



Leave Provisions in the TR Collective Agreement: Your Rights and Obligations

Answers provided by CAPE Labour Relations Officer Walter Belyea
at the Translation Bureau Stewards' Meeting, October 2, 2012

1. *What exactly are “operational requirements,” and what are their limits (in other words, under what circumstances can an employee dispute a manager’s use of operational requirements as a reason for refusing to grant leave)?*

a) *Example: I am participating in a two-month-long special project. I would like to take two weeks of leave during the second month, but my manager refuses to grant my request because of “operational requirements.” Can I challenge this decision?*

A request for two weeks’ leave during a two-month-long special project can reasonably be denied if

- the employer is unable, because of staff restrictions, to find anyone with the required expertise to replace the individual who has requested leave;
- the project in question is highly unusual or constitutes an urgent government priority (bearing in mind that the government is the actual employer);
- the employee has asked for leave outside a period specified for this purpose.

All cases, however, should be viewed in the light of what constitutes “reasonable action.”

b) *Example: Two people recently resigned from my work unit, and we have been short-staffed for three weeks. I am denied a week of leave because of operational requirements. Can I dispute the manager’s decision?*

Yes, you can challenge the decision if the requirements described above in 1 a) do not apply; in practice, however, the dispute will be settled long after the date for which you requested leave. Obviously, the last requirement is also subject to the employer’s usual practices.

2. *I have been on sick leave for four days because I have a bad case of the flu. It’s the first time I have taken any sick leave this year. My manager is asking me for a medical certificate. Can I dispute the request?*

The employer may require you to produce a medical certificate even for one day of leave; but here as well, the concepts of reasonable action and usual practice must be taken into account. In the above-described case, the individual has not yet taken any sick leave, so the requirement is unreasonable, unless the situation occurs in the first week of January and the employee has taken numerous days of sick leave in the previous twelve months.



Moreover, the employer cannot demand that the employee produce a medical certificate after the fact, once the employee has already returned to work.

3. *I submitted a leave request for this coming Christmas two weeks ago, but I have not yet received any official reply from my manager. He tells me that he is waiting to see whether other people will be asking for leave. Does my manager have the right to make me wait like this?*

Since no provisions exist to establish an order of precedence when it comes to leave applications (e.g., seniority), the employer enjoys a great deal of latitude in this area. However, any refusal to grant leave must be based on a valid reason. Even a delay in granting approval must be viewed in the light of usual practice. In this particular case, the waiting period to which the employee is subjected must be evaluated on the basis of what constitutes “reasonable action.”

4. *I applied for the same weeks of leave as one of my fellow workers. We submitted our leave applications on the same date, but I have more seniority than she does. My manager decided to approve her leave request and deny mine because I had already taken two weeks of leave this year. Can I challenge that decision?*

Seniority does not apply in this case, unless it is the employer’s usual practice to take seniority into consideration. Here too, the criteria set out in response to question 1 apply; the two weeks of leave taken previously cannot be considered in the assessment of the application, because each application for leave must be weighed on its own merits.

5. *How does bereavement leave work?*

Under article 21.02(a) of the Collective Agreement, you are entitled to a maximum of five consecutive calendar days of leave upon the death of a relative who was

- permanently residing in your household, or
- an individual considered to be a member of your “immediate family” for the purposes of the Collective Agreement.

However, the leave must comply with one of the following:

- it must begin within two days following the death, or
- it must include the day of the memorial ceremony commemorating the deceased.

Leave with pay will be granted for scheduled work days only.

Article 21.02(b) seems clear enough to me. Article 21.02(c) is also relatively clear, allowing you to have paid leave credits restored to your leave balance should you be forced to take bereavement leave during an approved leave period. Article 21.02(d) is discretionary and is quite often used by immigrants who have to travel extensively or are subject to religious constraints.



6. *I am a CAPE steward, and I take two days of leave without pay each year for Association business. Will this have the effect of postponing my retirement date? Will it reduce the amount of my pension?*

Your pension is based on credited months that you have worked, and you receive credit for each month in which you work at least ten days. Normally, apart from individuals who are working full-time for the union, this is not an issue.

7. *My mother suffers from a rare debilitating illness, and I have to take leave with pay for family-related obligations to drive her to the doctor's office. My manager asks me to provide details about the leave in order to determine whether I did in fact make every reasonable effort to avoid time away from work. What kind of details am I obliged to give to my manager?*

Officially, your only obligation is to state the person's family relationship to you and the reason why the appointment cannot be scheduled outside of normal working hours. You are not required to provide diagnostic information or identify the illness involved, but only the constraints surrounding access to treatment.

8. *I have a high-risk pregnancy that requires me to see my physician often to ensure that the foetus is developing normally. Now my manager tells me that I have reached the maximum amount of leave available to me under article 21.20 of the Collective Agreement. Is there really a maximum amount?*

There is no maximum when it comes to medical appointments for pregnant employees, unless the employer can demonstrate that the appointments are covered by the provisions of 21.20(b). In such cases, the only possible maximum would arise when an employee exhausts her sick leave; and even if that were to occur, the employee could always request an advance on her sick leave credits.

