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Association canadienne des employés professionnels
Canadian Association of Professional Employees

Sick Leave in the Federal Public Service

When the first provisions for sick leave in the public service were introduced in the first collective agreements at the end of the 1960s, the entitlement article was called: income protection from illness. In order to properly understand how the system of sick leave credits works, when employees take sick leave and for what purposes, it is important to understand that it is one way in Canada among many designed to address the matter of income protection during illness. Let us first describe the system for income protection from illness that exists in the federal public service, before we compare to other systems.

Income Protection from Illness: the Federal Public Service

Paid Sick Leave Credits

There are two components of income protection from illness in the federal public service: the sick leave provisions of public service collective agreements, and the provisions of the long term disability plan of the federal public service.
The typical paid sick leave provisions of a public service collective agreement stipulate that (1) paid sick leave credits are earned; (2) they are earned at a rate of 9.375 hours per month; (3) they are earned only if an employee has received pay for 75 hours in the month, or the equivalent of approximately 46% of a normal working schedule. This amounts to 15 days of paid sick leave credits earned per year, if the employee meets the conditions.

Earned but unused paid sick leave is not lost at the end of the year. It is accumulate and can be used subsequently when the employee meets the conditions for the use of paid sick leave. Typically, collective agreements in the federal public service state that the employer must authorize sick leave and that the employee must satisfy the employer that he or she is unable to perform her or his duties for reason of sickness or injury. Thus, an employee with a bank of paid sick leave days only has access to these paid sick days if the employer so authorizes.

Long Term Disability Plan

The other component of the “income protection from illness” system in the federal public service is the long term disability plan (LTDP). The LTDP is an insurance plan. The employer makes contributions to the plan on behalf of employees. Employees make a contribution to the plan. The plan is administered by a service provider. Currently, Sun

Life Assurance Company of Canada administers the public service LTDP. Employees have access to LTDP benefits, which amount to 70% of wages, though the level of benefit is reduced by benefits received from other sources. [1]

For a claim to be approved it needs to be submitted with evidence and explanations from all physicians who were involved in treating the disabling illness or injury. Sun Life has the right to request additional medical information from the treating physicians, or arrange for an examination by independent medical specialists (or other service providers).

Sun Life can refuse and does refuse benefit claims. In such circumstances, if the employee is unable to carry out his or her duties for reason of illness or injury, and if the employee has no more sick leave credits or vacation leave credits, then the employee is off work on unpaid sick leave.

When the claim is accepted by Sun Life, the employee will receive benefits only when he or she has no more sick leave credits in the bank, or, at the end of a 65-day elimination period, whichever comes latest. The default scenario is that the employee uses all unused paid sick leave accumulated over the years.

For example, if an employee has earned all possible sick leave credits according to the conditions of the employee's collective agreement and if the employee has worked for 10 years, the employee would have earned 150 days of paid sick leave credits. During that time, if the employee had used an average of 3 days of sick leave per year, then the bank of sick leave accumulated during that time would be equivalent to 150 days – (10 x 3 days), or 120 days. The employee would need to exhaust the 120 days of accumulated paid sick leave credits (or 24 weeks) before becoming entitled to benefits under the long term disability plan.

If the employee had accumulated less than 65 days of paid sick leave credits before the employee's LTDP claim is approved, then the employee could be authorized by the employer to use any vacation leave credits accumulated by the employee in order to protect income during the elimination period. If the employee has insufficient sick leave credits and vacation leave credits to cover the 65-day elimination period, then the employee must request unpaid leave.

[1] All benefits received under the Public Service Superannuation Act (PSSA); disability benefits received, other than benefits payable to or on behalf of dependants, under the Canada Pension Plan (CPP) or the Quebec Pension Plan (QPP); benefits received under the Government Employees Compensation Act, or similar benefits under a plan of the federal government or any other government; disability benefits paid or available under another group insurance plan; disability insurance benefits payable under the legislation of any government, such as income replacement benefits under a no-fault automobile insurance plan; amounts received under a third-party damage award.

With the default scenario, the insurance company pays out less money, and the insurance plan cost less for those contributing to the plan. The employer contributes 85% of the premiums. The accumulation of sick leave credits is designed in order to allow federal public service employees to cover the elimination period in the event that they need to request benefits under the LTDP. The accumulation of paid sick leave credits by employees is therefore a cost saving mechanism for the employer within the income protection from illness system used in the federal public service. It is not a gift to employees. It is earned and it saves the employer money on its LTDP costs.

