

# Newsletter



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## Requesting a complete medical report to justify a sick leave can be legitimate

*In Marchessault et Centre de la petite enfance Les Petits Adultes, 2019 QCTAT 1632, the plaintiff, an educator in a day care centre, filed a claim against her employer under s 122 of the Act respecting labour standards. She alleged having been unjustly suspended for three days after having been on sick leave. The employer held that the cause for the suspension was insubordination since, despite numerous requests, the plaintiff had not produced a medical certificate with a diagnostic.*

Accordingly, the employer ruled that the absence was unjustified and unauthorized. The plaintiff had based her refusal on the claim that the employer has no right to know the nature of her illness, which is a matter between her and her doctor.

The Administrative Labour Tribunal stated that taking a sick leave and failing to provide information on the diagnostic are unrelated. The fact that the medical certificate fails to disclose the illness does not in itself invalidate the plaintiff's claim that her absence was caused by a valid medical reason. However, the Tribunal still ruled that the employer was justified in requesting that the certificate contain information on the diagnostic, as provided by s 79.2 of the Act:

"[...] If it is warranted by the duration of the absence or its repetitive nature, for instance, the employer may request that the employee furnish a document attesting to those reasons[...]"

As the Tribunal explained:

The medical certificate is an efficient and legitimate tool allowing an employer to monitor the health of an employee. Precedents confirm that an employer may request a medical certificate containing accurate and objective data allowing to decide whether an employee is fit enough to perform his tasks. A mere mention that the leave is medically justified does not meet this requirement. [par 37; our translation]



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The Tribunal went even further by reminding that case law recognizes the employer's right to demand a medical expertise when the employee's reasons for leave are dubious. Requesting a diagnosis is far less invasive than a compelled medical expertise.

Requesting a medical certificate containing a clear and thorough diagnostic is therefore not necessarily an invasion of the employee's privacy. The plaintiff's ill-founded refusal to comply with her employer's requests was insubordination, and a suspension was justified.

