

Article 11

Article 11 - Definition of Employee Status and Benefit Entitlement

Article 11.01 - Restriction of Employee Status

Related Articles: 11.02 (C), 11.03 (C), 11.04, 13, 27, 29, 42, 43, 45, 49, 55, Appendix C, Appendix W

Interpretation Guidelines:

An employee cannot have more than one employment status at a time with the same Employer. This restriction also applies where the same Employer has multiple worksites. An employee must be either regular full-time, regular part-time, or a casual employee.

An Employee who has regular employment status at one worksite automatically is considered to have regular employment status at all the other worksites with the same Employer for the purpose of application of the above noted articles.

For example: Nurses working for the Employer identified in Appendix C as: "*Interior Health Authority (Okanagan Health Services Delivery Area - Public Health, Continuing Care, Mental Health, Armstrong Home Support Services, Shuswap Home Support Services, Vernon and District Home Support Services provided by the former North Okanagan Health Region*" - can only have one employment status for all of the worksites listed together as one employer in Appendix C.

Therefore if a nurse is employed as a regular part-time employee at *Shuswap Home Support Services*, even though the nurse has volunteered to be called in for casual shifts at *Vernon and District Home Support Services*, he/she cannot be considered to be a casual employee for the purposes of casual call-in as it is identified as part of the same Employer. Instead he/she can only be called for casual shifts at *Vernon and District Home Support Services* once the casual call-in list has been exhausted.

However, regular part-time employees accrue benefits such as sick leave and additional vacation for extra "casual" shifts worked at the same or other worksites with the same Employer. See interpretation under Article 11.03 (B) Benefit Entitlement - Regular Part-Time Employees for further details.

Please note: The ability to take this additional earned vacation as time off was rejected in the arbitration award [*Royal Columbian Hospital and BCNU*, February 17, 1989, (Hope)]. Instead the additional vacation entitlement by RPT employees is paid out. See interpretation at Article 45 - Leave - Vacation for further details.

The restrictions to one employee status with the same Employer also mean that a regular full-time employee would need to be paid overtime for "casual" shifts performed at other worksites with the same Employer.

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To determine the worksites that are part of the same Employer, Appendix C of the current PCA is your first source of information. Worksites covered by the same employer are listed together in brackets. To confirm whether this information is still accurate, Stewards can contact their LRO who will check the most recent copy of the Appendix to the consolidated certification between HEABC and the NBA.

Article 11.02 (C), 11.03 (C), 11.04 (H) - Seniority

For application of seniority for each employment status see the interpretation guidelines for Article 13.

Application of seniority for regular full-time, regular part-time and casual employees should be interpreted in context with Article 11.01- Restriction of Employment Status.

For example, casual employees in the above-noted example will accrue seniority for the purpose of casual call-in by seniority based on the hours worked at all the worksites identified in the example.

Article 11.03 (B) Benefit Entitlement - Regular Part-Time Employees

Related Articles: 12.03, 13, 14, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 54, 55

Interpretation Guidelines:

Benefits <u>Not</u> -Pro-Rated	Benefits <u>Pro-rated</u>
<ul style="list-style-type: none"> ✚ Increments (12.03) ✚ Probation (14) ✚ In-Service (35) ✚ Parental Leave (38) ✚ Leave for Public Office (41) ✚ Extended Health, Dental and Group Life, LTD (46) ✚ Special Leave Application (43) ✚ Seniority (13) ✚ Court Leave (34) ✚ Election Leave (36) ✚ Sick Leave Application (42) ✚ Monthly car allowance - community based services 	<ul style="list-style-type: none"> ✚ Payment for Statutory Holidays (39) ✚ Sick Leave Accumulation (42) ✚ Vacation Pay (45) ✚ Qualification Differential (53) ✚ Severance Allowance (55) ✚ Compassionate Leave - based on hours regularly scheduled (33) ✚ Special Leave Accumulation (43) ✚ Supplementary Vacation (45.03) ✚ Isolation Allowance (54) ✚ Leave - General (37) ✚ Monthly incentive allowance specialty areas

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The language in Article 11.03 (B) has been consistently applied by arbitrators to govern the interpretation of pro-ration in all the related articles where benefits are earned. An illustration of this point is in the arbitration decision, **Fort St. John General Hospital and BCNU, June 15, 1994, (Kinzie)**, dealing with the application of Isolation Allowance to regular part-time employees. Arbitrator Kinzie wrote "*the most significant interpretation applicable to the resolution of this dispute is that the provisions of the Master Collective Agreement are to be read as a whole giving meaning to them all and wherever possible avoiding conflict*".

That means that the language of Article 11.03 (B) takes precedence even when a plain reading of other articles appears to provide part-time and full-time employees with the same level of benefit. For example: in the Fort St. John arbitration, even though the language in Article 54 - Isolation Allowance spoke of a "lump sum payment", the pro-ration of benefits for regular part-time employees in Article 11.03 (B) takes precedence.

In most cases pro-ration applies to all accrued benefits. The intent behind pro-rating is that a regular part-time employee does not end up having a superior benefit to that of a regular full-time employee.

