

SHORT TERM DISABILITY PLAN

URBAN POSTAL OPERATIONS

**A GUIDE TO HELP LOCALS NAVIGATE
THEIR WAY THROUGH THE STDP**

CANADIAN UNION OF POSTAL WORKERS

APRIL 2013

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TAB B - UPO

SECTION 1 – STEP BY STEP – A MEMBER IS OFF WORK DUE TO ILLNESS OR INJURY

There are four different paths a member can go down when they cannot attend work for medical reasons:

- (1) They have an illness, such as a cold, and will be away from work for 7 calendar days or less.
- (2) They have an illness, such as the flu, and will be away from work for more than 7 calendar days.
- (3) They have injured themselves (not on the job), such as twisted their ankle playing baseball.
- (4) They have become ill and are hospitalized.

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LANGUAGE

Clause 20.01 Notification to Corporation of Absence:

- (a) *An employee who is unable to report to work as scheduled for the following reasons: illness, emergency, a non-work related injury, hospitalization and/or, circumstances not directly attributable to the employee, including but not limited to, illness in his or her immediate family, as defined in clause 21.02 shall notify his or her supervisor or other designated individual prior to the commencement of his or her shift, or as soon as possible thereafter, and advise his or her supervisor or other designated individual as to the probable date of his or her return to work.*

Clause 20.07 Usage of Urgent Personal Days:

- (a) *Urgent Personal Days must be taken for the following purposes:*
- (i) *illness;*
 - (ii) *emergency;*
 - (iii) *in circumstances not directly attributable to the employee, including but not limited to, illness in his or her immediate family as defined in clause 21.02;*
 - (iv) *or during the qualifying period under the Short Term Disability Program, as set out in Article 20, part (C).*
- (b) *For urgent Personal Days, an employee shall complete and furnish the Corporation with the necessary leave of absence forms as soon as possible after the commencement of the absence.*

Clause 20.08 Top-Up Credits:

As of the date on which the Short Term Disability Program is implemented, all sick leave credits accumulated shall be converted to "top-up credits" on a minute for minute basis.

Clause 20.09 Eligibility and Approval:

- (a) An employee shall be eligible for short term disability benefits when he or she is incapacitated by illness, or a non-work related injury, or is hospitalized.*
- (b) In order to be eligible for short term disability benefits, and remain covered once approved, an employee must:
 - (i) be under the care of a physician; and*
 - (ii) follow the treatment deemed appropriate for the illness or injury; and*
 - (iii) provide the required medical information to the Disability Management Provider; and*
 - iv) in the case of an illness or injury related to substance abuse, agree to receive ongoing, active professional treatment deemed appropriate for the condition being treated.**
- (c) Approval for short term disability benefits is determined by the Disability Management Provider.*

Clause 20.10 Short Term Disability Benefits:

- (a) An employee can receive short term disability benefits up to a maximum of thirty (30) weeks after the date of the commencement of the illness or injury.*
- (b) Under the Short Term Disability Program, the qualifying period is as follows:
 - (i) zero (0) days from date of hospitalization;*
 - (ii) zero (0) days for a non-work related accident, when medical attention was sought within twenty-four {24} hours of the accident; or zero {0} days from when medical attention is sought for a non-work related accident, if sought after the twenty-four (24) hour period;*
 - (iii) seven (7) calendar days for illness;*
 - (iv) in cases of illness where an employee is hospitalized prior to the end of the qualifying period, short term disability benefits are payable as of the date of hospitalization.**
- (c) In the event of illness, an employee must use his or her Personal Days until short term disability benefits commence*
- (d) Once approved for short term disability benefits by the Disability Management Provider, if an employee's Personal Days have been exhausted, the Corporation will maintain the employee's regular wages during the qualifying period, subject to the availability of top-up credits.*
- (e) Once approved for short term disability benefits by the Disability Management Provider, if an employee's Personal Days have been exhausted and the employee does not have any top-*

up credits available, the employee may elect to use any available vacation leave or any available compensatory leave to be paid during the qualifying period.

(f) Following the qualification period, if applicable:

(i) an employee shall receive seventy percent (70%) of his or her regular wages for up to fifteen (15) weeks.

(ii) an employee can use his or her top up credits, if available, on a minute for minute basis to augment his or her short term disability benefits to one hundred percent (100%) of his or her regular wages, during this period.

(g) Should an employee be approved for short term disability benefits for a period exceeding fifteen (15) weeks (excluding any applicable qualifying period), the employee shall apply for Employment Insurance benefits.

