



Employee's illness: the medical certificate must indicate the foreseeable duration of the illness

CAL-2019-00463

A very interesting decision was delivered on November 5, 2020 regarding an employee's illness.

The Luxembourg Court of Appeal reminded that: *"In order to benefit from the protection against dismissal provided by article L.121-6 of the Labor Code, an employee who is unable to work must comply with two information formalities vis-à-vis their employer. On the day of the incapacity, they must notify it to the employer or their representative. No later than the 3rd day of their absence, they must submit to the employer a medical certificate attesting of their incapacity to work as well as the foreseeable duration of the incapacity. "*

In this case, the employee was on vacation abroad and had to be hospitalized.

It was foreseen that they would return to work on July 30, 2018, and the Court of Appeal noted that the employee did inform the employer of their illness by email on July 26, 2018.

The Court of Appeal nevertheless confirmed the first instance judgment which considered that the protection against dismissal provided by Article L.121-6 of the Labor Code did not apply to this employee.

Indeed the medical certificate submitted by this employee to their employer did not indicate the date of the end of their sick leave, i.e. the foreseeable duration of her incapacity to work.

This is required by article L.121-6(2) of the Labor Code.

The court considered that the employee had not fulfilled their obligation to inform the employer, as the aforementioned medical certificate did not indicate the date of the end of their sick leave.

As a consequence the dismissal was declared justified.

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Linari law firm is of course available should you need any assistance in labor law or dispute resolution.