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**Disability  
Provisions  
in Collective  
Agreements  
in Canada**



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# DISABILITY PROVISIONS IN COLLECTIVE AGREEMENTS IN CANADA

## INTRODUCTION

Collective bargaining has been and continues to be a critical means for securing the rights of workers. Collective agreements provide economic security for workers in the form of wages, health and welfare benefits, cost-of-living allowances, long-term disability plans, prescription drug plans, severance pay, and pensions. Provisions such as seniority, hours of work, paid vacations, education leaves, and training provide additional benefits to workers. Other provisions such as maternity leave, parental and adoption leave, family illness leave, and bereavement leave help workers balance work with family responsibilities.

In recent years, collective bargaining priorities have reflected the changing workforce, particularly the growing number of women, workers of colour, Aboriginal peoples, and persons with disabilities. The labour movement recognized the need to negotiate equality provisions into collective agreements in order to secure basic human rights for the groups of workers just mentioned, as well as for lesbian, gay and transgendered workers.

The human rights-based or equality bargaining agenda includes negotiating provisions regarding employment equity, anti-discrimination and anti-harassment, pay equity, rights for persons with disabilities, duty to accommodate provisions, gay, lesbian and transgendered workers, part-time work, hours of work, family leave, back-to-work protocols, and child care and education leave. Collective bargaining gains for persons with disabilities are immensely important for overcoming the severe economic disadvantage persons with disabilities continue to experience.

Some gains have been made. Almost 38% of collective agreements covering bargaining units over 500 workers provincially and 200 workers federally have anti-sexual harassment provisions. Thirty per cent of agreements provide for paid adoption leave and 38% provide for paid maternity leave. Almost 50% of agreements have anti-discrimination clauses based on one or more of the prohibited grounds of discrimination, including race, religion, creed, colour, age, sex, sexual orientation, marital status, national origin, mental or physical disability, and trade union membership or activity. Eighteen per cent of these agreements have incorporated the human rights code of the jurisdiction in which the collective agreements apply.

This study examines provisions in collective agreements negotiated specifically for persons with disabilities, such as the right to another job and to be retrained for another job. It also examines anti-discrimination provisions and provisions covering all workers but which are of particular importance and benefit to persons with disabilities such as prescription drug insurance plans and long-term disability insurance plans. The second part of the paper

outlines a *Proposed Agenda for Collective Bargaining Priorities* which suggest priority areas for bargaining disability rights in collective agreements.

A wealth of data was provided by the Workplace Information Directorate (WID) at Human Resources Development Canada. The WID is an invaluable source of information. Many thanks to Marlene Presault of the WID who gathered the raw data, found things I hadn't thought of and didn't complain when asked to do yet another run of data to search for more information.

The WID data base covers collective agreements in which there are 500 or more workers employed in the provincial jurisdiction and 200 or more workers employed in the federal jurisdiction. Overall, there are 1,070 collective agreements covering 2,244,222 workers in the data base.

The data is analyzed on a Canada-wide basis and by sector. The sectors are Primary Industries; Manufacturing Industries; Construction; Transportation, Communications and Other Utilities; Trade, Finance and Insurance; Community, Business and Personal Service Industries and Public Administration. Health, education and social services are included in the large Community, Business and Personal Services sector. The table below shows the breakdown of the 1,070 agreements by sector.

TABLE 1: Share of Collective Agreements by Sector

SECTOR	AGREEMENTS #	AGREEMENTS %	WORKERS #	WORKERS %
Primary Industries	24	2.2	23,456	1.0
Manufacturing	214	19.9	252,874	11.3
Construction	89	8.3	202,996	9.0
Transportation, Communications and Other Utilities	190	17.6	338,827	15.1
Trade, Finance and Insurance	62	5.8	147,265	6.6
Community, Business and Personal Services	365	33.9	909,100	40.5
Public Administration	133	12.3	369,704	16.5
TOTALS	1,070	100.0	2,244,222	100.0

As Table 1 shows, the Community, Business and Personal Services sector is the largest sector with 909,100 workers and 33.9% of the total number of collective agreements. This sector includes health, education and social services. Public Administration and

Transportation, Communications and Other Utilities are the next largest sectors with collective agreements covering another 708,531 workers between them. These four sectors cover 72% of the workers under the total number of collective agreements. The Primary Industries sector which includes jobs in forestry, fishing and mining is the smallest sector, making up only 1% of all workers. Collective agreements in Manufacturing cover 11.3% of workers and agreements in Construction cover 9%. Just over 6% of workers are covered by agreements in the Trade, Finance and Insurance sector.

While the WID data base collects information on a very wide range of collective agreement provisions, it does not collect certain data important for a full examination of human rights and equality provisions. For example, there is no Employment Equity category to determine the hiring, lay-off and promotion provisions in agreements broken down by groups of workers protected by human rights legislation. So, it's not possible to analyze what specific provisions are contained in collective agreements regarding the hiring, lay-off and promotion of persons with disabilities. It is not possible to determine where agreements have 'back-to-work' protocols to reintegrate persons with a disability back into the workplace with the supports they require although such protocols exist and are becoming more prevalent.

While we know how many agreements have anti-discrimination clauses covering one or more of the prohibited grounds for discrimination, it is not possible to break those down into which agreements in which sector prohibit which grounds of discrimination. Therefore, it's not possible to determine the number or per cent of agreements having a provision for anti-discrimination on the basis of disability.

With the *Meiorin* decision, it is clear that the onus is on employers to introduce systemic measures to eliminate systemic discrimination. As this occurs, it will be important for the WID to collect this data.

This presents a task for the Canadian Labour Congress to enter into dialogue with Human Resources Development Canada about broadening even further the fine collective agreement analysis now undertaken by the Workplace Information Directorate.

## **HOW TO READ THE TABLES IN THE STUDY**

The tables broken down by industry sector should be read as follows:

- 1) The title of the table shows the provision being examined in the 1,070 collective agreements.
- 2) The 'Total Agreements' column is the total number of agreements in that sector.
- 3) The 'Total Employees' column is the number of employees covered by agreements in that sector.

- 4) The 'Agreements' column shows the number of collective agreements with the provision noted in the title of the table and the percentage of agreements containing that provision in that sector.
- 5) The 'Employees' column shows the number of employees covered by the provision in agreements in that sector and the per cent that number represents of all employees in that industry.

Where it is noted, the totals and percentages apply to the per cent of all agreements and all workers covered by a specific collective agreement provision.

- 6) The 'Totals' row at the end of the table shows the total number of agreements containing the provision, the per cent this number represents of the 1,070 agreements on which the data is based, the total number of employees covered by the provision, and the per cent that represents of the 2,244,222 employees covered by all the collective agreements. Please note that, in this row, the columns counting numbers can be added up but the percentages cannot. The percentage columns measure the per cent in each sector but the 'Totals' row measures all sectors combined.

Take the following example.

TABLE X: Agreements with the Right to Transfer To or Be Trained For Another Job As a Result of Disability

TOTALS	1,070	2,244,222	72	6.6%	104,467	4.6%
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1,070 – refers to the total number of agreements.

2,244,222 – refers to the total number of workers covered under those collective agreements.

72 – shows the total number of agreements containing the provision in the title of the table (right to train or transfer).

6.6% – shows what per cent of the 1,070 agreements contain this provision.

104,467 – shows the total number of workers under collective agreements containing this provision.

4.6% – is the percentage of the 2,244,222 workers who are covered by collective agreements with this provision.

This example shows we have a lot of work to do.

# ANTI-DISCRIMINATION PROVISION IN COLLECTIVE AGREEMENTS

Disability is a prohibited ground of discrimination under human rights legislation in both federal and provincial jurisdictions. It is becoming more common for collective agreements to contain provisions prohibiting discrimination on one or more grounds and to incorporate into collective agreements the federal or provincial human rights codes. While this is a positive bargaining advance, more remains to be done to ensure the human rights of all workers are protected.