For example in *Royal Columbian Hospital and BCNU, February 17, 1989*, Arbitrator Hope's concern with respect to part-time employees taking their additional vacation entitlement, earned by working extra shifts, was that based on their normal schedule it would result in the regular part-time employee being able to take a longer vacation period than a full-time employee.

Another example is with respect to compassionate leave: *Royal Columbian Hospital and BCNU, February 6, 1995, (Kelleher)* arbitration decision said that the use of compassionate leave is pro-rated and its usage is based on hours regularly scheduled.

To avoid pro-ration, the article usually has to contain specific wording that overrides the application of Article 11.03 (B). For example: Article 13.01 (A) Regular Employee makes it clear that seniority is accrued in the same way by both regular part-time and full-time employees.

Additional References:

Arbitrations on the effect of extra booked shifts worked by regular part-time employees have resulted in the following decisions:

1. Cancellation of extra booked shifts is considered a layoff:

Extra booked shifts worked by regular part-time employees are considered to be part of their work schedule and therefore cancellation of the shift by the Employer with less than ten days notice is considered in effect to be a layoff (See: *Royal Columbian Hospital and BCNU, June 7, 1994 (Kelleher)*).

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Extra shifts worked by regular part-time employees are recognized in the calculation of benefits paid for WCB leave, SEB Plan top-up, sick leave, vacation entitlement, payment of isolation allowance and usage of general unpaid leave.

Royal Columbian Hospital and BCNU, February 17, 1989, (Hope) - part-timers accrue *paid* vacation based on the extra hours worked; however vacation *time off* entitlement for part-timers is based on their regularly scheduled hours (i.e. FTE) not on extra hours worked.

Royal Columbian Hospital and BCNU, February 28, 1994 (Laing) - the taking of special leave credits is not pro-rated for part-timers.

Royal Columbian Hospital and BCNU, December 13, 1995, (Munroe) - sick leave accrual is based on extra hours worked by part-timers.

Fort St. John General Hospital and BCNU, June 15, 1994, (Kinzie) - while isolation allowance is pro-rated the amount is based on extra hours worked by part-timers.

HEABC and Richmond Hospital and BCNU, May 20, 1998 (Kelleher) - SEB plan payments are based on the extra hours worked by part-timers in addition to their regular FTE.

HEABC Vancouver Hospital and Health Sciences Centre and BCNU, January 28, 1998 (Munroe) - part-timers top-up while on WCB leave is based on the extra hours worked in addition to their regular FTE.

HEABC Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin) - the Employer is entitled to pro-rate unpaid leaves of absence for part-timers, however the pro-ration should be based on the extra hours worked by the part-timer in addition to their regular FTE.

2. Pro-ration Confirmed

Fort St. John General Hospital and BCNU, June 15, 1994, (Kinzie) - isolation allowance is pro-rated the amount is based on extra hours worked by part-timers.

Royal Columbian Hospital and BCNU, February 6, 1995, (Kelleher) - the use of compassionate leave is pro-rated and its usage is based on the part-timers regular FTE.

HEABC Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin) - the Employer is entitled to pro-rate unpaid leaves of absence for part-timers, however the pro-ration should be based on the extra hours worked by the part-timer in addition to their regular FTE.

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Note: The numbering in this provision was changed in 2001.

Article 11.04 (A) - Casual Employees

Related Articles: 11.04 (B) to 11.04 (L), 17.02, 17.04

Interpretation Guidelines:

Casual employees may be used by Employers to fill relief assignments as set out in the list at 11.04 (A). In other words, casual employees do not have an entitlement to that work.

The Union supports a reduction in the casualization of the nursing workforce as research has demonstrated that this leads to improved working conditions for nurses.

Since 2001, Employers have had the ability to create regular float positions (17.04) and regular temporary vacation relief positions (17.03) and reassign the work previously assigned to casuals under 11.04 (A).

As a result of the Policy Discussions in 2004, Employers agreed to convert casual and overtime hours to regular positions wherever possible.

Casual employees, who fill temporary assignments in accordance with Article 17.02, keep their casual employment status but have access to regular benefits as set out in Article 11.04 (G) (5).

Because casuals do not change their employment status, they are still considered to be part of the casual call-in list and may accept casual shifts in addition to those that are part of their temporary assignment.

The Employer is expected to post temporary assignments where the incumbent is expected to be away for over 4 months. For example: employees who are on LTD, Parental Leave, WCB or long term Union Leave (see Article 17.02 Temporary Appointments).

Regular and casual employees may apply.

Regular employees keep their regular employment status after posting into a temporary appointment.

A casual employee can only become a regular employee by bidding into a permanent position where there is no incumbent [(Arbitration Award: *Royal Columbian Hospital and BCNU*, March 14, 1996 (Larson).] Note: This arbitration took place before the changes in language in Article 17.03 regarding creation of temporary positions. Nevertheless the same overall concept applies, namely that it is *a position where there is no incumbent*.

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A temporary workload assignment is when the Employer requires additional work to be performed over and above the normal staffing requirements. This workload is supposed to be a temporary fluctuation and therefore not enough to create a regular ongoing vacancy. For example: Dealing with a flu outbreak or providing care to a seriously ill patient.

