

Disability insurance and medical arbitration



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Disability insurance and medical arbitration

Without question, the health and social services sector is a stimulating work environment offering a wealth of human experiences. Unfortunately, it is also very stressful for the employees who work in the sector. The realities of illness, suffering and at times hardship faced by service users creates an emotional burden and stress that, when added to the heavy workload of health and social service professionals and technicians, can have a detrimental effect on the latter's health.

As a union with 55,000 members in the sector, the APTS knows all about this problem that stems from the nature of the work itself and from work overload due to understaffing, and offers its members mandatory disability insurance coverage. The number of people receiving disability insurance benefits is steadily rising, with a significant increase in mental health-related absences.

This insurance coverage is based on two sources, Article 30 of the national provisions of the APTS collective agreement, and the insurance contract with SSQ Insurance. The rights and obligations set out by these documents must be exercised in accordance with public acts such as the *Québec Charter of Human*

Rights and Freedoms, the Act respecting access to documents held by public bodies and the Protection of personal information, and the Québec Civil Code.

The aim of the current document is to explain these rights and obligations, present certain concepts specific to leaves of absence for disability, and advise people who are on disability about the steps that have to be followed. Those who need to take disability leave are advised to consult their local executive or their labour relations counsellor to ensure that their rights are recognized and if applicable, to prepare their return to work under conditions that are in keeping with their medical condition.

Employees who were on disability leave at the time their union certification was transferred to the APTS in May 2017 and who are still on disability continue to be covered by their former union's collective agreement and long-term disability insurance. These employees have to refer to their former union's documents rather than to those of the APTS.

The information contained in this document comes from the 2016-2020 national provisions of the APTS collective agreement and the insurance contract concluded between the APTS and SSQ Insurance, which has been in force since January 1, 2008. For the application of the national provisions, the following concepts and terms have a specific meaning that is useful to know.

Disability insurance

Concept of disability

To be eligible for disability benefits, employees have to be in a state of incapacity within the meaning of the collective agreement. Three essential conditions are involved:

First condition:

a state of incapacity defined as resulting from:

- an illness or accident;
- a complication of pregnancy;
- a vasectomy, a tubal ligation or similar cases relating to family planning, or organ or bone marrow donation

Second condition:

a state of incapacity requiring medical supervision;

Third condition:

a total inability to perform the usual duties of their job or a comparable job with similar remuneration that their employer offers them.

[Clause 30.03]

Period of disability

WAITING PERIOD

The waiting period is defined as a qualifying period before receiving disability insurance benefits.

• For full-time employees

- This waiting period is 5 working days.
- It is calculated as of the first day of absence for disability.
 - During the waiting period, employees receive compensation equal to their regular salary. This compensation is deducted from their accumulated bank of sick leave. Advance sick days may be used to cover this waiting period. If not, these days must be taken without pay.

• For part-time employees or employees who do not hold positions

- The waiting period is 7 calendar days' absence from work due to disability.
- It is calculated as of the 1st day that employees must come in to work.
 - No direct remuneration is paid during this period, as employees receive 4.21% of their regular salary on each pay as remuneration for sick leave.

[Clauses 30.19 a and 30.34]



▣ PERIOD OF SHORT-TERM DISABILITY

is defined as:

- a continuous period of absence beginning after the waiting period and ending no later than the 105th week;
- or it may be a series of successive periods of disability due to the same cause, separated by less than 15 days of effective full-time work or of availability for full-time work if the disability lasts less than 104 weeks (two years);

[Clause 30.04 i]

▣ PERIOD OF LONG-TERM DISABILITY

The period of long-term disability can be defined as:

- a period of disability extending beyond the time limit of 105 weeks;
- or a series of successive periods of disability due to the same cause, separated by less than 90 days of effective full-time work or of availability for full-time work if the duration of the disability is equal to or greater than 104 weeks (two years).

[Clause 30.04 ii]

Rehabilitation

Throughout their disability period until the 36th month, employees may have one or more rehabilitation periods:

- in their position;
- in their assignment;
- in another assignment.

This rehabilitation is possible, with the employer's consent, provided it enables them to perform all their usual duties.

Who can initiate or extend a period of rehabilitation?

