

The Province is Seeking to Legislate when Employers can Request Sick Notes

On Tuesday, March 21, 2023, the Minister of Health and Wellness, Michelle Thompson, introduced Bill No. 256 (the “Bill”). If passed, the Bill will enact the *Medical Certificates for Employee Absences Due to Sickness or Injury Act* (the “Act”) which will change the way employers manage employees who are on sick leave.

Specifically, Section 5 under Schedule B of the Bill says:

- 5 (1) An employer may not require a certificate with respect to an employee's absence from work due to the employee's sickness or injury unless
- (a) the absence continues for more than five consecutive working days; or
 - (b) the employee has had at least two non-consecutive absences of five or fewer working days due to sickness or injury in the preceding 12 months.

This provision allows employers to request a medical certificate any time an employee is absent from work due to sickness for more than five consecutive working days or if the employee is absent due to sickness more than once in the preceding 12 months.

The certificate can come from a healthcare professional “who is providing a diagnosis, treatment or care” to the employee with respect to the injury or illness that is causing the employee’s absence from work and falls within the healthcare professional’s scope of practice. Those healthcare professionals include doctors, nurses, chiropractors, social workers, counsellors, occupational therapists, psychologists and physiotherapists, among others.

Under the proposed law, if an employer does not comply with these restrictions on requesting medical certificates, the employee may make a complaint to the Director of Labour Standards. The Director will endeavour to settle the complaint and may make an order requiring the employer to comply with the *Act* and may also order the employer to pay an administrative penalty. This order can be appealed to the Labour Board within 10 days of receipt of the order.

The Bill does not specifically address unionized environments where a collective agreement may contain specific provisions regarding requesting medical documentation from employees. The Bill does indicate that regulations may be passed “excluding persons or classes of persons from the application of this Act” but, at this stage, the regulations have not been drafted.

Bill No. 256 is not yet a law – it must first be debated and passed by the Provincial Legislature and given Royal Assent. Further, the Bill provides that the *Act* will have effect on or after July 1, 2023. There may be revisions to the Bill before it becomes a law – for example, the categories of healthcare professionals that can provide a medical certificate or the length or frequency of absences needed before an employer can request a medical certificate may change.

If passed into law, this legislation may impact your existing policies and procedures – The Labour and Employment Group at Burchell Wickwire Bryson LLP can answer any questions you may have or assist in reviewing your workplace policies.ⁱ

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