Stewards need to monitor these situations and determine whether there is enough ongoing workload to create a new regular position.

Additional References:

Arbitration Award:

Royal Columbian Hospital and BCNU, March 14, 1996 (Larson) - a casual employee can only become a regular employee by successfully posting into a position where there is no incumbent.

Other Resources:

Appendix Y - Framework for Settlement for Client Specific Nurses - only applied to nurses who worked for ParaMed, this agency ceased operations in BC and therefore this language is no longer relevant.

Article 11.04 (B) to (F)

The following provisions address the procedures for the assignment of casual work.

Article 11.04 (B) - Off-Duty Rights

New language in 2006

While Casuals have the right to turn down work, there are limitations.

- At the time of hire casual employees get a Letter of Appointment that contains a mutually agreed statement of their commitment to be available for certain shifts and days on specified unit(s). See Interpretation Guidelines at Article 11.04 (C) (1).
- Casuals can negotiate any changes to their general availability with the Employer at least once a year and provide monthly short term availability (Article 11.04 (C) (3)).
- It is important that casuals ensure that they have a Letter of Appointment and that it is updated to reflect any changes to their availability. The Letter of Appointment could be a key document in dealing with any disputes involving this provision.

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Employers have the option of terminating the employment of a casual who over a consecutive three month period:

- repeatedly refuses work offered in accordance with their Letter of Appointment, and/or
- repeatedly cancels pre-booked shifts,
- is not able to provide a valid reason for not accepting and/or cancelling pre-booked shifts, and as a result
- does not work any shifts during a consecutive three month period.

Where the casual employee has not worked any shifts for three months and before any decision is made to terminate the employment of a casual:

- the Employer is required to meet with the Union* LRO and the casual employee, and
- provide the casual employee with an opportunity to argue the bona fides of their refusal of shifts and their continued employment.

New in 2006, where the casual employee has not worked any shifts for a further consecutive 3 month period

The Employer can unilaterally remove the casual employee from the casual call-in list, without conducting a further meeting with the Union and casual employee, where the following conditions have been met:

- the casual employee as been previously advised at a meeting with the Union LRO at the 3 month point that their continued employment as a casual could be in jeopardy,
- the casual continues to refuse work and/or cancels pre-booked shifts,
- the casual is unable to provide a valid reason for their refusal of work or cancellation of shifts, and as a result
- the casual has not worked any shifts for a minimum of 6 consecutive months.

It is the Union's position that the Employer should notify the Steward of the names of employees removed from the casual list and be prepared to provide justification for the removal.

Given the new language casual employees need to make sure they advise their Employer **in advance** of any changes in their availability and to ensure that their appointment letter is updated on a regular basis to accurately reflect their current availability e.g. if their hours have increased at another worksite or their family situation means they are not available for work.

*"Union" as it's used in this provision, means the **HEAD office** of the Union, meaning the LRO. Given that the Employer may be intending to terminate the employment of the casual, it is important that the LRO be present for any discussion of the "bona-fides of refusal and the continued employment of the employee".

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Article 11.04 (C) (1) - Letter of Appointment and (2) General Availability

It is important to ensure compliance with this provision as it forms the basis for the casual's employment contract and could be a key part in arguing any future dispute that might arise.

These are the key aspects of the Letter of Appointment:

1. The letter is to be **provided at the time of hire** for a new casual employee.
2. **The employer and the new casual employee must mutually agree** on when and where the casual commits to be available to work.
3. The **general availability agreement can be changed** at least once a year, or more frequently if there is mutual agreement between the Employer and casual employee.
4. **The Employer is required to provide the casual employee with a new Letter of Appointment** each time there is a change to the general availability agreement.

The **Letter of Appointment** should contain the following information:

1. Employment status;
2. Classification and wage level;
3. Worksite;
4. Whether the employee is seeking regular employment;
5. A mutually acceptable statement of the casual employee's days and shifts of availability;
6. Any specialist qualifications held by the employee; (**Note:** casual employees need to advise the Employer of any additions to their specialty qualifications) and
7. All mutually agreed wards, units, programs in which the casual employee will work.

New in 2006:

Casual employees preferences for specific shifts or areas of work will no longer be accommodated at the expense of regular employees work schedules or areas of work.

As a result, a regular employee will not be required to float to another unit or have their work schedule changed to accommodate a casual employee's preferences for specific shifts or areas of work.

Casual employees will be expected to work in any area they have been assigned to and can be moved within the shift, unless they do not have the skills and/or orientation required to practice in that area.

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(3) Short Term Availability

Casuals must be available for work during June, July and August unless there is agreement between the Employer and the casual employee that is set out in the Letter of Appointment or they are on a leave of absence such as sick leave, parental leave etc.

(4) New Qualifications

The Employer is required to note this information on the employee's personnel file. It is important that casuals keep the Employer updated on any new qualifications they acquire.

(5) Orientation

Casuals must receive an orientation to each of the wards, units, programs agreed to in their Letter of Appointment.

