

***CUPE
MEMBERS'
GUIDE***

TO

HOODIP

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1. INTRODUCTION

Under the full-time CUPE/OCHU central agreement, full-time CUPE hospital workers are entitled to paid leave for illness and disability. Article 13 of the central agreement deals with sick leave, injury and disability.

This members' guide has been produced to provide you with an overview of the sick pay and long-term disability plans that make up HOODIP ("Hospitals of Ontario Disability Income Plan"). The information in the text boxes in this guide are relevant excerpts from the CUPE/OCHU central agreement.

The preamble to Article 13.01 in the collective agreement specifies that the Hospital must provide full-time employees with HOODIP (1992 booklets) or equivalent, or have some other sick leave/LTD arrangements.

Note :

Under the central collective agreement, part-time workers receive a fourteen (14%) percentage in lieu of sick leave and other benefits (**Article 18.04 or Article 18.01 in part-time only collective agreements**).

Some hospitals do not participate in HOODIP, and instead have an accumulating sick leave plan, where typically eighteen days a year of sick leave are earned at a rate of 1.5 days per month. This guide is not intended to cover the various accumulating sick leave plans which can be found in some CUPE hospital agreements, but focuses on those agreements with HOODIP or equivalent plan.

Where the Hospital and the local union mutually agree to replace the existing accumulating sick leave plan with HOODIP or equivalent, the plan becomes effective on the first of the month agreed to by the local parties.

The first thing to note about HOODIP is that it actually consists of two distinct plans - Part A "Sick Pay Benefit" and Part B "Long Term Disability Benefit". The two plans are quite independent of each other and have different eligibility requirements and benefit levels.

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- (a) The Hospital will assume total responsibility for providing and funding a short-term sick leave plan equivalent to that described in the August, 1992 booklet (Part A) Hospitals of Ontario Disability Income Plan Brochure.

The Hospital will pay 75% of the billed premium towards coverage of eligible employees under the long-term disability portion of the Plan (HOODIP or an equivalent plan as described in the August, 1992 booklet (Part B), the employee paying the balance of the billed premium through payroll deduction. For the purpose of transfer to the short-term portion of the disability program, employees on the payroll as of the effective date of the transfer with three (3) months or more of service shall be deemed to have three (3) months of service. For the purpose of transfer to the long-term portion of the disability program, employees on the active payroll as of the effective date of the transfer with one (1) year or more of service shall be deemed to have one (1) year of service.

The Sick Pay Benefit is designed to last 15 weeks, after which time an employee must resort to Employment Insurance for the next 15 weeks before the Long Term Disability Benefit kicks in at 30 weeks. This gap in coverage is the weakest feature of HOODIP, especially given that not everyone automatically qualifies for Employment Insurance benefits.

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- (f) Any dispute which may arise concerning an employee's entitlement to any benefits referred to in Article 13.01, including HOODIP and equivalents, may be subject to the grievance and arbitration under the provisions of this collective agreement. The Union agrees that it will encourage an employee to utilize the Medical Appeals Process provided under the plan, if any, to resolve disputes.
- (g) A copy of the current HOODIP plan text or, where applicable, the master policy of the current HOODIP equivalent shall be provided to the Union.

Two other important aspects of both the sick pay and long-term disability parts of HOODIP are that any dispute around entitlement is grievable, and hospitals are required by your central CUPE/OCHU collective agreement to provide a copy of the HOODIP plan text, or equivalent, to the Union.

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- (h) The Hospital shall pay the full cost of any medical certificate required of an employee.

The collective agreement also provides that the Hospital shall pay the full cost of any medical certificate required of an employee.

2. PART A: "SICK PAY BENEFIT"

The first paragraph of Article 13.01(a) of the central collective states that the Hospital has total responsibility for providing short-term sick leave, and that the short-term sick leave plan must be equivalent to the one described in the August, 1992 HOODIP booklet.

