First-aid course required by the ministère de la Famille: is the employer required to pay for the training time?

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The *Educational Childcare Regulation*[1] (the "Regulation") requires every permit holder to ensure that each member of its childcare staff holds a certificate not older than 3 years which must have been obtained through the successful completion of an early childhood first-aid course of a minimum of 8 hours.

Following the amendment of the Regulation of April 1, 2016[2], an additional component concerning the management of severe allergic reactions was added to this training obligation:

> **20. A permit holder must ensure that each childcare staff member holds a certificate not older than 3 years attesting that the member has successfully completed a minimum 8-hour early childhood first-aid course including a component on the management of severe allergic reactions or a minimum 6-hour refresher course updating the knowledge acquired as part of the early childhood first-aid course.**

This obligation on permit holders is accompanied by an administrative penalty in the event of its contravention.[3]

Recently, in the case of *Syndicat québécois des employés et employées de service, section locale 298 et CPE Les Petits Semeurs*,[4], the arbitrator, André Sylvestre, upheld the decision of a childcare center not to compensate staff for the training time they are required to complete under this section of the Regulation. In doing so, he also considered the scope of the obligation on childcare centers under section 57(4) of the *Act respecting labour standards*[5] ("**ALS**"), which reads as follows:

> **57. An employee is deemed to be at work**
>
> **(…)**

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(4) during any trial period or training required by the employer.

Facts

It was the employer's habit to send to educators in its employ, two months before the expiry of their first-aid card, a note reminding them of the requirement in section 20 of the Regulation to attend a six-hour refresher course. In addition, the terms of the collective agreement required each member of the childcare staff to have a first-aid training certificate.

Attached to the note was a list of the schools in the region that provided the training. The employer gave some educators notice that if they failed to renew their first-aid card, they would be suspended without pay until it was renewed.

Collective agreement and the parties' positions

Section 27.04 of the collective agreement stated that the employer would reimburse the registration fees for the first-aid course, but not the salary for the time spent taking the course. Section 27.05 stated that [translation] *when taking employer-authorized training during the day, employees are deemed to be at work, and therefore paid*.

In its grievance, the union contested the employer's decision not to recognize employees as "deemed to be at work" when they were taking their first-aid course, arguing that the training was considered essential for the performance of their duties and necessary by the very nature of their employment. In this regard, it relied on section 57(4) of the ALS as well as section 27.05 of the collective agreement.

The employer disagreed, claiming that section 27.05 of the collective agreement did not support the employees' argument and that section 57(4) of the ALS did not apply. In support of his claim, the employer maintained that since the training was not required by the employer itself, but rather imposed by the ministère de la Famille, neither section supported the employees' position.

Arbitrator's decision

At the outset, the arbitrator found that the first-aid courses did not meet the criteria set out in section 27.05 of the collective agreement. He was of the view that these courses were not one-time, but periodic events since they had to be renewed every three years. He further found that the employer had not authorized these courses and that it was not necessary for it to do so as they constituted a legal obligation. The employer had only reminded the employees to renew their training before the deadline was reached. Furthermore, clause 27.04 of the collective agreement only imposed the payment of the registration fees for the first-aid course. Had the parties intended to provide for the payment of salary for the time spent taking this course, they would have done so.

Then, regarding the application of section 57(4) of the ALS, the arbitrator agreed with the employer's submission that [translation] *the imposition of a professional requirement by a legislative text does not constitute training required by the employer* within the meaning of this section. Thus, the arbitrator held that the claim in the grievance could not succeed because the requirement found in section 20 of the Regulation originated from the ministère de la Famille and not the employer. Indeed, the employer only sent reminder letters to its staff members.

Conclusion

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Based on this decision, and subject to more favourable provisions in the employment contract or collective agreement, employers may be entitled to refuse to acknowledge that educators in their employ are “deemed to be at work” when they are taking a first-aid course required by the ministère de la Famille.

However, this conclusion could be different if the facts show that the training is in fact a requirement of the employer, particularly if the employee is left with no choice in the matter. For instance, in the decision in *Syndicat des travailleuses en CPE - région Laurentides (CSN) et CPE Le petit équipage*,[6] the relevant clause in the collective agreement was different, and the arbitrator, André G. Lavoie, found that the training was effectively a requirement of the employer, since it was the employer itself that registered its employees in a first-aid course and imposed a time and date for taking it.

In any event, one should conduct a detailed review of the circumstances and obligations set out in the collective agreement or employment contract to determine whether or not the employer does indeed not have to compensate employees for the time spent completing training required by the ministère de la Famille.

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1. CQLR, c. S-4.1.1, r. 2.
2. For more information on the legislative amendments made to the Regulation, please consult the newsletter “*Le Droit de savoir, Modification éventuelle au règlement sur les services de garde éducatifs à l’enfance*” (in French only) November 2015, by Myriam Lavallée.
3. *Supra*, note 1, ss. 123.1 and 124.
4. D.T.E. 2016T-333 (T.A.).
5. CQLR, c. N-1.1.
6. D.T.E. 2015T-32 (T.A.).

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