

G + Education

INFO

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EDITORIAL



The preventive withdrawal of a pregnant or breastfeeding worker: the Court of Appeal clarifies your obligations

M^{re} Mylène Lussier, Le Corre Lawyers

The program *For a Safe Maternity Experience* allows to maintain pregnant or breastfeeding workers in their job when it involves physical danger for the health of the unborn child, for the breastfed child or for the pregnancy. To be admissible, it is required to be pregnant or breastfeeding a child, be a worker under the *Act respecting occupational health and safety* (AOHS), be in the presence of a danger certified by a *Reassignment or preventive withdrawal certificate for a pregnant or breastfeeding worker*, be able to work, be available for a reassignment and to have submitted the certificate to the employer¹.

Recently, the Court of Appeal² clarified the scope of a pregnant or breastfeeding worker's right to a preventive withdrawal³: the submission of the reassignment or preventive withdrawal certificate for a pregnant or breastfeeding worker to the employer is equivalent to a request for reassignment. The employer has an obligation of means (and not of result). They must explain the reasons preventing reassignment, if applicable.

In this matter, a pregnant patrol sergeant submitted a certificate to her employer, a municipal police service. She requested to be reassigned. Her employer, prioritizing reassignment following occupational injuries or disabilities, did not offer her reassignment. It is important to remember that the cost of benefits paid to pregnant or breastfeeding employees removed from work is not directly charged to the employer's file by the CNESST. In addition, the absence of reassignment caused a loss of approximately \$800 per month to the employee due to of the annual maximum insurable amount used by the CNESST for the calculation of the income replacement indemnity ("IRI"), and the experience likely to have an impact on her career. She filed a complaint for unlawful sanction (article 227 AOHS), that was dismissed by the CNESST and the Administrative Labour Tribunal ("ALT"). The ALT concluded to the absence of sanction⁴, explaining that the right provided by the AOHS "[...] is intended for the immediate removal from work", that an employer "[...] has no obligation to follow up on a reassignment request, nor any obligation to reassign" and that the alleged retaliatory measures resulted from the application of the AOHS.

The Superior Court upheld the workers' recourse⁵, declaring the ALT's decision unreasonable and contrary to the

Supreme Court's ruling in the decision *Dionne*⁶. The Employer appealed this decision alleging notably a misinterpretation of the preventative withdrawal and of the decision *Dionne* and that the complaint is not the appropriate recourse.

The Court of Appeal dismissed the Employer's appeal by invoking the purpose of the Law and the legislator's intention. The Court held that, according to the Supreme Court in *Dionne*, the right protecting the worker is above all that of being reassigned (protection of the worker and the child). The withdrawal from work is not the result of the worker's refusal to be reassigned but rather the incapacity of the employer to offer the worker a work free from danger. The job retention also falls within the broader framework of the *Charter of Human Rights and Freedoms* that protects the right to just and reasonable work conditions and that respect the health, safety and integrity⁷. Finally, the complaint under article 227 AOHS is the appropriate mechanism. The file was returned to the ALT for it to assess the grounds of the refusal to reassignment and to determine whether the worker was subject to unlawful sanction.

Considering this decision, an automatic withdrawal from work until the end of the pregnancy or the breastfeeding is not the appropriate response. The possibilities of reassignment must be explored, documented and a refusal explained. According to the Court of Appeal:

An employer does not have an obligation of result regarding the reassignment of a pregnant or breastfeeding worker, but they must act and take reasonable measures to fulfill their obligation of means. To do this, the employer must genuinely consider the reassignment request, and it is only if reassignment is not possible that the worker will be removed from work and receive an IRI. The employer also has the obligation, if applicable, to inform the worker of the reasons why she cannot be assigned to other tasks during pregnancy⁸.

1. <https://www.cnesst.gouv.qc.ca/fr/prevention-securite/milieu-travail-sain/grossesse-allaitement/programme-pour-une-maternite-sans-danger>

2. *Ville de Québec v. Ouellet*, 2025 QCCA 825

3. Article 40 and following of the *Act respecting occupational health and safety* (« AOHS »), RLRQ, c. S-2.1

www.cnesst.gouv.qc.ca/fr/organisation/documentation/formulaires-publications/certificat-visant-retrait-preventif-l'affectation

4. *Ouellet and Ville de Québec (Service de police)*, 2022 QCTAT 5678

5. *Ouellet v. TAT*, 2024 QCCS 621

6. *Dionne v. Commission scolaire des Patriotes*, 2014 CSC 33

7. RLRQ, c. C-12, article 46

8. *Ville de Québec v. Ouellet*, aforementioned, note 1, para. 79

1 By humiliating and mocking his students, he repeatedly failed to fulfill his obligations as a teacher

A teacher with 27 years of seniority is contesting his suspensions (1, 3, 6, 12 and 24 days) and his termination. The School Service Center notably reproaches him to mock and humiliate his students: for example, the employee is often angry, he yells, threatens, insults his students by calling them "lazy" or "sparrow", he does not consider the diagnosis and particular needs of some of them. Many students fear his inappropriate reactions. It is not the employee's capacity to teach that is at issue, but his interpersonal skills. However, despite a progressive discipline, the employee did not change his behavior. Additionally, the evidence shows that he does not admit any wrongdoing and has never expressed regret. As stated by the Supreme Court, a teacher's role as a model and influence must be considered when determining a sanction. In the present case, the arbitrator ruled that it was not her place to show leniency, as that privilege belongs to the School Service Center. The grievances are dismissed.