There is one exception however. CUPE has negotiated an improvement to the 1992 HOODIP plan. This improvement eliminates a penalty clause contained in the 1992 HOODIP plan.

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- (e) The Hospital further agrees to pay employees an amount equal to any loss of benefits under HOODIP for the first two (2) days of the fourth and subsequent period of absence in any calendar year.

The HOODIP penalty clause requires a waiting period of two days on the fourth and subsequent periods of illness before the sick benefit is payable. Article 13.01(e) of the central agreement removes this penalty clause for CUPE members covered by the central agreement.

2.1 ELIGIBILITY

You are eligible for sick pay benefits if you are a regular full-time employee and you have completed three months of service with the same employer following your first day of active work.

Unlike the long-term disability portion of HOODIP, the sick pay plan is not portable between employers.

2.2 DEFINITION OF DISABILITY

Sick pay benefits are payable to employees who are "totally disabled". The definition in the plan text for totally disabled is as follows:

“Unable, due to injury or illness, to perform the regular duties pertaining to the occupation in which you participated immediately before becoming disabled.”

In other words, you are considered to be disabled if you are unable to perform the regular duties of your own job.

It is also important to know that the Supreme Court of Canada has ruled (*Brooks v. Canada Safeway Ltd.*) that it is illegal to exclude pregnant women from eligibility for short-term sick pay. If you are unable to do your job because you are pregnant you are entitled to HOODIP benefits.

2.3 PROOF OF DISABILITY

Proof of disability is required if you are absent for three days or more. This proof is usually a doctor's certificate. The plan text states that evidence "satisfactory to the employer" must be provided. If your absence continues, the employer can require proof on a periodic basis.

2.4 AMOUNT OF SICK PAY AND LENGTH OF SICK LEAVE

Clearly, the higher the level of income replaced, the better the sick leave plan. The length of time for which short-term sick pay is available is also of great significance. This includes whether the plan pays for each illness, or only for a stated length of time in each calendar year.

In HOODIP, the level of income replacement depends on the length of service prior to the first sick day as follows:

- ✓ after 3 months - 66.6% of regular earnings *
- ✓ after 1 year - 70% of regular earnings
- ✓ after 2 years - 80% of regular earnings
- ✓ after 3 years - 90% of regular earnings
- ✓ after 4 years - 100% of regular earnings

* means: straight time pay within the normal workweek, excluding bonuses, special payments, overtime, or premium payments.

Benefits are paid to you by the Hospital through salary continuance.

Sick pay entitlement is based on pre-injury earnings, so if you are entitled to a negotiated wage increase while on sick leave, your sick pay benefit will not be adjusted to reflect the wage increase, unless of course the increase is made retroactive to a day when you were actively at work.

Short-term sick pay benefits are taxable and subject to all regular deductions, including union dues, EI and CPP and LTD contributions.

Article 13.01(d) of the central collective agreement ensures that you receive 100% of your regular pay if you have completed any portion of your shift before going on sick leave.

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- (d) There shall be no pay deduction from an employee's regular scheduled shift when an employee has completed any portion of the shift prior to going on sick leave benefits or Workers' Compensation benefits.

Sick pay benefits are paid for up to fifteen (15) weeks (seventy-five working days). It is important to note that although the short-term plan is expressed in 'weeks' that is merely to equate employees with varying work schedules (e.g. extended shift employees). Coverage is provided in days and the 15-week bank for regular 5-day, 37.5-hour employees is to be calculated in days.

HOODIP pays on a per incident basis, for a maximum of 15 weeks each time. This means that you are entitled to a maximum of 15 weeks sick leave for each illness, provided that when you return from an absence you have worked for three continuous weeks.

If you become disabled again within three weeks from your return to work from the same or related illness, you are only entitled to the remainder of the 15-week period.

However, if you become disabled again within three weeks of your return to work from an unrelated cause of injury or illness, your benefit period will be reinstated in full. In other words, the short-term plan is not a 15-week bank that becomes exhausted regardless of the disability.

