



WSIB Claims Management Update

August 2013

Flash NEWSLETTER

Ontario Regulation 1/13 “Sick Leave Credits and Sick Leave Gratuities” as amended by Ontario Regulation 184/13

On June 27, 2013, Gabriel Sekaly, Assistant Deputy Minister (Elementary/Secondary Business and Finance Division) and Tim Hadwen, Assistant Deputy Minister (Education Labour Relations) sent a memorandum to the Directors of Education with respect to amended regulations on sick leave and non-vested retirement gratuities. Most of the memorandum is not relevant to the subject of WSIB top-up but a small portion is relevant and it reads as follows:

“For the purpose of a graduated return-to-work program, sick days may be used to top-up salary where the benefits from the Workplace Safety and Insurance Board (WSIB), or a long-term disability plan (LTD), do not provide a complete top-up. In such cases, the employees may use their sick-leave credits to top-up their pro-rata salary plus their benefits from WSIB or LTD to 90% or 100% of salary, depending on the type of sick leave credit used for top-up (i.e., 11 sick leave days may be used for 100% top-up and 120 short-term sick leave days may be used for 90% top-up). Sick days may be used to top-up more than one day.”

Section 3(10) in Ontario Regulation 1/13 as amended by Ontario Regulation 184/13 reads as follows:

“While an employee is working less than a full day in the course of a graduated return to work as he or she recovers from a sickness or injury, the employee may use sick leave credits to top up his or her salary as follows:

1. The employee may use the sick leave credits provided under paragraph 1 of subsection 1 (2), paragraph 1 of subsection 1 (2.1) or paragraph 1 of subsection 1 (2.2) to top-up his or her salary to a rate of pay equal to 100 per cent of the employee’s salary for the fiscal year.
2. The employee may use the sick leave credits provided under paragraph 2 of subsection 1 (2), paragraph 2 of subsection 1 (2.1) or paragraph 2 of subsection 1 (2.2) to top-up his or her salary to a rate of pay equal to 90 per cent of the employee’s salary for the fiscal year

3. If the employee is receiving benefits under the *Workplace Safety and Insurance Act, 1997* or under a long term disability plan, the amount that the employee is receiving for those benefits shall be considered part of the employee's salary for the purposes of this subsection.
4. A sick leave credit may be used to top-up the employee's salary on more than one day."

In the memorandum from the Ministry of Education the reference to top-up of WSIB and LTD for an employee on a graduated return to work program is described as a "clarification" however for many school board staff it would amount to additional entitlement to top-up where someone is on a graduated return to work program and may not otherwise have been entitled to top-up. To qualify the employee must be entitled under a collective agreement to 11 sick-leave days and 120 short-term sick days. For employees of school boards that never paid top-up in the past there is now a new requirement to pay top-up when an employee is on a graduated return to work program for LTD or WSIB. The duration of top-up would appear to be limited to the earliest of the following:

1. When the employee reaches full hours and pay on the graduated return to work program;
2. The employee stops the graduated return to work program;
3. The employee uses up the 11 sick-leave days and 120 short-term sick days;
4. August 31, 2014, the date the regulation is revoked.

Many school boards never topped-up employees on LTD graduated return to work programs in the past. The regulation and MOUs have now expanded top-up requirements for many school boards to include for the first time top-up during a graduated return to work program for LTD purposes. This is an additional cost for school boards resulting from the MOU and Ontario Regulation 1/13.

All of this is retroactive to September 1, 2012 to coincide with effective date of the new agreements and MOUs.

It is recommended that school board staff dealing with WSIB Claims Management, LTD Administration and payroll read through the relevant sections of the Memorandum from the Ministry of Education dated June 27, 2013 and Ontario Regulation 1/13. If you still have questions you may contact Chris@sbc.org or your school board's own legal counsel for additional advice and assistance.