Article 11.04 (D) - Casual Register

The requirements are as follows:

1. Casual employees must be registered for work on each of the units, wards programs as mutually agreed in their Letter of Appointment.
2. Casuals can request to be registered for work on additional units and the Employer is required to consider these requests before hiring more casuals. Where the Employer agrees to the casual's request, a revised Letter of Appointment needs to be issued.
3. The Employer is required to keep a master list which lists all the casuals with their agreed to areas of work in descending order of seniority, listing each of the casual's seniority hours. Copies of the list must be easily available at each ward, unit or program.
4. The Employer is required to update the casual seniority list every 3 months. It is essential that casuals keep track of all the hours they work and ensure that this is accurately reflected on each of the updates.

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Article 11.04 (E) - Procedure for Casual Call-In

Related Articles: 11.04 (I), 11.04 (J), 17.03, Appendix DD

Interpretation Guidelines:

Article 11.04 (E) (I) (1)

Employers are required to call in casuals for work in order of seniority provided that the casual is:

- registered for work on the ward, unit or program,
- has the qualifications and capabilities to perform the work,
- has been oriented to the ward, unit or program

Casual assignments with more than 24 hours notice are to be offered in order of seniority.

Article 11.04 (E) (I) (2) (3)

What are the three circumstances where the Employer can call casuals in out of order of seniority?

1. **Casual assignments with less than 24 hours notice:** May be filled in the manner the Employer "deems most efficient" (e.g. out of seniority order).

Note: The Employer is required to record the date and time of the notification of the employee's absence in the telephone log book [See Article 11.04 (E) (6) (d)].

An example defining the words "deems most efficient" is:

Where a casual employee is already working and is asked near the end of his/her shift to replace an employee who has just booked off sick for the next day.

As part of the legislated changes in 2001, the language was expanded to allow Employers to book casuals out of seniority order **for the first block of shifts**. However, it is our position that it would be just as "efficient" to fill the remaining shifts in a block using call-in by seniority.

2. **For probationary casual employees:** In 1998 bargaining, the Employer was given the ability to schedule **no more than 3 shifts** out of seniority order **over the length of the probationary period** so that probationary casual employees can be assessed.

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Note: The intent is that this provision only be used where the Employer can demonstrate that the shift pattern has not allowed for an adequate assessment. For example: The new casual employee has only worked night shifts or weekends during their probationary period.

- 3. New Graduate Nurses:** Part of the 2001 legislated settlement, was that new graduates who are casual employees could be called in for work out of seniority order to allow them to consolidate their practice. The intent of this provision was to take the new graduate from "practice ready" to "job ready". Since 2004, a number of Health Authorities have since developed ongoing programs to provide new graduates with periods of full-time employment varying from 6 months to a year to assist the new graduates to become job ready. Please contact your BCNU Steward or the LRO for further information.

Appendix DD provides for a mentorship program of up to 15 weeks of full and part time work assignments (using work normally offered to casuals) for new graduate nurses. The provisions of Article 17.03 would not apply to these assignments, so that means that they would not be posted and the new graduates would maintain their casual status.

Article 11.04 (E) (I) (4)

Related Article: 11.04 (I)

While casuals are expected to advise the person calling if they know the assignment will attract overtime, it is the Union's position that the Employer is in the best position to keep track of which employees are likely to attract overtime.

Article 11.04 (E) (I) (6) Telephone Call-In

The most important aspect of this provision for Stewards is that Employers have to keep a log book of calls to casuals. The requirements of the log book are:

1. When there is a dispute the Union has to be given reasonable access to the log book and is allowed to make copies of the pertinent pages.
2. All calls are to be recorded in the log book showing:
 - ✓ the signature of the person making the call
 - ✓ the name of the employee called
 - ✓ the position they were being called to fill
 - ✓ the time the call was made
 - ✓ whether the employee accepted or declined the assignment or whether the employee failed to answer the telephone
 - ✓ the date and time of the notification where the relief is requested with less than 24 hours notice

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Article 11.04 (E) (I) (7) - Block of Work

While the Union will support a shorter definition of a block than the shifts between regular days off, the Union will not support an agreement that would result in a definition of a block that exceeds the definition of a block in the PCA.

Casual employees do not have to accept all the blocks of work that result from one employee's absence. For example: Three weeks of vacation may give three blocks of work as defined by the PCA. The senior casual may accept the first and third block of work and decline the middle block of work.

Article 11.04 (E) (II) Errors in Casual Call-In

This provision is based on an industry wide arbitration award: *HEABC and BCNU (Casual Call-in) June 16, 1997 (Ready)* where it was determined that an arbitrator has the ability to award monetary damages where an Employer makes an error in calling in casual employees.

For example: the Employer violates the collective agreement by inappropriately calling in a junior casual, the arbitrator could award monetary compensation for the lost work opportunity experienced by the casual employee.

Article 11.04 (E) (III) New in 2006:

Once a straight time shift has been offered and accepted by the casual employee, it cannot be cancelled by either the Employer or the casual employee unless the circumstances are "beyond the employer or employee's control".

The wording "beyond the employer or employee's control" is somewhat ambiguous and as a result the application will likely need to be defined through the grievance process as to what could reasonably be defined as "beyond the employer or employee's control".

