

2013: B15

MEMORANDUM TO: Directors of Education
Secretary/Treasurers of School Authorities

FROM: Gabriel F. Sékaly
Assistant Deputy Minister
Elementary/Secondary Business and Finance Division

Tim Hadwen
Assistant Deputy Minister (Acting)
Education Labour Relations

DATE: June 27, 2013

SUBJECT: **Amended Regulations on Sick-Leave and Non-vested Retirement Gratuities**

On June 20, 2013, Deputy Minister George Zegarac advised you that regulations under the *Education Act* had been filed that amended previous regulations dealing with sick leave and non-vested retirement gratuities for teachers.

We are writing today to provide you with more details on the context and content of these regulations. Over the past few months, the Ministry of Education has been working closely with teacher federations and other major employee representatives to reach new agreements and memoranda of understanding (MOUs), as well as to update existing MOUs. As a consequence of revisions to some of the provisions negotiated previously, Ontario Regulation 1/13 needed to be amended to align with, and support, the new and updated MOUs. A consolidated version of the regulation can be viewed on e-laws at the following link:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_130001_e.htm.

It should be noted that the terms and conditions governing sick leave and sick leave credit gratuities established in regulations under the *Education Act* and *Putting Students First Act* continue in force. New or updated MOUs set out variations of those terms and conditions, which are implemented by these amendments to Ontario Regulation 1/13.

A. AMENDED REGULATION ON SICK LEAVE

1. Sick-Leave Credits

Ontario Regulation 1/13, Sick Leave Credits and Sick Leave Credit Gratuities, was based on the original Ontario English Teachers' Association (OECTA) sick leave plan which, in December 2012, became the template plan for all boards and bargaining agents, including those without MOUs. The original sick-leave plan reflected in the regulation provided for 10 sick days at 100% of salary plus 120 short-term sick days at 66 2/3%, or 90% of salary, if so determined by 3rd-party adjudication. The number of sick days at 100% of salary has been increased to 11 days for all eligible staff. Under the amended regulation, the treatment of the 120 short-term sick days has also changed, but, in keeping with the MOUs now in place, the application varies across employees groups.

For members of the Ontario Secondary School Teachers' Federation (OSSTF), the Elementary Teachers Federation of Ontario (ETFO), l'Association des enseignantes et des enseignants franco-ontariens (AEFO), and for principals and vice-principals, the 120 short-term sick days are paid at 90% of salary, based on a board's internal assessment process in effect as of August 31, 2012.

For Canadian Union of Public Employees (CUPE) members, the 120 short-term sick days are paid at 66 2/3%, or 90% salary, as determined by evidence or medical documentation. When a board is unable to determine whether an employee should qualify for 90% of salary, the claim is referred to 3rd party assessment.

For OECTA bargaining units, and for school boards on behalf of all non-bargaining groups (other than principals and vice-principals), a choice is provided between the model with 120 short-term sick days at 90% of salary, based on boards' internal assessment processes, and the original model of 120 days at 66 2/3%, or 90% of salary, as determined by 3rd-party adjudication.

For bargaining groups who have not yet reached an agreement with the Province, these groups will default to the OECTA sick leave plan of 120 days at 66 2/3%, or 90% of salary, as determined by 3rd party adjudication. It should also be noted that amendments to the sick leave regulation will be sought, should they be necessary, for MOUs signed after June 13, 2013.

2. Clarification of Sick-Learn Provisions

The amended regulation clarifies some of the terminology used in the original regulation. For example, the amended regulation makes it clear that "illness," with respect to the 11 sick-leave days, is as defined in the 2008-2012 collective agreement or an employment contract in force on August 31, 2012. The 120 short-term sick days can only be used for personal illness, which may include medical appointments. For the purpose of a graduated return-to-work program, sick days may be used to top up salary where the benefits from the Workplace Safety and Insurance Board (WSIB), or a long-term disability plan (LTD), do not provide a complete top-up. In such cases, the employees may use their sick-leave credits to top up their pro-rata salary plus their

benefits from WSIB or LTD to 90% or 100% of salary, depending on the type of sick-leave credit used for top up (i.e., 11 sick leave days may be used for 100% top-up and 120 short-term sick leave days may be used for 90% top-up). Sick days may be used to top up more than one day.

