

Fraudulent Medical Certificates: the Federal Council Stands Firm

In response to Postulate 22.3196 submitted by National Councilor Philippe Nantermod, the Federal Council published a report analyzing measures to address fraudulent medical certificates but declined to amend the existing legal framework. These certificates, often referred to as "certificats de complaisance," are issued when a healthcare professional deliberately attests to a non-existing inability to work. Both fraudulent and incorrect medical certificates (i.e., those resulting from genuine errors in medical judgment) create significant challenges for employers.

Summary of Postulate 22.3196

Postulate 22.3196 tasked the Federal Council with assessing the prevalence of fraudulent medical certificates through an employer survey and, if necessary, proposing appropriate measures.

The Federal Council's Position

After defining fraudulent medical certificates as those in which a healthcare professional deliberately attests to a non-existent inability to work, the Federal Council largely adopts a status quo approach, holding that the existing legal framework provides adequate means to prevent and sanction abuse.

Key points include:

- **Limited empirical basis:** While mentioning that fraudulent certificates are rare, the report also acknowledges that employers and authorities frequently suspect that they are dealing with incorrect medical certificates, i.e., certificates resulting from genuine errors in medical judgment.
- **Preference for non-legislative measures:** Rather than introducing new laws, the Federal Council advocates awareness-raising among employers and healthcare professionals via professional associations and medical schools.

Challenges for Employers

In our view, the Federal Council's approach overlooks the practical and financial challenges employers face, particularly in relation to incorrect medical certificates.

Common challenges include:

- **Void terminations:** Certificates may render terminations void.
- **Extended notice periods:** Employees may use certificates to prolong notice periods.

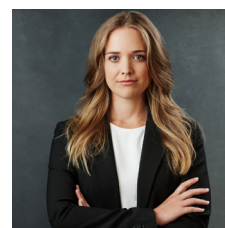
- **Financial burden:** Employers bear salary costs during absences unless optional daily allowance insurance is in place.

Conclusion and Practical Guidance

Although the Federal Council has opted against stricter legislation, our experience shows that employers can mitigate the impact of fraudulent or incorrect medical certificates by taking proactive measures:

- **Strengthen internal policies:** Require certificates for absences as of one or two days and establish procedures for second medical opinions.
- **Challenge questionable certificates:** Promptly challenge questionable certificates and require medical examinations by a physician appointed by the employer.
- **Optional daily allowance insurance:** Consider insurance to cover temporary loss of earnings due to illness, after evaluating the cost/benefit based on the specific context. If such insurance is in place, immediately explain to the insurer the reasons for which a certificate appears questionable.

Should you require any further information on this subject, please do not hesitate to contact the author or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.



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