As a result of recent awards, modified duties—whether at full-time or part-time hours—count towards the re-qualification of the 15-week bank, notwithstanding the text of the plan. See 2.8 Modified Duties below for more details.

2.5 EMPLOYER COST

The Hospital is totally responsible for paying for the full cost of the short-term sick pay benefit.

2.6 WORKPLACE SAFETY & INSURANCE BOARD (“WSIB”)

You are not entitled to sick pay benefits under HOODIP if your absence from work is due to a compensable accident for which you are in receipt of WSIB benefits. However, Article 13.03 of the central agreement does provide for sick pay benefits to be paid pending approval of WSIB claims.

13.03 - Payment Pending Determination of WSIB Claims

An employee who is absent from work as a result of an illness or injury sustained at work and who has been awaiting approval of claim for WSIB benefits for a period longer than one complete pay period may apply to the Hospital for payment equivalent to the lesser of the benefit she would receive from WSIB benefits if her claim was approved, or the benefit to which she would be entitled under the short term sick leave plan. Payment will be provided only if the employee provides evidence of disability satisfactory to the Hospital and a written undertaking satisfactory to the Hospital that any payments will be refunded to the Hospital following final determination of the claim by The Workplace Safety & Insurance Board. If the claim for WSIB benefits is not approved, the monies paid as an advance will be applied towards the benefits to which the employee would be entitled under the short term sick leave plan. Any payment under this provision will continue for a maximum of fifteen (15) weeks.

What this means is that although you are not entitled to receive both short-term sick pay from HOODIP and WISB benefits at the same time, you can borrow from your sick pay entitlement to tide you over until such time as your WISB claim is approved.

The amount you can receive is payment equivalent to the lesser of:

- ✓ the benefits you would receive from WISB if your claim were approved, or
- ✓ the benefit that you would be entitled to under the short-term sick portion of HOODIP or equivalent plan.

2.7 SENIORITY AND SERVICE

Because the Hospital has total responsibility for providing and funding sick pay benefits, paid sick leave is considered to be an approved absence paid by the Hospital, and both seniority and service continue to accrue.

9.04 - Effect of Absence

Unless otherwise provided in the Collective Agreement:

- (a) It is understood that during an approved unpaid absence not exceeding thirty (30) continuous days or any **approved absence paid by the Hospital, both seniority and service will accrue.** (Emphasis added)

This means that you continue to progress along the vacation and wage grids, so that following your return to work you will be placed higher on the wage grid if your anniversary date occurred during your absence, and you are entitled to any vacation improvement related to that anniversary date.

2.8 MODIFIED WORK COUNTS AS “ACTIVELY AT WORK” FOR RE-QUALIFYING

The rules concerning re-qualification of the 15-week sick leave entitlement in 1992 HOODIP have recently been ruled to contravene the Ontario Human Rights Code. According to the text of the 1992 HOODIP Brochure:

“If you return to work on an approved modified work program, you are not considered to be Actively at Work. The time spent doing modified work continues to count toward the expiry of the 15 week benefit period and does not cause it to be reinstated” (page 2).

However, in a recent award between ONA and Rouge Valley Health System, arbitrator Trachuk ruled that this practice discriminates against disabled workers and contravenes the Code. According to the arbitrator, “the reinstatement of sick pay benefit provision of 1992 HOODIP violates s. 5 of the Code to the extent that it treats nurses who return to full-time hours on modified duties differently from nurses who return to regular duties.” This decision follows a 2008 award similarly finding that it is a violation of the Code to prevent employees able to return to work part-time as part of a modified work program from re-qualifying for the 15-week sick leave entitlement.

In other words, workers returning to work on modified duties cannot be prevented from re-qualifying for the 15-week sick leave entitlement.

2.9 EFFECT OF SICK LEAVE ON OTHER EMPLOYEE BENEFITS

In addition to service and seniority continuing to accrue, it is important to know what happens to other employee benefits when you are in receipt of sick pay benefits.

