Health and Safety
Santé et sécurité

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Workplace accidents:

Your collective agreement and 'injury on duty' leave

Workplace accidents are stressful enough without having to worry about your income and dealing with often-complex workers' compensation laws.

Your union-negotiated collective agreement provides help when you most need it through Injury on Duty Leave (IDL).

Your right to IDL is set out in the following article:

"An employee shall be granted injury-on-duty leave with pay for such period as may be reasonably determined by the Employer when a claim has been made pursuant to the Government Employees Compensation Act, and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

(a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct;

or

(b) an industrial illness or a disease arising out of and in the course of the employee's employment;

if the employee agrees to remit to the Receiver General of Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease providing, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium."

If you are injured on the job, here is the process that ensures that you continue to receive pay:

- A claim is completed by a worksite supervisor and forwarded to the employer's Human Resources section. It is then sent to the Labour Programs division of Human Resources Skills Development Canada.

- This compensation claim is evaluated at HRSDC to determine whether there is enough information to justify forwarding the claim to the particular provincial Workers' Compensation Board (WCB).

- Until that is done, and the claim is approved, the employee is placed on sick leave with pay. When the claim is approved, the employee is then placed on Injury on Duty Leave and the sick leave used in the interim is returned to the employee.

As the collective agreement Article mentioned above notes, federal public service workers are covered by the *Government Employees Compensation Act* (*GESA*) while on IDL. An administration fee is paid to the provincial WCB to administer the paperwork on behalf of federal departments – including HRSDC Labour Programs , which is responsible for certifying the leave and providing periodic verification to support the continued provision of IDL.

So, how long can an employee remain on Injury on Duty leave? When the worker will be away for a short recuperation, it is entirely reasonable for that individual to remain on IDL. The pivotal word is 'reasonable'. Many factors must be considered by the employer before a decision is made to remove the employee from IDL and place him or her on direct WCB benefits. These factors include:

- the prognosis as to the length of time the employee would be off the job; and
- whether there is a Return to Work program (involving light duties) available in the work site which would allow the employee to return gradually to full duties by working less-than-normal hours or days.

It is our belief that it is patently unfair to place an injured worker on direct benefits without a case-by-case review of the situation. When an injured worker is placed on direct benefits, they are denied a number of entitlements, including being able to earn vacation or sick leave benefits.

Treasury Board does have a policy that provides guidelines to departments on the administration of IDL. When determining if IDL should be terminated, the policy states that "should the total period of injury-on-duty leave granted to an employee . . . reach 130 working days, a special departmental review of the case should be carried out and a decision made as to whether or not the continued provision of such leave beyond this period is warranted."

The Agriculture Union contends that this review should include the prognosis for a successful recuperation and return to work. As well, departments should not contemplate placing an injured worker on direct benefits until that time.

The definition of 'reasonable' has been argued on a number of occasions at adjudication. A recent case, where the employee felt that being placed on direct benefits after six weeks was unreasonable, was dismissed. (File 166-02-35166) The evidence provided to the adjudicator showed that both the worker's physician and the WCB were of the opinion that the particular injury would support a recuperation period of between five and eight weeks. The adjudicator found that the employer's decision to grant leave for six weeks was reasonable, given the facts at his disposal.

Before concluding, there are a number of points that bear remembering…

- Salary – including overtime and shift premiums – are considered revenue when calculating the amount of WCB compensation to be paid.

- Return to Work programs, while primarily used to return an injured worker to the workplace, can also be applied to outside accidents and illnesses.

- Local Health and Safety Committees should be involved in decisions as to whether the worksite is safe. This not only for the benefit of the specific returning injured worker, but for co-workers as well.

- The employer's 'due diligence' must ensure that there is no danger to you and your co-workers when returning to work. Employees are entitled to ask if this has been considered. Part of this 'due diligence' may see the employer request that a medical evaluation be carried out. If so, it should not be an automatic request. Rather, the request must be based on one of the following criteria:
    - a Job Hazard Analysis relating to the work being performed, or
    - a manager's reasonable doubt as to the safety of the employee and their co-workers.

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Protect Yourself!

Ask yourself this question…

Do you know where to find a copy of federal health and safety rules and regulations contained in Part II of the Canada labour Code?

If not, ask your Agriculture Union Local representative.