

SHORT TERM DISABILITY PLAN

**RURAL AND SUBURBAN MAIL CARRIERS
(RSMC)**

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

CANADIAN UNION OF POSTAL WORKERS

APRIL 2013

INDEX

INTRODUCTION

TAB A RURAL AND SUBURBAN MAIL CARRIERS (RSMC)

SECTION 1 Step by Step – A Member is Off Work Due to Illness or Injury_____07

SECTION 2 Step by Step – How Can a Member Use Their Personal Days?_____11

SECTION 3 Appeal Process_____13

SECTION 4 Carryover and Payout of Personal Days_____18

SECTION 5 Short Term Disability Plan & Medical Confidentiality_____21

SECTION 6 Short Term Disability Plan & Accommodation_____25

SECTION 7 Deductions while on STD_____26

NOTE: The Short Term Disability Plan was imposed on RSMCs by Arbitrator Keller in 2011. At that time he imposed the plan, he did not include the language in the Collective Agreement. The STD was referenced in clause 17.04. The 2012 Collective Agreement has included some of the STD language but a large portion is still covered by Canada Post's document entitled: *Short Term Disability Program Policies and Procedures*. This document is incorporated by reference in clause 19.04 as it relates to Personal Days.

In various sections we have included collective agreement language and where appropriate language from CPC's Policy document.

Where there are discrepancies between the Policy Document and the Collective Agreement, such as in payment of Personal Days, the Collective Agreement takes precedence over the Policy Document.

The entire Policy document has been included in Appendix D but it is important to note that the parties are in consultation on the document. Nothing prevents this document from being changed except where a change would conflict with the Collective Agreement.

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 they twisted their ankle playing baseball.
- (4) They have become ill and are hospitalized.

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LANGUAGE:

17.02 Notifying the Corporation:

An employee who is absent as a result of illness or an injury must notify the Corporation as soon as possible.

19.04 Personal Days:

On the first day of each year, employees shall become entitled to a maximum of seven (7) Personal Days as per the Short Term Disability Program Policies and Procedures document.

CPC Short Term Disability Program: Policies and Procedures:

The following Qualifying Period shall apply for Short Term Disability benefits:

- *Accident - 0 days*
- *Hospitalization – 0 days from date of hospitalization*
- *Illness - 7 calendar days*

CPC Short Term Disability Program: Policies and Procedures

In order to be considered eligible for Short Term Disability benefits, the Employee must be deemed Totally Disabled, under the care of a Physician or other Health Professional as deemed appropriate by the Disability Management Provider. They must provide a completed and signed Employee Statement and Attending Physician Statement by no later than 14 calendar days following the start of their absence. They must also be following the treatment prescribed by

that Physician or other Health Professional as deemed appropriate for the illness or injury by the Disability Management Provider.

CPC Short Term Disability Program: Policies and Procedures:

In order to continue to receive Canada Post Short Term Disability benefits after 15 weeks of benefits have been paid, the Employee must submit an Employment Insurance (EI) (sickness benefits) application to Service Canada within the first 15 weeks of absence.

If the claim is not approved by Service Canada, Canada Post will continue the payment based on the Short Term Disability payment schedule.

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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 (17.02).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form, no later than 14 calendar days following the start of their absence.
- **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 paid vacation leave (19.04).

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 (17.02).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form.

- **Step 3:** They must complete and provide the necessary forms (see Appendix B) and medical information to the Disability Management Provider (Policy Document). *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 (Policy Document). If they do not have any Personal Days remaining, the qualifying period will be unpaid.
- **Step 5:** If the member will be off longer than 15 weeks, the member must apply for Employment Insurance (EI) benefits.

PATH #3

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

- **Step 1:** If a member 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 (17.02).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form.
- **Step 3:** They must complete and provide the necessary forms (see Appendix B) and medical information to the Disability Management Provider (Policy Document). *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 are covered from the first day and do not have a qualifying (waiting) period (Policy Document). There will be no deduction of Personal Days.
- **Step 5:** If they are off for more than 15 consecutive weeks, they must apply for EI benefits to continue to be covered by STD. Coverage continues if you have applied but were denied EI benefits (Policy Document).

PATH #4

They have become ill and are hospitalized.

- **Step 1:** If a member cannot report to work due to hospitalization, they must inform their supervisor or other designated individual that they will be absent (17.02).
- **Step 2:** They must complete and provide to the Corporation a copy of a leave form.

- **Step 3:** They must complete and provide the necessary forms (see Appendix B) and medical information to the Disability Management Provider (Policy Document). *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 are covered from the first day and do not have a qualifying (waiting) period (Policy Document).
- **Step 5:** If they are off for more than 15 consecutive weeks, they must apply for EI benefits to continue to be covered by STD. Coverage continues if you have applied but were denied EI benefits (Policy Document).