The Hospital is required to continue making its share of contributions toward the extended health care plan, semi-private accommodation, life insurance, long-term disability and dental coverage while you are in receipt of sick pay benefits.

The Healthcare of Ontario Pension Plan ("HOOPP") requires you to continue contributing for fifteen (15) weeks while you are on a sick leave of absence, after which you must stop contributing to the Plan. If you receive less than your regular pay during this period, you will contribute less to HOOPP. To prevent any reduction in future pension benefits, you have the right to top-up your contributions to the pre-leave level.

During the 15-week period, the employer is also compelled to continue making its contribution towards the pension plan.

If you can't return to work after the 15-week period, you can take a "health leave" from HOOPP for up to four years. For more information on HOOPP, visit the HOOPP website at: www.hoopp.com.

17.03 - Illness during vacation

Where an employee's scheduled vacation is interrupted due to serious illness, which either commenced prior to or during the scheduled vacation period, the period of such illness shall be considered sick leave.

Serious illness is defined as an illness which requires the employee to receive ongoing medical care and/or treatments resulting in either hospitalization or which would confine the employee to their residence or to bed rest for more than three days.

The portion of the employee's vacation which is deemed to be sick leave under the above provisions will not be counted against the employee's vacation credits.

Article 17.03 of the central agreement calls for the Hospital to reinstate vacation credits if a serious illness interrupts your scheduled vacation.

2.10 DISPUTES

Don't forget that any dispute you have with the Hospital about your entitlement to sick pay benefits is grievable under article 13.01(f), although the parties to the central agreement have agreed that employees should be encouraged to utilize the medical appeals process first, should one exist under the plan.

3. THE GAP - EMPLOYMENT INSURANCE SICKNESS BENEFITS

Unlike other public sector short and long-term disability plans, HOODIP's sick pay and long-term disability plans are not joined together. A 15-week gap exists between the two. The only income protection for most members during this gap is federal Employment Insurance ("EI").

3.1 ELIGIBILITY

To qualify for EI Sickness Benefits, you must have:

- ✓ worked 600 hours in insurable employment (i.e. paid EI premiums) in the last 52 weeks or since your last claim, and
- ✓ have a medical certificate indicating how long your illness is expected to last (which you will have to supply at your own expense, and which you may have to provide on a periodic basis as continuing proof of your inability to return to work).

To prevent delays in having your claim approved, it is important to apply at your nearest Service Canada Centre at least four (4) weeks before your HOODIP sick pay runs out.

If your application is denied, you can appeal the decision. Let the EI officer you have been dealing with know that you wish the decision to be reviewed, and submit any additional medical information you may have in support of your claim. If the claim is still denied after the review has been completed, you may appeal to the Board of Referees within thirty (30) days after being notified of the final EI decision.

3.2 AMOUNT AND DURATION OF EI SICKNESS BENEFITS

Expect a substantial drop in income. EI Sickness Benefits are only fifty-five (55%) per cent of average weekly insurable earnings to a maximum of \$501* per week (*except when there is a supplement available for claimants with family net income under \$25,921).

If your average insured earnings are \$45,000 a year (\$884.62/week) and if you have been working full-time, you can expect to get an EI Sickness Benefit of 55% of \$884.62 or \$486.54.

The benefit rate will be based on your average insured earnings in the 26-week period preceding the last paid working day. Since the calculation will include the 15-week HOODIP sick pay period, employees with less than four years' of service will be further penalized, since during that 15-week period they would have received less than 100% of their regular earnings. The maximum number of weeks during which you can claim EI Sickness Benefits is fifteen (15) weeks.

EI Sickness Benefits are taxable.

Because you must be totally disabled for thirty (30) weeks before LTD benefits are payable under HOODIP, it is important to consider very carefully whether you are well enough to return to work during the EI period. Going back to work only to find you can't handle the work may mean you are no longer considered totally disabled, and may also play havoc with your EI claim.

