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Injury on Duty and Workers' Compensation

Article 16 of the Provincial Collective Agreement and Article 34 of the Labrador West Collective Agreement provide for special leave in the event that a teacher is injured in the performance of his/her duties. The parties to the Collective Agreements have agreed that the procedure for the processing of teacher claims for such Injury on Duty shall be in accordance with the legislative provisions outlined in the Workplace Health, Safety and Compensation Act (the Act). This procedure has been accepted by the NLTA Provincial Executive. Teachers should ensure that they are familiar with and follow this process in the event that they lose time for a work-related injury.

When is an Injury Work-Related?

Teachers often ask when an injury is considered to be an "injury on duty" for the purpose of being covered by the Act. Section 61 of the Act states that: *Where the injury arose out of the employment, it shall be presumed, unless the contrary is shown, that it occurred in the course of the employment, and where the injury occurred in the course of the employment, it shall be presumed, unless the contrary is shown, that it arose out of the employment.*

Therefore, any job-related duty/responsibility that has been assigned to a teacher (mandatory) or that the teacher has agreed to assume (voluntary) would be considered by the WHSCC to be part of the teacher's employment in the event that the teacher was injured in the course of carrying out said duty or responsibility.

Teachers should be aware that they are considered to be acting in the course of employment whenever they are involved in school related activities, including extra-curricular activities which involve supervision of and travel with students outside of the regular school day or during weekends or school holiday periods. Any time an injury occurs during an activity involving a teacher and student(s) for which the

teacher's involvement, whether mandatory or voluntary, is linked to his/her role and responsibilities as a teacher, said injury would be considered to be work-related and, therefore, compensable by the Workplace Health, Safety and Compensation Commission (WHSCC).

Injury on Duty

The Collective Agreements provide for Injury on Duty leave if a teacher loses time from work due to a work-related injury. Effective January 1, 2002, the following process has been implemented for the reporting and assessment of Injury on Duty claims.

(i) Reporting Process:

a) Worker's Report of Injury

Teachers should report work-related injuries to their principal and/or school district officials as soon as possible. Teachers should then complete a Workers' Report of Injury (Workplace Health, Safety and Compensation Commission Form 06) and forward the report to WHSCC as soon as possible. A teacher who fails to submit this report to WHSCC within three months from the date of the accident giving rise to the injuries may be denied benefits. A copy of Form 06 should also be provided to the school principal and/or school district Director.

b) Employer's Report of Injury

The principal, upon being informed of the accident/injury, shall conduct an investigation immediately, prepare a written report, complete an Employer's Report of Injury (WHSCC Form 07) and forward all relevant documents to the school district Director. The Director and/or designate, shall notify the Commission of the accident, in writing, within three days. The Director shall:

- Review and assess the Employer's Report of Injury (WHSCC Form 07) and forward the report on to WHSCC if the employee loses time from work beyond the date of the injury or requires medical attention;

- b) Complete salary details on the Employer's Report of Injury Form and forward immediately (with any principal's report) to the WHSCC;
- c) Place the injured teacher on Injury on Duty leave effective the date of the injury, as per the Collective Agreements;
- d) Notify Teacher Payroll immediately that the employee has been injured and the necessary documentation has been forwarded on to WHSCC (optional);
- e) Advise the teacher of the process and their responsibilities;
- f) Maintain contact with the teacher and WHSCC and seek updates on the status of the claim; and
- g) Ensure that teachers cooperate with the WHSCC. Failure to do so may result in the employee being placed on alternate leave, in accordance with other provisions within the Collective Agreement.

c) Physician's Report of Injury

If a teacher sustains a work related injury which results in the need to visit a medical professional, the attending physician is required to submit a Physician's Report (WHSCC Form 8/10) detailing the condition of the teacher and the medical treatment prescribed (if necessary).

(ii) Workplace Health, Safety and Compensation Adjudication

The WHSCC shall adjudicate all claims and shall notify both the teacher and the school district of its recommendation.

- a) Claims rejected – teacher placed on alternate leave in accordance with other provisions of the Collective Agreement.
- b) Claims approved – if the teacher is unable to report for work, then Injury on Duty leave will be granted in accordance with the provisions of Collective Agreements. Also, benefits payable to a teacher on Injury on Duty leave shall be in accordance with WHSCC legislation.

(iii) Claim for Rehabilitation Services

The WHSCC shall review claims for rehabilitation services at the earliest opportunity and shall advise both the teacher and the school district Director, in writing, as soon as possible as to whether: a) the nature of the disability is such that the employee will eventually return to pre-accident employment; or b) the nature of the disability is such that the employee will be unable to return to pre-accident employment.

Early and Safe Return to Work (ESRTW)

The Act places certain obligations on both the employer and employees when considering the return of an injured worker to the workplace.

(i) Employer's Obligations

In order to comply with the legislation, school districts must meet the minimum standard of cooperation as defined by Section 89(1) of the Act:

- a) Contact the injured worker as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment;
- b) Provide suitable employment that is available and consistent with the worker's functional abilities and, when possible, restore the worker's preinjured earnings;
- c) Give the WHSCC such information as it may request concerning the worker's return to work; and
- d) Do such other things as may be prescribed.