3. Expanded Eligibility

Under the amended regulation, eligibility for the new sick-leave plan is being extended to a broader range of employees. Additional permanent employees, including those who previously were not entitled to sick-leave days under the previous sick-leave plan, are now eligible for benefits, namely, ETFO and OSSTF employees who work more than 24 hours per week and all CUPE permanent employees who are not casual employees.

The treatment of long-term occasional teachers and other employees has also been changed to make it more consistent with the benefits provided to full-time employees. Under the amended regulation, employees with assignments that are shorter than their regular working year, are allocated 11 sick days paid at 100% of salary, prorated based on the length of their assignment. The amended regulation provides employees who are on a less than 10 month assignment with 60 short-term sick days prorated for their length of employment. This is a departure from Ontario Regulation 1/13, where long-term occasional teachers and other employees on an assignment of less than 10 months duration, were provided with 3 short-term sick days per month of assignment.

4. Attendance Recognition

An attendance recognition program is introduced through the amended regulation, whereby an employee who takes a minimum of one unpaid day, and who uses less than 6 sick days in the 2013-14 school year, would be reimbursed the equivalent of one day's pay at the end of the school year. This program is available to both teachers and non-teachers, provided that the member of the latter employee group has taken a full day of voluntary unpaid leave. It has been agreed that CUPE members, as well as principals and vice-principals, and employees who do not bargain collectively, are not eligible for this program.

B. AMENDED REGULATION ON NON-VESTED RETIREMENT GRATUITY

As communicated in the memorandum of March 30, **2013: B7 – Changes to the Requirements for the Wind-up Payments for Non-vested Retirement Gratuities**, school boards are now required to pay 25 cents per dollar of the employee's salary as of August 31, 2012, prorated with accumulated sick days and years of service as of August 31, 2012, with respect to non-vested retirement gratuities.

The minimum years of service for retirement gratuity is defined as the lesser of the contractual minimal service requirement in existing terms and conditions of employment, or 10 years.

Eligible employees with less than the minimum number of years of service are to have that entitlement frozen as of August 31, 2012. These employees are entitled to a gratuity wind-up payment calculated as the lesser of the board's existing amount calculated under the existing terms and conditions of employment as of August 31, 2012 (or board policy as of that date) or the following formula:

$$\frac{X}{30} \times \frac{Y}{200} \times Z = \text{Gratuity Wind-Up Payment}$$

X = years of service (as of August 31, 2012)

Y = accumulated sick days (as of August 31, 2012)

Z = annual salary (as of August 31, 2012)

Note that X, Y, and Z are to be as defined as per the terms and conditions of employment, or, as per policy or practice of the board for retirement gratuity purposes that were in effect on August 31, 2012. The gratuity wind-up payment is to be paid to each employee by the end of the school year. If there is a dispute between an employee and a board about the amount that the employee is eligible to receive, and the dispute has not been resolved by June 30, 2013, the employee's eligibility to receive the amount for gratuity wind up by June 30, 2013 shall not apply, and instead, the employee shall be eligible to receive that amount as soon as is reasonably possible after the dispute has been resolved.

The pay out for those who have vested retirement gratuities shall continue to be as set out in Ontario Regulation 2/13, as amended, made under the *Putting Students First Act*, 2012 and Ontario Regulation 1/13, as amended, made under the *Education Act*.

C. CONCLUSION

If you require further information, please contact:

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Over the coming weeks, we expect to release further memoranda detailing the expected impact on boards of other ratified MOUs and agreements as they become available.

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