Overall, 63.1% of workers have collective agreements containing an anti-discrimination clause. Just over 36% of collective agreements covering 38.2% of workers have a clause specifying one or more prohibited grounds of discrimination. Another 17.9% covering 24.9% of workers have a clause incorporating the human rights code for the federal or provincial jurisdiction. Just over 45% of agreements but only 36.9% of workers have no anti-discrimination clauses in their collective agreements.

TABLE 2: Anti-discrimination Provisions in Collective Agreements Canada-Wide

TYPE OF CLAUSE	AGREEMENTS # with provision	AGREEMENTS % with provision	WORKERS # covered	WORKERS % covered
One or More Prohibited Grounds	393	36.5	857,830	38.2
Human Rights Code Incorporated	193	17.9	558,814	24.9
No Provision	491	45.6	827,578	36.9

It's not possible to do an analysis of all the 1,077 collective agreements to determine 'best language' clauses. Below are examples of anti-discrimination clauses taken from *Contract Clauses: Collective Agreements in Canada*.<sup>1</sup>

**The Employer shall not discriminate against an employee because of membership or activity in the Union or the exercise of his/her lawful rights, or with respect to terms or conditions of employment on the grounds of race, creed, colour, age, sex, marital status, religion, nationality, Acquired Immune Deficiency Syndrome (AIDS), AIDS-related illness, AIDS-related complex (ARC), positive immune deficiency Virus (HIV) test, ancestry or place of origin, political affiliation, sexual orientation, place of residence, physical handicap or disability,**

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<sup>1</sup>Sack, J. and Poskanzer, E., *Contract Clauses: Collective Agreements in Canada*, Third Edition, Lancaster House, 1996

**providing that such handicap or disability does not clearly prevent the carrying out of the required duties. Any person covered by this agreement who feels that he/she has suffered discrimination shall have the right to seek redress in accordance with the Grievance Procedure.**

[CUPE and University of Toronto]

**In compliance with *The Manitoba Labour Relations Act*, and *The Manitoba Human Rights Act*, the parties hereto agree that there will be no discrimination by the System or the Union, for or against any employee covered by this Agreement.**

[IBEW, Local 435 and Manitoba Telephone System]

TABLE 3: Anti-discrimination Clauses by Sector

SECTOR	AGREEMENTS % with provision	AGREEMENTS % of workers covered	AGREEMENTS % with no provision	WORKERS % not covered
Primary Industries	79.1	87.3	20.8	12.7
Manufacturing	55.6	63.2	44.4	36.8
Construction	18.0	29.9	82.0	70.1
Transportation, Communications and Other Utilities	50.0	66.7	50.0	33.3
Trade, Finance and Insurance	58.1	43.8	41.9	56.2
Community, Business and Personal Services	59.8	67.6	40.3	32.4
Public Administration	62.4	73.9	37.6	26.7

Table 3 analyzes collective agreements containing non-discrimination clauses by sector. While the Primary Industries sector is a small sector, 87.3% of the workers in this sector have collective agreements containing an anti-discrimination clause. Almost 74% of the workers in Public Administration have this provision as do well over 60% of workers in the Manufacturing sector, the Transportation, Communications and Other Utilities sector and the Community, Business and Personal Industries sector. Almost 44% of workers in the Trade, Financial and Insurance sector and 30% of workers in the Construction industry have this provision in their collective agreements.

These provisions in collective agreements are broad in nature. The important evidence lies in specific provisions in collective agreements which give the protection against discrimination real life meaning in the workplace, both in terms of obtaining a job in the first instance, and in terms of the provisions which accommodate workers with a disability.

## **JOB RIGHTS FOR WORKERS WITH DISABILITIES**

### *Collective Agreements Containing Provisions for the Right to Transfer to or Be Retrained for Another Job as a Result of Disability*

Very few collective agreements give employees who have become disabled as a result of work the right to transfer to or be trained for another or suitable job.

As Table 4 shows, out of 1,070 collective agreements, only 72 or 6.6% have a provision giving workers the right to transfer to or be trained for another job if they become disabled as a result of work. In terms of the share of workers having such rights, only 4.6% do or 104,406 workers out of the 2,244,222 workers covered by collective agreements.

The Transportation, Communications and Other Utilities sector (13.2%) and the Manufacturing sector (12.6%) have the largest share of agreements with this right for workers.

Keeping in mind that this provision covers only workers who incur a disability on the job, the right to transfer or be trained for another job as a result of disability whether incurred on or off the job must become a collective bargaining priority for the labour movement.

TABLE 4: Collective Agreements with Provisions with the Right to Transfer to or Be Trained for Another Job as a Result of Disability Incurred at Work

SECTOR	AGREEMENTS Total	WORKERS Total	AGREEMENTS # with provision	AGREEMENTS % with provision	WORKERS # covered	WORKERS % covered
Primary Industries	24	23,456	2	8.3	1,788	7.6
Manufacturing	214	252,874	27	12.6	31,708	12.5
Construction	89	202,996	0.0	0.0	0	0.0
Transportation, Communications and Other Utilities	190	338,827	25	13.2	52,766	15.6
Trade, Finance and Insurance	62	147,265	3	4.8	3,620	2.5
Community, Business and Personal Services	365	909,100	13	3.6	13,022	1.4
Public Administration	133	369,704	2	1.5	1,560	0.4
TOTALS	1,070	2,244,222	72	6.6	104,467	4.6

*Collective Agreements with a Provision Indicating a Willingness on the Part of the Employer to Train or Transfer an Employee with a Disability Incurred in the Workplace to a Suitable Job*

“Willingness’ may be hard to define and the question is who gets to define the parameters of the employer’s ‘willingness.’ However, provisions of this type are an important first step. About 29% of collective agreements have a provision indicating the willingness of an employer to train or transfer an employee who has suffered a disability at work. Only 35.2% of workers overall are covered by this type of disability provision.

In the smallest sector, Primary Industries, just over 70% of workers are covered by this type of provision. In all other sectors representing the majority of workers, the share of workers covered by such a provision is much lower. Just over 46% of workers in the Manufacturing industry and 41% of workers in the Community, Business and Personal Services and the Public Administration sector have this provision. Only 26% of workers in the Transportation, Communications and Other Utilities sector and 23.5% of workers in the Trade, Financial and Insurance sector have this provision. Only 3.6% of the workers in the Construction industry have this provision in their collective agreements.

TABLE 5: Collective Agreements with a Provision Indicating a Willingness on the Part of the Employer to Train or Transfer and Employee to a Suitable Job

SECTOR	AGREEMENTS Total	WORKERS Total	AGREEMENTS # with provision	AGREEMENTS % with provision	WORKERS # covered	WORKERS % covered
Primary Industries	24	23,456	15	62.5	16,533	70.5
Manufacturing	214	252,874	84	39.3	117,191	46.3
Construction	89	202,996	12	13.5	7,370	3.6
Transportation, Communications and Other Utilities	190	338,827	56	29.5	90,686	26.8
Trade, Finance and Insurance	62	147,265	11	17.7	34,646	23.5
Community, Business and Personal Services	365	909,100	91	24.9	372,490	41.0
Public Administration	133	369,704	43	32.3	151,484	41.0
TOTALS	1,070	2,244,222	312	28.9	790,400	35.2

*Other Provisions Relating to Disability Incurred at Work*

The Workplace Information Directorate tabulates a category for disability provisions called 'other.' This category includes the hiring of workers with a disability, jobs designated for workers with a disability kept outside of the job posting procedure and seniority provisions related to accommodation. Unfortunately, it is not possible to separate the data into these sub-categories. However, very few collective agreements have such provisions. Only 1.7% of agreements have this type of provision. The construction industry has the largest share of this type of provision at 7.9% of agreements in this industry.

*Collective Agreements with No Provision Related to the Training or Transfer of Workers with a Disability as a Result of Work*

Table 6 sets out a challenge for the labour movement. Almost 63% of collective agreements and 57.5% of workers have no provision providing for training or transfer to another job when a worker incurs a disability as a result of work. More than half (58%) of the 2.2 million workers covered by these agreements have no collective agreement language allowing them to train for or transfer to another job.