3.3 SENIORITY AND EMPLOYER CONTRIBUTIONS TO BENEFITS DURING EI PERIOD

Seniority (but not service) will continue to accrue during the employment insurance period of the sick leave. Likewise, during this same period the Hospital is required to continue paying its share of benefit premiums.

4. PART B: “LONG-TERM DISABILITY”

The HOODIP long-term disability plan is an insured benefit.

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- (a) The Hospital will pay 75% of the billed premium towards coverage of eligible employees under the long-term disability portion of the Plan (HOODIP or an equivalent plan as described in the August, 1992 booklet (Part B)), the employee paying the balance of the billed premium through payroll deduction.

4.1 ELIGIBILITY

Full-time employees who have completed six months of service are eligible for coverage regardless of a pre-existing condition. If you are not actively at work following your waiting period, due to injury or illness, then coverage becomes effective when you have completed seven consecutively scheduled days of active work following your return to work (known as the "7-day rule").

A good feature of HOODIP is that it is portable between hospitals that participate in HOODIP. If you terminate employment with one hospital and are subsequently re-employed within six months by another facility which participates in HOODIP, your coverage becomes effective on the first day of employment with your new employer.

HOODIP LTD benefits become payable after the 15-week short term sick pay period and the 15-week EI period have been exhausted. This 30-week period of time before LTD benefits are payable is referred to as the "qualifying period", and in order for LTD benefits to start on time, you should apply at least 4-6 weeks before the end of the qualifying period (i.e. after you have been off work for 24-26 weeks).

Your employer should have the appropriate application forms.

At the very latest, application for LTD benefits must be made within six months after the end of the qualifying period.

4.2 DEFINITION OF DISABILITY

HOODIP's long-term disability plan has the "two-year own occupation" definition of disability. What this means is that the plan provides for pay during the first two years of your absence if you are unable to do your own job:

“Unable, due to injury or illness, to perform the regular duties pertaining to the occupation in which you participated immediately before becoming disabled, for the first two years you are absent from work and not engaged in any gainful occupation.

Unable, after two years, due to injury or illness, to participate in any gainful occupation for which you are, or may become, fitted through training, education or experience.”

HOODIP starts counting the two years on the first day of the short-term sick pay portion, so in reality LTD benefits are only payable for 74 weeks and not the full two years (104 weeks - 30 weeks = 74 weeks).

After two years, the definition of disability changes such that the plan will only pay benefits if you are unable to engage in any gainful occupation for which you are (or may become) fitted by training, education or experience.

One very good feature of HOODIP is that coverage is compulsory for all full-time employees regardless of their previous health history. Other inferior plans have provisions which exclude persons who have had pre-existing medical conditions. HOODIP provides coverage regardless of any pre-existing medical condition.

HOODIP does not discriminate against mental, nervous, alcohol or drug-related disabilities and will cover these conditions.

HOODIP does discriminate against (and does not cover) disabilities which are wilfully self-inflicted, occur as a result of a criminal offence or illegal occupation, or as a result of war.

4.3 PROOF OF DISABILITY

In order to qualify for HOODIP LTD benefits, you must be under the care of a physician and periodically provide proof of disability in the form of a doctor's note.

Your doctor, preferably a specialist (insurers prefers specialists to GPs), will have to provide sufficient medical documentation to prove to the insurance carrier that you cannot do your own job during the first 74 weeks, or do any job after 74 weeks.

Please note, as with the short-term plan, a disability due to pregnancy must be covered by the LTD plan (Supreme Court decision in Brooks v. Canada Safeway).

4.4 AMOUNT OF LTD INCOME

The amount of income you receive depends upon your length of service, and is paid monthly. HOODIP's LTD plan provides for an increasing level of income replacement related to years of service as follows:

- ✓ after 6 months - 65% of regular earnings*
- ✓ after 20 years - 70% of regular earnings
- ✓ after 30 years - 75% of regular earnings

* means: straight time pay within the normal workweek, excluding bonuses, special payments, overtime, or premium payments.