Examples of situations "beyond the employee's control" could include: illness, a death in the family, unexpected emergency, posting into a regular position

Examples cited by the Employer in bargaining of "circumstances beyond the employer's control" included: closure of a unit, decrease in patient census and an inability to "float" the casual to another unit.

Before cancelling a casual employee, Employers should be encouraged to provide regular employees with the opportunity to take a day off utilizing time owing, vacation or unpaid LOA or provide casuals with the option of floating to another unit according to their skills.

The intent of this provision is to address the arbitrary cancellation of pre-booked shifts by requiring an equal commitment on the part of both the Employer and the casual once a straight-time shift has been booked.

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Additional References:

Arbitration Award:

HEABC and BCNU (Casual Call-in) June 16, 1997 (Ready) - an arbitrator has the ability to award monetary damages where an Employer calls casual employees outside of seniority order in violation of the collective agreement.

Article 11.04 (F) - Wage Entitlement

Related Articles: 12, 52, 62

Interpretation Guidelines:

Article 11.04 (F) (2) New language in 2006

Casual employees are paid the same way as regular employees except casuals can now move up the increment scale faster by combining seniority accrued at more that one PCA worksite. The following conditions apply:

- the hours cannot exceed the maximum of a full-time equivalent (i.e. 1879.2 hrs per year) and worked at the different worksites during the same period of time,
- the hours have to be worked within the Union bargaining unit,
- the hours have to be worked with an employer covered by the PCA,
- the casual employee is required to provide the employer with written proof of the hours worked at another worksite*,
- credit for these additional hours will be effective on the date the Employer receives written verification of the hours.

* Employers at the other worksites are required to provide written proof of the hours worked by a casual employee promptly on request.

Casual employees port their increment step under the following circumstances:

- they are hired as a casual by another PCA employer within 30 days;
- they go from regular employment to casual at the same worksite within 30 days;

However when a casual goes from casual employment to regular at the same worksite within 30 days they have the following choice:

- to "port" their current increment step or
- to use their previous experience to get placed at a higher increment step.

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New in 2001 was that casuals can use previous experience to receive credit of one increment step for each 1879.2 hours of previous experience with no cap. The criteria for acceptance of previous experience are set out in Article 52:

- It has to have occurred within two years of their current employment (excluding time spent in an education program)
- It has to be relevant experience as determined by the Employer.

Employers are generally expected to accept any reasonably relevant experience. For example: Medical/Surgical experience has been considered relevant in most acute, extended and long term care units as well as for nurses employed in home care in the community.

Employers usually require documentation from previous employers to prove years of service. **Stewards should advise nurses to obtain documentation re years and type of experience before they leave their current employment.**

Additional References:

Mediation/Arbitration Decision:

HLRA and BCNU, October 11, 1989 (Ready) - this decision is the origin of the language on the application of casual increment steps set out in Article 11.04 (F) (1) through (4). The only change is the removal of the three year cap on increment steps that occurred in 2001.

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Article 11.04 (G) Casual Employee - Benefit Entitlement

Related Articles: 6.07, 9, 10, 17.03, 27, 28, 29, 30, 37, 39, 49, 54, 56, 61, 62

Interpretation Guidelines:

- (1) **Grievance and Arbitration**
Casual employees have all the same rights as regular employees with respect to access to the grievance and arbitration processes set out in the PCA.
- (2) **Vacation Pay and Paid Holidays**
Casual employees receive 12.2% of straight time pay on each pay cheque for vacation and stat pay. This equals 8% as vacation pay (based on 20 days vacation) and 4.2% (based on the 11 paid holidays) in lieu of stat pay.
- (3) **Other Benefits**
Casual employees are entitled to be paid shift premiums, weekend premiums, responsibility pay, and premium pay for work on a paid holiday, on-call, call-back, call-back travel allowance pay and isolation allowance.

Payment for relieving in a higher level position:

In the Arbitration Award: *Mt. St. Joseph's Hospital and BCNU, December 5, 2000, (Taylor)* the Arbitrator decided that a casual relieving in a higher rated position (i.e.: Level 2 or 3) will not be paid the rate of pay of the higher rated assignment. This award was overturned by the following IWAD decision: HEABC and NBA (Casual Employee Rates of Pay), November 10, 2005, (Munroe).

Munroe agreed that a casual nurse is entitled to be paid the rate associated with the classification in which she/he is working. In this case Article 30 does not apply.

The arbitrator went on to address the question of what increment step would apply and accepted HEABC's position that the casual be paid at the increment step that attracts a higher wage rate than the one attained in the DC1 classification. Where a casual typically works at a DC2 level and who accepts a call-in to perform work at the DC1 level they should be paid at the increment step on the DC1 level that reflects their experience as a DC2 nurse. The application of this decision is confusing.

Please check with your LRO for further information as the Union has asked the arbitrator for clarification on the application of this decision regarding placement on the increment scale.

Qualification Differential:

Casual employees are not entitled to be paid qualification differential as the current wording specifies that it only applies to regular employees.