TABLE 6: Collective Agreements with No Provision for Training for or Transfer to Another Job

SECTOR	AGREEMENTS Total	WORKERS Total	AGREEMENTS #	AGREEMENTS %	WORKERS #	WORKERS %
Primary Industries	24	23,456	7	29.2	5,135	21.9
Manufacturing	214	252,874	101	47.2	102,525	40.5
Construction	89	202,996	70	78.7	165,346	81.5
Transportation, Communications and Other Utilities	190	338,827	105	55.3	184,445	54.4
Trade, Finance and Insurance	62	147,265	47	75.8	107,999	73.3
Community, Business and Personal Services	365	909,100	258	70.7	510,168	56.1
Public Administration	133	369,704	87	65.4	216,020	58.4
TOTALS	1,070	2,244,222	675	62.6	1,219,638	57.5

## LONG-TERM DISABILITY PLANS (LTD)

### *Employer Contributions to Long-term Disability Plans*

Long-term disability protection is an important source of economic security for workers whether they are injured or suffer a disability in or out of the workplace. As Table 6 shows, 55% of the 1,070 collective agreements covering 2.2 million workers have no provision for an employer contribution to a long-term disability plan (LTD). This leaves 1.1 million workers without this protection should they suffer a disability as a result of work or otherwise. The lack of LTD protection for workers is of great concern.

TABLE 7: Employer Contribution to Long-term Disability Plans Summary Table

TYPE OF CLAUSE	# OF AGREEMENTS	% OF AGREEMENTS	# OF WORKERS	% OF WORKERS
No Provision	594	55.1	1,166,214	52.0
50% Contribution	52	4.8	104,822	14.7
51-75% Contribution	50	4.6	142,265	6.3
76-79% Contribution	24	2.2	84,822	3.8
100% Contribution	206	19.2	396,569	17.6
Plan - No Details	151	14.1	349,530	15.5
TOTALS	1,077	100.0	2,244,222	100.0

*Collective Agreements with No Employer Contribution to Long-term Disability Plans*

As Table 8 shows, the lack of LTD coverage is highest in the Construction industry where 99% of agreements covering 202,446 workers have no provision for LTD.

In the largest sector, Community, Business and Personal Services, 64% of agreements have no provisions for employer contributions to an LTD plan. This means that of the 909,100 workers in this sector, 554,594 workers have no LTD coverage unless they pay for it out of their own pocket.

Similarly, 41% or 152,209 workers in the Public administration sector have no LTD plan to which employers contribute. The same is true for 40% of workers in Trade, Finance and Insurance and for 33% of workers in Transportation, Communications and Other Utilities.

This is a priority for the collective bargaining agenda.

TABLE 8: No Provision for Employer Contribution to LTD Plans

SECTOR	AGREEMENTS # in sector	WORKERS # in sector	AGREEMENTS #	AGREEMENTS %	WORKERS # covered	WORKERS % covered
Primary Industries	24	23,456	10	41.7	11,288	48.1
Manufacturing	214	252,874	78	36.4	72,977	28.9
Construction	89	202,996	88	98.9	202,446	99.7
Transportation, Communications and Other Utilities	190	338,827	98	51.6	113,811	33.6
Trade, Finance and Insurance	62	147,265	24	38.7	58,811	40.0
Community, Business and Personal Services	365	909,100	235	64.4	554,889	61.0
Public Administration	133	369,704	61	45.9	152,209	41.2
TOTALS	1,070	2,244,222	594	55.1	1,166,214	52.0

TABLE 9: Agreements with Provision for Premium Contribution by Employer - Summary Table

SECTOR	# OF AGREEMENTS with LTD provision	% OF TOTAL AGREEMENTS	# OF WORKERS with LTD provision	% OF TOTAL WORKERS
Primary Industries	14	58.3	12,168	51.8
Manufacturing	136	63.5	179,897	71.1
Construction	1	1.1	550	0.2
Transportation, Communications and Other Utilities	92	48.4	225,016	66.4
Trade, Finance and Insurance	38	61.2	88,376	60.4
Community, Business and Personal Services	130	35.6	354,506	38.9
Public Administration	72	54.1	217,495	58.8
TOTALS	483	44.8	1,078,008	48.0

The Manufacturing sector has the highest share of agreements and the most number of workers covered by agreements in which the employer contributes to paying the premium for an LTD plan. Just over 63% of agreements covering 71% of workers have such a provision. In the Transportation, Communications and Other Utilities sector, 48% of agreements covering 66% of workers have this provision in their agreement. The same is true for 60% of workers in the Trade, Finance and Insurance sector, 59% of workers in Public Administration and 52% of workers in the Primary Industries. Only 550 workers in Construction have the benefit of LTD protection. In the Community, Business and Personal Services sector, 39% of workers have this provision in their agreement.

Tables 10 to 12 show the share of LTD premiums paid by employers by sector. The data includes only those agreements having some provision for an employer contribution to an LTD plan. Agreements having no provision are not included in any of the totals.

TABLE 10: Employer Pays 100% of LTD Premium

SECTOR	AGREEMENTS # with LTD provision	AGREEMENTS # with this provision	AGREEMENTS % with this provision	WORKERS # with LTD provision	WORKERS # covered by this position	WORKERS % covered by this provision
Primary Industries	14	9	64.3	12,168	7,585	62.3
Manufacturing	136	60	44.1	179,897	82,755	46.0
Construction	1	0	0.0	0	0	0.0
Transportation, Communications and Other Utilities	92	30	32.6	225,016	62,277	27.6
Trade, Finance and Insurance	38	24	63.1	88,376	69,420	78.5
Community, Business and Personal Services	130	51	39.2	354,506	106,412	30.0
Public Administration	72	32	44.5	217,495	68,120	31.3
TOTALS	483	206	42.6	1,078,008	396,569	36.7

In agreements with a provision for an LTD plan, the employer pays the full share of the premium in 42.6% of collective agreements covering 36.7% of workers. The average share of workers covered is lower because there are no agreements in the Construction sector with this provision but the 202,996 workers are included in the total. Leaving out the Construction sector from the totals would show that 45% of workers have the LTD premium paid for by the employer. Since LTD premiums are costly, this is a positive collective bargaining gain for workers.

This type of provision is most prevalent in agreements in the Trade, Finance and Insurance sector where 78.5% of workers are covered by this provision, followed by the Primary Industries sector and the Manufacturing sector in which roughly one-third of workers have this type of provision in their collective agreement. It's worth noting that although other sectors have a lower share of agreements with this provision, the number of workers covered by this type of provision is significant. For example, although only 11.7% of workers in the Community, Business and Personal Service Industries have this LTD provision in their agreements, in absolute numbers, 106,412 of those workers have this coverage compared to 7,585 in Primary Industries.

TABLE 11: Employer Contribution to Long-term Disability Plans, 76-99% of Premium

SECTOR	TOTAL # OF AGREEMENTS with an LTD provision	# OF AGREEMENTS with this provision	% OF AGREEMENTS with this provision	TOTAL # OF WORKERS covered by an LTD provision	# OF WORKERS covered by this provision	% OF WORKERS covered by this provision
Primary Industries	14	1	7.1	12,168	814	6.6
Manufacturing	136	7	5.1	179,897	5,260	2.9
Construction	1	0	0.0	550	0	0.0
Transportation, Communications and Other Utilities	92	4	4.3	225,016	2,698	1.2
Trade, Finance and Insurance	38	0	0.0	88,376	0	0.0
Community, Business and Personal Services	130	4	3.1	354,506	13,590	3.8
Public Administration	72	8	11.1	217,495	62,460	28.7
TOTALS	483	24	4.9	1,078,008	84,822	7.8

While only 7.8% of workers overall are covered by a provision in which the employer pays 76-99% of the premium, it's an important one in collective agreements in the Public Administration sector where almost 29% of workers have this LTD provision in their collective agreement.

As Tables 12 and 13 below show, 13.2% of workers (142,265) are covered by a provision in which the employer pays 51-75% of the premium and 9.7% (104,822) are covered by a provision in which the employer pays 50% of the LTD premium.