- the employer, through the designated physician;
- the employee, on the recommendation of her or his attending physician.

In all cases, a rehabilitation period is only possible with the employer's consent.

[Clause 30.19 c]

GRADUAL RETURN TO WORK

No definition of this concept is found in the national provisions or in our insurance contract. It can nonetheless be defined as a process of gradually reintegrating the workplace. This concept stems from the duty to accommodate that enjoins the employer to accommodate an employee who is living with a disability. The applicable rules are the same as those for rehabilitation.

Temporary assignment

Throughout the disability period up to the 36th month, employees may be temporarily assigned to duties that correspond with their residual capacities. But this assignment must not be hazardous to their health, safety or physical well-being.

Who may initiate or extend a temporary assignment period?

- The employer, on the recommendation of the designated physician (with or without the consent of the attending physician);
- the employer and the employee, on the recommendation of the employee's attending physician, may extend a temporary assignment.

[Clause 30.19 d]

A period of rehabilitation, gradual return or temporary assignment does not have the effect of interrupting the period of disability or extending the period during which disability insurance benefits are paid beyond the prescribed time period. However, during the days or parts of a day when employees are at work, they receive their salary and accumulate the applicable benefits in proportion to the days worked. On the days not worked, employees receive disability insurance benefits.

Part-time employees are entitled to their salary for the days worked and to their disability insurance benefit for the difference between the number of days worked and the number of days serving as a basis for calculating the disability insurance benefits.

[Clause 30.19 e]



Medical arbitration

Medical arbitration

This is a process whereby a medical arbitrator hands down a decision when there is a difference of opinion between the attending physician and the healthcare professional designated by the employer.

Disputes submitted to the medical arbitration procedure are those where the employee contests:

- the alleged non-existence of a disability;
- the presumed termination of a disability;
- the employer's decision to require that the employee participate in or extend a rehabilitation period or a temporary assignment.

Since 2016, it has been possible for employees to use the medical arbitration procedure when it is the employer who disputes the termination of the disability.

The medical arbitrator's mandate may only cover the following subjects:

- the alleged non-existence of a disability;
- the date of termination of a disability;
- the employer's decision to require that the employee undergo or extend a rehabilitation or temporary assignment period

[Clause 30.29]

CASES SUBJECT TO MEDICAL ARBITRATION

Since April 3, 2011, medical arbitration applies to all medical specialties. With the exception of disabilities that fall within the scope of practice of

physiatry, orthopaedics or psychiatry, the collective agreement does not provide a list of medical arbitrators.

CONDITIONS APPLICABLE DURING THE ARBITRATION PROCESS

The employer cannot require employees to return to work before the date stipulated on the medical certificate or before obtaining the medical arbitrator's consent.

Reasonable travel expenses that employees incur when visiting the medical arbitrator are reimbursed by the employer in accordance with the national provisions.

The medical arbitrator's decision is final and enforceable.

From the time that the medical arbitration process begins until the final decision is handed down by the medical arbitrator, employees continue to receive disability insurance benefits providing they meet the criteria defining disability.

When employees contest the termination of their disability and the final decision is in the employer's favour, benefits must be reimbursed to the employer. In that case, employees must reimburse the employer for the disability insurance benefits that were overpaid, at a rate of 10% of the amount per pay period.

When employers contest the termination of a disability, they must reimburse the difference between the disability insurance benefits and 100% of the employee's salary if the final decision concludes that the employee was able to work as the attending physician claimed.

Duty to accommodate

Employees on disability may come back to work with one or more temporary or permanent physical or psychological limitations that prevent them from resuming work in their position under the same conditions.

The parties – the employer, the union and the employee – must then try to find reasonable accommodation measures to facilitate the latter's return to work. These measures may take various forms such as

- adjusting the employee's schedule;
- adjusting the work premises;
- adjusting the employee's work station;
- adjusting the employee's duties;
- transforming the job;
- etc.

When an employee's return to work necessitates accommodation measures, it is important to contact a labour relations counsellor.

Employee's responsibilities during a period of disability

To obtain disability insurance benefits, employees must fulfill the following responsibilities:

MEDICAL FILE

They must remit copies of all medical certificates to their employer's health office and keep a copy.