(i) If an employee is approved for Employment Insurance benefits, and complies at all times with all rules associated with the receipt of Employment Insurance benefits, the Corporation shall provide the employee with the difference in pay between the amount provided in Employment Insurance Benefits and seventy percent (70%) of the employee's regular wages for the balance of the thirty (30) weeks, a duration which includes the qualification period.

(ii) If an employee demonstrates that he or she applied, but was not approved for, Employment Insurance benefits, the Corporation shall provide the employee with seventy percent (70%) of his or her regular wages for the balance of the thirty (30) weeks, a duration which includes the qualification period.

(iii) During this period an employee can use his or her top-up credits, if available, on a minute for minute basis to augment his or her short term disability benefits to ninety- five percent (95%) of his or her regular wages.

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PATHS

PATH #1

They have an illness, such as a cold, and will be away from work 7 calendar days or less.

- **Step 1:** If a member cannot report to work due to illness, they must inform their supervisor or other designated individual that they will be absent and tell them when to expect their return to work (20.01).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form (20.07 (b)).
- **Step 3:** Provided they have personal days in the bank, they will be paid. If they do not have personal days, it will be considered as leave without pay unless Canada Post agrees to grant another type of paid leave (20.07 (a)).

PATH #2

They have an illness, such as the flu, and will be away from work for more than 7 calendar days.

- **Step 1:** If a member cannot report to work due to illness, they must inform their supervisor or other designated individual that they will be absent and tell them when to expect their return to work (20.01).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form (20.07 (b)).
- **Step 3:** They must complete and provide the necessary forms (see Appendix B) and medical information to the disability management provider (20.09 (b)). *Both forms should be completed and returned within 14 days from the onset of the disability to avoid interruptions of payment to the member.*
- **Step 4:** They have a qualifying (waiting) period of 7 calendar days and must use their personal days to cover this period (20.10 (b) & (c)). If a member no longer has personal days, they may use top-up credit to cover the qualifying period in order to be paid (20.10 (d)). If they have no top-up credits to cover the qualifying period, they may use vacation leave or any other compensatory leave in order to be paid (20.10 (e)).
- **Step 5:** If they are off for more than 16 consecutive weeks, they must apply for Employment Insurance (EI) Benefits to continue to be covered by STD (20.10 (g)). Coverage continues if you have applied but were denied for EI benefits (20.10 (g)(ii)).

PATH #3

They have injured themselves (not on the job), such as twisted their ankle playing baseball.

- **Step 1:** If they cannot report to work due to a non-work related injury, they must inform their supervisor or other designated individual that they will be absent and must tell them when to expect their return to work (20.01).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form (20.07 (b)).
- **Step 3:** They must complete and provide the necessary forms (Appendix B) and medical information to the Disability Management Provider (20.09 (b)). They are

covered from the first day and do not have a qualifying (waiting) period provided medical attention is sought within 24 hours (20.10 (b)(ii)). If medical attention is sought after the twenty-four (24) hour period, the waiting periods stops at the point when medical attention is sought (20.10 (b)(ii)). *Both forms should be completed and returned within 14 days from the onset of the disability to avoid interruptions of payment to the member.*

- **Step 4:** If they are off for more than 15 consecutive weeks, they must apply for EI Benefits to continue to be covered by STD (20.10 (g)). Coverage continues if you have applied but were denied for EI benefits (20.10 (g)(ii)).

PATH #4

They have become ill and are hospitalized.

- **Step 1:** If they cannot report to work due to hospitalization, they must inform their supervisor or other designated individual that they will be absent and must tell them when to expect their return to work (20.01).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form (20.07 (b)).
- **Step 3:** They must complete and provide the necessary forms and medical information to the Disability Management Provider (20.09 (b)). They do not have a qualifying (waiting) period from the date of hospitalization (20.10 (b)(i)). *Both forms should be completed and returned within 14 days from the onset of the disability to avoid interruptions of payment to the member.*
- **Step 4:** If they are off for more than 15 consecutive weeks, they must apply for Employment Insurance Benefits to continue to be covered by STD (20.10 (g)). Coverage continues if you have applied but were denied for EI benefits (20.10 (g)(ii)).

At the beginning of the fiscal (calendar) year, a member receives 7 personal days (20.02). Personal days can be used one of two ways; either as Planned Personal Days or as Urgent Personal Days. There are a number of restrictions on how a member can access their personal days.

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Clause 20.02 Annual Allocation:

(a) A full-time employee will be allocated seven (7) Personal Days, expressed in hours, on the first day of each fiscal year.

A part-time employee shall receive a prorated amount of Personal Days, expressed in hours, on the first day of each fiscal year. The hours will be based on: the weekly schedule of the part-time employee on the first day of the fiscal year, based on the percentage of fulltime hours.