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Isolation allowance:

Casual employees are only entitled to be paid isolation allowance for hours and days actually worked. [*See Arbitration Award: Fort St. John Hospital and BCNU, June 16, 1994 (Kinzie)*].

Municipal Pension Plan:

Casual employees are entitled to access the **Municipal Pension Plan** under certain conditions. For current information contact the Municipal Pension Plan as follows:

- Website: www.pensionsbc.ca
- Toll free number: 1-800-668-6335
- Email: MPP@pensionsbc.ca
- Mail: Pension Corporation, Box 9460, Victoria, V8W 9V8
- Victoria residents: (250)-953-3000
- Vancouver residents: (604)-660-5366
- Office Hours are 8 a.m. to 4:30 p.m.

Article 11.04 (G) (4) - Health and Welfare Benefits

Related Articles: 17.02, 17.03, 46

Interpretation Guidelines:

Casual employees may enrol themselves and their families in the medical, dental and extended health plans on completion of 172.8 hours of work.

Requirements of enrolment are:

1. The casual employee has to enrol in all three plans.
2. The casual employee has to pay the premiums in advance.

Note: If the casual employee subsequently decides to "opt out" of the plans or they have their coverage terminated for non-payment of the plan premiums, they cannot re-enroll in the plans as long as they remain a casual with the same employer.

Casual employees who work more than half time in a year will be refunded their premium payments by the Employer by November 1st of each year under the following conditions:

1. They have worked **939.6 hours** (based on a 36 hour work week) by September 30th each year.
2. The casual who is enrolled after September 15th and works the required hours is limited to a refund for the number of months the employee paid premiums. For example: the casual paid premiums from January onward, so only casual hours from January to September will be counted.

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3. A casual employee who was enrolled in the benefit plans after October 1st and who posts into a regular position prior to September 30th of the following year is only eligible for a premium refund if he/she worked 939.6 hours as a casual in that period.

For example: for the casual who posted into a regular position January 1st the calculation would be based only on the casual hours worked in the months of October, November and December.

4. Hours worked in temporary appointments over 4 months pursuant to Article 17.02 and 11.04 (G) (5) do not count toward the hours used for benefit refund payments as the Employer is already required to pay 100% of the premiums.
5. Casual employees who post into a temporary regular position in accordance with Article 17.03 are changed to regular status for the duration of the position. Therefore the Employer pays 100% of the health and welfare plan premiums while the casual employee occupies the position. As a result these hours do not count in the calculation for benefit plan refunds.

Article 11.04 (G) (5) - Benefits for Casual Employees in Temporary Appointments (New in 1998)

Related Articles: 11.04 (G) (2), 17.02, 45, 46

Casual employees who have occupied a temporary appointment where there is a permanent incumbent on a leave of absence are entitled to the following benefits until the end of the appointment. **This only applies to the casual employee following the completion of 4 months work** in the temporary appointment but once that threshold is met it is applied retroactive to the beginning of the appointment:

1. **Ability to take vacation time off**, as long as they notify the Employer immediately on accepting the appointment to not pay their 8% vacation benefit on each pay cheque.
2. **Accrual of sick leave** and the ability to take sick leave from the time they occupy the temporary appointment (any unused sick leave remaining after the appointment ends will be frozen and can be added to if the casual gets another temporary appointment or regular position with the same Employer.
3. **Reimbursement for monthly health and welfare premiums** purchased by the casual after the first 31 days in the temporary appointment up to 4 months (i.e. paid for 3 months of the first 4 months). After 4 months, the Employer pays 100% of the health and welfare plans (i.e. medical, dental and extended health).

Note: This provision only applies to casuals who have not previously "opted out" of the health and welfare plans as a casual employee (see Article 11.04 (G) (4) (a)).

Casual employees should make note of their 4 month anniversary date so they can ensure that the Employer applies these benefits appropriately.

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Access to these regular benefits stops once the temporary appointment is finished. Unused sick leave is frozen. Banked vacation leave can either be paid out or taken as paid vacation leave at the end of the temporary appointment.

Shifts in a temporary appointment cannot be cancelled (unless the permanent incumbent returns) either by the Employer or the casual. Only extra relief shifts accepted by a casual working in a temporary appointment can be cancelled.

Casuals in these temporary appointments do not change their employment status therefore remain on the casual call-in register and are to be called in seniority order for the shifts they have indicated they are available to work.

Article 11.04 (H) - Seniority

Related Articles: 13.01 (B)

Interpretation Guidelines:

Total hours of seniority include overtime hours worked and hours worked in any Classification included in the Union bargaining unit.

Total hours of seniority can only be accrued to a maximum of 1879.2 (i.e. the annual full-time equivalent based on a 36 hour work week) in any one year.

New in 1998: Casual employees were credited with seniority on return to work following WCB leave (including wage loss replacement and rehab benefits). Their seniority is based on the number of hours worked as a casual in the 12 months before the leave as follows:

Number of hours worked in 12 month period before divided by 52.2 weeks and multiplied by the number of weeks on WCB leave.

