PROLONGED ABSENCE DUE TO A DISABILITY

Rights and Obligations

WHAT ARE THEY?

The collective agreement and the *Québec Charter of Human Rights and Freedoms* determine the rights and obligations of the employer and the employee with regard to disability-related absences.

1 A disability supported by a medical certificate

The teacher has the right to be absent for reasons of disability. A disability is defined as a state of incapacity which:

- is the result of an accident or illness **diagnosed** by a doctor;
- requires treatment and medical care (e.g., taking medication, physiotherapy, occupational therapy, psychotherapy, surgical procedures);
- **renders the individual totally unable to perform usual tasks,** that is, prevents him or her from performing the actions which are essential and necessary to carry out the workload of teaching.

To be eligible to benefit from the salary insurance plan specified in the collective agreement, the teacher must submit a medical certificate indicating the diagnosis, the foreseen period of absence and the medical supervision/treatment required; the certificate must be submitted to and accepted by the school board.

2 A salary insurance plan ensuring 104 weeks of protection

The salary insurance plan specified in the collective agreement applies for a **continuous period of 104 weeks** from the beginning of the disability period.*

Salary insurance **benefits** are paid as follows:

- use of the bank of sick-leave days for the first five days of absence;
- payment of salary insurance benefits at 75% of the salary that would have been received at work up to a maximum of 52 weeks from the beginning of the period of disability;
- payment of salary insurance benefits at 66 ⅔% of the salary that would have been received at work for an additional period of 52 weeks.

During the disability period, the school board **may request** that the teacher be examined by its doctor. The same may be required when the person returns to work to verify that he or she has sufficiently recovered.

*Note that a gradual return to work for several days during the week does not interrupt the 104-week period.

Beyond 104 weeks, after an analysis of the disability, the long-term disability plan administered by the insurance company may take over.

3 Possible accommodation for some periods of disability

Article 10 of the *Québec Charter of Human Rights and Freedoms* provides that no one can be discriminated against because of a handicap, among other things. Both psychological and physical health problems have been defined again and again by various courts throughout the country as being tied to the notion of handicap. It is within this context, where no one may discriminate against anyone for any of the reasons outlined in the *Charter*, that the obligation of accommodation by the employer has emerged.

Reasonable accommodation protects the right to equality of individuals during periods of disability. Each case of disability is **unique** and must be treated **on an individual basis** according to, among other things, the recommendations and prognosis of health professionals.

4 Obtaining a part-time contract despite a disability

For a teacher, being registered on the recall list is a way of maintaining an employment relationship with the school board. Where appropriate, a part-time contract must be granted to a teacher on the list, despite a disability. Once obtained, this contract includes the right to salary insurance benefits, the right to be replaced during the period of absence and allows for the application of the *Québec Charter of Human Rights and Freedoms*.

5 The teacher on disability has certain rights

- *The right* to have the years of service recognized for **pension purposes** while being exempted from paying contributions to the pension plan to a maximum of three years from the beginning of the disability period. Other years following the period of three years must be bought back to be recognized as years of service.
- *The right* to maintain **health and life insurance** coverage. However, the teacher may be exempted from paying the premiums for long-term disability insurance as well as other premiums from the sixth month of continuous absence following the beginning of the disability period. To do so, the teacher must complete and return the documents sent by the insurance company *Industrial Alliance*.
- *The right* to acquire **additional years of experience.**

Do not hesitate to contact your local union if you have any questions, to express your concerns or worries, or to discuss specific terms of return to work. Your union is there to support you and to intervene, if necessary, with the school board.

For information on occupational injuries caused by a work-related accident or illness, contact your local union for a copy of the QPAT leaflet on "Health and Safety and Accidents at Work"

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