TABLE 12: Employer Contribution to LTD Plans, 51-75% of Premium

SECTOR	TOTAL # OF AGREEMENTS with an LTD provision	# OF AGREEMENTS with this provision	% OF AGREEMENTS with this provision	TOTAL # OF WORKERS covered by an LTD provision	# OF WORKERS covered by this provision	% OF WORKERS covered by this provision
Primary Industries	14	1	7.1	12,168	700	5.7
Manufacturing	136	11	8.1	179,897	11,080	6.1
Construction	1	1	100.0	550	550	100.0
Transportation, Communications and Other Utilities	92	12	13.0	225,016	10,540	4.7
Trade, Finance and Insurance	38	2	5.3	88,376	4,140	4.7
Community, Business and Personal Services	130	19	14.6	354,506	78,985	22.3
Public Administration	72	4	5.5	217,495	36,270	16.7
TOTALS	483	50	10.3	1,078,008	142,265	13.2

TABLE 13: Employer Contribution to LTD Plan; 50% of Premium

SECTOR	TOTAL # OF AGREEMENTS with an LTD provision	# OF AGREEMENTS with this provision	% OF AGREEMENTS with this provision	TOTAL # OF WORKERS covered by an LTD provision	# OF WORKERS covered by this provision	% OF WORKERS covered by this provision
Primary Industries	14	1	7.1	12,168	681	5.5
Manufacturing	136	9	6.6	179,897	25,010	13.9
Construction	1	0	0.0	550	0	0.0
Transportation, Communications and Other Utilities	92	7	7.6	225,016	11,320	5.0
Trade, Finance and Insurance	38	4	10.5	88,376	6,180	6.9
Community, Business and Personal Services	130	20	15.4	354,506	37,094	10.4
Public Administration	72	11	15.3	217,495	24,537	11.3
TOTALS	483	52	10.7	1,078,008	104,822	9.7

The data base covers collective agreements in which there is a provision for the employer to pay a share of the premium but for which specific details are unavailable. The data represents a significant number of agreements and workers for which this is the case. One hundred and fifty-one of the 483 agreements covering 349,530 workers (32.4) are in this category and Table 14 shows. This is particularly true for the Transportation, Communications and Other Utilities sector in which there are no plan details available as to the share of the premium paid by the employer.

TABLE 14: Employer Contribution to Long-term Disability Plans  
No Details of Employer Contribution

SECTOR	TOTAL # OF AGREEMENTS with an LTD provision	# OF AGREEMENTS with this provision	% OF AGREEMENTS with this provision	TOTAL # OF WORKERS covered by an LTD provision	# OF WORKERS covered by this provision	% OF WORKERS covered by this provision
Primary Industries	14	2	14.3	12,168	2,388	19.6
Manufacturing	136	49	36.0	179,897	55,792	31.0
Construction	1	0	0.0	550	0	0.0
Transportation, Communications and Other Utilities	92	39	42.4	225,016	138,181	61.4
Trade, Finance and Insurance	38	8	21.1	88,376	8,636	9.8
Community, Business and Personal Services	130	36	27.7	354,506	118,425	33.3
Public Administration	72	17	23.6	217,495	26,108	12.0
TOTALS	483	151	31.2	1,078,008	349,530	32.4

The table below is a summary by sector of the share of agreements containing a particular provision for an employer contribution to an LTD plan.

TABLE 15: Employer Contribution to LTD Plans - Share By Sector

SECTOR	100% of Premium	76-99% of Premium	51-74% of Premium	50% of Premium	No details of Premium	TOTAL
Primary Industries	64.3	7.1	7.1	7.1	14.3	100.
Manufacturing	44.1	5.1	8.1	6.6	36.0	100.
Construction	0.0	0.0	100.	0.0	0.0	100.
Transportation, Communications and Other Utilities	32.6	4.3	13.0	7.6	42.4	100.
Trade, Finance and Insurance	63.1	0.0	5.3	10.5	21.1	100.
Community, Business and Personal Services	39.2	3.0	14.6	15.4	27.7	100.
Public Administration	44.5	11.1	5.5	15.3	23.6	100.

## **BENEFIT LEVELS OF LONG-TERM DISABILITY PLANS**

LTD plans vary greatly in the benefit levels provided among two main options. The first option is based on a percentage of earnings with either a defined maximum monthly benefit or with no upper limit on the monthly benefit. The second option is a set dollar amount per month. The best plans for workers are those in which benefit levels replace a high percentage of earnings and with no upper limit on the dollar amount.

Of the 1,070 collective agreements in the study, 594 have no provision for LTD plans, 343 have plans in which the details are available and 140 plans have no details available. Table 16 shows that the most common benefit is a benefit of up to 74% of earnings with no upper limit on the dollar amount of the monthly benefit. Almost 36% of agreements have this benefit level. In another 23.6% of agreements, the benefit level is up to 74% of earnings and a monthly benefit of more than \$1,500 but with an upper limit on the dollar amount.

Overall, 43.7% have no upper limit on the dollar amount; 36.2% of agreements provide a benefit level of more than \$1,500 a month; 4.4% provide \$1,500 a month; 9.3% provide \$1,000-1,499 a month; 2.9% provide \$501-999 and 0.3% provide up to \$499.

Only 3% of agreements have the 'Cadillac' plan with a benefit level based on 76-199% of earnings and no upper limit on the dollar amount of the benefit.

TABLE 16: Benefit Levels of LTD Plans - Summary Table

TYPE OF BENEFIT	# OF AGREEMENTS	% OF AGREEMENTS	# OF WORKERS COVERED
Up to 74% of earnings and \$1,500 per month	13	3.8	18,312
Up to 74% of earnings and more than \$1,500 per month	81	23.6	102,450
Up to 74% of earnings & no upper limit on dollar amount	123	35.8	381,395
Up to 74% of earnings and \$1,000-1,499	32	9.3	47,001
75 % of earnings and more than \$1,500 per month	13	3.8	14,190
75% of earnings and no upper limit on dollar amount	14	4.1	24,703
76-100% of earnings and no upper limit on dollar amount	13	3.8	52,103
76-100% of earnings and more than \$1,500 per month	3	0.9	12,840
Set dollar amount more than \$1,500 per month	27	7.9	88,400
Set dollar amount of \$1,500 per month	2	0.6	1,620
Up to 74% of earnings and \$501-999 per month	10	2.9	11,013
Dollar amount up to \$499	1	0.3	900
Other	11	3.2	7,518
TOTALS	343	100.	762,445

The adequacy of the benefit is dependent on earnings. A monthly LTD benefit of \$500 is only \$6,000 a year. On the other hand, a monthly benefit of \$1,500 a month provides an annual income of \$18,000 yearly which while sufficient for a single person would leave a family with no other earners in poverty. The caveat to this is the level of expenses related to the disability. Taking this into account may mean that \$18,000 a year is completely insufficient to cover both living and disability expenses.

Where the benefit level is a share of earnings, the level of earnings is important. For example, a worker with an income of \$60,000 in an LTD plan replacing 74% of earnings and no upper limit on the monthly benefit would receive \$3,700 a month or \$44,000 a year. A worker with income of \$20,000 would receive \$1,200 a month or just \$14,799 a year, below the poverty line for a single person.

Tables 17 to 28 show the various types of benefit plans by sector.