Planned Personal Days (not urgent)

Clause 20.06 Usage of Planned and Preapproved Personal Days:

- (a) All planned Personal Days must be taken in multiples of two (2) hours, unless taken for an employee's entire scheduled shift.*
- (b) An employee who wishes to use a planned Personal Day shall provide his or her supervisor or other designated individual with the necessary leave of absence forms.*
- (c) Requests for planned Personal Days shall be preapproved subject to a time convenient for the employee and the Corporation.*

LETTER (NEW 8)

Denis Lemelin
President
Canadian Union of Postal Workers
(CUPW)
377 Bank Street
OTTAWA ON K2P 1Y3

Dear Mr. Lemelin:

GRANTING PERSONAL DAYS (SHORT-TERM DISABILITY PROGRAM)

Please see below a draft of a communique that will be sent out to team leaders prior to the implementation of the STDP.

It is important that team leaders make efforts to accommodate their employees' requests for Personal Days and approve them whenever possible. We are providing team leaders with information in how best to manage requests for Personal Days.

Personal days can be used for both urgent and non-urgent situations.

*Personal Day requests for non-urgent situations shall be pre-approved subject to a time convenient to the employee and the Corporation. We are asking all employees, and you should encourage them, to provide as much notice as possible so you and your employees can plan appropriately. **All team leaders should approve as many Personal Day requests as possible.** Under normal circumstances, team leaders should respond to Personal Day requests within 24 hours of a request being made. If a Personal Day cannot be approved, an optimal alternative should be reached between you and your employee.*

Communication is critical: Employees are not required to provide the reason for a Personal Day request for a non-urgent situation. However, if you cannot grant a Personal Day, do ensure you have a conversation with the employee before you deny the request, to try to find an alternative that is good for both your employee and your operations.

Alternatives such as exploring a different date when the employee could be off or asking if the employee needs to be off the entire day or only needs a portion of a day are options to be considered.

Personal Days can be taken in multiples of two (2) hours. Also, ensure your employee is aware that after using all Personal Days, any absences due to illness that are seven (7) calendar days or less will be unpaid. This may help your employees manage their Personal Days so they don't put themselves in a situation of being on leave without pay.

Understanding your employees' needs, proper planning and having a strong rapport with all your employees is key to the successful implementation of the new Personal Days for you and your team.

Sincerely,

*Mark MacDonell
Chief Negotiator*

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- **Step 1:** If a member wishes paid time off work for any reason other than illness, injury or emergency they must apply and fill out a leave of absence form to use their personal day as a planned personal day. (20.06)
- **Step 2:** A member must have their leave application approved before they can take their planned personal day. (20.06)
- **Step 3:** The employer cannot deny the leave based on “operational requirements”. The leave shall be subject to a time convenient for the employee and the Corporation. (20.06 (c)). While this may not be a big difference from “operational requirements” it is still a difference.

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Urgent Personal Days

Clause 20.01 Notification to Corporation of Absence:

(a) An employee who is unable to report to work as scheduled for the following reasons: illness, emergency, a non-work related injury, hospitalization and/or, circumstances not directly attributable to the employee, including but not limited to, illness in his or her immediate family, as defined in clause 21.02 shall notify his or her supervisor or other designated individual prior to the commencement of his or her shift, or as soon as possible thereafter, and advise his or her supervisor or other designated individual as to the probable date of his or her return to work.

Clause 20.07 Usage of Urgent Personal Days:

(a) Urgent Personal Days must be taken for the following purposes:

- (i) illness;*
- (ii) emergency;*

(iii) in circumstances not directly attributable to the employee, including but not limited to, illness in his or her immediate family as defined in clause 21.02; or
(iv) during the qualifying period under the Short Term Disability Program, as set out in Article 20, part (C).

(b) For urgent Personal Days, an employee shall complete and furnish the Corporation with the necessary leave of absence forms as soon as possible after the commencement of the absence.

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- **Step 1:** Urgent personal days must be used for an illness, emergency or in circumstances not directly attributable to the employee (20.07).
- **Step 2:** If a member cannot report to work due to illness, emergency or in circumstances not directly attributable to themselves, they must inform their supervisor or other designated individual that they will be absent and must tell them when to expect their return to work (20.01).
- **Step 3:** A member must fill out a leave of absence form as soon as possible after the commencement of the absence (20.07 (b)).
- **Step 4:** If the personal day is used for illness, see Section 1 path 1 or 2. If the personal day is used for circumstances not directly attributable to the member, see Section 6.

