

# FOR GOA MEMBERS:

## LEAVE ENTITLEMENTS DURING AN ESSENTIAL SERVICES STRIKE OR LOCKOUT

1. The Employer declined to specify how they will handle the various types of leaves during a strike or lockout. Therefore, the current assumption is that the Employer will cease payment for most types of leave once a strike or lockout starts.
2. If the Employer ceases paying a member for leaves (or demands a member pay it back because they believe the member was overpaid), AUPE can choose to file grievances for the impacted members.
3. AUPE may initiate grievances as per the expired/bridged Collective Agreement or, depending on the circumstances, under the new Collective Agreement if it provides sufficient retroactivity to a date preceding a strike or lockout.
  - a. If the new Collective Agreement (or Memorandum of Agreement settling the Collective Agreement) is fully retroactive to a date before a strike or lockout, then it is more likely AUPE members will successfully get entitlements for leaves that started during the time of the strike or lockout. However, AUPE likely will still have to advance grievances and get those decisions from arbitration panels.
4. The following table provides a summary of how various types of leaves in the GoA Collective Agreement will apply during an essential services strike or lockout. Following the table is a more in-depth description.

TYPE OF LEAVE	NON-DESIGNATED ESSENTIAL SERVICES WORKER (DESW)	DESIGNATED ESSENTIAL SERVICES WORKER (DESW) <sup>[1]</sup>
Vacation	Not eligible <i>However, we may want to file grievances if the Employer stops vacation pay for vacations that were approved and commenced prior to the strike/lockout commencing.</i>	Not eligible <i>However, we may want to file grievances if the Employer stops vacation pay for vacations that were approved and commenced prior to the strike/lockout commencing.</i>
Special Leave	Not eligible	Not eligible <i>However, there may be a viable argument that DESWs who are working and need to leave a shift mid-way through should be paid for the remainder of their shift. This could be something we file grievances on to set precedent.</i> <i>We may also want to file grievances for members who requested and were denied paid Special Leave for Family Illness, Bereavement, or Domestic Violence reasons on days they were scheduled as DESWs.</i>

TYPE OF LEAVE	NON-DESIGNATED ESSENTIAL SERVICES WORKER (DESW)	DESIGNATED ESSENTIAL SERVICES WORKER (DESW) <sup>[1]</sup>
Minor Illness	Not eligible	Sometimes eligible <i>Article 31.02 of the Collective Agreement (CA) applies:</i> <i>When a DESW works at least 1 hour in a half day, but becomes ill and has to leave work early, the DESW will be paid for the remainder of the half day in which they became ill.</i>
Medical Appointments (i.e., dental, physiotherapy, optical, medical or “such other” appointment)	Not eligible	Sometimes eligible <i>Article 31.02 of the CA applies:</i> <i>Subject to management authorization, when a DESW works at least 1 hour in a half day, the DESW will be paid for the remainder of the half day in which they attend an eligible appointment.</i> <i>Appointments requiring a full day or half day off work would likely not be eligible.</i> <i>Note: During a strike/lockout we would expect management to approve time off for urgent/emergent appointments only.</i>
Casual Illness	Not eligible	Not eligible <i>However, there may be a viable argument that DESWs who are working and need to leave a shift mid-way through should be paid for the remainder of their shift. This could be something we file grievances on to set precedent.</i> <i>We may also want to file grievances for members who requested and were denied Casual Illness Leave on days they were scheduled as DESWs.</i>
General Illness	Eligible only if the GI leave began prior to the start of the strike/lockout. <i>If a member becomes medically fit to return to work after the strike or lockout commences, they would transition to being on strike.</i> <i>If a member becomes seriously ill during a strike or lockout, with a potential for a future LTD claim, the member would not be eligible for paid GI from the Employer, but the member should still provide the Employer with sufficient medical documentation to ensure the 80-day LTD elimination period is properly accounted for.</i> <i>However, depending on the circumstances of the illness leave, this could be something AUPE grieves after the fact to try to recover the lost wages.</i>	Eligible only if the GI leave began prior to the start of the strike/lockout. <i>If a member becomes medically fit to return to work after the strike or lockout commences, they would then be eligible to be scheduled as a DESW.</i> <i>If a member becomes seriously ill during a strike or lockout, with a potential for a future LTD claim, the member would not be eligible for paid GI from the Employer, but the member should still provide the Employer with sufficient medical documentation to ensure the 80-day LTD elimination period is properly accounted for.</i> <i>However, depending on the circumstances of the requested illness leave, this could be something we grieve after the fact to try to recover the lost wages.</i>
WCB	If the member is already on WCB, continued eligibility for wage replacement for temporary disability may be reviewed by the Board.	If the member suffers a work-related injury as a DESW, file a claim as normal. <i>For WCB claims accepted after the strike or lockout starts, the Employer may not pay “WCB Supplement” as per Article 23, and instead the member would receive payment directly from WCB.</i>
LTD	New applications, appeals, and current leave continue uninterrupted. <i>For new LTD applications or appeals, the Employer may not pay “Interim Payments” if the member is still waiting for their LTD application to be accepted or is in the process of appealing an LTD decision.</i>	New applications, appeals, and current leave continue uninterrupted. <i>For new LTD applications or appeals, the Employer may not pay “Interim Payments” if the member is still waiting for their LTD application to be accepted or is in the process of appealing an LTD decision.</i>

