

FAQ: Sick Leave and Long-Term Disability Rights

By Peggy Smith
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Q What happens if I get very ill or become disabled in a way that prevents me from working?

A At Queen's, there are three ways to deal with illness or disability that prevents you from fulfilling your duties:

- 1. Incidental Sick Leave:** This is for temporary absences owing to illness or injury. There is no limit to the number of days in a year that you might take, but longer-term absences (more than three weeks) or repeated absences may trigger an inquiry from the University about whether you need a longer leave or other forms of accommodation.
- 2. Sick Leave (Short-Term Disability):** If you are ill, injured, or develop a disability that requires a longer absence from work, you will be asked to provide medical documentation to the Return to Work and Accommodations Services Office (RTWAS) to justify the leave. This leave is limited to 180 contiguous days and is explained in the University Sick Leave Policy¹ and the Queen's-QUFA Collective Agreement (CA).
- 3. Long-Term Disability (LTD):** If you are unable to return to work following six months of sick leave, you will be expected to apply for long-term disability insurance coverage from Manulife (formerly Great West/Canada Life). LTD is theoretically limitless if you meet the criteria for disability. At age 65, LTD insurance payments will stop, and you will be expected to rely on pension income.

Sick Leave

Q Who administers the Sick Leave?

A Sick leave is a paid leave of absence administered by the University. The terms of the leave are set out in Article 33 of the CA. Article 33.2.3.2 stipulates that the application for sick leave is made by submitting a medical note completed by

your physician to Faculty Relations or their delegate in RTWAS.

Q What happens to my wages and benefits while I am on sick leave?

A Sick leave is a paid leave of absence for a maximum of 180 calendar days. While you are on paid sick leave, you receive wages as though you were performing your normal duties, and union dues continue to be deducted from your salary.

During the duration of the sick leave, the University continues to pay the premiums for the group benefit plans in which you are enrolled, including pension, where you continue to pay your share (Article 33.2.3.4).

Q Do I have the right to work while on paid sick leave?

A While you are on sick leave, the University pays 100% of your wages and will work with you to identify any accommodation needed to successfully return to your full academic duties as soon as possible. Such accommodation may involve a gradual return to work, but any return to work needs to be supported by your doctor and approved by RTWAS. You may not engage in any form of paid or unpaid work, within or outside Queen's, without approval from Faculty Relations or RTWAS while on paid sick leave.

Q What are my rights of appeal?

A The decisions of RTWAS and the University in the administration of the sick leave benefit are grievable decisions under Article 19 of the CA. That means that if QUFA concurs that there has been a breach of CA rights (procedural, fairness, etc.), QUFA can file a grievance and either resolve the matter or bring it before an arbitrator for resolution.

Long-Term Disability Insurance (LTD)

Q What is LTD?

A LTD is a third-party insurance plan that provides you with an income should you be deemed to be too ill or disabled to perform your academic duties at Queen's for longer than the six-month sick leave. The income you receive from LTD is paid by the insurance provider, and there are no union dues deducted from the payments. As this is a fully employee-paid benefit, the income you receive is tax-free.

Q Who administers the LTD Insurance Plan?

A Article 42.6.2 of the CA requires the University to provide and maintain an LTD insurance plan for QUFA Members. Employees entitled to benefits are required to participate in the plan. The specific terms and conditions of the LTD plan are set by the plan provider and can be found in the benefit booklet, a copy of which can be provided by the insurance provider or your LTD case worker. These terms do not form part of the CA and are not negotiated between QUFA and Queen's. Application for LTD is made directly to the plan provider: neither QUFA nor the University are involved in the decision. If the insurance company approves the application, insurance payments will be made as compensation for your continued inability to work and earn wages. As the payments are not wages or salary, no union dues are deducted.

Q What rights do I have under the CA while on LTD?

A QUFA Members who are on LTD continue to be members of the bargaining unit, but they do not have the same entitlements under the CA as Members who are actively at work. Article 33 outlines a variety of leaves and identifies specific entitlements during those leaves. Because LTD is not a type of leave identified in Article 33, QUFA must look to the specific provisions of the CA to determine your entitlement and the scope of QUFA's duty to represent members while on LTD.

QUFA continues to have a duty to represent Members on LTD in any dispute arising from applicable provisions of the CA. For example, Article 9 protects every Member from discrimination and the right to be accommodated under the Ontario Human Rights Code, Article 20 protects against unjust discipline, and Appendix N expressly provides tuition support to Members on LTD.

Conversely, where rights are attached to the active performance of duties in the paid service of Queen's University, they are not available to those on LTD who are, by definition, not actively working for or paid by the University. For example, Articles 15 and 29 refer to the performance and assessment of certain duties and are tied to active

employment. Article 36 (Working Conditions) is limited to active members and those on leave as defined by Article 33.

Q What happens to medical benefits while I am on LTD?

A The University is not obligated under the CA to continue to pay for employee extended medical benefits while on LTD. However, it has been the past practice of the University to do so if the employee elects to continue these while on LTD. If the University decided to change this practice, they would be required to give QUFA notice at bargaining of an intent to stop the practice. QUFA does not anticipate such a change, as it would trigger several legal obligations and risks for the University.