SECTION 3 – HOW CAN A MEMBER USE TOP-UP CREDITS

Clause 20.08 Top-Up Credits:

As of the date on which the Short Term Disability Program is implemented, all sick leave credits accumulated shall be converted to "top-up credits" on a minute for minute basis.

Clause 20.10 Short Term Disability Benefits:

- (d) Once approved for short term disability benefits by the Disability Management Provider, if an employee's Personal Days have been exhausted, the Corporation will maintain the employee's regular wages during the qualifying period, subject to the availability of top-up credits.*
- (f) (ii) an employee can use his or her top-up credits, if available, on a minute for minute basis to augment his or her short term disability benefits to one hundred percent(100%) of his or her regular wages, during this period.*
- (g) (iii) During this period, an employee can use his or her top-up credits, if available, on a minute for minute basis to augment his or her short term disability benefits to ninety-five percent (95%) of his or her regular wages.*

Clause 24.01 Eligibility for Leave:

Once approved for injury-on-duty leave, the Corporation will maintain the employee's regular pay during the leave period, subject to the availability of top up credits as defined in clause 20.08.

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Starting January 1st, 2013, all sick leave credits become "top-up credits". (20.08) A member can use their top-up credits one of four ways:

- (1) For the 7 calendar day qualifying period when they no longer have personal days and are approved for the Short Term Disability Plan (20.10 (d)).
- (2) To top-up the first 16 weeks (or 15 weeks if there is a waiting period) of Short Term Disability Plan to 100% pay (20.10 (f)(ii)).
- (3) To top-up the remaining 14 weeks of Short Term Disability up to 95% of his or her regular wages (20.10 (g)(iii)).
- (4) To top-up Injury-On-Duty pay to 100% (24.01).

SECTION 4 – APPEAL PROCESS

Clause 20.12 Appeal Process:

- (a) An appeal is a written request from an employee to revisit the decision made by the Disability Management Provider. The appeal process is designed to provide an objective review of the decision made and to provide the employee with the opportunity to submit additional medical information.*
- (b) If an employee avails himself or herself of his or her right to appeal, he or she will receive short term disability benefits during the time it takes to come to a determination regarding the first level appeal. If the first level appeal is denied, the Corporation shall recover any overpayment from the employee's pay, but such recovery shall not exceed ten percent (10%) of the employee's pay in each pay period, until the entire amount is recovered. However, in cases of noncompliance with the Short Term Disability Program, the ten percent (10%) rule shall not apply and the recovery shall be made in full.*
- (c) Notwithstanding the foregoing, in the event that employment ends, any overpayment still outstanding will be recovered in full from the employee's final pay.*

Clause 20.13 First Level Appeal:

- (a) An employee must submit a written intent to appeal to the Disability Management Provider within seven (7) calendar days of the original decision having been communicated to the employee in writing.*
- (b) Within thirty (30) calendar days from the notice to appeal, the employee must provide the Disability Management Provider's Case Manager with any additional medical information that the employee wishes to submit or that has been requested by the Case Manager.*
- (c) The Disability Management Provider will provide a written decision with detailed reasons and recommendations to the employee.*

Clause 20.14 Final Appeal:

- (a) When an employee claim is denied at the first level appeal, the Union and the employee will be advised in writing.*
- (b) The Union on behalf of the employee, has fourteen (14) calendar days to advise the Case Manager, in writing, of the intent to appeal. Upon notice to the Disability Management Provider of the intent to appeal, the Case Manager will provide to the agreed upon independent medical physician and the Union, upon request, copies of the claim documents.*
- (c) In order to proceed to final appeal, the employee must sign a release authorizing a representative of the Union to represent the employee's interests during the final appeal.*
- (d) The independent medical physician shall undertake a review of the information provided as soon as possible following his or her appointment.*
- (e) The independent medical physician may hold a fact finding meeting to ascertain the issues and facts prior to rendering a decision. If a fact finding meeting is held, the parties shall not be represented by lawyers, and no witnesses will be allowed to testify.*

- (f) *If the parties are unable to agree on an independent medical physician within twenty-one (21) calendar days from the notice to appeal, either party can make a request to the Minister of Labour for the appointment of an independent medical physician to make a final review and determination.*
- (g) *The decision of the independent medical physician shall be final and binding upon both parties, without creating a precedent.*
- (h) *The fees and expenses of the independent medical physician, including the costs of the fact finding meeting, if any, shall be shared equally between the parties.*

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- **Step 1:** Once a member receives a letter from Canada Post's Disability Management Provider, they have 7 calendar days to submit a written request to appeal this decision (First Level Appeal) (20.13 (a)).
- **Step 2:** It is important for the member to read the reason provided for the denial of the leave and to provide within 30 calendar days any additional information to support their appeal (20.13 (b)).
- **Step 3:** With the letter from the Disability Management provider there will be a release for the member to sign which would allow the DM provider to send the member's medical file to the Union in case their claim has to go the final level of appeal.