At the employer's request, employees must allow the person in charge of the health office and the physician designated by the employer to have access to their medical file. Employers must reimburse any costs associated with additional medical information that they require, in accordance with the collective agreement.

Access to information contained in employees' medical file should normally be limited to information related to the current disability.

MEDICAL EXAMINATION REQUESTED BY THE EMPLOYER

As soon as employees are asked to see a physician designated by their employer in connection with their leave, they have to comply. They are entitled to ask for a copy of the medical report.

The physician may give her or his opinion on such aspects as:

- a return to work;
- a return to work involving a temporary assignment;
- or a period of rehabilitation.

The medical assessment may confirm the attending physician's opinion or refute it.

Reasonable travel costs incurred for the appointment with the physician designated by the employer will be reimbursed by the employer in accordance with the national provisions.

EMPLOYER'S NOTIFICATION TO RETURN TO WORK

When employees receive notification to return to work, they must consult their attending physician or medical specialist as quickly as possible to obtain the latter's professional opinion and comments in writing concerning the conclusions transmitted in the notice. They may either accede to this notice by returning to work, or contest it. It is also important to inform a labour relations counsellor as soon as they receive notification from the employer.

An attending physician who recommends a

gradual return to work or a rehabilitation period must specify the conditions and, if applicable, indicate any functional limitations. Employees should contact a labour relations counsellor so that the latter can take the necessary steps to ensure compliance with the return to work conditions stipulated by the attending physician.

Moreover, if the employer refuses to take an employee back to work after the latter submitted her or his medical certificate, the employee should contact a labour relations counsellor as soon as possible.

Applying for disability insurance from the insurer

Roughly 3 months before the 105th week of disability leave, we recommend that employees check to make sure that the SSQ has opened a file for them.

They have to contact the employer's health office to obtain the application form for disability insurance (*Demande de prestation d'assurance invalidité*). This form contains three sections:

- the employer's declaration;
- the insured person's declaration;
- the attending physician's declaration.

They also have to:

- fill out the section that concerns them;
- have their attending physician fill out the appropriate section;
- have their employer complete the plan administrator section and send all the required information to the insurer.



Roughly 6 months before the 36th month of disability leave, they should contact their union to assess the possibility of negotiating accommodation measures to avoid having the employment relationship severed after 36 months of absence, as provided for in clause 13.08 of the national provisions. Prior to the end of the 36th month of leave, their attending physician must provide an assessment of their ability to return to work. At this stage, their collaboration is important.

Employer's responsibilities

During the first two years of disability, employers act as the insurer and pay the disability insurance benefits. As such, they receive the medical information necessary to administer the disability case.

As every case is assessed, employers may have a physician of their choosing examine an employee. They may not take undue advantage of this right, however.

Upon request, employers must give them a copy of all medical reports ensuing from these examinations.

When employees give their doctor's note for a gradual return to work or rehabilitation to the health office, employers must comply with the

stipulated conditions. But employees may be required to meet a physician of the employer's choosing to verify the conditions stipulated by the physician or the employees' ability to return to work. If the employer changes the conditions stipulated by the physician or does not follow through on the doctor's note for a return to work, employees should immediately contact their union.

Union's responsibilities

The labour relations counsellor who is responsible for their file has to:

- answer employees' questions;
- defend employees' interests and ensure that the attending physician's orders are followed;
- participate and collaborate in any discussion to find the necessary accommodation measures;
- ensure follow-up during the medical arbitration process;
- ensure that the file is kept confidential.