9. *I have been summoned to appear as a witness in a court case involving my spouse. Am I entitled to court leave?*

Normally, you would not be entitled to court leave for a proceeding in which you are a party, and we really do not have enough information to answer the question as it appears here. Usually, the information needed to determine whether the employee is entitled to court leave is contained in the subpoena or summons.

10. *I want to take leave with income averaging next summer and to start paying for it this fall. When I submitted my application in August, however, my manager told me that I would have to wait until spring before I could apply for this leave. Can I dispute that?*

No. There are three main reasons why this refusal to grant leave cannot be challenged: (1) this type of leave is administered under a Treasury Board policy and is not a right guaranteed by the Collective Agreement; (2) such leave is granted at the employer's discretion; and (3) the granting of leave with income averaging is subject to operational requirements. There is a slim possibility of challenging the decision if other individuals did receive such leave, provided the conditions are identical and the



individual applying for leave does not have competencies that cannot be replaced. Even under these conditions, an arbitrator could decide that the employer's arguments in favour of applying the policy differently are valid if you are unable to demonstrate patent prejudice against you.

11. *I have to accompany my spouse, who is not living with me, to a medical appointment. Can I take leave with pay for family-related responsibilities?*

No. You are not entitled to leave for family-related responsibilities in this case because your spouse does not reside with you.

12. *I am an interpreter, and I have parliamentary leave in addition to annual leave. The employer would like me to take leave during periods of low demand for interpretation services (and sometimes when an assignment is cancelled without sufficient advance notice). The employer would prefer not to (1) find written translation work for me, or (2) pay me to do nothing (stand-by, documentation, down time). Is the employer entitled to force me to take leave? The employer seems to think it has the right to do so.*

There are constraints that could prevent an employee from taking leave, such as operational requirements. However, there does not seem to be any requirement in Article 19 of the Collective Agreement that would force employees to take leave. Parliamentary leave is subject to two maximums requiring a reduction in the balance of leave credits: the maximum number of annual leave days that the employee is allowed to accumulate, and the maximum number of parliamentary leave days to which the employee is entitled. If either of these maximums is attained, the employee is supposed to take leave in order to eliminate the surplus. However, the employer may convert to cash the amount of annual leave credits that exceeds thirty days, and the employer also has the option of withdrawing any parliamentary leave credits that remain unused after the start of the next fiscal year.

13. *I wanted to know whether an employee, after suffering from a disabling health problem, could get time off for regular follow-up medical appointments if those appointments are directly related to the employee's diagnosed health problem. Someone told me it was possible to get time off for this type of appointment without having to use sick leave credits. Is that correct? Can you enlighten me on this subject?*

Follow-up medical appointments for a diagnosed medical condition are not covered under the leave with pay for family-related obligations clause. It is necessary to use sick leave for such appointments. Your initial visit to a physician, dentist, etc. is not deducted from the balance of your sick leave credits; the time required for subsequent visits related to the same illness/incident will be deducted from your sick leave credits. It should be noted, however, that time for a visit related to a different illness/incident will not be deducted from your accumulated sick leave credits because this constitutes a separate event meeting the requirements of the policy. It is therefore important to differentiate between routine appointments for ongoing treatment and initial visits to diagnose an illness/incident. If you were to give me a description of a concrete situation, it would be easier for me to give you a more specific interpretation.



14. *I would like to take leave without pay for three months or one year. How far in advance do I need to submit my application? Can my manager refuse to grant me this type of leave? Do I have to specify why I want to take this leave?*

The clause concerning leave without pay for personal needs does not specify how far in advance applications for such leave must be submitted; however, since this leave is granted on a discretionary basis, and unless there is an emergency involved (e.g., illness of an immediate relative), the employer may claim that extremely short notice has been given and the application for leave may be denied because of operational requirements. Yes, your manager can deny the leave application; however, the reasons given for refusing the application must be reasonable.

An employee is not required to reveal the reasons why he or she is applying for such leave; however, if the individual takes up work elsewhere, there must be no conflict of interest situation.

15. *I want to take five consecutive weeks of leave. I have accumulated the required leave credits. Can my manager refuse to approve my leave application by citing operational requirements, simply because he feels I will be away too long?*

Yes, the employer can deny your application for five consecutive weeks of leave in the face of demonstrable operational requirements. This is another case that must be weighed in the light of what constitutes reasonable action. In other words, the manager must be able to show proof that the leave cannot be granted under the existing circumstances, as described in the answer to question 1 above.

16. *I have used up all of my leave with pay for family-related responsibilities. Can I use sick leave instead?*

Yes, an employee who runs out of leave for family-related responsibilities can use sick leave or even annual leave instead, subject to operational requirements and with two days advance notice.