TYPE OF LEAVE	NON-DESIGNATED ESSENTIAL SERVICES WORKER (DESW)	DESIGNATED ESSENTIAL SERVICES WORKER (DESW) <sup>[1]</sup>
Maternity/Parental/Adoption Leave	Current leave continues uninterrupted. <i>If leave started before the strike/lockout, previous cases (decided by arbitrators) suggest the member on maternity leave would still get the rest of their Supplemental Employment Insurance Benefits (SEB) topped up by the Employer.</i>	Current leave continues uninterrupted and new leave may commence during a strike/lockout. <i>If leave starts during a strike/lockout, it is unlikely the Employer will continue to pay maternity SEB top-up payments.</i>

<sup>[1]</sup> Workers are considered DESWs during those times they are required to perform essential services under the ESA, as per the definition in the Code and the ESA.

## Leave Entitlements for non-DESW Members

1. The majority of GoA members will not be eligible to be assigned as DESWs, and the Collective Agreement will not apply to them during a strike or lockout.
2. Some members may be eligible to be assigned DESW shifts (DESW-eligible) but may not end up being assigned any DESW shifts. The Collective Agreement will also not apply to members who are not assigned any DESW shifts during a strike or lockout, even if they would have been eligible to have shifts assigned to them.
3. Any entitlement to leaves and other benefits during a strike or lockout will be determined by whether the entitlement under the expired Collective Agreement had vested, or crystalized, before the start of the strike or lockout.
  - a. Determining whether an entitlement was vested depends on the language of the respective Article in the Collective Agreement. A Membership Services Officer (MSO) should be able to help with specific cases.
4. Arbitrators have ruled in the past that a member who starts an illness leave or maternity leave (which ought to extend to parental and adoption leaves but is not specified) prior to the start of a strike or lockout, is entitled to continue getting paid for those leaves during the strike or lockout. This also includes continued payment of Maternity Leave Supplemental Employment Insurance Benefits (SEB).
  - a. Important: Even during a strike or lockout, a member must continue to provide medical information to explain the duration of an illness leave.
5. While there are only a few cases of arbitrators making rulings about entitlement to paid vacation and Special Leave during a strike or lockout, the same general principles should apply regarding whether that entitlement is allowed if the leave was approved AND commenced before the start of a strike or lockout.
  - a. For example, if a member has an approved vacation that starts before the strike or lockout and the Employer chooses to stop paying that member for their vacation leave once a strike or lockout starts (or says they are going to take back alleged overpayments), AUPE may file a grievance and argue that the member's entitlement to vacation pay had vested/crystalized at the time the member started their vacation, meaning that the member was entitled to be paid for the duration of the approved vacation time and was not overpaid by the Employer.
6. Entitlements to approved and commenced Leave without Pay (such as Military Leave, unpaid Illness Leave, and Compassionate Care Leave) ought to continue even once the strike or lockout has ended.
7. Paid Administrative Leaves are fully at the Employer's discretion (and typically happen only when the Employer is investigating alleged misconduct by the member). However, if the Employer ends a paid Administrative Leave at the start of a strike or lockout, then AUPE maintains that even a non-DESW member ought to be immediately returned back to work at the end of the strike or lockout and not placed back on Administrative Leave. If the Employer wishes for the Administrative Leave to continue past the end of a strike or lockout, then they ought to continue to pay the member for Administrative Leave throughout the strike or lockout.
  - a. AUPE maintains that the Employer should not schedule members on paid Administrative Leave even if they are eligible to be DESWs. The member on Administrative Leave should continue to be on paid leave until the Employer decides the outcome of the situation for which the member was placed on Administrative Leave.

## Leave Entitlements for Members who are Scheduled/Assigned to be DESWs

- The following sections apply only to those members who are actually assigned shifts as DESWs.
- This does not apply to those members on longer-term leaves (Maternity/Parental/Adoption Leaves, General Illness Leave, WCB Leave, LTD Leaves, Administrative Leaves, Leave without Pay, etc.) prior to the start of the strike or lockout, even if they would technically be qualified to perform essential services.

### Vacation

1. If a member is away on an approved vacation when a strike or lockout commences, the Employer should not schedule that member for any DESW shifts for the duration of the approved vacation.
2. If the member is scheduled to be a DESW on a day they had an approved vacation, the Collective Agreement would apply (Article 37.10) and the Employer would not be able to change the member's vacation without agreement from the member.

