

## Article 43

### Article 43 - Special Leave

Related Articles: 1.02, 11.03(B), 33, 38.02, 56.04(I)

#### Interpretation Guidelines:

This is an example of a **non-discretionary** leave with clear and objective conditions for all the leaves addressed by this provision except one, special leave for serious illness of a spouse or child where the conditions are subjective (i.e. open to interpretation).

#### Article 43.01 - Accumulation

1. **Effective June 4, 2006:** A regular full-time employee earns special leave credits at the rate of  $\frac{1}{2}$  a day every 4 weeks to a maximum entitlement of ~~25 days~~ **20 days**. Once the bank drops below ~~25 days~~ **20 days**, it is replenished on the basis of earning more credits.
  - a. Regular employees who have earned over 20 days of special leave credits as of June 4, 2006 will maintain their existing banks.
  - b. The new language is effective 1 month post-ratification. i.e. June 4, 2006

The Union agreed to the reduction in maximum credits in order to expand the application of special leave in Article 43.02(C).

2. A regular part-time employee's accumulation of special leave credits is pro-rated [See Article 11.03 (B)]. However the use of special leave is not pro-rated, part-timers are entitled to use special leave credits at the same rate as regular full-time employees per working hour of leave from their scheduled hours of work. [See Arbitration Award: *Royal Columbian Hospital and BCNU*, February 28, 1994 (Laing)].
3. The Employer is required to record any special leave hours used within a pay period on the employee's statement of wages [See Article 56.04 (I)].

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### Article 43.02 - Application

(A) Marriage Leave and (B) Paternity Leave are **non-discretionary** leaves and the Employer is required to grant the leave on request and provision of proof:

- **Marriage leave** - 5 working days, the days do not have to be consecutive and regular part-time employees are entitled to take all 5 days. For example the employee can take 2 days paid leave followed by scheduled days off and then take the last 3 days of leave. Or they can divide it as long as there was a clear connection between the wedding and the event relied upon to support the division e.g. to coincide with more than one event related to the marriage, such as repeating the vows for family members who could not be present for the marriage ceremony itself.
- **Paternity leave** - 1 day, the leave does not have to be taken on the day of the actual birth of the child, it can be taken at a later time. However to be eligible, the leave must be consistent with its purpose.

(C) **Effective June 4, 2006: Leave for Serious Illness of a Spouse or Child** was expanded beyond spouse and child to include an **immediate family member** and the wording changed to remove all the qualifiers. Now the only qualifier is that the immediate family member has a serious illness. This leave is non-discretionary as long as the employee meets certain conditions. Namely:

- It is an immediate family member. (The list in Article 33 - Compassionate Leave could provide some guidance as to who might be defined as an immediate family member).
- The family member does not have to live in the same home as the employee.
- The family member has a serious illness. It no longer has to be a "sudden" serious illness.
- **Please note: The change to this provision means that the arbitration decisions issued before 2006 on the old language in Article 43.02 (C) are no longer applicable and as a result they are crossed out below.**

When the Employer denies special leave:

Two dominant themes have been noted in the arbitration awards on this provision:

1. That the arbitrator must recognize the essential nature of special leave as being provisions that record a negotiated benefit which has been earned through service.
2. That the onus is upon the grievor to bring the facts of their situation within the governing language.

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In arguing grievances, the Union has to show that the employee denied special leave came within the criteria set out in the collective agreement.

- (a) **Industry Troubleshooter Recommendations: HEABC (on behalf of the Chrysalis) and BCNU, July 10, 2004 (Steeves)** - [This is provided for information purposes only] - The Troubleshooter recommended payment of special leave credits for accompanying her child to medical appointments related to cancer treatments on the basis that the grievor was "intimately involved in the treatment of the child and it was important to understanding the health of the child for her to attend with him".
2. The following Troubleshooter Recommendations set out reasons that grievances were denied and are provided for information purposes only:
    - a) **Employees are entitled to a maximum of 2 days special leave for the same episode of a serious illness** (i.e. an employee is not eligible for two more days of special leave even if they were on scheduled days off or took a vacation day in between) [See Troubleshooter Recommendations: *Fraser Health and BCNU, July 26, 2004 (Steeves)*]
    - b) **An employee was denied special leave for travelling to Victoria to attend to her daughter who was "distressed and distraught" at school.** The Troubleshooter found that this didn't meet the intent of the language to address situations where the employee has to stay at home to care for the child or spouse. In addition the circumstances lacked the vital or critical urgency found in cases where the benefit has been allowed [See Troubleshooter Recommendations: *HEABC (Interior Health Authority) and BCNU, November 24, 2004 (Sullivan)*].

### Additional References:

### Arbitration Awards:

*Surrey Memorial Hospital and HEU, February 13, 1978 (Larson)* - employees are entitled to divide their marriage leave between separate marriage events, as long as a clear connection can be established.

~~*Cowichan District Hospital and BCNU, July 5, 1989 (Hope)* - set out the criteria for determining the application of special leave for serious illness of spouse or child.~~

*Royal Columbian Hospital and BCNU, February 28, 1994 (Laing)* - the accrual of special leave is pro-rated for regular part-time employees, however these employees get to take special leave on the same basis as regular full-time employees (i.e. the usage is not pro-rated).

~~*Sunnyhill Hospital for Children and HSA, December 14, 1994 (Munroe)* - defined the criteria as set out in the HSA collective agreement (which contained the same language to the PCA).~~

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The interpretations in this manual are provided on a *without prejudice, errors and omissions basis* to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.

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*Peace Arch District Hospital and BCNU, September 3, 2002 (Hope)* - this was an Industry Wide Application Dispute (IWAD) and the arbitrator ruled that regular part-time employees were entitled to the full 5 days of marriage leave and that the leave can be divided as long as there was a clear connection between the wedding and the event relied upon to support the division e.g. to coincide with more than one event related to the marriage, such as repeating the vows for family members who could not be present for the marriage ceremony itself.

### Expedited Arbitration Decisions: Included for information purposes only

*HEABC/Canadian Blood Services and BCNU, February 28, 2005 (Gordon)* - confirmed the Union's position that marriage leave is not pro-rated for regular part-time employees that had already been upheld in two previous arbitrations. Namely that the Union's interpretation ensures equal treatment of full-time and part-time nurses, and ensures the same benefit is enjoyed by both groups.

### Industry Troubleshooter Recommendations: Included for information purposes only

~~*Peace Arch Hospital and BCNU, May 29, 2002 (Sullivan)* - grievance denied, grievor had sufficient time to make alternate arrangements.~~

*HEABC (on behalf of the Chrysalis) and BCNU, July 10, 2004 (Steeves)* - grievance upheld, special leave was payable for mother to accompany her child to medical appointments associated with treatment for cancer.

*Fraser Health and BCNU, July 26, 2004 (Steeves)* - grievance denied. Payment of special leave is up to 2 days maximum for each episode of serious illness (i.e. can't apply for another two days special leave after taking a vacation day off in between)

*HEABC (Interior Health Authority) and BCNU, November 24, 2004 (Sullivan)* - grievance denied. The circumstances of travelling to comfort a child away at school did not meet the criteria of vital or critical urgency or the intent of the language where the employee has to stay at home to care for the child or spouse.