PLEASE NOTE: members are encouraged to sign the release immediately as this will speed up the process if the union has to take the member's claim to the final level of appeal.

- **Step 4:** If a member does appeal the decision, they will be paid Short Term Disability Benefits while waiting for the first level appeal decision but will be required to pay it back if they lose their appeal (20.12 (b)).
- **Step 5:** The Disability Management Provider will provide a written decision to the member (20.13 9c)). If the decision is denied, both the member and the Union will be advised in writing (20.14 (a)).
- **Step 6:** If the member has not signed the release during the first level of appeal, another one will be included with the decision letter (step 5)
- **Step 7:** If a member signs the release, the union will receive a copy of the decision and the entire medical file.
- **Step 8:** The Union has 14 calendar days to notify the employer if we wish to take the claim to the final level of appeal (20.14 (b)).
- **Step 9:** If the Union decides to take the claim to the final level, the Union and the Employer will agree on a medical physician to hear the appeal (20.14(b)).
- **Step 10:** The employer will send the member's medical file to the Physician who is handling the appeal (20.14 (b)).

- **Step 11:** The Union must have the member sign a release authorizing the Union to represent them during the final level of appeal (20.14 (c)). *The release referred to in steps 3, 6 & 7.*
- **Step 12:** The Union may submit additional medical information to the physician and may submit a written brief explaining why the member's claim should be approved (20.14 (b) & (d)).
- **Step 13:** The member, the Union and the DM provider shall be informed in writing of the Medical Physician's decision.
- **Step 14:** CPC will be advised on the outcome of the appeal.

*It should be noted that CPC has implemented an additional review of the member's claim. If the member submits additional medical information for the Final Appeal, CPC will review the information and may reverse their decision to deny the claim. This will put money in the member's pockets earlier than waiting for the Final Appeal decision and it will save the Union money.

At the time of writing, all appeals will be handled by the Regional Grievance Officers or their designates.

20.04 Annual Payout and Carry Over:

- (a) At the end of each fiscal year, an employee shall automatically have all remaining Personal Days paid out unless, on written request, as per the rules set out by the Corporation, he or she elects to carry over to the next fiscal year up to a maximum of five (5) unused Personal Days.*
- (b) An employee may not have more than twelve (12) Personal Days in any one fiscal year.*
- (c) The payout of unused Personal Days prior to the end of the fiscal year is not allowed.*
- (d) Any payout of Personal Days shall be based on the employee's hourly rate of pay as of the last day of the fiscal year. All payouts will be made by March 31 of the following fiscal year.*

20.05 When Employment Ends:

- (a) When an employee leaves the Corporation during the fiscal year for any reason, other than the termination of his or her employment by the Corporation, any unused Personal Days as of his or her last day of employment shall be paid on a prorated basis.*
- (b) When an employee leaves the Corporation during the fiscal year for any reason and has used more Personal Days than he or she was entitled to, the value of excess Personal Days of the employee shall be recovered.*

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The employer will automatically pay out any unused personal days and it is up to the member to submit in writing their request to carry over any of their personal days. Canada Post will have a form (available from December 1 to January 7) for the member to fill out if they want to carry over any personal days. A member can fill out a hard copy or fill it out on the Employee Self-Serve site (ESS). A member is entitled to a maximum of 12 personal days in the bank and therefore can only carryover a maximum of 5 personal days from one year to the next (20.04 (a) & (b)).

If a member leaves the Corporation for any reason other than termination, they will be paid out their personal days on a pro-rated basis (20.05(a)).

20.07 Usage of Urgent Personal Days:

(a) Urgent Personal Days must be taken for the following purposes:

- (i) illness;*
- (ii) emergency;*
- (iii) in circumstances not directly attributable to the employee, including but not limited to, illness in his or her immediate family as defined in clause 21.02; or*
- (iv) during the qualifying period under the Short Term Disability Program, as set out in Article 20, part (C).*

(b) For urgent Personal Days, an employee shall complete and furnish the Corporation with the necessary leave of absence forms as soon as possible after the commencement of the absence.

21.03 Leave for Other Reasons:

Where conditions warrant it, special leave with pay may be granted when circumstances not directly attributable to the employee, including but not limited to illness in the immediate family, as defined in clause 21.02, prevent his or her reporting for duty. Such leave shall not be unreasonably withheld.

