

SECTION 4

COMPENSATION

4.04 SICK LEAVE

AUTHORITY: THE COLLECTIVE AGREEMENT BETWEEN THE
PROVINCE OF PRINCE EDWARD ISLAND AND THE
UNION OF PUBLIC SECTOR EMPLOYEES

ADMINISTRATION: P.E.I. PUBLIC SERVICE COMMISSION
GOVERNMENT DEPARTMENTS AND AGENCIES

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1. PURPOSE

1.01 To outline the terms and conditions related to the accumulation and utilization of an employee's sick leave.

2. APPLICATION

2.01 This applies to those employees outlined in Article 2.01 of the Collective Agreement and the Excluded Terms and Conditions.

3. POLICY

3.01 General (Article 23 of the Collective Agreement)

(a) Sick leave is provided to enable employees to be absent during periods of illness as well as for medical and health examinations or treatments without suffering financial loss of their regular salary. Any employee found to be abusing sick leave may be subject to disciplinary action (See 3.11 for guidance regarding Absenteeism).

3.02 Entitlement

(a) Sick entitlement for employees is set out in Article 23.02.

(a) Temporary employees hired for less than four (4) months and casual employees are not entitled to sick leave (Article 2.02). They are paid 12% in lieu of benefits as per Article 2.02(a) or 8% in lieu as per Article 2.02(b).

3.03 Granting of Leave

(a) An employee who is absent due to illness must notify their supervisor as soon as possible. The employee must indicate on the leave form the nature of his/her illness and certify their inability to perform their duties. Self Service users will update their time sheet and input information in relation to the sick leave in the comments section (cloud) on the time sheet. If an employee does not wish to disclose the nature of his/her illness on the sick leave application the Employing Authority may accept a separate written statement as to the nature of the illness. The Employing Authority has the right to be kept informed of the employee's condition and a

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prognosis regarding their anticipated return to work date.

- (b) A Physician's statement is required for an illness exceeding five (5) consecutive days/shifts or when the employee has been granted ten (10) days/shifts on their own certification within a fiscal year. Notwithstanding this, the employer may request certification regardless of the length of leave if circumstances warrant medical certification. (ie Sick leave patterns)
- (c) An employee must submit a leave form no later than ten (10) calendar days from the beginning of the absence. If he/she does not provide a leave form they will not be paid for the leave of absence unless there were extenuating circumstances which may be considered by the Employing Authority

3.04 When Benefits are not Paid

- (a) Sick leave credits will not be provided when an employee is:
 - (i) on suspension without pay; and
 - (ii) on leave without pay (with the exception of Injury on Duty Article 19.08).

3.05 Sick Leave Advances

- (a) Classified employees may be provided advancement of sick leave credits to a maximum of 15 days.
- (b) In order to qualify for a sick leave advance, the employee must:
 - (i) be under a medical doctor's care; and
 - (ii) show that sick leave credits have not been previously misused.
- (c) The Employing Authority should review the following when considering a request for advancement of sick leave;
 - (i) employee's leave history;
 - (ii) is the employee having difficulty repaying previous advances; and
 - (iii) is the illness likely to become a long term disability?

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- (d) The denial of advancement of sick leave credits to an employee is not subject to the grievance process.
- (e) An employee who is terminated for reasons other than layoff, permanent disability, or death must repay the Employer for all outstanding advanced sick leave credits.

3.06 Bridging of Sick Leave

An employee who is terminated and is rehired within twelve months shall be credited the sick leave credits they had at the time of termination.

3.07 Medical Examinations

- (a) This provision can be helpful where the employer is unable to get sufficient medical information on which to base its decision regarding the employee or in a case where the employee may be denying the existence of a medical problem and therefore is not obtaining appropriate advice or treatment.

3.08 Disabled Employee Options

- (a) If, as a result of a medical examination the employee is found to be physically or mentally disabled from performing the functions of the position he/she occupies, the employee may request an accommodation pursuant to Article 39.
 - if a reasonable accommodation of the disability is not available, the employee will be placed on sick leave until sick leave credits are exhausted or the employee is able to return to work, whichever occurs first, or
 - if the employee is unable to return to work or be accommodated by the date sick leave credits are exhausted, the employee can request to be placed on a leave of absence without pay in accordance with Article 24.09(b) or
 - if the employee is unable to return to work or be accommodated at the end of the leave of absence, the employee will be subject to the layoff provisions of Article 36.

