure the sound management of disability files.

The consequences of this award must be closely monitored in terms of its impact on both the development of the case law and the practices of managers of disability files.

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