LTD pay is offset by other sources of disability income, ("offset" means reduced.) Your monthly benefit will be reduced if you receive income from:

- ✓ your employer, in the form of earnings,
- ✓ the Canada Pension Plan ("CPP") disability or regular pension benefits (but any CPP income you receive for your dependents is not offset),
- ✓ Old Age Security,
- ✓ WSIB benefits,
- ✓ Healthcare of Ontario Pension Plan ("HOOPP") disability or regular pension benefits.

It is also very important to note that a disabled worker must apply for CPP. This is because HOODIP requires you to prove that you either are, or are not receiving CPP benefits. Otherwise HOODIP assumes you are collecting CPP, and the offset is calculated against your monthly LTD benefit.

LTD benefits are not indexed to the cost of living (meaning they are not protected against inflation), another weakness of the Plan. LTD benefits are also taxable.

4.5 LENGTH OF LTD BENEFITS

Benefits are payable for 74 weeks when you are disabled and unable to perform the duties of your own occupation.

Benefits are payable for longer than 74 weeks, but only if you can prove that you are unable to engage in any gainful occupation for which you are or may become fitted by training, education or experience.

After the initial 74 weeks, if you have at least 10 years of service and you can prove that you are unable to engage in any gainful occupation, your LTD benefits continue for life. In this case your benefit will be further reduced by any additional payments from government plans and your employer's pension plan.

After the initial 74 weeks, if you have less than 10 years of service and you can prove that you are unable to engage in any gainful occupation, your LTD benefits continue to age 65.

4.6 RECURRENCE OF DISABILITY

If you have been collecting LTD and then return to full-time work, only to have to go off work again due to the same disability, LTD benefits will commence immediately without the need for a new qualifying period if the recurrence occurs within six months.

However, if you have to go off work due to a different disability, or if the recurrence occurs after you have been back on the job for six months or more, then the disability will be considered a new disability and you will complete the 15-week short-term sick pay period and the 15-week EI period before becoming eligible for LTD benefits after 30 weeks.

4.7 EMPLOYER COST

The central agreement requires the Hospital to pay 75% of the premium cost, you pay 25%. The premium cost for LTD is high. The amount depends, in part, on the occupational groups included in the plan (some jobs are higher risk than others), age, sex, and how often the plan has been used (known as the "experience rating" of the plan).

Employees who are collecting LTD benefits are not required to pay an LTD premium. You should also note that premiums for the Hospitals of Ontario Group Life Insurance Plan ("HOGLIP") are also waived while you are collecting LTD.

4.8 REHABILITATION

HOODIP's LTD plan does allow disabled workers to participate in a rehabilitation program approved by the insurer. This includes modified work programs at the Hospital. You will be assessed by one of the insurance company's rehabilitation consultants who will help develop and coordinate a rehabilitation program.

Rehabilitation could involve vocational retraining, educational programs and trial or part-time work in a new or related field.

If you do participate in a rehabilitation program, you will receive your monthly disability benefit less 50% of the earnings you receive from your rehabilitative employment.

If the total amount you get from the discounted disability benefit plus the earnings you get from your rehabilitative employment exceed your regular pre-disability earnings, HOODIP will discount your monthly disability benefit further, so that at no time will you be allowed to receive more than your regular pre-disability earnings.

4.9 SENIORITY, SERVICE, AND EMPLOYER CONTRIBUTIONS TO BENEFITS DURING LTD PERIOD

The Hospital has to continue paying its share of premiums for insured benefits for up to 30 months while an employee is on sick leave, including the EI and LTD periods, to a maximum of 30 months from the time the absence commenced. The central agreement provides for the accrual of seniority while an employee is on paid or unpaid sick leave, including the EI and LTD periods, while service accrues for a period of 15 weeks if an employee's absence is due to a disability resulting in LTD benefits.