3.09 Addiction Treatment (See Section 8.05 - Employee Assistance Program)

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Pursuant to Article 23.15 where an employee's job performance is unsatisfactory and is considered by the Employing Authority to be due to the use of alcohol or other drugs and where the employee concerned voluntarily elects or is directed to undertake an approved rehabilitation program, the employee may be granted sick leave with pay in accordance with the Collective Agreement and the *Civil Service Act* & Regulations respecting Drug Abuse.

3.10 Duty to Accommodate (Article 39)

The area of disability and accommodation is an extremely complex and dynamic one. In any case of employee disability the departmental HR Manager should be consulted at a very early stage. Depending on the circumstances, there may be a need to confer with the PEI Public Service Commission and others in order to ensure that the employer's duty to accommodate a disabled employee is discharged.

3.11 Absenteeism

- (a) The management of innocent absenteeism is really a matter of performance management. While the issues relating to absenteeism are unique, the employer response in cases of significant absenteeism is non-disciplinary and is provided in the context of the desire for improved performance.
- (b) As an element of performance, it is clearly appropriate to speak with employees regarding their absenteeism in the context of performance development.
- (c) The absences requiring close monitoring include sick leave, injury on duty leave, and special leave related to family illness. For cases where the employee does not appear to have an on-going disability, the employer should determine whether anything at work is causing or contributing to the absences. The employee should be asked about this and given an opportunity to indicate whether anything at work or elsewhere in their life is causing them difficulties. A sudden increase in sick and special leave usage may be an indicator of the onset of a disability such as substance abuse or of problems in the employee's personal life.
- (d) Employees are not obligated to divulge information relating to their

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personal lives but they do have an obligation to actively deal with any barriers to satisfactory work performance.

- If it appears appropriate, or you sense an underlying problem that the employee will not speak with you about, discuss E.A.P. with the employee. (See Section 8.05)

(e) General principles for Leave Management:

- monitor section, department and civil service leave usage;
- raise matter with employee as soon as issue appears;
- ensure clarity and verification of all leave requests and supporting information;
- make periodic contact with employee during lengthy absence; and
- E.A.P. referral where appropriate.

(f) To be successful at leave management, the employer must approach the issue from the dual concerns of the employee's well-being and the work unit's productivity and efficiency. While these concerns may seem to be to some degree in conflict, the employer needs to understand that neither of these is an absolute and that the task is to strike an appropriate balance between the two.

(g) The most critical question in attempting to strike this balance is whether the employee suffers from a disability which in turn gives rise to the employer's duty to accommodate.

3.12 Medical Information

(h) Generally, the employer will seek medical information or opinion in respect of an employee when:

- the employee is requesting a benefit; or
- fitness to return to work following a lengthy absence is in question.

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- Significant change in work performance may prompt the Employer to determine if the unsatisfactory work performance is an indicator of an underlying medical issue.
- (b) When the medical certification is sought for purposes of adjudicating an entitlement to a benefit, what is really being requested is proof of illness. The employer is entitled to enough information to adjudicate the request. This may include, in appropriate cases, the date the physician saw the employee, nature of illness, types of treatment recommended, dates of absence due to illness and prognosis for improved attendance in future.

3.13 The Stress “Diagnosis”

In recent years, more and more sick leave certificates have been submitted stating the nature of illness to be stress. The employer is not obliged, without more information, to accept this as the basis for granting leave. Stress is not a medical diagnosis but possibly a symptom of another underlying issue. Additional information is required to verify that the employee is experiencing physical or psychological symptoms which are severe enough to warrant the employee being on leave from work.

3.14 Fitness for Work and Duty to Accommodate

- (l) In cases where an employee has been out of the workplace for an extensive period due to illness or injury, the employer has a duty to ensure that the employee is fit to resume their duties prior to allowing the employee to return to work.
- (m) Where the employer is trying to verify the employee’s fitness to return to work or where a continuing disability gives rise to the employer’s duty to accommodate the employee, perhaps with alternate work, the employee is responsible for communicating their needs and for providing relevant information including medical opinion to assist in the search for accommodation.
- (c) The employer is entitled to medical information respecting the following:
- nature of illness or disability. In Accommodation, the Employer may seek the diagnosis;

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- explanation of any limitations the employee has which are pertinent to the duties of the employee's position, an alternate position under consideration, or work in general (e.g., can only work part days);
 - any types of work that are not recommended for the employee;
 - any treatment the employee may be having either in terms of its possible effect on the employee's ability to do the work or the need for absence from work to take treatment.
 - any adaptations to the workplace which may be required to accommodate the employee; and
 - the prognosis for the employee's future attendance and level of recovery.
- (d) There is no formula for determining when the threshold has been crossed into excessive absenteeism. Each case must be examined on its particular circumstances and actively managed with a view to returning the employee to regular attendance as soon as reasonably possible.