## BENEFIT LEVELS OF LTD PLANS

TABLE 17: Up to 74% of earnings and \$1,500 per month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Primary Industries	3	12.5	4,102	17.5
Manufacturing	2	0.9	1,040	0.4
Construction	1	1.1	550	0.3
Transportation, Communications and Other Utilities	1	0.5	430	0.1
Trade, Finance and Insurance	5	8.1	10,790	7.3
Community, Business and Personal Services	1	0.3	1,400	0.2
TOTALS	13		18,312	

TABLE 18: Up to 74% of Earnings and More than \$1,500 per Month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Primary Industries	2	8.3	951	4.1
Manufacturing	35	16.4	24,795	9.8
Transportation, Communications and Other Utilities	14	7.4	24,240	7.2
Trade, Finance and Insurance	7	11.3	15,786	10.7
Community, Business and Personal Services	10	2.7	10,518	1.2
Public Administration	13	9.8	26,160	7.1
TOTALS	81		102,450	

Table 19: Plan Pays 76-100% of Earnings and More than \$1,500 per Month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Transportation, Communications and Other Utilities	3	1.6	12,840	3.8

TABLE 20: Up to 74% of Earnings and No Upper Limit on Dollar Benefit

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Manufacturing	33	15.4	27,947	11.1
Transportation, Communications and Other Utilities	21	11.1	31,747	9.4
Trade, Finance and Insurance	9	14.5	24,870	16.9
Community, Business and Personal Services	42	11.5	197,094	21.7
Public Administration	18	13.5	99,737	27.0
TOTALS	123		381,395	

TABLE 21: 75% of Earnings and More than \$1,500

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Transportation, Communications and Other Utilities	4	2.1	3,650	1.1
Community, Business and Personal Services	3	0.8	2,840	0.3
Public Administration	6	4.5	7,700	2.1
TOTALS	13		14,190	

TABLE 22: 75% of Earnings and No Upper Limit on Dollar Benefit

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Transportation, Communications and Other Utilities	3	1.1	14,713	4.3
Trade, Finance and Insurance	1	1.6	550	0.4
Community, Business and Personal Services	6	0.5	1,570	0.2
Public Administration	3	6.8	7,870	2.1
TOTALS	14		24,703	

Table 23: 76-100% of Earnings and No Upper Limit on Dollar Benefit

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Transportation, Communications and Other Utilities	3	1.6	1,790	0.5
Trade, Finance and Insurance	1	1.6	1,590	1.1
Community, Business and Personal Services	6	1.6	12,783	1.4
Public Administration	3	2.3	35,940	9.7
TOTALS	13		52,103	

TABLE 24: Up to 74% of Earnings or Set Dollar Amount of \$1,000-1,499 per Month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Primary Industries	6	25.0	5,265	22.4
Manufacturing	18	7.9	21,466	8.1
Transportation, Communications and Other Utilities	2	1.1	970	0.3
Trade, Finance and Insurance	3	4.8	10,500	
Community, Business and Personal Services	2	0.5	7,400	
Public Administration	1	0.8	1,400	
TOTALS	32		47,001	

TABLE 25: Set Dollar Amount of More than \$1,500 per Month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Primary Industries	1	4.2	600	2.6
Manufacturing	23	10.7	77,010	30.5
Transportation, Communications and Other Utilities	1	0.5	350	0.1
Trade, Finance and Insurance	2	3.2	10,400	7.1
TOTALS	27		88,400	

TABLE 26: Set Dollar Amount of \$1,500 per Month

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Manufacturing	2	0.9	1,620	0.6

TABLE 27: Up to 74% of Earnings and \$501-\$999 per Month or Same Set Dollar Amount

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Manufacturing	7	3.3	10,303	4.1
Transportation, Communications and Other Utilities	3	1.6	710	0.2
TOTALS	10		11,013	

Table 28: Set dollar amount up to \$499

SECTOR	# OF AGREEMENTS in sector with provision	% OF AGREEMENTS in sector with provision	# OF WORKERS covered in sector	% OF WORKERS covered in sector
Trade, Finance and Insurance	1	1.6	900	0.6

## EMPLOYER CONTRIBUTIONS TO PRESCRIPTION DRUG PLANS

Prescription drugs are extraordinarily costly in Canada. Even the cost of drugs for short-term illness can be a burden on resources. Many illnesses and disabilities require long-term use of medications, perhaps life-long use. Without some form of drug insurance plan, the cost may be prohibitive, even unaffordable. It is known that some people have to choose between paying for medicine and other things. In the absence of a national pharmacare program, employer sponsored drug plans are a critical source of economic security for workers. As the cost of prescription drugs continues to soar, employers are looking for ways

to curtail or cut back on the cost of this benefit. It may be difficult for workers to maintain this protection if they have it, and to negotiate it if they don't have it.

As Table 29 shows, far too few collective agreements have provisions for a drug benefit plan. This is the case in 66% of the 1,070 collective agreements in this study. Of the 2.2 million workers covered by those agreements, 1.3 million have no drug plan in their agreement.

The employer pays the full cost of the premium in 14.8% of collective agreements and between 75-99% in another 2.1%. In 7% of agreements, the employer pays a flat sum. For 6.7%, there are no details as to the employer's share. In the remaining agreements the employer pays between 50 and 74% of the premium.

TABLE 29: Employer Contribution to Drug Insurance Plans

PROVISION	AGREEMENTS #	AGREEMENTS %	WORKERS #	WORKERS %
50%	26	2.4	47,410	2.1
51-66%	3	0.3	2,660	0.1
67%	2	0.2	1,775	0.1
68-74%	2	0.2	1,350	0.1
75%	7	0.6	9,445	0.4
76-99%	16	1.5	10,872	0.5
100%	159	14.8	323,339	14.4
Flat Sum	75	7.0	344,866	15.4
No Details	72	6.7	134,145	6.0
No Provision	715	66.4	1,368,360	61.0
TOTALS	1,070	100.0	2,244,222	100.0

TABLE 30: Employer Contribution by Sector

SECTOR	# OF WORKERS with drug plan	% OF WORKERS with drug plan	# OF WORKERS with no plan	% OF WORKERS with no drug plan
Primary Industries	16,429	70.0	7,027	30.0
Manufacturing	147,146	51.5	105,728	49.5
Construction	10,480	5.2	192,516	94.8
Transportation, Communications and Other Utilities	101,486	30.0	237,341	70.0
Trade, Finance and Insurance	77,511	52.6	69,754	47.4
Community, Business and Personal Services	345,940	38.8	563,160	61.2
Public Administration	176,870	47.9	192,834	52.2
TOTALS	875,357	39.0	1,368,360	61.0

## WORK ENVIRONMENT

The vast majority of collective agreements covered by this study have no provision regarding work environment. Almost 78% have no such provision covering 74% of workers under these agreements. While it may be that Health and Safety Committees deal with the work environment, 69% of agreements have no provision for such a committee.

Work environment factors include counselling services, work environment committees, job rotation, and health and recreational facilities.

The work environment is an important factor in the health and well-being of all workers, but may be even more important to workers with a disability, particularly factors such as accessibility, lighting quality, ergonomics, noise, and opportunities to change positions or move around.

Counselling services can play an important role in the health of workers whether the concerns stem from the workplace, from disability concerns or from sources outside the workplace. Having someone to talk things over with often can deal with concerns before they become a major problem. Solving problems early also generates a positive work environment by reducing stress associated with the job. Only 13.3% of collective agreements have provisions for counselling services. Even fewer, 4.9% have health and recreational facilities which can enhance both the health and productivity of workers.

It's well understood that the right to be part of the decision-making process has positive benefits on the health of workers, including the reduction of stress. Only 2.8% of agreements have provisions for a Committee on Work Environment. It may be possible that labour-management committees can deal with work environment issues and 67% of agreements have provisions for these committees. However, it also may be the case that work environment issues get lost in the many issues dealt with by labour-management committees.

There have been some gains made through collective bargaining in areas that are of benefit and importance to workers with disabilities, but a great deal remains to be done at the bargaining table. The next section outlines a proposed collective bargaining agenda for bargaining disability rights into collective agreements.

# PROPOSED BARGAINING PRIORITIES FOR DISABILITY RIGHTS AND BENEFITS

The labour movement has recognized that a growing portion of the workforce and thus, their membership is made up of traditionally disadvantaged and marginalized groups of people. These groups include women, Aboriginal peoples, persons with disabilities, persons of colour, gay, lesbian, bisexual and transgendered persons, and groups of people and workers who have long-sought equality in every sphere of their lives, their workplace and their union included. We need to keep in mind that people and workers often experience more than one form of discrimination at the same time as well as more than one disability.

