Employers' Right to Require Medical Certificates: New Restrictions as of January 1, 2025

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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. In this context, on October 9, 2024, the National Assembly assented to Bill 68, *An Act mainly to reduce the administrative burden of physicians*.[1]

The provisions of the Act

The new Act comprises 11 sections, many of which introduce amendments to the *Act respecting labour standards*[2] (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,[3]every employer is entitled to expect their employee to fully perform the work agreed upon. Depending on the circumstances, the supporting document provided must in some instances indicate a specific medical diagnosis, an estimated duration of absence and other details relevant to handling the employee's absence.

In keeping with these principles, section 79.2 of the ALS provided 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, "[i]*f it is warranted by the duration of the absence or its repetitive nature, for instance,* [...] *request that the employee furnish a document attesting to those reasons.*" According to arbitral jurisprudence[4] and that of the Administrative Labour Tribunal[5], unwarranted refusal to provide such a document may constitute valid grounds for imposing an administrative or

disciplinary measure, depending on the circumstances.

That said, the new Act as adopted changes this balance.

Indeed, a paragraph has been added 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 over a period of 12 months.” It will therefore be prohibited to require a supporting document, including a medical certificate, for the first three short-term absences (less than four days) occurring over the 12 preceding months. According to the comments of the Minister of Labour, such calculation of absences is to begin with the first absence during the year rather than as of January 1st of each year.[6] The Act does not provide for an exception in cases where absences are excessive or otherwise questionable.

Under which conditions will employers be entitled to require a medical certificate?

Under the Act, 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 will also apply to employers whose employees are governed by the *Act respecting labour relations, vocational training and workforce management in the construction industry*.[7]

Furthermore, the Act includes an amendment to the provisions relating to family or parental leave and absences. The third paragraph of section 79.7 of the ALS is amended so as to prevent employers from requiring a medical certificate to justify such absences. However, we believe 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 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.

How will the Act affect insurers and employee benefit plan administrators?

On another note, the *Act mainly to reduce the administrative burden of physicians* also introduces a new prohibition applicable to insurers and employee benefit plan administrators. They will no longer be entitled to require that a medical service, such as a consultation, be received in order to reimburse the cost of services or a technical aid, nor will they be entitled to require that a medical service be received at a predetermined frequency different from that considered appropriate by the attending physician for the purpose of maintaining the payment of disability benefits. Coming into force The amendments to the ALS will come into force as of January 1, 2025. The amendments concerning insurers and employee benefit plan administrators will apply subsequently at a date or dates to be set by the Government.

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1. S.Q., 2024, c. 29.
2. CQLR, c. N-1.1.
3. *Civil Code of Québec,* CQLR, c. CCQ-1991, art. 2085.
4. 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.
5. 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.
6. COMMITTEE ON LABOUR AND THE ECONOMY, *Clause-by-clause consideration of Bill 68, An Act mainly to reduce the administrative burden of physicians*, October 1, 2024.
7. CQLR, c. R-20.