

Article 30

Article 30 - Responsibility Pay

Related Articles: 59.12, 61, Memorandum Extended Work Day

Interpretation Guidelines:

There have been loads of disputes on the application of this provision over the years. We've lost some and won some. For the most part, employees need to fit the circumstances described below in order to be eligible for payment of responsibility pay. However, where an employee is making a claim for responsibility pay there still needs to be an analysis of the facts in each situation.

The criteria that have been applied by arbitrators to determine entitlement to responsibility pay were originally set out in the **Arbitration Award: Kelowna General Hospital and BCNU, November 26, 1982 (Getz)** [which the Union lost] as follows:

1. Has the general duty nurse been placed in a position in which she has the:
 - duty and responsibility to supervise or direct the performance of the activities that go on in the particular ward or unit,
 - to see that matters are organized and carried out as they should be,
 - to make effective operational decisions about the manner and timing of those activities" (p.36).
2. To be designated "in-charge" does not require the Employer to specifically make the designation. Rather, the consensus is that the word designated can be implied. **Arbitration Award: Bulkley Valley District Hospital and BCNU, January 9, 1987 (Owen-Flood)**

In the **Arbitration Award: Vancouver Hospital and Health Sciences Centre and BCNU, May 5, 1997 (Dorsey)** the arbitrator determined that nurses working on 6 units were entitled to in-charge pay on weekday shifts even though they hadn't been officially designated in-charge and the managers were on duty.

If an employee is required to assume the duties and responsibilities of supervision, an employer cannot deny her responsibility pay on the basis that she has not been "designated in-charge". The meaning of in-charge is a question of fact and is to be determined based on the actual supervisory responsibilities required of the employee.

Expedited Arbitration Decision: Creston Valley Hospital and BCNU, January 17, 1997 (Laing).

3. Employees can be entitled to responsibility pay on weekday shifts even though the manager/administrator is available.

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"Where the obligation to pay the in-charge premium exists, it does not evaporate solely on account of the presence in the hospital of the administrator. Where the supervision includes responsibility for patient care and response to emergency medical situations, a bargaining unit nurse is entitled to the in-charge premium". (Expedited Arbitration Decision: *Normandy Private Hospital and BCNU*, July 12, 1996 (Munroe) and the Arbitration Award: *Vancouver Hospital and Health Sciences Centre and BCNU*, May 5, 1997 (Dorsey))

4. The employee must have the responsibility to organize the activities occurring on the ward/unit or worksite. Not just making individual professional decisions involving care of an individual or group of patients/clients/residents.

Vancouver Hospital and Health Sciences Centre and BCNU, May 5, 1997 (Dorsey) "From the evidence of the organization of the performance of the work in the six units, it is clear that someone is intended to accept and discharge the normal in charge responsibilities during the ordinary working hours of the unit's nurse manager"

Also in this decision it was determined that the hospital had "downloaded" decision making to the employee teams and/or permitted the managers to adopt a "hands off" approach to the minute-by-minute and hour-to-hour decisions that needed to be made, including non-emergency and routine decisions.

The significance of this decision is that it may have direct implications where the Employer has reduced or eliminated the number of supervisory personnel with nursing qualifications, or expanded each manager's area to include responsibilities for a number of units, some at other sites.

5. To be entitled to responsibility pay, the in-charge duties usually need to be "over and above" what a Level 1 employee would normally do in the context of her/his job description.

In the Arbitration Award in *Kitimat General Hospital and BCNU*, March 17, 2000 (Munroe) and quoted in the arbitration award dismissing the grievance between *HEABC (Delta Hospital) and BCNU*, July 10, 2001 (Munroe) - the arbitrator ruled against the Union saying "a nurse need not perform all the various charge duties in order to be entitled to responsibility pay, and neither does it matter that the performance of charge duties does not require substantial time. However the nurse must be performing duties additional to those ordinarily performed and expected of a DC1 nurse.

6. A Level 1 nurse may be entitled to responsibility pay in certain call-back circumstances. For example nurses working more than 3 hours in a call-back to the operating room.

Troubleshooter Recommendations: *Powell River General Hospital and BCNU*, April 14, 1997 (Laing) - Recommendation is that responsibility pay should be paid to one of the RNs on call-back in the operating room on those occasions when the call-back occurred and such nurse was required to work 3 hours or more. I would find that a nurse has been required to

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assume a degree of responsibility for what goes on in the unit, which must be interpreted as being in-charge of the unit. **She is the one who is expected to decide on her own**, at least initially, what is to be done and how, when anything out of the ordinary occurs and, in the words of the Kelowna decision " to make effective operational decisions about the manner and timing of activities".

