

CONTRACT INTERPRETATION MANUAL

Article 37 LEAVE - GENERAL

Interpretation Guidelines

Article 37.01 – Application

While the language says “employees” the effect of the application of these provisions is limited to regular employees or casuals working in a temporary position pursuant to Articles 11.04 (G) (5), 17.02 (C) or 17.03.

A normal full work day is 7.5 hours and 20 unpaid leave of absence (LOA) days is 150 hours. Extended work day employees use 150 hours and not 20 work days.

A regular employee granted an unpaid LOA for less than 21 work days in any calendar year continues to accumulate seniority and all benefits.

Each LOA day over 20 work days is deducted from the employee’s length of service in the calculation of benefits and for increment purposes, unless the Union and Employer mutually agree otherwise. For example, with increments, a RFT employee with an anniversary date of October 1st who is on the 8th increment step and takes 25 work days as unpaid LOAs in the same calendar year will have to wait until October 6th before they go to the 9th increment step.

Service is the length of employment as either a RFT or RPT employee. Continuous service is all periods of service in a regular position with the employer which is uninterrupted by a layoff, a termination, a resignation, or an unpaid LOA of more than 20 work days (Article 55.03).

The 20 work days are replenished at the beginning of each calendar year.

If a regular employee starts an LOA on December 1st and does not return to February 1st of the following year, they will be entitled to 20 work days of benefits for the months of December and January. In HEABC and BCNU; Surrey Memorial Hospital; 2014 (Brown), the Arbitrator ruled that the 20 days are not reset if the leave is consecutive and encompasses 2 calendar years. The member in that case is only entitled to 20 days of concurrent leave regardless of the dates of the leave.

Qualification differentials are considered to be part of an employee’s wage package. As a result they are prorated during unpaid leaves (Campbell River and District Hospital and BCNU, March 18, 1985 (Munroe)).

The 20 day limit does not apply to members who are on Union paid Union Leave in accordance with Articles 44.01(G) or 44.02 (a), (b) & (c).

Where an Employer places an employee on unpaid LOA it is considered a suspension (Vancouver Hospital and BCNU, October 6, 1988 (Kelleher)).

The number of unpaid LOAs is prorated for RPT employees. However, the Employer is required to include any extra hours worked by a RPT employee when calculating the proration (HEABC Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin)).

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LEAVE – GENERAL – SENIORITY BENEFITS		
<i>Seniority Benefits</i>	<i>*Continues or **Discontinues</i>	<i>Exceptions</i>
Seniority Benefits	Discontinues	1. Article 13.03(D) – Union Business 2. Article 13.03(G) – LTD and LTD Wait Period 3. Article 38 Maternity and Parental Leave 4. Article 42.07 – WCB 5. LTD – Appendix C

LEAVE – GENERAL – ACCUMULATED BENEFITS		
<i>Accumulated Benefits</i>	<i>*Continues or **Discontinues</i>	<i>Exceptions</i>
Vacation Accrual	Discontinues	Article 38 Maternity and Parental Leave
Sick Leave	Discontinues	Article 38 Maternity and Parental Leave
Special Leave	Discontinues	Article 38 Maternity and Parental Leave
Statutory Holiday	Discontinues	Article 38 Maternity and Parental Leave

LEAVE – GENERAL – HEALTH AND WELFARE BENEFITS		
<i>Health and Welfare Benefits</i>	<i>*Continues or **Discontinues</i>	<i>Exceptions</i>
Medical, Dental, Extended Health, Group Life	Discontinues – employees can make arrangements to continue H&W benefits by paying the premiums in advance to the Employer. The employee must continue all the H&W plans (i.e. they can't pay for only one or two plans)	Article 38 Maternity and Parental Leave. Article 37 - Employer pays domestic and sexual violence leave.
LTD	Discontinues – employees can continue eligibility by paying premiums in advance to the Employer.	Article 38 Maternity and Parental Leave. Article 37 - Employer pays domestic and sexual violence leave.