If you can't perform your own job because of a disability, the Healthcare of Ontario Pension Plan allows you to take a "health leave of absence" for up to four years from the last day you worked.

As we saw in the earlier section on HOODIP sick pay benefits, during the first 15 weeks of health leave, you and your employer are required to make contributions to HOOPP. You are not allowed to contribute to HOOPP after the 15 week-period. After this 15-week period has expired, HOOPP allows you to receive "imputed" service for the remainder of your disability for up to four years. What this means is that you are credited with contributory service to HOOPP for this period even though you and your employer are not contributing to the pension plan during this time.

It is, therefore, a good idea to consider applying for a health leave of absence from HOOPP if you are off on LTD. Visit the HOOPP website at hoopp.com for more detailed information on HOOPP health leaves of absence.

4.10 DISPUTES

Again, don't forget that any dispute you have with the Hospital over your entitlement to LTD benefits is grievable.

5. OTHER SOURCES OF DISABILITY INCOME

In addition to WSIB and HOODIP LTD benefits, you may be entitled to a Canada Pension Plan ("CPP") disability pension and/or a HOOPP disability pension.

The definitions of disability under the CPP and HOOPP plans are more onerous to meet than under HOODIP.

5.1 CPP DEFINITION OF DISABILITY

The disability must be a "physical or mental impairment that is both severe and prolonged", meaning that the disability is such that you are unable to work at any job and is likely to be of indefinite duration or is likely to result in death.

As has been mentioned earlier in this guide, you are expected by HOODIP to apply for a CPP disability pension. This is because you are required to demonstrate that you are NOT eligible for a CPP disability pension in order to avoid having your HOODIP benefit reduced by the amount you would be entitled to under the CPP disability program.

5.2(A) HOOPP DEFINITION OF DISABILITY

HOOPP also offers a disability pension for contributing members who become "totally and permanently" disabled. This means that the disability must be severe enough to prevent an employee from engaging in any employment and is expected to last a lifetime.

To apply for a HOOPP disability pension also means that you would, if eligible, be retiring from your employment. Again, your HOODIP LTD benefit would be reduced by the amount of any benefit you would be entitled to under the HOOPP disability program.

5.2(B) NO DEEMED OFFSET FOR DISABILITY PENSION NOT TAKEN

As noted above, in the event a member is totally and permanently disabled and opts to accept their HOOPP disability pension, their HOODIP LTD would be reduced by an equivalent amount to avoid "double recovery." Some hospitals, however, have been deducting the amount a member could have received from their HOOPP disability pension had they opted to accept it even if they opted instead for the free accrual option. Recent awards have found this interpretation to violate the collective agreement. Arbitrators have agreed that a member choosing free accrual means the disability pension is no longer "receivable" to them, and hence there ought not to be any deduction from their LTD.

5.3 APPEALS PROCESS

Both the CPP and HOOPP have an appeals process. Under the CPP program you have 90 days to appeal a denial in writing, and under HOOPP you have 60 days to notify in writing your attention to appeal. In both cases, you will be expected to supply further medical evidence to support your argument.

6. REPLACING AN EXISTING ACCUMULATING SICK LEAVE PLAN WITH HOODIP

A number of CUPE hospital local unions do not belong to HOODIP - and instead have accumulating sick leave plans whereby employees typically earn sick leave credits at a rate of 1.5 days per month, for a total of 18 sick days per year.

Accumulating sick leave plans provide 100% income replacement from the first day of absence from work.

Unused sick leave credits accumulate from year to year. Some accumulating sick leave plans have an unlimited maximum accumulation feature, but most in the CUPE hospital sector have a maximum accumulation limit of anywhere between 60 and 180 days.