As of the date on which the Short Term Disability Program is implemented, an employee can only be granted leave with pay under this clause once he or she has exhausted all of his or her Personal Days.

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A member's access to Special Leave has changed with this new Collective Agreement. If a member finds themselves in a circumstance which would require them to apply for Special Leave, they must first exhaust their Personal Days. (20.07)). Once their Personal Days are exhausted, they can apply for Special Leave under article 21. (21.03). It is important for members to understand that they are still entitled to Special Leave once their Personal Days have been exhausted.

On the plus side, the member cannot be refused for using a Personal Day if it meets the criteria articulated in 20.07 (a)(iii)), which is the same criteria as the previous Collective Agreement. On the down side, if the member uses all their Personal Days, they have no paid leave for the 7 calendar day waiting period for STD.

- **Step 1:** If they cannot report to work due to circumstances not directly attributable to the employee, including but not limited to illness in the immediate family, they must inform their supervisor or other designated individual that they will be absent and must tell them when to expect their return to work (20.01).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form (20.07 (b)).
- **Step 3:** If they have exhausted their Personal Days, the member still must follow steps 1 & 2. However, as in the past, the employer may try to deny their request for Special Leave. If so, the member should be encouraged to file a grievance.

*In the past the employer has ordered members in some Locals to apply for Special Leave when the employer is sending them home due to inclement weather. If this is the case, please ensure that members are not forced to use any of their personal days.

24.01 Eligibility for Leave:

** As of January 1, 2013, an employee shall be granted injury-on-duty leave with pay, at seventy-five percent (75%) of his or her regular pay, for the period of time approved by a provincial workers' compensation board that he or she is unable to perform his or her duties because of:*

- (a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct, or*
- (b) sickness resulting from the nature of his or her employment, or*
- (c) over-exposure to radioactivity or other hazardous conditions in the course of his or her employment, if the employee agrees to pay to the Corporation any amount received by him or her for loss of wages in settlement of any claim he or she may have in respect of such injury, sickness or exposure.*

Once approved for injury-on-duty leave, the Corporation will maintain the employee's regular pay during the leave period, subject to the availability of top up credits as defined in clause 20.08.

Until January 1st, 2013 an employee shall be granted injury-on-duty leave with full pay under this clause.

24.02 Part-time Employees – Injury-on-Duty Leave:

Subject to the approval of the relevant workers' compensation boards, the Corporation will calculate the rate of pay for part-time employees on injury-on-duty leave on the following basis:

- (a) where the employee has worked for the Corporation for fifty-two (52) weeks or more prior to going on injury-on-duty leave, his or her average weekly rate of pay for the fifty-two (52) week period will be used (as of January 1, 2013, reduced to seventy-five percent (75%) of his or her average weekly rate of pay for the fifty-two (52) week period); or*
- (b) where the employee has worked for the Corporation for less than fifty-two (52) weeks prior to going on injury-on-duty leave, his or her average weekly rate of pay for his or her period of employment will be used, (as of January 1, 2013, reduced to seventy-five percent (75%) of his or her average weekly rate of pay for his or her period of employment).*

Once approved for injury-on-duty leave the Corporation will maintain the employee's average weekly rate of pay during the leave period, subject to the availability of top-up credits, as defined in clause 20.08.

24.03 New:

As of the date on which the Short Term Disability Program is implemented, an employee shall receive seventy percent (70%) of his or her regular pay when he or she is incapacitated and unable to report to work as scheduled as a result of an injury that is pending a decision of a Worker's Compensation Board.

20.08 Top-Up Credits:

As of the date on which the Short Term Disability Program is implemented, all sick leave credits accumulated shall be converted to "top-up credits" on a minute for minute basis.

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- Starting January 1, 2013, members will only be paid 75% of their regular pay if they are approved for Injury-on-Duty Leave (24.01).
- While waiting for the Workers' Compensation Board to approve their claim, members will be paid 70% of their regular pay (24.03). It is important that a member ensures that once their claim is approved that CPC makes up the 5% difference.
- Once approved for Injury-on-Duty (IOD), a member can request to use their Top-up Credits to receive 100% pay while they are on IOD Leave (24.02 last paragraph).
- If denied IOD, a member should be encouraged to apply for Short Term Disability benefits.

There is an upcoming meeting with the Grievance Department and the Regional Grievance Officers at which time we will have a full discussion on the STD and Medical Confidentiality. In the meantime below please find a review of decisions that pertain to this subject.