SECTION 2 – STEP BY STEP – HOW CAN A MEMBER USE THEIR PERSONAL DAYS

At the beginning of the year a member receives 7 personal days (19.04). 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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19.04 Personal Days:

On the first day of each year, employees shall become entitled to a maximum of seven (7) Personal Days as per the Short Term Disability Program Policies and Procedures document.

When an employee uses or is paid out for any unused Personal Days, such payment shall not include vehicle expenses.

All Personal Days must be taken as full days.

All other terms and conditions regarding the allocation of Personal Days shall be as per the Short Term Disability Program Policies and Procedures document.

CPC Short Term Disability Program: Policies and Procedures:

Personal Days

To be used for, but not limited to:

- *Casual sick days.*
- *Other personal reasons.*
- *Urgent situations.*
- *Satisfying the Short Term Disability Qualifying Period.*
- *In the case of an urgent situation, the requirement for prior notification may not be required. Urgent situations are unexpected and unforeseen.*
- *Any Employee wishing to use a Personal Day for a non-urgent situation must advise his Team Leader, in writing, at least 3 days in advance.*
- *Authorization to take a Personal Day in a non-urgent situation shall be approved subject to operational requirements, and should not be unreasonably withheld. In normal circumstances, a Team Leader should provide a response to the request within 24 hours.*
- *Personal days cannot be used to top-up Short Term Disability benefits.*

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Planned Personal Days (not urgent):

- **Step 1:** If a member wishes paid time off work as a planned Personal Day, for any reason other than illness, injury or emergency, they must apply in writing at least 3 days in advance to use their personal day as a planned personal day. Personal days must be taken as full days (Policy Document).
- **Step 2:** A member must have their leave application approved before they can take their Planned Personal Day (Policy Document).
- **Step 3:** The employer can deny the leave based on “operational requirements”, however it cannot be unreasonably withheld (Policy Document).

Urgent Personal Days:

- **Step 1:** Urgent personal days must be used for an illness or urgent situations. Urgent situations are unexpected and unforeseen (Policy Document).
- **Step 2:** If a member cannot report to work due to illness or an urgent situation, they must inform their supervisor or other designated individual that they will be absent (Policy Document).
- **Step 3:** A member must fill out a leave of absence form as soon as possible after the commencement of the absence.
- **Step 4:** If the personal day is used for illness, see Section 1, path 1 or 2. If the personal day is used for urgent situations, the member’s supervisor or team leader will provide the necessary forms.

LETTER (NEW 2)

**Donald Lafleur
Chief Negotiator
Canadian Union of Postal Workers
377 Bank Street
OTTAWA ON K2P 1Y3**

RE: SHORT TERM DISABILITY PROGRAM AND PENSION

Dear Mr. Lafleur:

This letter confirms that Canada Post Corporation (the “Corporation”) will modify, in accordance with the conditions and details set out below, the “Short Term Disability Plan” (“STDP”) and the Canada Post Corporation Registered Pension Plan (“Pension”) that exists for the Rural and Suburban Mail Carriers (“RSMCs”).

STDP

If, before December 31, 2015, the collective agreement between the Corporation and the CUPW urban bargaining unit (“urban unit”) contains an STDP “Final Appeal Process” (the “Process”) and Personal Day payout process that includes all of the items set out in paragraphs one (1) through four (4), below, these four (4) items shall be applied to the RSMC collective agreement expiring December 31, 2015 (“RSMC collective agreement”), effective as of the same date the language takes effect in the urban unit.

- 1. If the Process references that claim documents shall include a release that the employee must sign authorizing a bargaining unit representative to represent the employee’s interests during the final appeal;***
- 2. If the Process references an “independent medical physician” rather than an “independent occupational health specialist”;***
- 3. If the Process references that an independent medical physician may hold a fact finding meeting to ascertain the issues and facts prior to rendering a decision, and that should a fact finding meeting be held, the parties shall not be represented by lawyers and no witnesses will be allowed to testify; and***
- 4. If employees who have unused Personal Days at the end of a Calendar year may choose to have up to twelve (12) Personal Days paid out.***

PENSION:

With respect to the Pension, this letter confirms that effective on the date of signing of the RSMC collective agreement, individuals who become eligible RSMC employees will be entitled to a defined benefit plan that allows them to retire with an unreduced pension at the earliest of age sixty-five (65) with a minimum of two (2) years of eligible service, or at age sixty (60) with a minimum of thirty (30) years of eligible service. In accordance with pension legislation, this Plan amendment is dependent on approval by the Canada Post Board of Directors, as well as the Office of the Superintendent of Financial Institutions of Canada and the Canada Revenue Agency.