Alliance des professeures et professeurs de Montréal and Centre de services scolaire de Montréal
2025EXPT-1419, 2025 QCTA 242, SAE 9830, Nathalie Faucher

2 A janitor could be reassigned in another building for a few days

A janitor is contesting his reassignment in another building for a few days. The union is alleging that the role of a janitor necessarily implies an assignment to a physical location. According to the arbitrator, the position of the employee has not been modified by his temporary assignment to tasks that are in line with his job description in another location than the usual place of work. The assignment being less than 10 days, the provisions regarding the temporary assignment do not apply. Finally, it is not a matter either of a reassignment for administrative reasons requiring an agreement. As stated by the School Service Center, the employee's temporary assignment of a few days in another building was within his right to manage that is not framed by the collective agreement. The need being real, punctual, of a short duration, at nearly 7 km from the usual place of work, one cannot claim there has been abuse of rights or an arbitrary behavior. The grievance is dismissed.

Syndicat du personnel de soutien de Jonquière and Centre de services scolaire de la Jonquière
2025EXPT-1455, 2025 QCTA 249, SAE 9834, Éric-Jan Zubrzycki

3 IRI during the summer season: the School Service Center could keep the CNESST's reimbursement

The union is contesting the School Service Center's refusal to give back to a part-time teacher the amount which was reimbursed to them by the CNESST for the income replacement indemnity (IRI) to which she was entitled for the 2023 summer period. According to the arbitrator, the employee tacitly renounced to the IRI in favor of her employer by accepting to continue receiving her salary as if she were still working, during her work stoppage. The renunciation was valid for all the amounts paid by the employer, including those for the summer period. The employer completely respected his obligation provided for in the collective agreement. The employee cannot choose to benefit from the advantage set out in the collective agreement, that is to receive a higher compensation than the one provided for in the *Act respecting industrial accidents and occupational diseases* and to avoid delays of the CNESST's compensation process, without respecting the obligation to renounce to the IRI in favor of the employer. The grievance is dismissed.

Syndicat de l'enseignement de la région de Laval and Centre de services scolaire de Laval
SAE 9817, Frédéric Tremblay

RECENT DECISIONS

4 Remuneration of the extracurricular activities: the School Service Center decides

The union claims that as part of the Ministry of Education's extracurricular activities program that takes place outside of the regular work hours, teachers must be paid according to the terms of the collective agreement and not based on the employer's rate. According to the arbitrator, the program is not targeted by the collective agreement. The extracurricular activities are not part of the teachers' educational tasks since they are not assigned tasks that add to the regular week of work. A student activity does not automatically become a part of the educational task because it is within a teacher's functions. Additionally, teachers perform these activities on a voluntary basis. The arbitrator concluded that the remuneration of extracurricular activities falls under the School Service Center's right to manage and that they can offer the remuneration that they judge appropriate. The grievances are dismissed.

Syndicat de Champlain (CSQ) and Centre de services scolaire des Patriotes
2025EXPT-1696, 2025 QCTA 329, SAE 9846, Alain Turcotte

5 The intensity of the crisis was overflowing from the normal staff-student relationship: cost transfer granted

The School Service Center is contesting the CNESST's refusal to grant them the cost allocation transfer related to the workplace accident of a special education teacher and a psychoeducator. The School Service Center alleges that the lesions are attributable to a third party, a student who has become disorganized. The employer provides services to approximately 150 young people with autism spectrum disorder or with moderate to severe deficiency. Crises are part of everyday life. Despite the statistics on violence in the educational field, the intensity of this crisis overflows from the normal staff-student relationship. Facing a violent and sudden disorganization, about ten support workers were asked to take control of the student who is normally rather passive. The intervention was long and required the intervention of police officers and the use, notably, of a chemical restraint. The student was tide up and taken to the hospital. Some employees mention to have acted "out of survival instinct to save themselves". In the presence of exceptional, rare and unusual circumstances, the cost allocation transfer is granted.

Centre de services scolaire Marie-Victorin
2025 QCTAT 2498, Isabelle St-Jean

6 The expert witness is not recognized: the cost-sharing is refused

The School Service Center is contesting the CNESST's refusal to grant them a cost-sharing under article 329 of the *Act respecting industrial accidents and occupational diseases*. The School Service Center alleges that the employee has a pre-existing musculoskeletal condition, and in accordance with the opinion of her expert, a generalized anxiety disorder. However, the evidence submitted by the employer does not allow to distinguish the impact of the alleged deficiencies from the other diagnostics of the work injury. Above all, the tribunal refuses to qualify the employer's healthcare professional as an expert which makes her opinion inadmissible. Notably, the fact that she works with clients that sometimes encounters mental health difficulties or at musculoskeletal level does not give her the required specialization. She could not present herself as a specialist, having no certification in psychiatry not orthopedics. Moreover, her medical opinion of 50 pages, along with 200 pages of medical articles, some of which are not commented on, do not respect her duty of clarity and conciseness. The contestation is refused.

Centre de services scolaire de Montréal
2025 QCTAT 3689, Julie Samson