



WSIB Claims Management Update

September 2013

Flash NEWSLETTER

Top-up of WSIB Benefits - Understanding the Regulations

To help school board administrators gain a better understanding of when to top-up WSIB benefits we are writing to share an email exchange with a Ministry of Education official and have prepared a simple matrix below which we hope will be of assistance to you. The matrix does not cover every possible situation but we hope it will assist you with the most common questions and issues that may arise.

Questions:

“We are getting plenty of questions from the school boards that we work with on the topic of the top-up of WSIB benefits and whether they should be charging an employee a portion of a sick day for the privilege of being topped-up.

When regulation 2/13 was issued school board staff came to understand from the provisions of section 2(10) that top-up should be paid to those that qualified and that no charge should be levied on the employee’s sick days for the privilege of having their WSIB benefits topped-up i.e. from 85% of net to 100% of gross by the school board. Many school boards have been following that practice.

Ontario Regulation 1/13 section 3(10) allows for the use of sick days to top-up WSIB or LTD benefits where the employee is participating in a “graduated return to work” and appears to provide for the school board to charge or use the employee’s sick leave credits for the purpose. Ontario Regulation 1/13 does not specify as regulation 2/13 did who is eligible for top-up. Ontario regulation 1/13 appears to apply to a broader group than did regulation 2/13. The broader group would include new employees hired starting September 1, 2012 or those now eligible for sick days that might not have had any left on August 31, 2012.

Is it the Ministry of Education’s view that a school board should be charging a portion of sick day for the privilege of top-up of WSIB in all instances now? Alternatively should school boards only be charging a portion of a sick day for the privilege of top-up of WSIB benefits in limited circumstances and if so what are those circumstances.”

Answer:

“For those who are currently receiving WSIB and are NOT at work (not on graduated return to work), they would only be eligible for top-up, without deduction from sick leave credits, if they

were in a class of employees who could previously top-up WSIB benefits using their accumulated sick leave credits under the old plan. For those who are off work completely receiving WSIB benefits, top-up is limited to certain groups that had this provision in their 2008-2012 collective agreement. The regulation also states that top-up is limited to 4 ½ years. If an employee received WSIB benefits prior to September 1, 2012 and continues to receive WSIB come September 1, 2012, they may only receive top-up if they still have sick days in the bank as of August 31, 2012 and their top-up is reduced by the number of months/years that they received WSIB benefits in the previous year/s.

For ALL employees who are on graduated return to work and have access to the new sick leave plan, they may top-up their salary (for the remaining part of the day they are not working) using their sick leave credits. Employees who receive WSIB benefits in a graduated return to work program are eligible to use their sick leave credits to top-up their salary even if they did not qualify to receive top-up from the board while off work completely receiving WSIB benefits. The top-up under a graduated return to work is limited to the number of sick leave credits available to the employee in that fiscal year.

The employee who receives WSIB while off work completely, and the employee who receives WSIB while on a graduated return to work are separate and distinct as only the latter may use sick leave credits to top-up their remaining salary for the portion of the day they are not working. The former group does not receive top-up from sick leave credits and not all of employees in this group qualify (based on their collective agreement) to receive top-up from the board while off work.

ALL employees with a sick leave plan have the ability to top-up using their sick leave credits while on a graduated return to work (because they are back at work and have access to their sick leave plan).”

Matrix

<u>Who is Eligible for WSIB Top-up?</u>	<u>Are Deductions made to sick leave credits for the privilege of receiving top-up?</u>	<u>Source Reference</u>
<p>Employees who did not bargain collectively but who were in a class that were entitled on August 31, 2012, to use unused sick leave credits for the purpose of topping up benefits received under the Workplace Safety & Insurance Act (WSIA).</p> <p><u>Top-up rate:</u> 100% of employee’s salary less amount of WSIA benefits.</p> <p><u>Other requirements:</u> Employee had unused sick leave</p>	<p>No</p>	<p>Putting Students First Act, 2012, Regulation 2/13, Section 2(10)</p>

<p>credits as of September 1, 2012</p> <p><u>Maximum duration:</u> Eligible employees are entitled to be topped up for a maximum period of 4 years and six months as a result of that accident.</p>		
<p>Employees who bargained collectively and were in a class of employees that on August 31, 2012 were entitled to use unused sick leave credits for the purpose of topping up benefits received under the WSIA.</p> <p><u>Top-up rate:</u> 100% of employee's salary less amount of WSIB benefits</p> <p><u>Other requirements:</u> Employee had unused sick leave credits as of September 1, 2012</p> <p><u>Maximum duration:</u> Eligible employees are entitled to be topped up for a maximum period of 4 years and six months as a result of that accident.</p>	No	Putting Student First Act, 2012, Regulation 2/13, Section 3(8)
<p>Employees who are eligible for sick leave credits pursuant to Ontario Regulation 1/13 under the Education Act may use those sick leave credits to top-up their salary while they are in receipt of benefits under the WSIA or a long-term disability plan <u>and</u> are working less than a full day in the course of a graduated return to work.</p> <p><u>Top-up rate:</u> 100% if drawn from 11 sick leave credits paid at 100% of employee's salary</p> <p>90% if drawn from 120 days of sick leave credits paid at 90% of employee's salary</p> <p><u>Note:</u> Top-up is only paid during the course of a graduated return to work and not while the employee is off work completely and in receipt of WSIA benefits or LTD benefits.</p> <p><u>Maximum duration:</u> Top-up is limited by the amount of unused sick leave credits in the current fiscal year</p>	Yes Yes	Education Act, Regulation 1/13, Section 3 (10)