For example: $1000 \text{ hours} \div 52.2 \text{ weeks} \times 4 \text{ weeks} = 76.62 \text{ hours}$

Casuals who have been employed less than 12 months before the WCB leave will have their seniority calculation based on the shorter period. For example: A casual employed for 6 months at a worksite would use the hours worked in those 6 months.

Article 11

Article 11.04 (I) - Overtime Pay

Related Articles: 11.04 (E) (4), 17.02, 25.07, 26.03 (C) & (D), 27, 29, 39.03, 39.04(A) & (B), 57.01

Interpretation Guidelines:

In *(HEABC) Overlander Extended Care and BCNU, September 30, 2002, (Hope)* the arbitrator set out the purpose of overtime provisions as follows:

"Very briefly, [overtime] provisions are intended to act as a disincentive against too many consecutive hours or days of work, and as a source of premium earnings for employees who are called upon to work for extended periods".

The arbitration decision *Campbell River et al and BCNU, February 12, 1998 (Munroe)* reinforced that Article 11.04 (I) (or J as it then was) is the sole source for overtime entitlement for casuals except with regard to determination of the rate of pay (Article 27). This decision also applies to casuals working in temporary appointments pursuant to Article 17.02 because they do not change their employment status.

There is no requirement in the PCA for consecutive days off for casual employees. Overtime applies only after the number of shifts specified in Article 11.04 (I).

Article 11.04 (E) (4) Procedure for Casual Call-In provides that where a casual is called for an assignment which the casual is aware would attract overtime, the casual must so advise the Employer when asked.

Article 11.04 (I) (1) (a) (i) - Hours of work in one day exceed the normal daily full shift hours.

Given the plain reading of this provision, are casuals entitled to overtime if they agree to work a second shift within a 24 hour period?

This question was arbitrated in *(HEABC) Overlander Extended Care and BCNU, September 30, 2002, (Hope)*

The arbitrator found they were not entitled to overtime in those circumstances. Arbitrator Hope stated: *"The assignments the Grievor accepted were discrete and the term, "normal daily full shift hours", must be read as meaning the hours of the particular assignment. I conclude that the Union failed to establish that the Grievor was entitled to claim overtime for the second assignment she accepted".* However he went on to add *"That is not to say that the interpretive issue prevents a member employer from offering overtime to a casual nurse to induce her to accept a second assignment within 24 hours. The question is whether overtime can be claimed as of right under the language".*

Article 11

"When the language is examined in the context of the arbitral authorities dealing with issues of overtime, it must be taken that the parties intended that casual nurses, who have no work schedules and who have a unique control over the assignments they will accept, will be entitled to overtime when the "normal daily full shift hours" of an assignment they accept are extended. Acceptance of a second assignment does not fall within Article 11.04(J)(1)(a)(i) in the sense that it cannot be seen as an extension of the "normal daily full shift hours" of the original assignment" .

This award only dealt with a situation where the grievor worked the two 7.5 hour shifts in 24 hours **with 8 hours off in between** the two shifts (so she worked 16 hours out of 24). The award clarified that overtime would apply in the following circumstances:

1. In the same circumstances where the Employer promised to pay overtime as an inducement to the casual to accept the second shift.
2. Where the second shift is essentially an extension of the original assignment i.e. the Employer asks the casual to work two shifts back to back without a break in between.

Since this award there have been ongoing discussions with HEABC. Please contact your LRO for further information. The Union takes the position that where the second shift is worked within 8 hours of the original assignment the casual is entitled to overtime for the whole of the second shift. HEABC is arguing that the casual is only entitled to overtime for the hours that are worked within 8 hours of the original assignment e.g. nurse works 0700-1900 then is called back to work 2300 to 0700. HEABC's position would result in the casual only getting overtime from 2300 to 0300 then getting straight time for the remainder of the shift.

Other provisions that apply to casuals dealing with payment of overtime premiums are:

1. Article 17.02 - Casuals in Temporary Appointments - Notice of Shift Changes (Article 25.08)

HEABC recommends that Employers provide notice of shift changes pursuant to Article 25.08 to a casual employee in a temporary full-time appointment in accordance with the provisions of Article 17.02.

The Union takes the position that where Employers fail to provide 10 days notice in accordance with Article 25.08 then the casual would have the same overtime entitlements as a regular employee in these circumstances. (Note: this has not been arbitrated)

HEABC takes the position that where a casual accepts an offer of additional casual work under the casual call in provisions of the PCA, that this offer does not create a change in work schedule with insufficient notice.

2. Article 26.03 Meal Breaks

Casuals who work during their meal break and do not receive additional continuous time off later in the same shift, are entitled to be paid 1.5 x the regular rate for the total of the meal period (Also see the [Employment Standards Act](#), Section 32).

Article 11

3. Article 27 Overtime

Casuals are paid overtime for hours worked in excess of the normal daily full-shift hours or for hours in excess of the normal work week of a full-time employee.

4. Article 29 On-Call, Call-Back and Call-In

Casuals being paid on-call allowance are entitled to be paid a minimum of 2 hours at the appropriate overtime rates provided by Article 27.05 for each separate call-back.

