



## *WSIB Claims Management Update*

February 2013

*Flash NEWSLETTER*

### **Ontario Regulation 2/13 and Ontario Regulation 12/13 made under the Putting Students First Act, 2012**

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Ontario Regulation 2/13 contains some significant provisions dealing with the top-up of WSIB benefits. Ontario Regulation 12/13 amends two of the provisions in Regulation 2/13 dealing with the top-up of WSIB benefits. SBCI is pleased to provide you with a preliminary interpretation of the relevant sections of the Regulations dealing with the top-up of WSIB benefits, however we do not have all of the answers. Our aim is to provide you with some practical guidance rather than a definitive legal analysis.

There are two sections of Regulation 2/13 that deal with the top-up of WSIB benefits. Section 2 of the regulation pertains to employees who do not bargain collectively while section 3 deals with employees who bargain collectively. The wording in the section 2(10) and 3(8) appears to be identical. We have chosen to focus on the wording in section 3(8) since that would apply to most school board staff.

Section 3(8) reads as follows:

“The employee’s entitlement to receive an amount to top-up benefits that he or she is entitled to under the *Workplace Safety and Insurance Act, 1997*, is as follows:

- i. The employee is only entitled to receive the top-up amount if the employee is in a class of employees that, on August 31, 2012, was entitled to use unused sick leave credits for the purpose of topping up benefits received under the *Workplace Safety and Insurance Act, 1997*.”

Interpretation – We read this section to mean that anyone that was part of a collective agreement on August 31, 2012 that allowed for top-up of WSIB benefits when they had unused sick leave is entitled to be topped up.

- ii. “The top-up amount shall be paid for a maximum of four years and six months.”

Interpretation – This section provides for a maximum period of top-up of four years and six months. Under the previous sick leave plan, the length of time that an employee could top-up their payments was limited to the amount of sick leave credits accumulated by the employee. Once an employee had exhausted their sick leave credits, no further top-up was provided. The current regulations provide a maximum period for the payment of top-up.

As to the question of whether the maximum duration is per employee or per claim, one would expect that if an employee who was on WSIB, and received top-up returned to work, and has another workplace accident or illness as a result of which he/she becomes eligible for WSIB, the maximum duration would apply again.

- iii. “The top-up amount shall be paid at a rate determined in accordance with the collective agreement in effect on August 31, 2012 or, if the collective agreement did not provide for the top-up, in accordance with a board policy in effect on August 31, 2012.” (This is amended wording provided for in Ontario Regulation 12/13)

Interpretation – This section essentially means that you need to look at your existing collective agreements in place as of August 31, 2012 to see if they provide a description of the amount of top-up to be paid to the employee. If a collective agreement is silent on the issue then the school board should next look to see if any board policies described the amount of top-up to be paid.

- iv. “For the purposes of the 2012-13 fiscal year, an employee is not entitled to receive a top-up amount under this section if,
  - A. On August 31, 2012, the employee was eligible to receive benefits under the *Workplace Safety and Insurance Act, 1997* and
  - B. As of September 1, 2012, the employee had no unused sick leave credits that were provided in previous years.”

Interpretation – We read this section to mean that if an employee was eligible to receive WSIB benefits on August 31, 2012 (because they had an approved open claim) then the employee would not get any top-up if they had already run out of sick leave as of September 1, 2012.

- v. “If, as a result of an accident, an employee received benefits under the *Workplace Safety and Insurance Act, 1997* in respect of the first workday in the 2012-13 fiscal year, the employee’s entitlement to be topped up for four years and six months shall be reduced by the length of time for which the employee received benefits under that Act as a result of that accident.”

Interpretation – We read this section to mean that there is cap on the duration of top-up for employees who had an active claim and received WSIB benefits on the first day of school in 2012-13 and still had sick leave in their bank as of September 1, 2012. The maximum duration for

the payment of top-up is for a period to four years and six months as a result of an accident i.e. the maximum duration includes the period prior to September 1, 2012 when the employee was receiving top-up.

### **Practical Guidelines**

1. Employees that were eligible to use unused sick leave in the past to top-up WSIB benefits continue to be entitled to top-up on new claims. The maximum duration would be for a period of 4 years and 6 months.
2. Top-up shall be calculated in accordance with the language in collective agreements in effect as of August 31, 2012. If a collective agreement is silent on the issue then a school board should look to any board policies in effect on August 31, 2012.
3. Employees that had active claims as of August 31, 2012 (claim approved and LOE benefits being paid) would be entitled to receive top-up provided that as of August 31, 2012 they had unused sick leave credits. If they had no unused sick leave as of September 1, 2012 then there is no entitlement for top-up on claims with accident dates prior to September 1, 2012.
4. An employee with an active claim as of August 31, 2012 and unused sick leave credits as of September 1, 2012 would be entitled to top-up for a maximum period of 4 years and 6 months. The actual duration of top-up would be reduced by any periods during which top-up had been paid. This would require a reconciliation of prior periods of top-up payments.

### **Examples**

Scenario 1: John Doe had an accident on August 1, 2012 and ran out of sick leave on August 25, 2012. He was off work continuously until December 10, 2012 when he returned to modified duties. As he had no unused sick leave as of September 1, 2012 he would not be entitled to top-up from September 1, 2012 until December 9, 2012.

Scenario 2: John Doe had an accident on September 1, 2008 and remains off work as of February 15, 2013. On September 1, 2012 he had unused sick leave. John would continue to be eligible for top-up for a maximum period of 4 years and six months from the accident date of September 1, 2008.

Scenario 3: John Doe had a new accident on October 1, 2012 and is entitled to top-up of WSIB benefits for lost time under this new claim to a maximum period of 4 years and six months. When John had a new claim on February 1, 2013 he would be entitled to a maximum period of top-up of four years and six months in respect of this separate accident.

I hope that this guidance is of some practical assistance and should you have any questions please contact [chris@sbc.org](mailto:chris@sbc.org) or your individual SBCI Claims Manager. Thank you.