The Private Sector

There are many different systems for the protection of income from illness in the private sector, though not all private sector employers are committed to income protection for sick or injured employees. Some private sector employers provide their employees with the minimum standard found in their respective provincial labour standards legislation or in the Canada Labour Code (CLC). The Canada Labour Code provides no entitlement to paid sick leave if an employee is ill or injured outside the work place. However, it does require employers covered by the Act to contribute to a wage replacement plan that pays as much as the provincial workers compensation insurance plan for illnesses or injuries incurred in the work place (and only work related illnesses and injuries).

As of 2007, eight of fourteen jurisdictions in Canada require employers to provide unpaid sick leave: the federal jurisdiction (CLC), Quebec, Yukon, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan. In Ontario employers are not required to provide unpaid or paid sick leave, or paid benefit plans for sickness to employees. In Manitoba, employers are required to provide employees with unpaid family leave to deal with personal illness or the needs of their families. Alberta, British Columbia, the Northwest Territories and Nunavut don't have any provisions in their employment standards legislation for sick leave. Beyond the minimum requirements, many employers develop policies that allow managers the discretion to authorize paid absences from work for reasons of illness or injury[2].

In a poll conducted in 2007, 61.6% of employers indicated that their employees were entitled to 5 days or less of paid sick leave days.[3] However, 22.2% indicated that their employees were entitled to more than 10 days of paid sick leave.
In some cases, paid sick leave entitlements were supplemented by a form of short term disability insurance with various elimination periods and other conditions that make comparisons difficult and/or a form of long term disability insurance with similar complexities.

[2] http://www.hrinfodesk.com/preview.asp?article=23929 .
[3] http://www.hrinfodesk.com/preview.asp?article=23929

Statistics and Sick Leave

So, the question is what are we comparing when we are comparing the average number of sick leave days taken in the federal public service to sick leave days in the private sector? By analogy, we can say that we are comparing an apple with a fruit salad. It is not a comparison that holds up to scrutiny.

It is even shaky to make broad statements about sick leave in the federal public service. Take the notion of an average. What is the average number of sick leave days taken by public service employees? Are we talking about all circumstances, including those where employees are required to use all their sick leave in order to be eligible for long term disability? A few hundred cases of employees required to take 100 or 150 days of sick leave in order to qualify for LTDP benefits can bump an average up pretty high.

When talking about the average number of sick leave days, are we talking about paid and unpaid sick leave? How is unpaid sick leave a benefit, we can reasonably ask? How does the rate at which employees take unpaid sick leave factor into a justification for taking away their entitlement to paid sick leave?

Let us go a step further here. Financial liability reporting has changed over the past few years for the federal government of Canada. It was a conscious decision by government officials. As a result, sick leave banks can now be presented as a financial liability. Yet, let us give this matter a little thought here. Everyone knows that public service employees have gone to the bargaining table more than once trying to secure a cash-out provision for unused sick leave. Why? Because public service employees leave the federal public service with mountains of unused sick leave that end up being of no benefit to them and of no cost to the employer. So the so-called liability incurred when public service employees bank sick leave credits is a paper exercise with no equivalent value in reality. Yes, some paid sick leave credits are used, but nowhere as much as suggested by figures that have thrown around by government officials. Yes, there is a liability. But to properly anchor the notion in reality it would be necessary for the employer to extrapolate on the basis of a reliable set of assumptions and past statistics in order to produce a reliable figure.

FACTS

For reasons explained above, we conclude that using an average gives a distorted representation of what is happening in reality as it does not allow distinction of very different circumstances, i.e. where employees are authorized to take paid sick leave and where employees are compelled to take paid sick leave.

Equally disturbing is the mixed use of paid and unpaid sick leave, where cases of employees receiving the benefit of income protection from illness, are confused and thrown together with cases where employees may or may not receive any income protection depending on whether we are talking about circumstances of unpaid leave with an approved claim for LTDP benefits, or unpaid leave with a rejected claim.

But, even when such a weak statistical indicator as average is used, here is what the Treasury Board of Canada has been telling CAPE at the bargaining table over the past few rounds of bargaining. According to Treasury Board figures provided to CAPE for collective bargaining, the average number of paid sick leave days taken by all federal public service employees in the core administration was **10.4** days in fiscal year 2004-05, **10.54** days in fiscal year 2005-06, **10.7** days in fiscal year 2008-09, and **10.97** days in fiscal year 2009-10.

And these figures include **all paid** sick leave. Therefore, they include circumstances where employees have no choice but to use all their paid sick leave credits in order to qualify for LTDP benefits.