Notwithstanding the preceding paragraph, if, before December 31, 2015, the collective agreement language between the Corporation and the urban unit that exists as of the date of this letter is changed in relation to the Pension, the change(s) will be applied to the RSMC collective agreement. The parties' agree that the change(s) will be effective as of the same date agreed to in the urban unit and that they will be made whether or not they are viewed by the RSMCs as beneficial. Further, the change(s) will be made even if the change(s) include a modification or elimination of what has been agreed to by the Corporation in the preceding paragraph.

Sincerely,

***Rob Sinclair
Chief Negotiator***

CPC Short Term Disability Program: Policies and Procedures:

The Employee has the right to appeal a non-supported claim decision rendered by the Disability Management Provider.

What is an appeal?

An appeal is a written request from an Employee that details the reason(s) for believing that the non-support decision is incorrect and to have this decision reconsidered in light of new facts. The appeal process is designed to provide an opportunity for a review of the non-support decision when the Employee provides additional information that was not already on file with the Disability Management Provider.

FIRST APPEAL

Notification & Intent to Appeal

- *The employee will receive written confirmation detailing the reason(s) their claim is not supported.*
- *The Employee will be informed verbally and in writing of their right to appeal a non-support decision and the process they must follow.*
- *The process requires the Employee to:*
 - *Notify the Disability Management Provider in writing with his intent to appeal within 7 calendar days of the non-support decision, including the reason(s) for the appeal.*
 - *Submit to the Disability Management Provider additional evidence to support his claim for Short Term Disability benefits within 30 calendar days from the notice of appeal.*

Abandonment of Appeal

- *Failure by the Employee to provide written notice of appeal within 7 calendar days or failure to provide additional evidence to support his claim within 30 calendar days will result in Canada Post terminating Short Term Disability benefits, and any Short Term Disability benefits received to date for the non-supported absence by the employee will be recovered as per the recovery process.*

Appeal Decision

- *Upon receipt of the additional information the Case Manager will review the claim with a Senior Case Manager/Operations Specialist, and the Occupational Medical Consultant.*
- *The Employee and the Team Leader will be notified in writing and verbally on the decision of the 1st level appeal.*

Support decision

- *Short Term Disability benefits will be approved for the period supported.*
- *Any entitlement to benefits for the non-supported period will be reconciled and paid by Canada Post based on the Disability Management Provider's decision.*

Non-Support decision

- *If the absence continues to be non-supported, the Team Leader consults with the Subject Matter Experts (Occupational Abilities Manager/Co-ordinator, Labour Relations, Human Rights, etc.) to discuss internal management of the decision. They will determine an appropriate action plan with regards to consequences and next steps.*

- *A non-support decision at the 1st level appeal will result in Canada Post terminating Short Term Disability benefits, and any Short Term Disability benefits received to date for the non-supported absence by the employee will be recovered as per the recovery process.*

FINAL APPEAL

Once the Employee has been advised in writing that his first appeal has been denied, the employee or his authorized representative has 10 working days to advise the Case Manager, in writing, of the intent to appeal. An independent occupational health specialist shall review the claim, including any further information provided. The claim documents will include a release that the Employee may sign if they wish to authorize a bargaining unit representative to represent the Employee's interests during this final review.*

The independent occupational health specialist shall have the authority to hold a fact finding meeting.

If the parties (Canada Post and the bargaining agent) are unable to agree on an independent occupational health specialist to consider the appeal within 15 working days from the notice of appeal, either party can make a request to the Minister of Labour for the appointment of an independent occupational health specialist to make a final review and determination.

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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) (Policy Document).
- **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 claim (Policy Document).
- **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 (Policy Document).
- **Step 5:** The Disability Management provider will provide a written decision to the member. If the decision is denied, both the member and the employer (with medical information removed) will be advised in writing (Policy Document).

- **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 authorized representative has 10 working days to notify the employer if they wish to take the claim to the final level of appeal (Policy Document).**
- **Step 9:** The Union and the Employer will agree on a medical physician to hear the appeal (Letter (New 2) and Policy Document).
- **Step 10:** The employer will send the member's medical file to the Physician who is handling the appeal (Policy Document).
- **Step 11:** The Union must have the member sign a release authorizing the Union to represent them during the final level of appeal (Letter (New 2)). If the member does not sign the release, the Union takes no further action.
- **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 (Policy Document).
- **Step 13:** The member, the Union and the DM provider shall be informed in writing of the Medical Physician's decision (Policy Document).
- **Step 14:** CPC will be advised on the outcome of the appeal

*Please note that this conflicts with the new collective agreement. As per the new collective agreement, the person reviewing the claim at the Final Level of Appeal will be an Independent Medical Physician. The Collective Agreement always takes precedence over CPC policy.