A rights-based bargaining agenda seeks to eliminate barriers to work as well as barriers inside the workplace and to eliminate discrimination and harassment against the minority of workers experiencing disadvantage based solely on 'perceived difference.' It's a huge challenge for the labour movement to take up. We have done so in the knowledge that human rights are universal and indivisible and that achieving these rights makes people, workers and the union movement stronger, cohesive and indivisible. The fundamental value behind the advancement of human rights is that every single person is as valuable and worthy as every other single person.

Negotiating equality provisions in collective agreements requires action on many different fronts. To gain equality for workers with disabilities, bargaining priorities need to focus on accommodating the requirements of these workers to gain employment, to fulfill the requirements of the job once they are employed, and to have opportunities for advancement in their profession.

**Employment Equity** provisions in collective agreements are essential in order to bring people with disabilities into the workforce and to ensure they have both job security and opportunities for promotion once there. Systemic barriers to employment need to be identified and eliminated. Unions need to address squarely how to incorporate employment equity principles into seniority provisions. While we recognize that seniority is a protection for workers, we need to develop creative solutions around this issue. This is, perhaps, the largest challenge facing workers in the trade union movement in setting out a bargaining agenda reflecting a commitment to equality for workers with disabilities.

**Anti-harassment** provisions in collective agreements must be negotiated to end systemic discrimination in the workplace. Negotiating **Training and Education** for both employers and workers is an extremely important parallel to the negotiation of anti-harassment provisions in order to develop understanding, raise a collective consciousness and eliminate unfounded fears.

**Anti-Discrimination** provisions to include all the prohibited grounds for discrimination under the federal and provincial/territorial human rights codes and beyond. The Meiorin decision

makes it clear that the onus is on the employer to introduce systemic measures to end systemic discrimination.

**Equal Pay for Equal Value** provisions are critical for women workers who have disabilities. More often than not, women with disabilities suffer double discrimination— once because they are women and twice because they have a disability.

**The Right to Transfer To or Be Trained for Another Job** whether or not the disability was incurred on or off the job is critical to attaining rights for workers with a disability. Agreements which now provide for training and transfer based on the 'willingness' of the employer to undertake training or transfer must be upgraded to a rights basis.

**Long-Term Disability Plan** provisions are a critical source of economic security for workers with and without disabilities. Coverage in this area needs to be expanded as does the premium share paid by employers and the benefit levels provided. Ideally, replacement income under such plans would provide workers with 100% of income with no upper limit on the monthly dollar amount.

**Extended Health Benefits** are also important sources of economic security for workers with disabilities. To provide security against exorbitant drug costs, we need to bargain employer-paid drug insurance plans, although a national pharmacare plan is the best option. Over 55% of collective agreements have no provision for vision benefits and 81% have no provision for the hearing aids. There are technological advances which allow persons with certain disabilities to function in the workplace but for which there is no collective agreement coverage.

**Work Environment** provisions in collective agreements are of particular importance to workers with disabilities because these can make the difference as to whether or not workers with disabilities can function in the workplace in ways which do not aggravate their disability. Provisions such as counselling, health and recreational facilities, job rotation and workplace committees advance provide critical resources as well as advancing understanding of disability issues.

**Back To Work Protocols** are emerging in some collective agreements to define the supports available to workers when they return to work after incurring a work-related disability or a disability incurred beyond the scope of the job or a combination thereof. Such protocols negotiated in advance eliminate the painful process of trying to reintegrate individual workers experiencing a disability back into the workplace with their integrity and self-worth intact when the employer may not fully grasp the intricacies posed by different types of disability.

**Illness in the Family** provisions take into account that workers may have family members who have a disability and that the primary responsibility for care may rest on the worker. In the absence of a national home care program offering these critical and necessary services, provisions addressing these and other family responsibilities is of primary importance.

**Paid Sick Leave** is a priority area for collective bargaining. Only 50% of agreements provide for paid sick leave and these agreements cover 41% of workers. Workers with disabilities may need this protection in order to manage and treat their disability.

**The Confidentiality of Health Information** is becoming more and more important as health information technology expands. At the same time, we are rapidly approaching the time when DNA testing will be a common occurrence. Privacy and confidentiality protections for health information, including prohibiting the sale of health information to insurance companies and employers need to become a critical bargaining priority.

In collective agreements where health and insurance benefits have a specified period for receipt of the benefits, we need to re-negotiate extending the benefit period for the duration of the disability. We need to change the language in collective agreements where continuous illness or disability for a specified period of time is understood to mean termination at the end of that period.

We may wish to bargain that on the request of the Union, the employer will make employment notices available in alternative formats, including payment for such formats.

This list of bargaining priorities is not meant to be exhaustive. It is hoped that the first Canadian Labour Congress Conference on Disability Rights will add to our understanding of collective bargaining priorities for workers with disabilities.

# SAMPLE CONTRACT LANGUAGE

## **Anti-discrimination**

The Corporation and the Union agree that neither will at any time, act or proceed in any manner contrary to the provisions of *The Employment Standards Act, The Labour Relations Act, The Industrial Standards Act, The Occupational Health and Safety Act, or The Ontario Human Rights Code*, all as amended and any Regulations made thereunder, and both parties will adhere to Council's policy respecting no discrimination on the basis of sexual orientation.

[CUPE, Local 543 and City of Windsor]

The Parties hereto subscribe to the principles of the *Human Rights Act*, Sec 1984, c.22. As stipulated in the *Act*, the Parties will not discriminate against a person with respect to employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offense that is unrelated to the employment or to the intended employment of that person.

[Compensation Employees\* Union and B.C. Workers\* Compensation Board]

## **Sexual Harassment**

The Employer, the employees and the Union recognize the right of all persons employed by the Employer to work in an environment free from sexual harassment.

Sexual harassment is a serious infraction and will be dealt with as such by the Employer and may lead to the imposition of discipline.

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature:

- (a) that might reasonably be expected to cause offense or humiliation; or
- (b) that might reasonably be perceived as placing a condition of a sexual nature on employment or on an opportunity for training or promotion.

The employee who alleges sexual harassment may contact a Human Resources representative who will:

- (a) investigate the matter, and
- (b) maintain a strict degree of confidentiality with the employee concerned; and
- (c) take appropriate action to resolve the problem.

Subject to the provisions of Article 9:03 (complaint to the Human Rights Commission), in the event that the matter is not resolved under clause 11:04, the matter may be referred to the Grievance and Arbitration procedure and shall be handled with all possible confidentiality and dispatch by the Employer and the Union.

An alleged offender, whether or not a member of the bargaining unit, shall be given notice and particulars of the substance of a complaint sufficient to know the full nature of the allegations and shall be given notice of and be entitled to attend, participate in, and be represented at any grievance hearing or arbitration hearing under the agreement.

At any stage of this procedure an employee may seek assistance and/or involvement of a Union representative.

[PSAC and Greater Toronto Airports Authority]

## **Workplace Harassment**

All employees are expected to treat all persons with courtesy and consideration and must not engage in discrimination or harassment because of a prohibited ground contrary to the *Canadian Human Rights Act* (the "Act"). Prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

If an employee believes that he/she has been harassed and/or discriminated against on the basis of a prohibited ground of discrimination the employee may:

- (a) Tell the person involved as soon as possible, how you feel, and request that he/she stop the conduct you find offensive.
- (b) If you feel uncomfortable approaching the person, or if the harassment continues, bring the incident forming the basis of the complaint to the attention of the Manager, Human Resources and/or the National Representative or the Local 4100 President.
- (c) The parties will review the complaint and where warranted, will strike a committee and carry out a joint investigation.
- (d) The Joint Committee will consist of equal members of Management and the Union. The actual composition of the joint committee will be determined by the parties on a case by case basis.
- (e) It is the intention of the Union and the Company that, where practical, the joint investigation will begin within five (5) working days of the lodging of the written complaint and shall be completed within fifteen (15) calendar days after the lodging of the written complaint.
- (f) All matters brought before the committee will be dealt with the utmost confidentiality.
- (g) Any complaint not resolved through this process may be addressed by the Union pursuant to Article 3.
  - a. It is agreed that the workplace should be free from any type of sexual harassment. It is also agreed that any complaint involving sexual harassment shall be submitted at Step 3 as per the grievance procedure as outlined in the Collective Agreement.  
It is also understood that both the Company and the Union shall cooperate in every way to reduce or eliminate any type of harassment in the workplace.