Issue of Medical Privacy and the new Short Term Disability plan (STD)

The question is what confidential medical information can the Employer require and how do we ensure that Canada Post is not crossing that line when it comes to our member's privacy when it states in Article 20 that an employee must "*provide the required medical information to the disability management provider*" The issue is not whether the medical provider is protecting the information they are receiving, although that is essential. The issue is what are they entitled to and when are they entitled to it?

In Canada the provincial and territorial governments have jurisdiction over most aspects of health care delivery. By and large, the provincial legislations try to balance an individual's right to privacy with respect to their own personal health information with the legitimate needs of persons and organizations providing health care services in order to access and share this information. With limited exceptions, the legislation typically requires the health information custodians to obtain consent before they collect, use or disclose personal health information, which is why the Short Term Disability forms include a release. In addition, individuals have the right to access and request correction of their own personal health information.

In terms of jurisprudence the authority on the issue is the "Hamilton Health Sciences Vs. The O.N.A (2007) 167 L.A.C. (4th) 122 (G.T. Surdykowski)" In his decision Arbitrator George Surdykowski clearly sets out what confidential medical information an Employer is entitled to. In the decision he addresses the questions that typically arise in medical information cases: what is appropriate as a matter of general practice and policy, and what is appropriate in a particular case; and secondly, is the sort of invasive inquiry that may be appropriate in a particular individual case also appropriate in the first instance in every case?

Review:

Hamilton Health Sciences and O.N.A. (2007), 167 L.A.C. (4th) 122 (G.T. Surdykowski)

Facts:

Hamilton Health Sciences (the employer) awarded a contract to Cowan Wright Beauchamp (COWAN) to administer their STD plan. The Ontario Nurses' Association (ONA) (the Union) contested the form used by COWAN, arguing that it was "too broad" and "improper" and that it went well beyond what was necessary or appropriate for a short term illness.

Decision:

In this decision Arbitrator George Surdykowski agrees with the Union that the information on the COWAN form “overreaches” what is necessary or appropriate.

“An employer only has a right to an employee's confidential medical information to the extent that legislation or a collective agreement or other contract of employment specifically so provides, or that is demonstrably required and permitted by law for the particular purpose.”

He clearly articulates that *“the test is one of objective reasonableness”*. He argues that: *“As a matter of general principle in that latter respect, what is required is sufficient reliable information to satisfy a reasonable objective employer that the employee was in fact absent from work due to illness or injury, and to any benefits claimed (see Arbitrator Swan's comments in St. Jean de Brebeuf Hospital and C.U.P.E., Local 1101 (1 977), 16 L.A.C. (2d) 199, at pp. 204-206). As a general matter, the least intrusive non-punitive interpretive approach that balances the legitimate business interests of the employer and the privacy interests of the employee is appropriate.”*

On the issue of access to confidential medical information Arbitrator Surdykowski contends that: *“the employer must demonstrate a legitimate need for specific information on an individual case-by-case basis. That is, for sick benefits purposes an employer has no prima facie right to an employee's general medical history, a diagnosis, a treatment plan, or a prognosis other than the expected date that the employee will be able to return to work with or without restrictions. “*

Further in terms of entitlement he asserts that: *“Employer-paid leave benefits, including STD benefits, are all contractual. Paid leaves of absence, whether the absence is due to illness or injury, or otherwise are only available to the extent that the collective agreement so provides, and then only on the negotiated terms that the agreement stipulates. The onus is on the employee to establish entitlement to collective agreement paid sick leave benefits. This generally means that the onus is on the employee to establish that an absence is legitimate in the sense that she is genuinely unable to report for work due to illness or injury. As a general matter, the employer is entitled to sufficient proof of the employee's assertion that she is unable to attend work due to illness or injury and entitled to benefits.”*

However, in terms of an employees' obligation to release personal information to a medical provider he asserts that: *“A “basket” consent that purports to authorize anyone who the employer may ask to release confidential medical information is not appropriate. Nor is it appropriate to require an employee to sign a forward-looking consent that may exclude her from the confidential medical information loop. The overwhelming weight of the arbitral jurisprudence takes a dim view of consents that purport to give an employer prospective permission, particularly where the consent purports to permit the employer to unilaterally (with or without notice to the employee) initiate direct contact with a doctor or other custodian of confidential medical information. Every contact should be through or at the very least with the*

knowledge and consent of the employee, a separate consent should be required for every contact, and every consent should be limited to the completion of the appropriate form or the specific information required, as appropriate."

"In the absence of collective agreement authorization, a "one size fits all" medical certificate of disability form for STD benefits purposes will necessarily be limited in scope in the first instance."

