

2013: B19

MEMORANDUM TO: Directors of Education with employees represented by Collaborative Education Support Staff (CESS) unions
Secretary/Treasurer of Moosonee DSAB

FROM: Gabriel F. Sékaly
Assistant Deputy Minister
Elementary/Secondary Business and Finance Division
Tim Hadwen
Assistant Deputy Minister
Education Labour Relations

DATE: September 18, 2013

SUBJECT: Implications of the MOUs with Collaborative Education Support Staff (CESS) unions

On July 30, 2012, the Government signed a memorandum of understanding (MOU) with the Association of Professional Student Services Personnel (APSSP). On August 31, 2012, the Government signed a MOU with the Halton District Educational Assistants Association; Educational Assistants Association of the Waterloo Region District School Board; Dufferin-Peel Educational Resource Workers' Association; and Association des enseignantes et des enseignants franco-ontariens (AEFO), identified collectively as the "Signatory Unions".

On June 14, 2013, APSSP, the Signatory Unions, and the Government agreed to an update of the MOU. The updated MOU and the MOUs from July and August 2012 are available on the Education Labour Updates page on the Ministry website at <http://www.edu.gov.on.ca/eng/studentFirst.html>.

On June 27, 2013, many of the remaining unions that are part of the Collaborative Education Support Staff (CESS) group signed a MOU that updates the terms of previous MOUs to include labour enhancements that were negotiated with other unions subsequent to the MOUs signed in 2012. These bargaining agents are:

- Canadian Office and Professional Employees
- Custodian Association of Huron Perth
- Educational Resource Facilitators of Peel
- Essex & Kent Counties Skilled Trades
- Labourer's International Union of North America (LiUNA)
- Ontario Public Service Employees Union
- Service Employees' International Union
- Unite Here

For further details, please refer to the CESS MOU, which can be found on the Education Labour Updates page on the Ministry website.

As noted in previous correspondence, the provisions of the collective agreements established under the PSFA and the Education Act continue in force over the two-year term of the labour framework.

We are writing today to advise you of the steps that the Government is taking to facilitate the implementation of these MOUs, including the modification of current collective agreements at the board level.

A. CESS LOCAL BARGAINING

Provisions in the updated MOUs are to be appended to, and form part of, the existing local collective agreement without amendment, through agreement of the local unions and their respective school boards.

The inclusion of provincial items in local agreements should be done as soon as possible and need not wait for local discussion, which should occur separately.

Many of the actions described herein must be implemented by the making of regulations.

It should be noted that regulations to effect the agreements have not yet been made. The information in this memorandum is provided in the absence of such regulations.

The Minister will recommend such regulations.

B. IMPLEMENTATION

As was noted in the Deputy Minister's memorandum of August 8, 2013, titled "Next steps in implementing the 2012–14 Labour Framework", the government is providing funding support for the implementation of the MOUs. These supports were detailed in a memorandum of July 8, 2013, to the Implementation Cost Estimate (ICE) Working Group. The Ministry provided each school board with a detailed projection of its allocation from these supports on August 12, 2013.

Some of these funding supports are conditional on school boards attesting to compliance by September 30, 2013. Further to the Deputy Minister's memorandum of August 20, 2013, titled "August 14 Teleconference – Education Labour Relations", these timelines for compliance with the MOUs will also be extended for both the APSSP/Signatory Unions MOU and the CESS MOU.

The Ministry expects school boards that have staff covered by these two updated MOUs to complete the process of appending the terms of the MOUs by September 30, 2013 and to forward the formal statement of attestation by that date. An updated form is included with this memo. The deadline for boards to send in a copy of each local collective agreement (including the appended terms of the MOUs) is October 30, 2013.

C. REGULATORY AND OTHER CHANGES

Maternity benefits

Effective May 1, 2013, an employee who was previously entitled to maternity benefits under the 2008-2012 collective agreement will continue to be entitled to those benefits. In addition, the benefits are also available to:

- Employees hired in a term position or filling a long-term assignment, with the length of the benefit limited by the term of the assignment; and
- Any other full-time employee (for this purpose defined as working more than 24 hours per week).

Employees on daily casual assignments are not entitled to maternity benefits.

Also effective on May 1, 2013, maternity benefits for eligible employees will be:

- Guaranteed at 100% of salary for a total of not less than eight (8) weeks. For any part of the eight weeks that falls during a period of time that is not paid (for example, Summer, March break), the remainder of the eight weeks of top up shall be payable after that period of time; or
- If deemed advantageous by a local bargaining unit, maternity benefits may be altered to include six (6) weeks at 100% plus meshing with any superior entitlements to maternity benefits contained in the 2008-2012 collective agreement.

Sick leave/Short-Term Sick-Leave and Disability Plan (STLDP)

Both MOUs provide that, for members who are employees of an English Catholic school board, where two plans exist, the bargaining unit may choose either of the sick leave plans pursuant to the terms of the OSSTF MOU dated April 9, 2013 or the sick leave plan pursuant to the terms of the OECTA MOU dated May 16, 2013. Where one plan exists, the bargaining unit will have that same plan.

For members of the remaining bargaining units, eligibility for sick leave/short-term leave and disability plan benefits has been extended to include employees hired in a term position or filling a long-term assignment and any other full-time employee (defined as greater than 24 hours per week).

The Ministry recognizes that this change will have financial implications for boards and – as announced in May 2013 – is allocating as much as \$3M provincially to school boards to help address this pressure.