[CAW and Loomis Courier Service]

## **ACCOMMODATING PEOPLE WITH DISABILITIES**

### **Job Rights**

An employee who has become incapacitated by injury or illness will be employed in other work which he can do. Such employee may not displace an employee with more seniority.

[CUPE and Town of Dalhousie]

An employee who suffers from an illness, a non-occupational injury or an injury sustained at work or one who becomes affected by an occupational disease during the course of his employment and is unable to perform his job as a result thereof will be given preference on a posting for a new job or a vacancy for which he is qualified and willing to perform.

[IAM and Stanley Hardware]

In the event that an employee is able to return to light or modified duties as determined by the Workers\* Compensation Board of Ontario, the Employer shall attempt to provide such work

and the employee shall continue to receive the hourly rate of pay or bi-weekly salary the employee was receiving prior to the date of the accident.

Any employee who returns to modified or light duties shall be assessed on an on-going basis by the Workers\* Compensation Board of Ontario. In the event such assessments determined that the employee is able to return to full and regular duties, 7.3 (c) above shall apply. In the event the employee\*s condition is assessed as deteriorating, the Employer shall provide rehabilitation as recommended by the Workers\* Compensation Board of Ontario for employment with the Employer or other employers. In this case, the Employer will make a reasonable effort to offer the employee on-going alternate employment. In any case, when the employee returns to light or modified duties, the Employer shall be guided by the assessment of the Workers\* Compensation Board of Ontario.

The Union recognizes that reassignment of a permanently partially disabled employee to alternate employment may necessitate a change of classification and pay.

It is recognized that where the employee has been reassigned or offered, and accepts alternate employment with the Employer, the employee shall be entitled to any lump sum payment or permanent award payable as determined by the Workers\* Compensation Board of Ontario, and such payments will not reduce the wage or salary the employee will be receiving.

No employee shall have his employment terminated until, all benefits, which are standing to the employee\*s credit at the time of the assessment is made, are paid to the employee.

In the event that Workers\* Compensation should become taxed as normal income, the Employer and the Union agree that the employee receiving Workers\* Compensation shall not receive less than his normal salary or wage. The details of such rearrangement shall be negotiated between the Union and the Employer at the time of such change in the legislation.

[CUPE Local 503 and City of Ottawa]

In the event of an employee suffering a disability which would prevent an employee from carrying out normal duties the Company, if unable to place the employee on a job on an employee\*s regular shift consistent with a physical disability, may make exceptions to the seniority provisions of this Agreement in favour of such employee. However, if in the event of a layoff the employee\*s seniority does not entitle the employee to remain at work the employee shall be called back according to seniority provided the employee has the ability to satisfactorily perform the work to be done.

[CAW Local 1 285 and Chrysler Canada]

### **Accommodation**

For each disabled employee who is able to perform work, the board in consultation with the Union and the employee, shall cooperatively develop a "Modified Work Plan". The Plan will consider the employment needs and abilities of the disabled employee, the workplace needs of the system and the interests of the Union. A Work Plan shall establish an implementation date and a termination date.

The underlying principle behind each Modified Work Plan is to create a suitable position by modifying the employee\*s regular position through the smallest possible changes to both the employee\*s regular position and/or other positions. With due regard to seniority, a reserved vacancy may also be considered to facilitate the employee\*s return to full employment status.

Any position modified, reserved and/or created under this provision shall be treated as non-permanent and no employee shall have the rate of pay reduced nor the fundamental quality of the normal position permanently eroded. For the purpose of administering other provisions of the collective agreement, any position that is modified under this provision shall be treated in the same manner as if it were a regular position.

It is understood that the Union reserves the right of access to the grievance procedure up to and including arbitration should the Union disagree with [the] Board\*s application of these Modified Work Plan Provisions.

[OSSTF and Lakehead Board of Education]

CUPE Local One and Toronto Hydro are jointly committed to re-integrating employees back into the workplace who have suffered a work-related injury or illness accepted and paid for by the Workers\* Compensation Board. The Union and Management will work together through an Accommodation Committee.

#### Accommodation Committee

The Accommodation Committee will consist of three (3) Union Representatives and three (3) Management Representatives who will meet bi-monthly to discuss both permanent and temporary accommodations.

The Accommodation Committee shall:

- (1) Recommend to Toronto Hydro Management procedures and practices to ensure safe, consistent, and fair administration of the Return To Work Program.
- (2) Review and recommend to Toronto Hydro Management modified work assignment for employees who have been injured on the job on both a temporary and a permanent basis.
- (3) Meet regularly to monitor each modified work assignment and the overall performance of the Return To Work Program.
- (4) Recommend to Toronto Hydro Management changes to the Return To Work Program as appropriate.

The Union Committee members shall be allowed not less than two (2) hours between the termination of the meeting and return to normal duties for meals, clothing change and travel.

Time absent from work will be at the Employer\*s expense and shall not be charged to the grievance work order.

#### Permanent Placement

Employees who have suffered a permanent work-related injury/illness accepted and paid for by the Workers\* Compensation Board, and who are medically fit to perform work may be placed as follows:

- (1) In the employee\*s existing job, if the employee is medically fit to perform the job duties.
- (2) In the employee\*s existing job, with modified duties, if the employee is medically fit to perform the job as modified, and the modifications permit the performance of the essential duties of the job.
- (3) In another classification within the employee\*s Bargaining Unit with approval by the Accommodation Committee and confirmed at Employer-Union.

- (4) In another classification within the 'other\*' Bargaining Unit with approval by the Accommodation Committee and confirmed at Employer-Union.
- (5) In a classification created specifically to accommodate the employee with approval by the Accommodation Committee and confirmed at Employer-Union.

An employee returning to work will receive the current annual rate of pay for her/his pre-injury/illness position or the minimum annual rate of the new classification, whichever is greater, plus any future negotiated increases for that classification.

As a condition of this continued wage protection, an employee who has been placed in a position other than the employee's previous position, will apply for all posted vacancies for which they are qualified and which have an annual rate greater than their new classification and equal to the employee's current annual rate.

#### Temporary Placement

Employees who have suffered a temporary work-related injury or illness, and who have submitted a claim to the Workers' Compensation Board, and who are medically fit to perform work may be placed as follows:

- (1) In the employee's existing job, if the employee is medically fit to perform the job duties.
- (2) In the employee's existing job, with modified duties, if the employee is medically fit to perform the job as modified, and the modifications permit the performance of the essential duties of the job.
- (3) In a classification within either Bargaining Unit with approval by the Accommodation Committee and confirmed at Employer Union.

The wage of the employee who is placed under this program will be protected at the pre-injury/illness level or the minimum of the new classification, whichever is greater, plus any future negotiated increases for that classification.

Where a scheduled increase or progression occurs during a temporary placement of not less than three (3) months, the employee will receive such increase or progression upon satisfactory demonstration of competency during a trial period of thirty (30) days.

[CUPE, Local 1 and Toronto Hydro Electric Commissioners]

- (21) In the event an employee becomes physically challenged and is unable to continue his/her job, an exception to Article XVI and the seniority provisions of the collective agreement, will be made in favour of such employee on the following basis:
  - (a) if a new job or permanent job vacancy occurs, which the physically challenged employee can perform, he/she will be placed on such a job without the necessity of a job posting, subject to the following:
    - (i) a doctor's certification of disability by the employee's own doctor must be submitted for verification by the Company Medical Officer
    - (ii) an employee placed on a job because of a disability will have that disability reviewed at least annually
  - (b) the Company will review all the circumstances with the Union Committee before exercising this provision. All exceptions to Article XVI and the seniority provisions of the collective agreement must be mutually agreed to by the parties.