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Superannuation or Pension Plan Contributions	Continues –employees should purchase service by March 31 in the year following the end of the leave. Refer to pension plan website.	Article 38 Maternity and Parental Leave – Employee only required to pay her portion.
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LEAVE – GENERAL – SERVICE BENEFITS		
<i>Service Benefits</i>	<i>*Continues or **Discontinues</i>	<i>Exceptions</i>
Increment Progression	Discontinues	a. Unpaid LOA for Education Purposes and Maternity and Parental Leave b. Article 38 Maternity and Parental Leave – (also Employment Standards Act) deems service as continuous while on Parental Leave.
Severance	Discontinues	
Vacation Entitlement	Discontinues – A calendar year containing an unpaid LOA in excess of 20 days isn't a year of continuous service for the purpose of determining Vacation Entitlement. (Arbitration Award : Lions Gate Hospital & HEU, August 29/79 (Larson).	Article 38 Maternity and Parental Leave – (also see Employment Standards Act).
Probationary Period	Continues – Per Article 14, employees are probationary for first 3 months of employment (not based on workdays)	
Qualifying Period	Continues – Per Article 18.03, employees serve a qualifying period of 90 calendar days, as opposed to workdays.	
LTD Recipients	Discontinues	a. If the employee has accumulated sick leave credits, service is interrupted after expiry of those credits. b. If the employee has no sick leave credits to access during the waiting period, service discontinues after 20 work days on unpaid LOA. c. Service is discontinued after 20 days on LTD. Arbitration Award: Nicola Valley Hospital and BCNU, July 2, 1992 (Hope).

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*Continues = continues the entire period of the leave

**Discontinues = stops when leave exceeds 20 days

Article 37.02 – Notice

An employee may request an unpaid LOA for any reason.

The request needs to be in writing and provided at least 8 days before the date of the proposed LOA.

The Employer has the choice of granting the leave. However, if the Employer denies the LOA request, they are required to show they acted in a reasonable manner and exercised “good faith” judgement in making their decision.

The Employer’s decision on the LOA request needs to be given to the employee in writing at least 48 hours before the date of the LOA.

Article 37.03 – Increments

An unpaid LOA for educational, maternal, or parental leave does not affect annual increments. Service is considered to be continuous for parental leave, court leave for jury duty and union leave.

Article 37.04 Domestic and Sexual Violence Leave

This clause was added in 2019 following legislative changes. An employee can receive an unpaid LOA up to 17 weeks with additional days from Article 43.01 and does not need to provide reasons to the Employer to qualify for the leave. They only need to state they are taking the leave. During the leave benefits continue to be paid by the Employer, and service for pension purposes is maintained.

Arbitration Awards

1. Surrey Memorial Hospital, HEABC and BCNU, 2014 (Brown). The Arbitrator ruled that the 20 days are not reset if the leave is consecutive and encompasses 2 calendar years. The member in that case is only entitled to 20 days of concurrent leave regardless of the dates of the leave.
2. Campbell River and District Hospital and BCNU, March 18, 1985 (Munroe). While the language of the PCA was not clear as to the parties’ intentions, the Arbitrator based their decision on the facts that:
 - (a) Qualification differentials were considered to be part of an employee’s wage package and that these differentials were recorded on the employee’s statement of wages;
 - (b) The use of “salary differential” is interchangeable with “qualification differential” (Article 53); and
 - (c) The past practice at the facility over a ten year period of prorating qualification differentials when employees were on an unpaid leave.
3. Vancouver Hospital and BCNU, October 6, 1988 (Kelleher). The Employer required an employee to take a 6 month LOA to take a nursing refresher course. The Arbitrator ruled that this amounted to a suspension and ordered the Employer to reimburse the employee for lost wages and benefits and expenses including tuition and text books associated with taking the refresher course.

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4. Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin). The Employer is entitled to prorate unpaid leaves of absence for RPT employees; however, the proration should be based on the extra hours worked by the RPT employee in addition to their regular FTE.
5. Nicola Valley General Hospital and BCNU, July 2, 1992 (Hope). The language in Appendix C – LTD indicates that the employee is required to pay the health and welfare benefit premiums after the first 20 days unpaid LOA.

Additional Resources

Legislation

1. Employment Standards Act, Section 56.

Footnotes

Article	37
Sub-Article	37.01, 37.02, 37.03, 37.04
Last Update	31-03-21
Related Articles	1112, 13, 17, 34, 38, 42, 43, 44, 45, 55, Memorandum Extended Work Day, Appendix A