7. **Article 30 does apply to CH1 nurses:** The language in Article 30 does not specifically reference CH1 nurses. However there have been Consent Awards that confirm the application of responsibility pay to CH1 nurses. Two examples of "without prejudice" awards that are provided for your information are: *Fraser Valley Health Region and BCNU, December 13, 2001 (McPhillips)* and *Simon Fraser Health Region and BCNU, January 8, 2002 (Munroe)*.
 - CHI nurses are typically designated on week days when the Site Coordinator (Supervisor) is going to be away from the office and not reasonably available by telephone or pager (i.e. within 5-15 minutes).
 - CHI nurses are also designated in-charge when the Site Coordinator (Supervisor) is on days off (weekends, stat holidays), vacation, or away on any leave of absence
 - If the Site Coordinator (Supervisor) has not designated a CHI nurse in-charge a CHI nurse is deemed to be designated in-charge retroactively where the Site Coordinator (Supervisor) has not been reasonably available by telephone or pager.
8. **"Small employers"** (e.g. adult day care agencies, mental health group homes and home support)
 - Level 1 employees who relieve in a higher rated position within the bargaining unit - can be relieving for less than a full shift i.e. the PCA specifies an hourly rate and there is no minimum number of hours specified.
 - A Level 1 employee who is designated "in-charge" are designated on the basis of the whole worksite for a full shift i.e. there is no hourly rate specified in the PCA and there is no breakout
 - The employee cannot get paid both the premiums as set out above for the same shift.
9. **Responsibility Pay is usually not paid in the following circumstances:**
 - Where the ward has a higher classification on duty (e.g. DC2). In these situations responsibility pay is generally only paid when this person is absent (See **Expedited Arbitration Award: Normandy Hospital and BCNU, July 12, 1996 (Munroe)**).
 - In some situations where the ward is governed by a team nursing method and there was an employee Coordinator or Director of Care on site.
 - An employee working as the sole employee on a unit/ward does not necessarily result in an entitlement for responsibility pay it depends on the specific facts for that unit.

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- An employee must be in-charge of the entire ward/unit, not just a subsection or portion to be entitled to responsibility pay. Unless evidence can be presented that demonstrates some distinctiveness (e.g. functions, activities) to define it as a separate unit not just a subsection.
 - Making professional decisions about the care of individual patients/clients/residents in an assignment.
10. There is a difference between being “in-charge” and doing the work of a Level 2 (e.g. DC2) position. Generally evidence of continuing responsibilities in addition to those normally assigned to Level 1 nurses and in particular responsibilities associated with supervision of other health care workers are required in order to make a successful argument for re-classification.
11. Nurses in charge of a ward, unit or worksite may call in additional staff for workload for either the current shift or the next shift in an emergency situation and no-one from management is immediately available to contact (See Article 59.12). Casual call-in by seniority doesn't apply in these circumstances.

Additional References:

Arbitration Awards:

Kelowna General Hospital and BCNU, November 26, 1982 (Getz) - while the grievance was dismissed, the arbitration decision set the criteria that were subsequently used by other arbitrators for determining entitlement to responsibility pay.

Bulkley Valley District Hospital and BCNU, January 9, 1987 (Owen-Flood) - employees do not have to be designated by the Employer in order to be entitled to responsibility pay.

Vancouver Hospital and Health Sciences Centre and BCNU, May 5, 1997 (Dorsey) - specified circumstances when DC1 nurses are entitled to responsibility pay when the manager is on duty and confirmed previous decisions that in-charge does not have to be explicitly designated by the Employer it can be implied.

Kitimat General Hospital and BCNU, March 17, 2000 (Munroe) - clarified that DC1 nurses need to have additional duties to those normally performed by a DC1 nurse to be entitled to responsibility pay.

HEABC (Delta Hospital) and BCNU, July 10, 2001 (Munroe) - DC1 nurses need to have additional duties to those normally performed by a DC1 nurse to be entitled to responsibility pay.

Fraser Valley Health Region and BCNU, December 13, 2001 (McPhillips) - consent award setting out the process for CH1 nurses to be designated in-charge.

Simon Fraser Health Region and BCNU, January 8, 2002 (Munroe) - consent award setting out the process for CH1 nurses to be designated in-charge.

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Expedited Arbitration Awards:

Normandy Hospital and BCNU, July 12, 1996 (Munroe) - DC1 nurses can still be entitled to responsibility pay when the administrator is at the facility.

Creston Valley Hospital and BCNU, January 17, 1997 (Laing) - employees do not have to be designated by the Employer in order to be entitled to responsibility pay.

Troubleshooter Recommendations:

Powell River General Hospital and BCNU, April 14, 1997 (Laing) - nurses on call-back in the operating room may be entitled to responsibility pay in certain circumstances.