[CAW and Wescat Industries]

## **Training**

- (1) Where a member of the 113 Unit is injured and disabled while engaged in active fire-fighting duties or support division duties, in the course of employment with the City, the member shall be given the opportunity to participate in the following employment options:
  - (i) Temporary assignment to a non-fire-fighting position, with the Fire Department.
  - (ii) Participation in a rehabilitation program designed to assist the employee to return to active fire-fighting duties or support division duties.
  - (iii) Enter a re-training program designed to qualify the employee for a non-fire-fighting position in one of the Fire Department Support Divisions.

Where an employee is participating in a rehabilitation program under (a) (i) and (ii), the employee will continue to receive the same rate of salary, in accordance with the employee's rank or classification as provided for in Article 6 hereof.

[IAFF, Local 113 and City of Toronto]

## **Confidentiality of Health Information**

- (1) The confidentiality of health and medical information of employees is recognized by the Company and the Union.

Therefore, Company and Union representatives who have access to this information will ensure its confidentiality. The Company also agrees that medical information of an employee will not be divulged to a third party without his consent or as otherwise required by law.

[CAW and Air Canada]

- (2) The signatories to this Memorandum hereby agree that the Employer will store employee health information separately and that access thereto shall be given only to those persons directly involved in administering that information.

[NSGEU and Government of Nova Scotia]

## **Employment Equity**

Without restricting the generality of the foregoing and notwithstanding the provisions of Article 9 or any other clause of the collective agreement, in all cases involving transfers, layoffs, and recalls from layoff the Company shall be entitled to give preference to First Nations or native employees regardless of their seniority. In addition, and notwithstanding the provisions of Article 17 or any other clause of the collective agreement, the Company shall be entitled to develop and implement special work schedules applicable to First Nations or native employees to allow them to engage in traditional economic activities while maintaining employment with the Company.

Where the rights of First Nations or native employees pursuant to this article conflict with rights of non-native or non-First Nations employees under other provisions of this collective agreement, the rights of First Nations or native employees pursuant to this article shall prevail.

In all cases of vacancy, promotion, transfer, layoff and recall from layoff, First Nations or native employees shall be entitled to preference provided they have the ability to perform the work notwithstanding their seniority.

The Company and the Union also acknowledge the interest of the Windigo Tribal Council and the Osnaburgh Band in the disposition of any grievance affecting a First Nations or native employee. To this end, the Company and the Union agree to notify the Native Employment Coordinator of any such grievance who, in turn, will liaise with Windigo and Osnaburgh and convey to the parties all recommendations and advice Windigo and Osnaburgh may wish to give.

Upon request of any First Nations or native employee who has completed the probationary period, the Company shall grant to him/her leaves of absence which total not more than three months in a calendar year, for the purposes of engaging in traditional economic activities as hunting, wild rice harvesting and trapping. It is acknowledged by the parties that any one leave may need to be restricted to a period of less than three months having regard to the total number of employees on leave at any one time.

A First Nations or native employee shall continue to earn seniority during any leave granted for the period of engaging in traditional economic activities which leave shall be for the period set forward in the Dona Lake Native Agreement and the Dona Lake Human Resources Sub-Agreement, on the one hand, or for the period set out in the preceding article, whichever provides the greater benefit to the employee.

[USWA, Local 8533 and Placer Dome Inc.]

#### Workplace Diversity

The Company and the Union recognize the need to achieve equality in the workplace so that all employees are treated with dignity and respect, are free from harassment, and are provided the opportunity to achieve their full potential.

This means that women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada may require the implementation of special measures and accommodation to overcome unintentional discrimination. In a similar vein, the Company and the Union recognize the need for, and encourage, greater awareness and acceptance of the diversity of our workforce.

#### Joint Committee

The joint Committee already established for this purpose is continued with a mandate to consider ways and opportunities for improving workforce diversity including employment equity. It is recognized that the Company may, in certain circumstances, operate outside the structure of the Joint Committee in view of its obligations as required by legislation, regulation or similar authority.

Decisions of the Committee are to be achieved jointly by consensus with a view to promoting, to the fullest extent practicable, the active involvement of employees, union representatives, and managers at the operating level of the Company.

Within the terms of reference expressed above, the parties expect to consult and explore together the reasonable positive steps that may be taken in relation to such issues as:

- The Company and Union will consult on policy issues related to Employment Equity legislation and seek the input of the joint Committee on the implementation of guidelines (e.g., Employment Equity goals and timetables required of the employer under the *Employment Equity Act*; the development and implementation of special measures to promote the integration of the four (4) designated groups).

- The joint development and subsequent implementation of training strategies and educational programs dealing with issues associated with diversity, equity and human rights. Joint (Company-Union) leadership of harassment sensitivity training is strongly encouraged.
  - The Company and CEP members of the Committee should specifically explore, measures designed to facilitate the placement of female employees from the Operator Services bargaining unit into male-dominated positions in the Craft and Services bargaining unit. The criteria for qualifications of the employees who will be part of any special measure aimed at qualifying employees for non-traditional opportunities are not to be dissimilar to those established by former Joint Committees unless sanctioned by the Joint Committee.
  - The feasibility of utilizing qualified designated group candidates awaiting permanent placements for temporary or supplement work opportunities in desired occupations.
  - The development and implementation of on-going support mechanisms for persons placed into jobs through special measures.
  - The provision of aids and assistance for job information and guidance.
  - The review of qualifications, as deemed appropriate by the joint Committee, to ensure that they are work related and do not present an illegal barrier to achieving equality in the workplace.
  - The development and implementation of a policy regarding return to former position.
- [CEP and Bell]

The following provisions shall come into effect on January 1, 1996

Notwithstanding the provision in the Collective Agreement, the parties agree that the following initiatives supersede the specified provisions of the agreement, and are provided in order to improve the participation of employment equity designated members (Aboriginal people, persons with disabilities, visible minorities, and women) in all types of employment at the University of Regina.

- (1) The Personnel Department may deem certain postings for positions as "Employment Equity Designated Positions" in order to [pursue] the University's employment equity goals.  
[A] position will be considered for designation only if it cannot be filled by an employee who has received notice of layoff or an employee with recall rights.
- (2) The number of such positions shall not exceed four at any given time.
- (3) Such designations may include permanent, seasonal, term, full-time and part-time positions.
- (4) The university will undertake to fill the designated position from among the current employees who are members of the employment equity designated groups. Selection from among these candidates will be made on the basis of possessing the greatest seniority, required qualifications, and efficiency demonstrated in the applicant's current or previous position with the University.  
If there is not a qualified applicant, the University will consider on the same basis outlined above, the applications of employees who are close to possessing the required qualifications before considering any external candidate. If appointment is made of an applicant who does not possess the required qualification(s) for the position for the position the University may, as a condition of appointment, require the applicant to obtain the qualification(s) within a specified time limit.  
If no suitable candidate is available internally, the University may appoint an external candidate from members of the designated employment equity groups.

- If no suitable external candidate from these groups is available, the position shall be re-posted and filled in accordance with Article 8.
- (5) The University may advertise at any time for appropriate employment equity candidates. Designated equity positions will not be advertised until the close of internal posting.
  - (6) A candidate appointed to a designated equity position will be granted, on date of appointment to the position, enough seniority to bring the total up to three years. If the employee has three years or more of seniority at the time of assuming the position, seniority will continue to accrue in the normal fashion. If the employee is granted seniority to bring it up to three years at the time of the appointment, it will be held until the amount of seniority the employee would have earned under normal circumstances reaches three years, and then it will continue to accrue in the normal fashion. Any extraordinary seniority which may have been added to the total of a candidate in a designated position may be exercised in the event the employee is affected by Article 12: Layoff and Recall. Such extraordinary seniority may not be used for bidding purposes.
  - (7) Equity employees in designated positions may be provided with special training as the Personnel Department deems necessary ...
  - (8) The University may conduct training for management and employees in the unit with one or more employees in designated equity positions, in cross-cultural awareness and related fields.
  - (9) Without disrupting the normal working conditions of other employees, the University may undertake measures to assist equity candidates to fit into the work situation, such as designating the hours of work at different times of the day or week, granting leaves of absence, etc.
  - (10) When a designated position with an equity member as incumbent is vacated, it may or may not be posted as one of the designated employment equity positions.

[CUPE and University of Regina]

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