Note: The definition of a "scheduled day off" has an expanded application in Article 29.04 (C) so it also applies to casual employees and regular part-time employees who are placed on-call. Article 11.04 (G) (3) confirms that all the on-call, call-back and call-back travel allowance provisions apply to casual employees.

The Union's interpretation was confirmed by an arbitration award: *Delta Hospital and BCNU, April 28, 1999, (Munroe)* where the arbitrator considered the clear language of the collective agreement and the evolution of that language that supported the Union's position that casual and regular part-time employees who are placed on-call and receiving the on-call allowance have the same entitlement to overtime as regular full-time employees.

5. Article 39.04 Premium Rates of Pay on a Paid Holiday

Casuals are entitled to overtime at the rate of 1.5 x the appropriate stat holiday rate for all overtime hours worked on a paid holiday [also see Article 11.04(G)(3)].

Casuals placed on-call and called-back receive 1.5 x the appropriate stat holiday rate for each separate call-back [also see Article 11.04(G) (3)].

6. Article 57.01 General Conditions - Escort Duty

A casual required to escort a patient receives his/her regular pay and where applicable overtime pay while the patient/client/resident is in his or her care (i.e. until the patient/client/resident is delivered to their destination).

7. Article 11.04 (I) (2) Community Based Employees

Overtime for shift care (palliative care employees) and for client specific (this was primarily nursing assignments from Para-Med) will be in accordance with current practices. The prevailing practice at the time these employees were brought into the PCA in 1997 was that they could work more than 4 extended work shifts without attracting overtime. With respect to the shift care nurses this was to accommodate the desire to maintain continuity of care during the dying process.

Note: When this language was originally included in the PCA, the only home support agency that used "client specific nurses" was Para Med. Given that Para Med ceased operations in BC, it is open to question whether the provisions regarding "client specific nurses have any further application".

Article 11

Additional References:

Legislation:

Employment Standards Act

Arbitration Awards:

Campbell River et al and BCNU, February 12, 1998 (Munroe) - This grievance was about a casual in a temporary line that was booked for three shifts and had the shifts cancelled because the Employer believed it would result in overtime. The grievance was allowed.

Delta Hospital and BCNU, April 28, 1999, (Munroe) - the arbitrator considered the clear language of the collective agreement and the evolution of that language that supported the Union's position that casual and regular part-time employees who are placed on-call and receiving the on-call allowance have the same entitlement to overtime as regular full-time employees.

(HEABC) Overlander Extended Care and BCNU, September 30, 2002, (Hope) - there were two issues:

1. In the preliminary issue, Hope ruled that this arbitration decision would only apply to the facts of this case.
2. The main issue was whether casuals who agree to work two 7.5 hours shifts in a 24 hour period with 8 hours off in between are entitled to overtime for the second shift. The arbitrator found they were not entitled to overtime in the circumstances.

Article 11.04 (J) Casual Employees - Probationary Period

Related Articles: 11.04 (E) (3), 14

Interpretation Guidelines:

1. The probationary period for new casual employees is a minimum of 468 hours worked.
2. The criteria set out in Article 14 apply to casual employees in the same way as to regular employees. Namely that before transferring or dismissing the employee during their probationary period, the Employer has to demonstrate that the employee "is unsuitable" and that "the factors involved in suitability could reasonably be expected to affect work performance"

New in 1998: Article 11.04 (E) (3) provides the Employer with an ability to schedule a maximum of 3 shifts during the probationary period for the purposes of assessment.

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This means that the Employer has flexibility to schedule additional opportunities to work with a new casual employee on day shifts to assist them in passing their probation.

Often new casual employees are also new graduate nurses who may require mentoring support in order to make the change from being "practice ready" to "job ready".

Article 11.04 (K) - Employer Approved Education Programs (New in 2001)

Related Articles: 35.03 (A), 35.03 (E), 62, Appendix C

Interpretation Guidelines:

What are the obligations that apply when a casual employee participates in an education program paid for by the Employer?

1. The casual employee has to return to work for the same Employer, or another Employer covered by the PCA, for one year 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 156 hours paid at the employee's regular hourly wage rate.
3. If the casual employee fails to return to work for a year, as set out in Point 1, then they have to reimburse the Employer for the full costs (including wages, if any) of the program to the Employer.

What is the impact of this provision?

It clarifies that casual employees are eligible to attend Employer paid education programs that may include the payment of wages (likely based on average hours worked in the previous 12 months) for the period of time the casual is in the program.

This only applies to programs where the employee's participation has cost the Employer more than the equivalent of 156 hours at the employee's regular hourly rate. For example: At Step 9 of the DC1 wage rate the costs paid by the Employer would need to exceed \$5219.76.

The casual employee can move to another Employer anywhere in the province of BC within the year and not be liable for repayment as long as it's an Employer covered by the PCA. A list of PCA Employers is found in Appendix C. If there are any questions about the accuracy of the list it can be checked against the current copy of the appendix to the consolidated certification between HEABC and the NBA.

Article 11

Employers are not required to pay for study time associated with programs taken on a voluntary basis pursuant to this provision. See Arbitration Award: *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".

Additional References:

Arbitration Awards:

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 a nurse undertakes on a voluntary basis.