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Absenteeism and the obligation to accommodate: When the employer is required to consider the measures recommended by the medical experts

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In a judgment rendered on February 7, 2006, the Quebec Court of Appeal reiterated the obligations of the employer and the employee to play a role in seeking a reasonable accommodation. In cases where a collective agreement exists, the union has the same obligation.

More specifically, the Court of Appeal required that all the measures envisioned by the different medical experts consulted in the months preceding the administrative dismissal be considered by the employer, and that evidence of such analysis be presented when it is being judicially determined whether the termination of employment for excessive absenteeism should be maintained, regardless of the employer's undeniable patience and tolerance in previous years.

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