Rights during a leave of absence for disability

SHORT-TERM DISABILITY INSURANCE	LONG-TERM DISABILITY INSURANCE
Amount of benefits	
80% of the employee's gross salary including additional remuneration provided for in Article 17 and the premium for regional disparities (excluding inconvenience premiums). This benefit is paid by the employer.	72% of the employee's net monthly salary. The net salary is the salary that the participating employee would have received, if, on the 105 th week of total disability, no disability existed, after deductions for provincial and federal taxes, employment insurance, the Québec Parental Insurance Plan (QPIP/RQAP), the Québec Pension Plan (QPP/RRQ) and the Canada Pension Plan (CPP/RPC).
Part-time employees and temporary employees without a position The benefit is established proportionally to the time worked in the 52 calendar weeks preceding their disability.	Part-time employees and temporary employees without a position The benefit is established proportionally to the time worked in the 52 calendar weeks preceding their disability.
Seniority	
Accumulated during the first 24 months of a disability. Part-time employees Seniority is calculated according to the weekly average number of days' seniority accumulated in the last 12 months of work before the leave of absence started.	Conservation of seniority until the 36 th month.
Retaining the employment relationship	
Employees retain their employment relationship and the position they held. Temporary employees without a position Part-time employees without a position continue in the assignment they held at the time they went on leave; otherwise, they are entitled to any other assignment in accordance with the collective agreement.	They retain their employment relationship until they've been absent for 36 months. Temporary employees without a position Part-time employees without a position continue in the assignment they held at the time they went on leave; otherwise, they are entitled to any other assignment in accordance with the collective agreement. The employment relationship is severed after 36 months of leave Severing of the employment relationship is not automatic. It should apply when "the employee was unable to establish her or his capacity to perform her or his work at a reasonable future time." ¹

¹ Micheline Bouchard, *Le salarié affecté d'une lésion psychologique : la fin d'emploi est-elle encore possible?*, Cowansville, Édition Yvon Blais, 2006, p.12.

Rights during a leave of absence for disability (continued)

SHORT-TERM DISABILITY INSURANCE	LONG-TERM DISABILITY INSURANCE
Sick leave	
Sick leave stops being accumulated after a leave of absence of more than 30 days.	Aucune accumulation.
Annual vacation	
<p>Annual vacation is accumulated for the first 12 months of absence.</p> <p>Part-time employees and employees without a position</p> <p>During the first 12 months of leave, employees are entitled to accumulate vacation weeks based on their number of years of service and to payment of an amount ranging from 8.77% to 11.21% of the salary on which disability insurance benefits are based.</p>	No annual vacation is accumulated, but what was already accumulated is conserved.
Statutory holidays	
<p>Payment of statutory holidays</p> <p>For the first 24 months, the employer pays the difference between the benefit received (80%) and the full remuneration.</p> <p>Part-time employees and employees without a position</p> <p>For the first 24 months, employees are paid 1.27% of their received disability benefits.</p>	No payment of the difference between the benefit received and the full remuneration.
Accumulation of experience and echelon advancement	
The disability insurance benefit is adjusted during the employee's absence in accordance with any echelon advancement provided for on the salary scale, if the echelon advancement was provided for in the six months following the onset of the disability.	No sick leave is accumulated.
Pension plan (RREGOP)	
<p>People on disability continue to participate in the pension plan as if they were at work, but are exonerated from paying their premiums, provided they are receiving disability insurance benefits.</p> <p>Part-time employees and employees without a position</p> <p>Employees accumulate their years of service for the purposes of the RREGOP based on the same calculation as that used for seniority.</p>	<p>Participation continues, with the same conditions, but ends when the 36th month ends.</p> <p>Thereafter, employees conserve their accumulated benefits.</p>

Rights during a leave of absence for disability (continued)

SHORT-TERM DISABILITY INSURANCE	LONG-TERM DISABILITY INSURANCE
Group insurance plan	
<p>Employees on disability continue to participate in the health insurance, life insurance, long-term disability insurance and dental care insurance plans, where applicable, without paying premiums (disability waiver).</p>	<p>Participation continues, with the same conditions, but employees' exoneration from paying the premium comes to an end after the 36th month of absence. It may be extended up to 48 months of absence provided the employment relationship is retained and the employer gives written confirmation.</p> <p>Thereafter, if the employment relationship is retained, employees must pay the premiums for the health insurance and dental care insurance plans.</p> <p>If the employment relationship is severed while the person is still on disability, the person ceases to be covered by the health insurance and dental care insurance plans. The person continues to participate in the life insurance and disability insurance plans without paying the premiums.</p> <p>Participation in long-term disability insurance continues until age 65 if the disability began after January 1, 2016.</p> <p>Participation in the life insurance plan continues until age 65.</p>

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