

CONTRACT INTERPRETATION MANUAL

Article 35 LEAVE – EDUCATION – STAFF DEVELOPMENT PROGRAMS

Interpretation Guidelines

Article 35.01 - Transfer of Function

A transfer of function occurs where skills and functions traditionally performed by physicians are transferred to employees who have the appropriate training. Decisions on the functions that can be transferred are made and governed by the relevant licensing bodies (e.g. BCCNM and the College of Physicians and Surgeons).

Where a transfer of function is required, identified, and agreed to by the Employer, it is the Employer's responsibility to provide in-service programs or training for any employee who must perform that function as part of their job duties.

Before any transfers of function occur, the relevant governing bodies need to make sure there are well-developed plans for the education, periodic evaluation, and reassessment of employees responsible for carrying out specific transferred functions.

Employees required by the Employer to perform transfer of functions are entitled to be paid the applicable rate of pay (e.g. OT where appropriate) for time spent in attendance at training or in-service programs related to transfer of function and for a reasonable period of time for any study at home (MSA Hospital and BCNU, August 16, 1993 (Munroe)). The Arbitrator ruled that "employees required to update transfer of function who study at home must be paid for a 'reasonable' period of concentrated study".

Article 35.02 - In-Service Programs

This provision begins with a statement recognizing the mutual benefit of continuing education courses to both Employers and employees.

Employees "required" by the Employer to attend in-service programs are entitled to receive the applicable rate of pay (e.g. OT where appropriate) while in attendance. The issue of what is meant by "required" is not always clear (e.g. CPR recertification). Employers have argued either that it is the employee's responsibility or that attendance at in-services related to this is not "required".

Stewards need to clarify at U/M meetings what is meant by "required" when their Employer uses the word and to what type of in-service programs this would apply. Stewards need to determine from the Employer whether or not employees will suffer repercussions for not attending a particular in-service program (University Hospital (UBC Site) and BCNU, October 18, 1988 (Hope)). This award initially defined what was meant by "required" in the context of CPR recertification, in the following:

1. The Employer changed their policy on providing paid leave for such training and took the position that they did not require the employees to take the training;
2. The grievance was dismissed;

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3. “The paid training leave provision in the Collective Agreement required the Employer to request the employee to take the course with some implications of sanctions (e.g. comments in performance appraisals, or denial of promotion or transfers etc) if the employee refused to do so”; and
4. The arbitrator felt this was not the case with the CPR recertification courses in this situation.

In *Jackman Manor and BCNU*, September 24, 1995 (McPhillips), the majority of the panel found that in this case the Employer was liable to pay for employees’ attendance at CPR in-services during their off-duty time:

1. They rejected the Employer’s argument that no compensation could be claimed because CPR was a requirement of the job and employees were required to keep their skills up to date;
2. They determined that CPR was a “course” contemplated by the collective agreement provision;
3. They ruled that in requiring employees to attend outside their regular hours, the Employer had “scheduled” them for the period of the course and had implicitly granted them leave to attend;
4. They ruled that employees were entitled to compensation at the applicable overtime rate; and
5. The panel did not rule out compensation for travel time.

Article 35.03 - General Education Programs

Employer Requested Leave

1. Where the employee is taking courses at the “request” of the Employer, the Employer is required:
 - (a) To grant leave with pay;
 - (b) To pay the full cost of the course, including tuition fees, text books, travel, and subsistence expenses (e.g. meals, accommodation etc); and
 - (c) To treat courses identified by the JOH&S Committee, and approved by the Employer, to promote a safe and healthy workplace, like Employer requested leave and therefore paid.
2. What is meant by the word “requested” has been examined in a number of arbitrations and arbitrators generally follow the same principal as set out in the UBC arbitration award above. In *HEABC for Fraser Health Authority (Chilliwack General Hospital, MSA General Hospital and Mission Memorial Hospital) and BCNU*, February 18, 2004 (Hall), the majority of the arbitration panel came to the conclusion, “nurses are not “requested” to take courses unless there is an element of compulsion in the sense of some sanction or other adverse employment consequence”.
3. The question of whether study time associated with a course taken pursuant to the provisions of Article 35.03 (A) is compensated has also been arbitrated. In *HEABC and NBA (otherwise known as the NRP (Neonatal Resuscitation Program) decision)*, September 23, 2004 (Hall) (IWAD), the issue was payment for reading and study time associated with the NRP certification and recertification. The Arbitrator referred to some of the principles set out in the *Jackman Manor* decision to find that nurses were required to take the course and that a “reasonable period of time to study the NRP textbook may qualify as “work” for the purposes of compensation under the collective agreement”. The decision was based on the following criteria:
 - (a) The certification and recertification were requirements imposed on nurses in existing positions;
 - (b) It did not concern pre-employment requirements or nurses upgrading to become qualified for a new or different position;
 - (c) Independent textbook study was an integral part of the course;

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- (d) Nurses were expressly directed by the hospitals to read and study the textbooks, therefore it was considered “work carried out at the direction of the Employer”; and
- (e) Hospitals cannot escape their PCA obligations because they allow the nurses to decide when they will study, because such work has been effectively assigned by the Employer.

