



FPSE ISSUES

UPDATE

A Member's Guide to Partial Disability Benefits



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PLEASE NOTE:

It should be noted that this "Member's Guide to Partial Disability Benefits" only applies to those local unions and institutions that are signatories to the Common Agreement. As such, you are covered by the provisions of Article 9.3 Disability Benefits. In some cases, your union and employer may not be signatories to the current Common Agreement, but nevertheless the disability benefits are the same. If that is your situation, this information would be applicable. If, however, you are employed at Vancouver Community College or Langara College, you are covered by a different insurance company and have a different disability and sick leave plan in place. To be sure, contact your local shop steward for further information and assistance.

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There may come a time in your work life when, due to an illness or disability, you are unable to fulfill your duties as a full-time or part-time faculty member.

Recognizing the Problem

First and foremost, talk to someone about how you are feeling – a friend and confidante, your spouse or, if you have the option, speak with someone in the Employee and Family Assistance Plan. If you have a health concern, then definitely go to your doctor and have a medical assessment done.

Assessing Your Needs

You may ask, “Do I need to take full-time sick leave or can I just reduce my workload to make my condition more manageable?” Generally, it is easier to obtain 100 percent sick leave than it is to obtain a partial workload reduction due to sickness or disability. Many employers and insurance companies have certain biases when it comes to requests to reduce an employee’s workload. Moreover, for employers, the amount of reorganization required for a partial workload reduction may influence their attitude as well.

It is really not important what the employer may or may not think. If you have a medical condition, a health problem or a disability that in some way impedes your ability to perform your duties, you may be able to ask for workplace accommodation. The law says it is the employer’s responsibility to accommodate

ill or disabled employees up to the point of undue hardship. This accommodation may take the form of workplace modifications, changes in your duties, and in some cases, partial sick leave and reduced work load. The law also requires the union to assist you with that accommodation, and where necessary to facilitate that process by being part of the process and negotiating specific variances to the collective agreement if and where necessary.

Documenting Your Claim

If you are applying for leave/accommodation due to illness or injury, you will need to provide your employer and the insurance company with sufficient medical evidence of illness or disability to support your request. This will mean that you disclose to the insurer, and in some cases your employer, the nature of your illness and how it impairs your ability to do your work. If you don’t want them to know what your health issue is, then the employer is not required to accommodate your medical condition and grant you the workload reduction.

What you should not do is “self accommodate” because that may jeopardize your disability claim.

You also need to know what your contractual rights and obligations are when making a request to be accommodated.

Your Contractual Rights

Under all our agreements, faculty who are absent from work due to illness or injury qualify for sick leave with pay. If you are a full- or part-time regular employee, or a non-regular employee employed on a continuing basis for a period of at least four months, with fifty percent (50%) or more of a full-time workload, you are eligible for paid sick leave benefits.

The leave begins with a period of up to 30 **calendar** days at 100% regular pay. If you continue to remain ill beyond that first 30 days, you are then entitled to Short Term Disability for up to a period of six months, paid at 70% of your regular pay.

It should be noted that if you have applied for partial disability benefits and the request is accepted by the employer and by the insurance company, that 30 calendar days of pay at 100% is prorated. This is made clear by way of an example in the **Letter of Understanding # 4** (included on page 6).

If you continue to remain disabled after that six month period, you are entitled to Long Term Disability for a period up to two years at 70% pay, or until age 65.

For the initial period of sick leave and Short Term Disability the definition reads as follows:

Disability or illness means the inability, because of accident or sickness of a covered employee, to perform the regular duties of his or her own occupation.

For the first two years on Long Term Disability, the definition of disability changes and reads as follows:

Total disability means the complete inability because of an accident or sickness of a covered employee to perform all the duties of his/her own occupation for the first two years of disability.

This two year period is for your occupation as a faculty member. The policy states that after the first two years, an employee will still be considered totally disabled if he/she cannot, by reason of education, training or experience, perform the duties of a gainful occupation for which the rate of pay is not less than 75% of the current rate of pay of his/her regular occupation at the date of disability.

This means two things. First, you either remain totally and completely disabled and, therefore, remain on Long Term Disability until age 65. Or second, it is determined that you are not totally disabled and are able to perform a job that would pay you at least 75% of your current rate of pay. If that is the determination made by Manulife, your claim will be discontinued.