Most accumulating sick leave plans have "cash-out" provisions whereby an employee who is terminated or who retires is allowed to exchange any unused sick leave for a cash payment. Typically, an employee is entitled to some percentage of their accumulated sick leave credits (the range is usually 50 - 100%) upon termination or retirement.

A major shortcoming of accumulating sick leave plans is that employees who exhaust their accumulations have no income protection. This is especially the case for new employees or for employees who suffer a major illness. Most collective agreements with accumulating sick leave plans do not have additional long-term disability programs.

Where the parties have agreed to transfer from an accumulating sick leave plan to HOODIP, Article 13.01(a) of the central collective agreement deems all employees with three or more months of service to have only three months of service on the effective date of the transfer for purposes of determining the amount of sick pay entitlement in the short-term (sick pay) portion of HOODIP.

13.01 - HOODIP

(The following clause is applicable to full-time employees only)

- (a) For the purpose of transfer to the short-term portion of the disability program, employees on the payroll as of the effective date of the transfer with three (3) months or more of service shall be deemed to have three (3) months of service. For the purpose of transfer to the long-term portion of the disability program, employees on the active payroll as of the effective date of the transfer with one (1) year or more of service shall be deemed to have one (1) year of service.

What this means is that on the date of transfer you are only entitled to 66.6% of regular earnings in sick pay benefits, after one year you are entitled to 70% of regular earnings, and so on until after four years from the date of transfer, you become entitled to 100% income replacement. In addition, 13.01 (a) states that for the purpose of transfer to the LTD portion of the disability program, employees with one year or more of service are deemed to have one year of service for determining how much income replacement you will get under the LTD program. This means that on the date of transfer you would only be entitled to 65% of regular earnings even if you had 20 years or more service with your employer.

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- (c) Existing sick leave credits for each employee shall be converted to a sick leave bank to the credit of the employee. The "sick leave bank" shall be utilized to:
 - (1) supplement payment for lost straight time wages on sick leave days under the new program which would otherwise be at less than full wages or no wages and,
 - (2) where a pay-out provision existed under the former sick leave plan in the Collective Agreement, pay-out on termination of employment shall be that portion of any unused sick leave days under the former conditions relating to pay-out,
 - (3) where, as of the effective date of transfer, an employee does not have the required service to qualify for pay-out on termination, his existing sick leave credits as of the date shall nevertheless be converted to a sick leave bank in accordance with the foregoing and he shall be entitled, on termination, to that portion of any unused sick leave days providing he subsequently achieves the necessary service to qualify him for pay-out under the conditions relating to such pay-out,

- (4) an employee who, as of the effective date of transfer, has accumulated sick leave credits and is prevented from working for the Hospital on account of an occupational illness or accident that is recognized by the Workers' Compensation Board as compensable within the meaning of the Workers' Compensation Act, the Hospital, on application from the employee will supplement the award made by the Workers' Compensation Board for loss of wages to the employee by such amount that the award of the Workers' Compensation Board for loss of wages to the employee, together with the supplementation of the Hospital, will equal 100% of the employee's net earnings, to the limit of the employee's accumulated sick leave credits.

There is also language in the CUPE/OCHU central agreement outlining what happens to your existing sick leave credits when an accumulating sick leave plan is replaced by HOODIP.

Article 13.01(c) of the central agreement protects any sick leave credits that you have when a hospital converts to HOODIP.

The central agreement provides that your existing sick leave credits be converted into a sick leave bank which you can use to:

- ✓ top up to 100% any sick leave taken under the HOODIP Sick Pay Benefit program,
- ✓ top up Workplace Safety & Insurance Board benefits to 100% of net pay, if you so request,
- ✓ cash-out upon termination or retirement, provided your "old" accumulating sick leave plan had such provisions.

Note

If you need more information than is contained in this guide, or if you wish to consult with someone about your particular situation, you should contact your shop steward or your assigned CUPE National Representative.

You can also find the 1992 Sick Pay Benefit and Long-Term Disability brochures on the OCHU website at www.ochu.on.ca.