Duration and Expenses

1. This provision deals with education programs that employees take on a voluntary basis (e.g. where the Employer has approved an employee request to attend or where the Employer has offered courses to employees on an optional basis).
1. Arbitrators have found that independent study time is not paid for by the Employer in this situation.

In Vancouver Hospital and Health Sciences Centre (VGH Site) and BCNU, February 19, 2004 (Korbin), the Arbitrator wrote “I am unable to conclude that any requirement to compensate nurses for training found in the Collective Agreement extends to the point where the Employer is obliged to pay for training and upgrading that a nurse undertakes voluntarily in order to apply and qualify for a new position. Suffice to say the present facts lack the necessary compulsion to warrant pay for the study time claimed”.

In HEABC for Fraser Health Authority (Chilliwack General Hospital, MSA General Hospital and Mission Memorial Hospital) and BCNU, February 18, 2004 (Hall), the arbitration panel came to the same conclusion that nurses could not be compensated for study time associated with voluntary participation in education programs paid for by the Employer.

Employee Requested Leave

The intent of this provision is to provide employees with an ability to take short (e.g. 1 or 2 day) education courses of their own choice on the basis that the Employer provides paid leave for half of the time required and the employee takes unpaid leave, does a voluntary shift exchange or takes vacation time for the second half.

Leave on a Day Off

Where schedule changes are made so an employee takes an education leave on a day off, the employee receives pay for that day and another day off to be scheduled at a later date.

Employer Approved Education Leave

This provision, along with Article 11.04 (K) for casuals, was negotiated in the 2001 PCA.

The following obligations apply when a regular or casual employee participates in an education program paid for by the Employer:

1. The regular or casual employee may be required to return to work for the same Employer, for 18 months after they complete the education program;
2. This only applies where the total cost of the education program (including wages) paid for by the Employer exceeds the dollar value represented by 225 hours paid at the employee’s regular hourly wage rate; and

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3. If the regular employee fails to return to work without a bona fide reason, for 18 months, as set out in (1) above, then they must reimburse the Employer for the full cost (including wages, if any) on a prorated basis of the program. Bona fide reasons are circumstances outside the employee's control.

Impacts of this provision

1. This only applies to programs where the employee's participation has cost the Employer more than the equivalent of 225 hours at the employee's regular hourly rate.
2. If there are no regular jobs in the department or service for which the employee completed training, upon completion of the course, the employer must create a regular relief line on the unit for the employee.
3. Employers are not required to pay for study time associated with programs taken on a voluntary basis pursuant to this provision. In Vancouver Hospital and Health Sciences Centre (VGH Site) and BCNU, February 19, 2004 (Korbin), the Arbitrator wrote "I am unable to conclude that any requirement to compensate nurses for training found in the Collective Agreement extends to the point where the Employer is obliged to pay for training and upgrading that a nurse undertakes voluntarily in order to apply and qualify for a new position. Suffice to say the present facts lack the necessary compulsion to warrant pay for the study time claimed".

Arbitration Awards

1. University Hospital (UBC Site) and BCNU, October 18, 1988 (Hope). This award initially defined what was meant by "required" in the context of CPR recertification.
2. Jackman Manor and BCNU, September 24, 1995 (McPhillips) found that in this case the Employer was liable to pay for employees' attendance at CPR in-services during their off-duty time.
3. MSA Hospital and BCNU, August 16, 1993 (Munroe). The arbitrator ruled that "employees required to update transfer of function who study at home must be paid for a 'reasonable' period of concentrated study".
4. HEABC for Fraser Health Authority (Chilliwack General Hospital, MSA General Hospital and Mission Memorial Hospital) and BCNU, February 18, 2004 (Hall).
 - (a) Issue #1 came to the conclusion that nurses could not be compensated for study time associated with voluntary participation in education programs paid for by the Employer.
 - (b) Issue #2 the majority of the arbitration panel came to the conclusion, namely "nurses are not 'requested' to take courses unless there is an element of compulsion in the sense of some sanction or other adverse employment consequence".
5. Vancouver Hospital and Health Sciences Centre (VGH Site) and BCNU, February 19, 2004 (Korbin). Employers are not required to pay for study time associated with programs that an employee undertakes on a voluntary basis pursuant to Article 35.03 (E).
6. Vince Ready Settlement Agreement June 2004 for the agreement around a reasonable amount of study time.
7. Interior Health (Elk Valley) and BCNU; 2017; (Ready and Bell). The arbitrators found that casuals were not entitled to be paid study time for the NRP course as it was not required by the Employer.

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Footnotes

Article	35
Sub-Article	35.01, 35.02, 35.03
Last Update	31-03-21
Related Articles	2, 6, 11, 32, 63, Memorandum Extended Work Day, Appendix F