**It should also 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

SECTION 4 – CARRYOVER AND PAYOUT OF PERSONAL DAYS

LETTER (NEW 2)

**Donald Lafleur
Chief Negotiator
Canadian Union of Postal Workers
377 Bank Street
OTTAWA ON K2P 1Y3**

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- 4. If employees who have unused Personal Days at the end of a Calendar year may choose to have up to twelve (12) Personal Days paid out.**

PENSION

With respect to the Pension, this letter confirms that effective on the date of signing of the RSMC collective agreement, individuals who become eligible RSMC employees will be entitled to a defined benefit plan that allows them to retire with an unreduced pension at the earliest of age sixty-five (65) with a minimum of two (2) years of eligible service, or at age sixty (60) with a minimum of thirty (30) years of eligible service. In accordance with pension legislation, this Plan amendment is dependent on approval by the Canada Post Board of Directors, as well as the Office of the Superintendent of Financial Institutions of Canada and the Canada Revenue Agency.

Notwithstanding the preceding paragraph, if, before December 31, 2015, the collective agreement language between the Corporation and the urban unit that exists as of the date of this letter is changed in relation to the Pension, the change(s) will be applied to the RSMC collective agreement. The parties' agree that the change(s) will be effective as of the same date agreed to in the urban unit and that they will be made whether or not they are viewed by the RSMCs as beneficial. Further, the change(s) will be made even if the change(s) include a modification or elimination of what has been agreed to by the Corporation in the preceding paragraph.

Sincerely,

**Rob Sinclair
Chief Negotiator**

CPC Short Term Disability Program: Policies and Procedures:

Options for unused Personal Days Payout

- **Unused Personal Days or portion thereof remaining at the end of the fiscal year to a maximum of 5/7ths* of the initial allotment will be paid out on the third (3rd) pay of the following fiscal year or upon termination of employment.**
- **An employee who has carried over Personal Days (or portion thereof) from the previous fiscal year may have those days paid out, if they remain unused at the end of the year, in addition to the maximum payout of 5/7ths* of the initial allotment unused days as per the section above.**
- **Payment will be based on the Employee's salary as of the last day of the fiscal year.**
- **Employees will not be paid out personal days in the following situations:**
 - **Dismissal**
 - **Rejected during Probation**
 - **Released for Incapacity**
 - **Separation Incentive**
- **Payment/recovery will be made shortly after the date of termination of employment.**
- **Payment is subject to Federal and Provincial statutory deductions.**
- **Payment is not pensionable.**

Carry Over

Employees have the option, prior to the end of the fiscal year ending, instead of the pay out, to carry over any Personal Days (or portion thereof) remaining at the end of the fiscal year, to a maximum of 5/7ths*, for use in the following year.

- *Unused Personal Days will be paid out as detailed above, unless the employee elects to have them carried over.*
- *An Employee may not have more than 12 Personal Days in any one fiscal year.*

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* Please note that this conflicts with the new collective agreement. As per the new collective agreement, RSMCs may now be paid out for all unused personal days at the end of the year. The Collective Agreement always takes precedence over CPC policy.

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 (Letter (New 2) and Policy Document).

If a member leaves the Corporation for any reason other than dismissal, release during probation or release for incapacity, they will be paid out their personal days on a pro-rated basis (Policy Document).

SECTION 5 – SHORT TERM DISABILITY PLAN & MEDICAL CONFIDENTIALITY

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. 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, what is appropriate in a particular case; and 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 may mean that 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

SECTION 6 – SHORT TERM DISABILITY PLAN & ACCOMMODATION

CPC Short Term Disability Program: Policies and Procedures:

- *Employees are eligible for up to 30 weeks of coverage in total (for each claim).*
- *The following Qualifying Period shall apply for Short Term Disability.*

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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. A member can receive compensation when they cannot work their entire shift for 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 for a total of 30 weeks (Policy Document).

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.

SECTION 7 – DEDUCTIONS WHILE ON STD

CPC Short Term Disability Program: Policies and Procedures:

- *Benefit payments are subject to Federal and Provincial statutory deductions.*
- *Short Term Disability benefit payments are pensionable.*
- *Pension contributions continue and are based on the Employee's pre-disability earnings.*

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A member is entitled to the same benefits while they are off on Short Term Disability as when they are working. 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.