### Minor Illness Leave and Appointments

3. Article 31.01 of the Collective Agreement would apply to a DESW who is working. When a DESW works at least 1 hour in a half day, but becomes ill and has to leave work early, or has management approval to attend an eligible appointment, the DESW will be paid for the remainder of the half day in which they became ill or attended the appointment.
4. AUPE expects the Employer will be less permissive with medical appointments during a strike or lockout than they would be during normal operations.

### Casual Illness Leave

5. Generally speaking, if a member is scheduled for a DESW shift but calls in sick in advance of the shift, they would no longer be considered a DESW and therefore not entitled to be paid for the missed shift(s).
6. However, if a member is scheduled for a DESW shift, attends the first half of the shift and needs to go home sick partway through the shift, AUPE may argue that the member should be paid sick time for the remainder of the shift.

### Special Leave

7. As with Casual Illness, if a member calls in advance of their scheduled DESW shift to report they are unable to work for any of the Special Leave reasons, they would no longer be considered a DESW and therefore not entitled to be paid for the missed shift(s).

### Maternity/Parental/Adoption Leave

8. If a member is scheduled to commence Maternity/Parental/Adoption Leave after the start of a strike or lockout, the member would be entitled to start that leave as originally approved. For a Maternity Leave starting after a strike or lockout is underway, it is unlikely the Employer will provide the Supplemental Employment Insurance Benefit (SEB).

### Unpaid Leaves

9. Members who are assigned/scheduled to be DESWs are still entitled to job-protected unpaid leaves under the *Employment Standards Code* for reasons such as bereavement, citizenship ceremonies, compassionate care, critical illness of a family member, death or disappearance of a child, domestic violence, and personal and family responsibility leave. This would apply only when the member is requesting time off for a scheduled DESW shift.

## If you are on General Illness and Long-Term Disability (LTD)

1. Long-Term Disability is a type of insurance and members pay an insurance premium to receive this benefit. The Employer cannot terminate LTD entitlements or benefits at any point during a strike or lockout, unless AUPE decides not to pay the premiums for striking members.
2. If any member is on approved General Illness Leave or Long-Term Disability (LTD) when a strike or lockout starts, they will continue to be paid for these leaves without interruption.
3. There may be situations where members are scheduled to commence a General Illness Leave after the date a strike or lockout begins (e.g., scheduled surgery), or a member may fall ill during a strike or lockout. The Employer is likely

not required to pay General Illness Leave for these situations because it was not established while the collective agreement was still in force. However, members should still submit the necessary medical information to the Employer if they need illness leave. This is for 2 reasons:

- a. The 80-day General Illness Leave time period serves as the LTD eligibility period. After 80 days of Illness Leave, a member is eligible to apply for LTD. Even if the 80 days started during a strike or lockout, the member should still be eligible to apply for LTD after 80 days of illness (assuming they meet the other LTD eligibility criteria).
  - b. Depending on the retroactivity language of the new collective agreement, the member may be eligible for paid GI leave retroactive to the start of the illness.
4. A member who has submitted an LTD claim that has not yet been accepted should be entitled to continue getting General Illness (GI) pay as per the expired collective agreement for the remainder of their 80-day entitlement.
  5. If a member has submitted an LTD claim, it is not yet accepted, and they ran out of paid GI prior to the start of the strike or lockout, they may have agreed to be paid "GI Continuance" or an "Interim Payment" for up to two months. Once a strike or lockout begins, the Employer may choose to discontinue these Interim Payments. However, members would still be entitled to remain on Illness Leave without pay until they receive decisions about their LTD claims or are medically fit to return to work.
  6. The "Interim Payment" process is not part of the Collective Agreement and is found in the *Public Service Long-Term Disability Income Continuance Plan Regulation*.
    - a. The Interim Payment bridges the time between the end of the elimination period (i.e., 80 days) and when the LTD adjudicator makes a decision about a claim.
    - b. The Regulation states that a deputy head has discretion on approval of the Interim Payment, and it is not an automatic entitlement.
    - c. In practice, the Employer gives members the option to use time from their vacation leave banks (if they have sufficient time in their banks) instead of having to repay the Interim Payment if their LTD claims are denied. When the LTD claim is approved, the Interim Payment is treated as pre-payment of the LTD benefit.

## **If you are on or need Workers' Compensation (WCB)**

1. If your claim is interrupted during a strike, please contact us, as a Union Rep in our Disabilities Department will be able to help.
2. If a DESW is injured at work during the strike or lockout and makes a claim to WCB, the claim would go through the normal process. However, the Employer may deny paying for any scheduled or missed DESW shifts after the accident. The WCB may also review eligibility for temporary wage replacement benefits. Please contact the Union if you suffer a work related injury as a DESW.
  - a. If a member's claim for WCB is approved in this circumstance, it is most likely they will be compensated directly by WCB and not through the Employer's WCB Supplement.