

Article 35

Article 35 Leave - Education - Staff Development Programs

Related Articles: 2, 6.03, 11.02 (B), 11.03 (B), 11.04 (C) (5), 11.04 (G) (3) & (5), 11.04(K), 18.05, 32.03 (B) &(C), 62, Memorandum Extended Work Day, Appendix C, Appendix F

Interpretation Guidelines:

Article 35.01 - Transfer of Function

1. A transfer of function occurs where skills and functions traditionally performed by physicians are transferred to nurses who have the appropriate training. Decisions on the functions that can be transferred are made and governed by the relevant licensing bodies e.g. College of Registered Nurses, College of Registered Psychiatric Nurses and the College of Physicians and Surgeons.
2. Where a transfer of function is required, identified and agreed by the Employer, it is the Employers responsibility to provide whatever in-service programs or training for any nurse who must perform that function as part of her/his job duties.
3. 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 nurses responsible for carrying out specific transferred functions.
4. Nurses required by the Employer to perform transfer of functions are entitled to be paid the applicable rate of pay (e.g. overtime 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 [See Arbitration Award: *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

1. Important to note is that this provision begins with a statement recognizing the **mutual benefit** of continuing education courses to both Employers and nurses.
2. Nurses "required" by the Employer to attend in-service programs are entitled to receive the applicable rate of pay (e.g. overtime 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 nurse's responsibility and/or that attendance at in-services related to this is not "required".

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Stewards need to clarify at Union-Management Committee meetings what is meant by "required" when their Employer uses the word and to what type of in-service programs this would apply. In other words, Stewards need to determine from the Employer: will employees suffer repercussions for not attending a particular in-service program? [See *Arbitration Award: 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. The issue in dispute is described below:

The Employer had changed their policy on providing paid leave for such training; on the grounds the Employer took the position that they did not require the employees to take the training. The grievance was dismissed. *"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"*. The arbitrator felt this was not the case with the CPR recertification courses in this situation.

However the majority of the panel in the *Arbitration Award: 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.

1. They rejected the Employer's argument that no compensation could be claimed because CPR was a requirement of the job and nurses 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. Finally, the panel left the door open to 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:
 - Grant leave with pay;
 - Pay the full cost of the course: including tuition fees, text books, necessary travelling and subsistence expenses (e.g. meals, accommodation etc)

Note: Courses identified by the joint OH&S Committee to promote a safe and healthy workplace and approved by the Employer are to be treated like Employer requested leave.

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2. The question of what is meant by the word "requested" in this context has been examined in a number of arbitrations and arbitrators generally follow the same principal as set out in the UBC arbitration award. For example: 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, 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".
3. In addition 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 the arbitration decision on the **Industry Wide Application Dispute: HEABC and NBA (other wise known as the NRP (Neonatal Resuscitation Program) decision)**, September 23, 2004 (Hall) - 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". His decision was based on the following criteria:
 - The certification and recertification were requirements imposed on nurses in existing positions;
 - It did not concern pre-employment requirements or nurses upgrading to become qualified for a new or different position;
 - Independent textbook study was an integral part of the course.
 - 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"
 - Hospitals cannot escape their collective agreement 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 nurses 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.
2. Arbitrators have found that independent study time is not paid for by the Employer in this situation.

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".

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The arbitration panel in *HEABC for Fraser Health Authority (Chilliwack General Hospital, MSA General Hospital and Mission Memorial Hospital) and BCNU*, February 18, 2004 (Hall) 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.

(A) **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.

(B) **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.

(C) **Employer Approved Education Leave**

This provision, along with 11.04 (K) for casual employees, was negotiated in the 2001 collective agreement.

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

4. The regular 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.
5. 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 employees regular hourly wage rate.
6. If the regular employee fails to return to work for one year, as set out in Point 1, then they have to reimburse the Employer for the full cost (including wages, if any) of the program to the Employer.

What is the impact of this provision?

1. 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.
2. A regular employee can change 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.

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Note: 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".

In 2004, the Provincial Government agreed to provide a certain amount of funding for specialty education programs. To facilitate the application of these funds and resolve a number of outstanding disputes a Letter of Understanding was negotiated as follows:

Letter of Understanding Re: Employer Sponsored Voluntary Specialty Education Programs (VSEP)

The proposed terms of settlement to resolve the parties' outstanding issues in relation to Employer Sponsored Voluntary Specialty Education Programs (VSEP).

1. This Letter of Understanding (LOU) will apply to specialty education programs that are funded by the Federal or Provincial Government.
2. Employees who participate in VSEP shall be compensated at regular rates for time attending the education programs. For employees enrolled in a full time educational program, the intent is that the employee will be funded at 100% based on a 36 hour work week.
3. Time spent on study outside of structured program time and time spent on prerequisite courses will not be compensated.
4. Employees will not be eligible to claim premiums (responsibility pay, shift differential, weekend differential, super shift premium) while in VSEP unless the employee works a practicum or a shift in the worksite which would attract these premiums.
5. The Employer agrees to pay all reasonable expenses such as meals, accommodation, and related travel expenses pursuant to Employer policies. Mileage will be reimbursed pursuant to the PCA for distances greater than the difference between the employee's home and worksite. Should the employee incur parking expenses beyond their normal expenses, the Employer will reimburse the employee for the difference.
6. Decisions regarding access to VSEP remains at the Employer's discretion.

Note: While this is not what the Union recommends, this means that potentially Employers can offer access to specialty education programs out of seniority order or to new graduate nurses.

In some cases, Employers have been relaxing previous standards used to determine eligibility for enrolment in specialty education programs.

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Stewards should clarify what criteria will be used by the Employer in selecting employees for participation in specialty education courses with an objective of seeking a balance between the retention of existing staff and the Employer's desire to recruit new graduates/employees.

7. The Employer agrees not to schedule employees in full time VSEP for any shifts in the workplace, unless the trainee declares availability for work shifts. Should a trainee so declare, such work shifts shall be paid at regular rates. For employees enrolled in part-time VSEP, the Employer agrees not to schedule these employees for shifts on any day where the employee is scheduled in the VSEP, unless the trainee declares availability for work. Should the trainee so declare, any work on a day they are also scheduled in the VSEP shall also be paid at regular rates.
8. The parties will convene a committee of up to 7 members each to review issues arising from virtual online education courses and to make recommendations to the parties by June 30, 2005.
9. In the interim period, up to June 30, 2005, for currently approved virtual online classroom education courses, the employee will be provided with Employer paid time away from work based on the instructor recommended time requirement for online classroom education. This is without prejudice to any recommendations made by the committee in #8.
10. The individual and SEPD grievances filed at the Health Authorities will be resolved as per Attachment A. (*Set out retroactive payment for 100% wages and benefits to certain grievors and reinstatement of vacation and FTE, plus Employer agreed to pay both the employee and employer portions of the pension plan contributions for the period of time where full-timers had their FTE changed to part-time*).

Additional References:

Arbitration Awards:

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. The issue in dispute is described below:

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.

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".

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HEABC for Fraser Health Authority (Chilliwack General Hospital, MSA General Hospital and Mission Memorial Hospital) and BCNU, February 18, 2004 (Hall)

- **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.
- **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".

Arbitration Award: *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 pursuant to Article 35.03 (E).