A decision to discontinue your Long Term Disability claim by Manulife can be appealed. This process involves an independent medical review panel composed of three doctors. Should the independent medical panel determine that you continue to remain completely disabled, you will be placed back on Long Term Disability until you either recover or you reach the age of 65. If the panel agrees with the assessment done by Manulife, your claim will end. The decision of the appeal board is final and binding on both you and Manulife (note: this process of appeal will be outlined in a subsequent bulletin).

Your Contractual Obligations

In all cases where you are sick and are expected to be off for a period of more than five days, you will have to provide medical documentation to support your absence. This is the same responsibility whether you are off 100% or plan to request a reduced workload.

The test remains the same in both instances: medical documentation that you are unable to perform the regular duties of your own occupation. As well, while you are on sick leave, you are required to be under the care of a qualified doctor, and will periodically be required to provide medical updates.

Background on the Disability Plan

It is important to understand that the current disability plan does not have a definition for what is considered a partial disability. The policy defines a disability for the purposes of sick leave and Short Term Disability as:

Disability or illness means the inability, because of accident or sickness of a covered employee, to perform the regular duties of his or her own occupation.

The insurance company usually interprets disability or illness to mean *completely* or *totally* unable to perform the regular duties of his or her own occupation. By definition, someone who is partially disabled or sick can still perform the regular duties of his or her own occupation. That is where the problems begin.

Potential Problems

The disability plan doesn't allow for partial disabilities to be covered for income replacement. The experience we have had to date is that, on a number of occasions, a member has presented with an illness or disability which would qualify them for short term disability. However, in consultation with their attending physician, the employee and their doctor determined that rather than a complete break from work, a temporary reduction in their workload or a change in assigned duties would assist in a speedier return to optimal health.

Creation of Partial Disability Benefits

Prior to the inclusion of Letter of Understanding #4, found in the Common Agreement, there were no partial disability benefits available under the Faculty Common Disability Plan. Members had to begin sick leave at 100%. Once on sick leave, a member could make a request through the Disability Management and Rehabilitation Committee for a graduated return to work on a reduced workload. This approach required that the member provide medical documentation as well as physician support for the return to work. It was time consuming and costly.

As a result, the unions and the employers discussed implementing a partial disability benefit plan. The parties drafted a proposal that would make it better for the faculty member, the institution and the students.

In the 2004-2007 Common Agreement, the unions and the employers agreed to include a provision in the Common Agreement as follows:

Letter of Understanding #4
**PARTIAL SICK LEAVE AND PARTIAL
DISABILITY BENEFITS**

The Parties agree that it is in the interests of both the employee and the employers to enable an employee to remain at work when the employee is only partially disabled.

"Partially disabled" for the purpose of this Letter of Understanding means that the employee is unable to do a portion of his/her normal workload where such portion is agreed by the employer to conform to the configuration of faculty workload in the employee's instructional or non instructional areas and where the partial sick leave is in any event no greater than eighty percent (80%) of a full-time workload in that area. The application of this definition is subject to the employer's legal duty of accommodation.

Determination of whether the employee is partially disabled as defined above shall be by the short-term disability benefits carrier.

An employee who is determined to be partially disabled will be entitled to sick leave under Article 9.3.2 on a pro-rated basis until the employee has satisfied the qualifying period for short-term disability benefits of the equivalent of thirty (30) complete calendar days. In any event, to qualify for short-term disability benefits the employee must complete the qualifying period within six (6) months of the date the employee commenced part-time sick leave.

Should the employee return to his/her full normal duties of his/her own occupation during this qualifying period for short-term disability benefits and then become disabled from the same or related disability within fourteen (14) consecutive calendar days after returning to full active

employment, he/she will be considered to be within the same qualifying period.

The employee is required to meet all application, reporting, and other requirements provided for in the short-term and long-term disability benefits plans as applicable.

The carrier's approval of a partial disability claim for sick leave continuation on a pro-rata basis does not in itself mean that the employee's subsequent claims for short-term disability benefits will be automatically approved, nor does approval for short-term disability benefits mean that the employee's subsequent claim for long-term disability benefits will be automatically approved.

Additional information on the processes and criteria for partial sick leave and partial disability benefits are set out in the document titled "Administration of Partial Sick Leave and Partial Disability Benefits", which the Parties agree shall be part of the "Policies and Procedures" section of the Disability Management Handbook for the common disability benefits plan set out in Article 9.3 of the Common Agreement.

When this letter of understanding was included in the Common Agreement, many employers had questions about eligibility.