The MOUs also confirm that bargaining unit members with long-term assignments for a full year and who currently have access to sick leave provided in their 2008-2012 collective agreement are entitled to 11 days of sick leave at 100% of regular salary, and 60 days of short-term sick leave at 90% of salary. Members in long-term assignments of less than one year have the same entitlements, but these entitlements are to be prorated based on the length of the assignment.

Unpaid Days and Offsetting Measures

No staff covered by the two MOUs will be required to take any unpaid days. However,

the MOUs provide for staff to have access to a Voluntary Unpaid Leave of Absence Program (VLAP) for up to 5 unpaid leave of absence days per year.

Attendance Recognition

The MOUs also provide for a Shared Savings Initiative. Permanent regular bargaining unit members who use less than six full days of sick leave in 2013-14 will be reimbursed the equivalent of one full day's pay at the end of the school year. Annual compensation is not to exceed what would have been paid in the absence of unpaid days.

For other members of the bargaining unit, the payment shall be equal to the regular daily rate of pay and shall be contingent upon the member having taken a VLAP day during the term of the collective agreement.

Retirement gratuities

The provisions in the two MOUs with respect to retirement gratuities reflect the regulatory amendments of which boards were advised in the memorandum of June 27, **2013: B15 – Amended Regulations on Sick-Leave and Non-vested Retirement Gratuities**

Specialized Job Classes

In cases where there is a particular specialized job class in which the pay rate is below the local market value assessment of that job class, the parties may use existing means under the collective agreement to adjust compensation for that job class.

Job security

The 2013 MOUs are explicit that, where the current collective agreement has job security provisions that are superior to those in the MOUs, the provisions in the current collective agreement prevail.

D. CLARIFICATION OF PROVISIONS IN THE 2013 APSSP/SIGNATORY UNIONS MOUs

Sick leave/Short-Term Sick-Leave and Disability Plan

For clarity, definitions and practices in place in accordance with the 2008-12 period cannot be changed. Illness is defined as per the 2008-12 school board collective agreements for the use of the 11 sick leave days paid at 100%. The 120 short term sick leave and disability days may be used for absences due to an employee's personal illness, which includes medical appointments, as per the board adjudication process in place as of August 31, 2012. School boards are to determine eligibility for STDLP subject to the existing terms and conditions of employment and/or board policies, procedures, and practices in place during 2011-12 school year.

In addition to the top-up bank, boards have the discretion to allow, for compassionate reasons, a top-up for special leave/miscellaneous/personal days (or equivalent term in the collective agreement). This top-up is not to exceed 2 days and is dependent on

employees having 2 unused leave days in the current year.

Where the long term disability plan in the 2008-2012 collective agreement requires a waiting period in excess of 130 days, the STLDP period should be extended until the waiting period is exhausted.

Short-Term Sick Leave and Top-up

Employees can top-up their STLDP days to 100% salary. For 2012-13, which is the transition year to the new sick leave plan, each employee is to have 2 days in the top-up bank for use that school year. In 2013-14, the top-up bank is to consist of those sick leave days that remain unused from the 11 days allocated for 2012-13.

Long-term Assignments

As per the respective MOUs, non-teaching staff on long-term assignments are eligible for sick leave benefits where such employees were eligible under the 2008-2012 local collective agreement.

Partial Days

The 11 + 120 sick days are divisible and boards should deduct a partial sick day for a partial day's absence, including a graduated return to work day

Maternity Benefits

When a member is eligible to receive Employment Insurance (EI) benefits under the maternity plan, the maternity benefits will be administered as a Supplemental Employment Benefit plan. When a member is not eligible to receive EI benefits, the maternity benefits will be paid at 100% salary for the period.

Boards shall provide short-term sick leave before or after a maternity leave when medical evidence is provided in accordance with the practices in place during the 2008-2012 collective agreement.

Workplace Safety and Insurance Board (WSIB) and Long-term Disability (LTD)

Members awaiting WSIB claim adjudication would be paid 100 percent of regular salary for the first 11 days (assuming that the employee had not previously taken sick days); and 66.67% or 90%, as applicable, of their regular salary for the remaining (up to 120) days during the waiting period. Adjustments shall be retroactive.

WSIB and LTD are separate and distinct from a Short-term Leave and Disability Plan (STLDP). If an employee's claim is not successful under WSIB or LTD, it does not preclude the employee from receiving STLDP.

Benefits

Benefit levels and practices are to be status quo in accordance with the 2012 MOUs.

Local bargaining

MOUs were embedded in to the collective agreement through the imposition of the *Putting Students First Act, 2012* (PSFA).

The 2012-14 APSSP and Signatory Union collective agreements consist of:

- The MOU between the Ministry and APSSP dated July 30, 2012, and the MOU between the Ministry and the Signatory Unions dated August 31, 2012, including the enhancements described in the updated MOU.
- 2008-12 collective agreement, modified, as applicable, by Minister approved amendments, with the exception of those 2008-12 provisions that do not agree with the 2012 MOU or supporting legislation and regulations.

If you require further information, please contact:

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We have every expectation that school boards will work collaboratively with their local unions in implementing the provisions of these MOUs. As is the case with other MOUs, we will continue to support school boards as much as we can through this process.

Gabriel F. Sékaly
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Tim Hadwen
Assistant Deputy Minister

Attachment

Copy: Superintendents of Business and Finance
Superintendents of Human Resources