



Memo

To: All Locals in Provincial Negotiations
Date: July 9, 2004
Re: Special Leave

The new collective agreement has made some significant changes to Special Leave . It is the hope of UNA that the new provisions will be properly administered and will resolve the many problems that we have encountered with attempts to use Special Leave.

The new language is as follows:

22.07 **Special Leave**

- (a) Each calendar year, each regular and temporary Employee shall be entitled to up to four (4) days of special leave days, without loss of pay, as either family leave or pressing necessity leave.

(i) Family leave

Family leave is intended to provide Employees with a way of attending to the health needs of members of their immediate family as defined in Article 22.02. It is for use when the Employee's attendance is necessary and they are unable, through other means, to change the time when they need to be in attendance, or to arrange in advance time off work when needed through other means such as shift trades, time off in lieu, or vacation. Employees are required to provide the Employer with notification of leave requirements as early as possible after determining the need. Employers will not unreasonably deny other forms of leave when it is asked for to allow the Employee to attend to the health needs of members of their immediate family.

(ii) Pressing Necessity Leave

A pressing necessity is a sudden or unusual circumstance that could not, by the exercise of reasonable judgment, have been foreseen by the Employee and which requires the Employee's immediate attention or makes the Employee's attendance at work impossible. This may include sudden or unusual circumstances involving a need to attend to members of their immediate family.

(b) Terminal Care Leave

An Employee with a qualified relative in the end-stage of life shall be entitled to leave of absence without pay but with benefits at the normal cost sharing, for a period up to six (6) months. Qualified relative means a person in a relationship to the Employee for whom the Employee would be eligible for the compassionate care benefit under Employment Insurance legislation.

- (c) Employees may be required to submit to the Employer satisfactory proof demonstrating the need for special leave in accordance with Article 22.07(a) and (b).

The easiest way to consider special leave is to consider it three separate provisions.

The first, Family Leave, is for pre-scheduled matters relating to a health matters of member of the immediate family. For these leaves, the Employee should first attempt to find other ways to have the time off without loss of pay, such as vacation, time off in lieu of overtime, or trading shifts. There is no requirement to attempt to use unpaid Leave of Absence.

The second is Pressing Necessity Leave, which is for sudden or unanticipated events. This could an Employee's furnace blowing up, for example. As is clear from the final sentence of (ii) above, the pressing necessity may also involve family needs, including health matters related to family members, if it was unexpected and not pre-scheduled. Because these leaves are for unexpected matters, there is no requirement for an Employee to try to book vacation or trade shifts.

The third and final form of special leave is leave that is required to care for a member of the immediate family who is terminally ill. This final leave is without pay, but with the normal cost sharing for benefits. Again, there is no requirement to attempt to first use vacation or other leaves.

For any of the three leaves, the Employer, although not needing to know all the personal details involved, is entitled to request some proof demonstrating the need for the leave, to ensure that the leave is not abused. If you are unsure of what the Employer needs to know, or are uncomfortable with any questions being asked, contact UNA office and ask to speak with a Labour Relations Officer.

Questions and Answers

Family Leave

Scenario 1

- Q1.** My child has a physician appointment booked for next month. I need to be with my child for this. What should I do now?
- A.** The first thing to do in this case is to see if it is possible to use vacation or time off in lieu of overtime. In a case such as this, the Employee should immediately request vacation. There is no requirement to inform the Employer as to why vacation is being requested. Indeed, it is unwise to do so, as the reasons for the vacation request are not to be considered as factor in the granting or denying of vacation. Depending on the time of year, it may or may not be possible for the Employer to grant vacation. It must be noted that vacation is to be granted in order of seniority and Employees will not receive special preference for vacation because of family matters.
- Q2.** I was denied vacation based on seniority. Now what do I do?
- A.** Quite often is impossible to grant vacation request after the vacation planner has been finalized. Starting next year, when the Employer first posts the planner, the manager will provide guidance as to the number of Employees who can be away on vacation at the same time. Although this number is not carved in stone, it will provide guidance as whether or not is reasonable for the vacation to be denied. Given the general difficulty nurses have in getting vacation requests granted, it should not be surprising that Employers may not be able to grant vacation. Assuming that the Employer acted in good faith in denying the vacation, the next step is to see if the Employer will grant time off in lieu of overtime. Again, this may be difficult with the short staffing so common. If it is not possible, the Employee should see if it is possible to trade shifts with other Employees on the unit.
- Q3.** It is not possible for me to trade the shifts – what now?
- A.** Now is the time to request Special Leave. And this request should be made as early as possible.
- Q4.** I have done all that and now the Employer says my leave is denied and I can use a vacation day. Are they correct?
- A.** No. In the above example, vacation was denied based on seniority. Special Leave must be granted. Granting vacation in this case would be a violation of the collective agreement.

Scenario 2

- Q.** My child has a school concert and I believe it is important for me to be there. Can I use Special Leave for this?
- A.** In most cases, no. Special Leave is to attend health needs of members of their immediate family. While school concerts are important, unless it relates to health matters, it is not possible to use Special Leave.

General Question re: Family Leave

- Q.** What individuals are included in the terms “immediate family” as it applies to Family Leave?
- A.** Spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, grandchild, guardian or fiancé(e), niece, nephew, aunt, uncle. Spouse includes common-law and/or same sex relationship. Step-parent, step-children, step-brother and step-sister are also considered as members of the Employee’s immediate family.
- Q** I requested a Family Leave. My manager asked me if I had attempted to use vacation or to trade shifts. Is this question appropriate?
- A.** Yes. For Family Leave, the Employee is to first attempt to use vacation or trade shifts prior to Special leave being granted. In order to determine if the request is to be granted or not, the manager needs to know this information.

Pressing Necessity Leave

Scenario 1

- Q.** My child became ill last night and could not be sent to day care, so I must stay home and be with them. My manager says I should take a vacation day. Is this correct?
- A.** No. This situation could not have been foreseen by the Employee, and therefore falls under Pressing Necessity Leave, not Family Leave. There is no requirement to use vacation in these circumstances.

Scenario 2

- Q.** Due to weather conditions, it is impossible to get to work. Am I entitled to Special Leave with pay?
- A.** Yes. This is one reason where Pressing Necessity Leave is acceptable.

Terminal Care Leave

Q. Who are the family members referred to in the Terminal care Leave?

A. For Terminal Care Leave, qualified relative means a person in a relationship to the Employee for whom the Employee would be eligible for the compassionate care benefit under Employment Insurance legislation. According to the Federal Government regulations, currently this means:

- your child or the child of your spouse or common-law partner
- your wife/husband or common-law partner;
- your father/mother; or
- your father's wife/mother's husband;
- the common-law partner of your father/mother.

For further information on compassionate care benefit under Employment Insurance legislation see:

http://www.hrsdc.gc.ca/en/ei/faq/faq_compassionate_care_individuals.shtml