"An assertion or undertaking to treat all medical information received in a highly confidential manner, and disseminating it solely on a "need to know" basis, alters none of this. It does not expand an employer's entitlement to information, and really adds nothing to the equation since the employer is under such an obligation in any event. Nor does the fact that an employee has a continuing obligation to account for her absence and the employer has a concomitant right of continuing inquiry in that respect alter the analysis."

Conclusion:

This is an important decision as it clearly articulates that there are limits on management rights; and that even in the absence of collective agreement provisions, an employer cannot override basic human rights to privacy and confidentiality. It is likely that early in the process we will have to arbitrate what information the Corporation is entitled to and exactly when they are entitled to it. One thing is clear, the longer the absence the more information the employer is entitled to. We will have to ensure that the employer has access to what is required and nothing more. As Arbitrator Surdykowski contends what is required is that the *employer "act reasonably and with due consideration of what it really requires for the particular purpose."*

Additional Resource Material on Medical Privacy:

Decision - St. Jean De Brebeuf Hospital v. CUPE, Local 1101 - Sep-77
Decision - St. Joseph's Hospital v. Ontario Nurses' assoc. (Campbell Grievance) - Dec-02
Decision - Manitoba Teachers' Society, No.2 St. James - Jul-04
Decision - B.C. Teachers Fed. V. B.C. Public School Employees Assoc. - Aug-04
Decision - Port Hope (municipality) v. CUPE, Local 749 (Watts) - Jun-05
Decision - Essex (county) v. CUPE Local 2974.1 (Sick Leave Grievance) - Jul-06
Decision - Health Employees Assoc. of B.C. v. B. C. Nurses' Union - Aug-06
Decision - Hamilton Health Sciences v. ONA 167 L.A.C. (4th) 122 - Oct-07
Decision - Brant Community Healthcare System vs. Ontario - Feb-08
Decision - CUPE, Local 966 v. Caledon (town) (Deforest Grievance) - Jun-08
Decision - J & P Leveque Bros. Haulage Ltd v. Ontario - Apr-10
Decision - City of Sudbury (Pioneer Manor) CUPE Local 148 (Sick Pay Grievance) - Aug-10
Internal - CPC v. CUPW #N00-03-00016 - Jul-09
Internal - Employers Submission to Keller - Aug-11
Guide - Guide to Personal Health Information Protection Act - Dec-04

Article - Lancaster's Disability & Accommodation E- Bulletin - Nov-06
Act - Personal Health Information Protection Act, 2004 (PHIPA) (amended 2010)
Article - 7:6142 Medical Examination and Opinions - Jul-11
Article - 8:3320 Qualifying for Sickness and Disability Benefits - Jul-11
E-mail - Globe & Mail Article - Sick notes - Jul-11

20.10 Short Term Disability Benefits:

- (a) *An employee can receive short term disability benefits up to a maximum of thirty (30) weeks after the date of the commencement of the illness or injury.*

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The employer's obligations and the member's right to accommodation have not changed with the introduction of the STD.

What has changed with the introduction of the STD is when a member cannot work their entire shift either in a day or in a week. Any compensation that a member receives when they cannot work their entire shift will be limited to the 30 weeks under the STD.

For example: If a member is on a Graduated Return to Work (GRTW) program and can only work 3 days a week, under the STD they will be compensated for the remaining two days but only for a total of 30 weeks (20.10 (a)).

Please note that the 30 week period mentioned above, is reduced by any time the member was off on the STD (Policy Document). For example, if a member was hospitalized and was off work for 3 weeks and returned to work on a GRTW where she was working 3 days a week for 30 weeks, she would only be compensated for 27 of those weeks.

LETTER (New 4)

NOT TO BE INCLUDED IN THE PRINTED VERSION OF THE COLLECTIVE AGREEMENT

*Denis Lemelin
President
Canadian Union of Postal Workers (CUPW)
377 Bank Street
OTTAWA ON K2P 1Y3*

Dear Mr. Lemelin:

While on STDP eligible employees will only continue to maintain the following pay and benefit entitlements:

- *Accrual of Vacation Leave*
- *Continue to contribute to pension based on regular earnings*
- *Extended Health Care Plan**
- *Dental Plan**
- *Hearing and Vision Plan**
- *Life Insurance**
- *Disability Insurance**
- *Isolated Post Allowance*
- *Boot and Glove Allowance*
- *Personal Days*
- *Designated Holidays*
- *Bilingual Bonus*

**Usual employee and employer contributions apply.*

Sincerely,

*Mark MacDonell
Chief Negotiator*

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A member is entitled to the above benefits while they are off on Short Term Disability. Therefore a member will still be required to pay premiums on the Dental Plan and the Extended Health Care Plan.

Deductions for Pension will be the same amount as it is when the member is working.