

Article 37

Article 37 - Leave - General

Related Articles: 11.02, 11.03, 11.04 (G) (5), 12.03, 13.05, 17.03, 34, 38, 42.06, 42.07(C), 44.01 (G), 44.02 (a), (b) & (c), 45.02, 55.03, Memorandum Extended Work Day, Appendix B - Section 1 (B)

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) or 17.03.

1. An employee granted an unpaid leave of absence (LOA) for less than 21 work days in any calendar year continues to accumulate seniority and all benefits.
2. 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 regular full-time 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 she/he goes to the 9th increment step.

See following pages for more detail about the impact of unpaid LOAs on increments and benefits.

3. **Service is the length of employment** as either a regular full-time or regular part-time employee. **Continuous service** is the period of service which is **uninterrupted** by a layoff, a transfer to casual status, a termination, a resignation, or an unpaid LOA of more than 20 work days (See Article 55.03 Severance Allowance).
4. **The 20 work days** are replenished at the beginning of each calendar year, even though the LOA may overlap 2 calendar years. **For example:** If a regular full-time employee starts an LOA on December 1st and does not return to February 1st of the following year, he/she will be entitled to continue 20 work days of benefits for the month of December and an additional 20 work days of benefits during the month of January. In other words, there would be no impact on the employee's continuous service for the purpose of benefit entitlement and increment steps.
5. **Qualification differentials** are considered to be part of an employee's wage package. As a result they are pro-rated during unpaid leaves. **See Arbitration**

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6. **Award: *Campbell River and District Hospital and BCNU*, March 18, 1985 (Munroe).**
7. **The 20 day limit does not apply to Council and Bargaining Committee members who are on Union Leave in accordance with Articles 44.01(G) or 44.02 (a) , (b) & (c).**
8. **Where an Employer insists that an employee take an unpaid LOA it is considered a suspension. (See *Arbitration Award: Vancouver Hospital and BCNU, October 6, 1988 (Kelleher)*).**
9. **The number of unpaid LOAs is pro-rated for regular part-time employees. However the Employer is required to include any extra hours worked by a regular part-time employee when calculating the pro-ration. See *Arbitration Award: HEABC Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin)*.**

Leave - General - Seniority Benefits		
Seniority Benefits	*Continues <u>or</u> *Discontinues	Exceptions
Seniority Benefits	Discontinues	1. Article 13.03 (D) - Union Business 2. Article 38 Parental Leave 3. Article 42.07 - WCB 4. LTD - Appendix B

- ❖ Continues = continues the entire period of the leave
- ❖ Discontinues = stops when leave exceeds 20 days

Leave - General - Accumulated Benefits		
Accumulated Benefits	*Continues <u>or</u> *Discontinues	Exceptions
Vacation Accrual	Discontinues	Parental Leave - Article 38
Sick Leave	Discontinues	Parental Leave - Article 38
Special Leave	Discontinues	Parental Leave - Article 38
Statutory Holiday	Discontinues	Parental Leave - Article 38

- ❖ Continues = continues the entire period of the leave
- ❖ Discontinues = stops when leave exceeds 20 days

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Leave - General - Health and Welfare Benefits		
Health and Welfare Benefits	*Continues <u>or</u> *Discontinues	Exceptions
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 for one or two plans).	Parental Leave - Article 38
LTD	Discontinues - employees can continue eligibility by paying premiums in advance to the Employer. (Note: this is essential, if the employee is in the waiting period for LTD.)	Parental Leave - Article 38
Superannuation or Pension Plan Contributions	Continues - if the employee pays his/her portion and the Employer's portion	Parental Leave - Article 38 - Employee only required to pay her portion.

- ❖ Continues = continues the entire period of the leave
- ❖ Discontinues = stops when leave exceeds 20 days

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Leave - General - Service Benefits		
Service Benefits	*Continues <u>or</u> *Discontinues	Exceptions
Increment Progression	Discontinues	a. Unpaid LOA for Educational Purposes and Parental Leave, Article 42.07 WCB
Severance	Discontinues	b. Article 38 - Parental Leave - (also <u>Employment Standards Act</u>) deems service as continuous while on Parental Leave
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 : <i>Lions Gate Hospital & HEU</i> , August 29/79 (Larson))	Parental Leave (also see <u>Employment Standards Act</u>) Article 42.07
Probationary Period	Continues - Per Article 14, employees are probationary for first 3 months of employment (not based on workdays)	
Qualifying] Period	Continues - Per Article 18.04, employees serve a qualifying period of 90 calendar days, as opposed to workdays.	HEABC instructed employers the Qualifying Period discontinues when employees goes on LOA & resumes when employee returns.
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).

- ❖ Continues = continues the entire period of the leave
- ❖ Discontinues = stops when leave exceeds 20 days

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Article 37.02 - Notice

1. An employee may request an unpaid LOA for any reason.
2. The request needs to be in writing and provided at least 8 days before the date of the proposed LOA.
3. 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.
4. 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 or parental leave does not affect annual increments.

Service is considered to continuous for parental leave, court leave for jury duty and union leave.

Additional References:

Arbitration Awards:

Campbell River and District Hospital and BCNU, March 18, 1985 (Munroe) - while the language of the collective agreement was not clear as to the parties' intentions, the arbitrator based his decision that qualification differentials were considered to be part of an employee's wage package on the fact that these differentials were recorded on the employee's statement of wages, the use of "salary differential" interchangeably with "qualification differential" in Article 53 and finally on the past practice at the facility over a ten year period of pro-rating qualification differentials when employees were on an unpaid leave.

Vancouver Hospital and BCNU, October 6, 1988 (Kelleher) - 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.

Overlander Extended Care Hospital and BCNU, July 4, 2002 (Korbin) - the Employer is entitled to pro-rate unpaid leaves of absence for regular part-time employees; 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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Nicola Valley General Hospital and BCNU, July 2, 1992 (Hope) - the language in Appendix B - LTD indicates that the employee is required to pay the health and welfare benefit premiums after the first 20 days unpaid LOA.

Legislation:

Employment Standards Act, Section 56.