It is our understanding that Manulife will not be amending their contract. The contract does not have provisions for partial disability, short term disability or long term disability. Instead, Manulife agreed to review sick leave claims submitted by employees who are disabled but could work some of the time. Each claim will be reviewed on a case-by-case basis. However, it is our understanding that Manulife's

approval of a sick leave claim does not guarantee approval for short term disability or long term disability.

As you can see, each case will be reviewed on an individual basis.

Invisible Illnesses

Members will, from time to time, contact the union because they have been denied disability benefits under the insured plan. They will advise the union that they had approached their dean/supervisor and requested a voluntary reduction in their workload due to illness. The nature of that illness or disability is what is often described as a “soft illness” or an “invisible illness.” Quite often they fall into the broad area of “stress” or “mental health illness.”

In most of those cases, the employer has usually agreed with little if any need for the member to provide supportive medical information, other than self-reporting on the symptoms they experience while in the workplace.

The pattern has usually been that the member may have gone to their family physician prior to approaching the employer to make the request. The decision to request a reduction in workload usually follows a period where the member has struggled for some time with the disability or illness and has not seen any improvements. The condition usually begins early into the term, with the member trying to struggle through, being committed to their students, their fellow faculty and the college. The request is often made for the next term, not during the term when the symptoms are typically most acute and when the member should really be relieved of their duties.

The member struggles through the rest of the semester, ***performing the regular duties of his or her own occupation.*** This fact does not help their claim that they are ill or disabled during this period.

In some cases, the member has not seen a doctor before they receive the forms necessary for making a claim with Manulife. The doctor completes the forms, often incorrectly or with insufficient detail. These claims are often denied, due to insufficient medical information. At this point, the member will either give up or attempt to get more medical information. So what is the most effective way for a member to proceed at this point?

Guidelines to Applying for Partial Disability Leave

1. Contact your workplace steward and/or union representative on the disability committee before approaching the employer.
2. Seek assistance and or advice on what steps are necessary to be taken in order to request a partial sick leave/reduced workload for illness or disability.
3. Remember that only your doctor can make a medical diagnosis and, as part of a treatment plan, recommend a reduction or change in your work load.
4. If your medical condition is a chronic one or one that is more complex (such as a psychological one), most insurance companies will require a specialist report to support your request for medical leave. It is always good to have a second opinion to support your claim.
5. Acute episodes are more likely to be accepted before long-term chronic

health problems. Chronic conditions can and/or may have episodic periods where the symptoms become more acute. It is for these periods that you will need to have good medical evidence.

6. Try not to self report on your symptoms.
7. Claims for modifications, including a workload reduction, that are based on medical opinion are more likely to be accepted than ones requested by a patient.
8. The medical opinion of your doctor should include an understanding or reference to the kind of work you do. Therefore, take your job description or duty statement with you to your doctor so you can discuss your work restrictions. This is sometimes called a work-ability form that your DMR committee member may help you with.
9. There is no medical condition called stress. Stress is the combination of medical symptoms that impair your ability to work. As such, just because you have a medical diagnosis, it does not mean that you are unable to perform the duties of your job. What your doctor's report needs to outline is how your symptoms restrict your ability to perform your regular duties.
10. In some cases you may be able to perform all of your regular duties, but on a less frequent basis or with rest between. If that is the case, then that should form part of the doctor's report.
11. The treatment plan is very important and should be part of your doctor's report.
12. Treatment and rehabilitation are a very important and a necessary component of the Disability Plan. The policy requires that where and when appropriate, a disabled or sick employee go through a period of rehabilitation. In a sense that is why the insurer agreed to the partial disability benefit plan.
13. The report should include the rationale for why your workload should be reduced, in combination with other interventions such as medications, therapy, etc.
14. It should be understood that partial disability benefits are not a long term or permanent fix. The idea is that the temporary reduction is part of a process of rehabilitation in an effort to return to work. It was never intended to be a permanent arrangement.
15. It should be noted that many people with permanent disabilities can work full-time. In some cases they are accommodated with workplace modifications, re-bundling of work duties, or transfers into other work areas where their skills are an appropriate fit.
16. In some cases, the accommodation is a move into a lower paid job or into a permanent part-time job. In many of those cases, there is no requirement for the employer to continue their pay at the level it was before the disability.

In conclusion, know your rights: be proactive in maintaining your health and talk to your union before your health suffers. Also, be open and receptive to your colleagues and your union if they approach you and are concerned about your health.