(ii) Workers' Obligations

In order to cooperate with the facilitation of a return to work plan, workers must satisfy the following minimum requirements:

- a) Contact their employer as soon as possible after the injury occurs and maintain communication throughout the period of their recovery and impairment;
- b) Assist the employer, as may be requested or required, to identify suitable employment that is available and consistent with their functional abilities and that, when possible, restores their pre-injury earnings;
- c) Give the WHSCC such information as it may request concerning the return to work process; and
- d) Do such other things as may be prescribed.

Post-Injury Employee Options Consultation

If a teacher is deemed unable to return to pre-accident employment, the school district Director, in consultation with appropriate resource personnel, including the Newfoundland and Labrador Teachers' Association, the Human Resources Division, Department of Education, and, where applicable, the WHSCC, shall review appropriate options, taking into consideration the employee's age, service, experience and training. Options include:

- alternate employment;
- retraining; and
- medical retirement.

Any of the options undertaken will be in keeping with the Collective Agreement, The Teachers' Pensions Act, the Workplace Health, Safety and Compensation Act and in consideration of any other medical benefits which may be available under the Newfoundland and Labrador Teachers' Association Group Insurance Plan.

Workplace Health, Safety and Compensation Commission Benefits

(i) Earnings Loss Benefits

The Act determines that the benefit level for all employees who are injured on duty will be 85 percent of net wages, with maximums established as indicated below. As well, the legislation states that employers, including school districts, may not pay an injured employee an amount in excess of that which the employee is entitled to under the Act.

The legislation defines "net" wages as gross wages minus EI, CPP and Income Tax deductions. Any other deductions from the employee's regular pay (e.g. group insurance premiums, pension premiums) will continue to be deducted from the WHSCC benefit levels. **While the WHSCC benefits are set at the above percentage levels, teachers should be aware that the maximum insurable gross pay effective January 1, 2018, used in the calculation of benefits is \$64,375 per annum (\$2,475 bi-weekly).**

Thus, any teacher beyond Certificate V (Step 5), Certificate VI (Step 2) or at any step on Certificate VII of the provincial salary scale (as determined for September 2015 in the current Collective Agreements) will be negatively affected by the cap of \$64,375 on maximum insurable gross pay. The 85 percent benefit will be calculated on the maximum insurable gross pay and not on the teacher's actual gross pay, if the actual gross is greater than \$64,375 annually (\$2,475 bi-weekly). Teachers receiving WHSCC benefits for lost earnings will continue to receive pay cheques, with the deductions noted above, issued by the Teacher Payroll Division, not by the WHSCC. A teacher on Injury on Duty leave will be considered to be in receipt of full salary for the purpose of all benefits under the Collective Agreements. Any teacher who is in receipt of WHSCC benefits at the end of a school year will have their regular bi-weekly salary reinstated for the period during which school is closed for summer vacation. If a teacher is required to continue on WHSCC benefits at the beginning of the following school year, then the teacher's income at that point in time will revert to the amount calculated at WHSCC rates. Teachers are strongly advised to report all

injuries *immediately* in order to avoid possible delays in receiving WHSCC benefits or potential reductions in WHSCC compensation benefit levels. A reduction in WHSCC compensation benefits would occur when a teacher has not reported an injury immediately and eventually decides to do so. The WHSCC benefit would then be reduced proportionately to provide for repayment of any paid sick leave already received.

(ii) Medical Aid

Whether or not an employee misses time from work due to a workplace injury, WHSCC benefits for other expenses may be payable. For example, fees for medical reports, physiotherapy, chiropractic services, prescription medication, crutches and prostheses, and travel expenses for attending appointments are covered by WHSCC. Therefore, even though the NLTA Group Insurance program may cover a portion of some of the above referenced costs, they should be charged to the WHSCC when incurred due to a workplace injury.

Long-Term Disability (LTD) Top Up Benefit

Any teacher who has Long-Term Disability (LTD) insurance coverage through the NLTA Group Insurance program and has lost time at work due to a workplace injury, will be entitled to receive a "Top Up" Benefit through the LTD coverage once they are in receipt of WHSCC benefits for lost earnings. The LTD Top Up Benefit is non-taxable and will pay teachers the difference between 85 percent of their regular net income and the WHSCC benefit received. Under the LTD Top Up Benefit program, net income is defined as gross salary, less Income Tax, Employment Insurance premiums, and Canada Pension Plan contributions. In order to qualify for this benefit, the teacher must be a member of the LTD benefit plan under the NLTA Group Insurance program and must complete the applicable application. Applications are available from the NLTA office.

NLTA Fees

Any teacher who is in receipt of a lost-time accident benefit for more than two consecutive weeks will not have their regular NLTA fees (1.25% of salary) deducted as per normal. Instead, the teacher will have to pay only \$2.00 per month for each month that he/she is in receipt of a lost-time accident benefit in order to maintain their membership in the Association.

The LTD Top Up Benefit and reduced NLTA fees are intended to help alleviate some of the financial stress experienced by teachers and their families due to lost-time accidents.

Conclusion

Experiencing an injury that requires an employee to miss work for any period of time is not what anyone hopes for, and the stress of this may be increased by having to comply with and face the financial realities of the WHSCC claims process and compensation regime. NLTA Programs and Services staff are available to provide information and assistance in navigating the WHSCC system to teachers who are injured on the job.

For inquiries to the Workplace Health, Safety and Compensation Commission, please call 709-778-1000 or 1-800-563-9000.