Q What happens to my pension while I am on LTD?

A The University Pension Plan (UPP) requires the employer to make both employer and employee contributions while a member of the plan is on LTD. These contributions are made at the salary level at the time that LTD began. Pension service is accrued consistent with the rate of accrual before LTD.

Q Can I work while I am in receipt of LTD Insurance?

A "Work" in this context is defined as paid or unpaid services for the benefit of the University.

After a period on LTD, you may want to explore the option to return to some of your academic duties, as you may feel that it would be better for your mental health to engage with your academic community. It is important to note that any decision you make to return to work could put your entitlement to LTD at risk. The LTD provider will determine that you are no longer entitled to LTD income if your total paid workload is 60% of your pre-disability workload. As QUFA and the University are not involved in the assessment of your LTD claim, you are urged to consult with a lawyer experienced in the field or your LTD case worker before taking on any paid work activities. However, you may continue to read scholarly articles, write, correspond with colleagues, and otherwise try to keep up with your field to the extent your health will allow.

Q What is the difference between "Own Occupation" and "Any Occupation" LTD?

A "Own Occupation": LTD plans have two stages of assessment. Stage one is an assessment of your ability to perform your "own occupation," defined as the occupation you had at the time you became disabled. The Queen's plan has a three-year "own occupation" period. During this period, you will continue to be approved for LTD insurance payments if the LTD provider determines that you are unable to perform the essential duties of the position you held at the

time you became disabled. The LTD caseworker may determine that, based on the medical evidence, you can attempt a gradual return to work while still in the “own occupation” period. Your participation in that exercise will not jeopardize your ongoing entitlement to LTD if the return to work is unsuccessful, but the dollar figure of your LTD benefit may be adjusted through the return to work period.

“Any Occupation”: After the period of “own occupation,” you will be assessed on your ability to perform “any occupation” you are deemed qualified to perform based on your qualifications and experience. The criteria that define which occupations would be considered appropriate are set by the plan provider. One of the criteria is that the job must allow you to earn an income equivalent to at least 60% of what you were earning prior to becoming disabled. More information about “any occupation” can be explained by your case manager.

Q How do I return to work while on LTD?

A If you and your medical caregivers agree that you are fit to return to work, the LTD provider will begin to discuss the terms of return with Queen’s RTWAS. The LTD provider must determine, with the advice of your medical caregivers, whether any accommodations will be required for your successful re-entry to the workforce and at what pace you should resume full-time duties.

For Members who are still in the “own occupation” period, Queen’s must determine if those accommodations are reasonable, and if the proposed schedule for return to full time duties is manageable. If the discussion turns to long-term workplace accommodations, QUFA will also be consulted.

In the “any occupation” period, Queen’s must determine if there is a suitable position for you, based on your qualifications, training, and earnings at the time you became disabled. Pending any limitations on the work you can do, this may or may not be the position or occupation you left when you went on leave.

It is absolutely imperative that you not initiate return to work processes until you have clear dispensation from your medical caregivers to do so. LTD is an insurance payout, and the LTD provider is motivated to end your coverage as soon as is permitted by the terms of the benefit. If you begin the process of return, you may find that the LTD provider finds grounds to cease coverage before you are fully ready or able to resume your duties.

Q Can I appeal decisions of the LTD provider?

A QUFA is not a party to the decision about whether you are able to perform your own or any occupation as

defined above. If you are not approved for LTD payments at any stage in the process, you have the right to appeal as per the process set by the LTD provider. The appeal is made directly to the provider, and you are advised to seek independent legal counsel to help you with this.

QUFA and the University are not involved in the decision-making or administration of the plan and have no legal standing in the appeal process. There is no right to grieve decisions made by the LTD provider and a labour arbitrator has no jurisdiction to consider the dispute.

Q What role does QUFA play in accommodation and return to work?

A If QUFA believes that Queen’s is not meeting its duty to accommodate you in the return to work process, either by not considering all reasonable accommodations or by failing to canvass all appropriate positions, QUFA will grieve on your behalf. In addition, if you believe Queen’s has engaged in any harassing behaviour during the process, QUFA would consider grieving on your behalf.

Q If LTD payments cease when you are eligible to collect a full pension at age 65, when do you stop paying the premiums?

A Your deductions for LTD stop six months before you are eligible for the pension (at age 64.5 years). That’s because short-term disability coverage would ensure that you are fully paid during these six months until you reach age 65, when you can trigger your pension and retire from work. For clarity, people over age 65 who are still working do not have LTD coverage and could expect to go on unpaid leave at the end of a six-month sick leave if they couldn’t return to work. They should not see LTD deductions from their salary.

Q How much does LTD pay?

A The calculation is as follows:

- 68% of the first \$1,000, or \$680, plus
- 60% of the next \$833.33, or \$500, plus
- 50% of the rest, to a maximum of \$5,000 per month.

Most full-responsibility, full-time Member salaries would result in a maximum payment. This payment is tax free because you paid the premiums.

This amount is adjusted for cost of living the first January after you have received LTD benefits for 12 months. The adjustment will be based on the Consumer Price Index for the 12-month period ending 31 January and is capped at 3%. It is important to note that this benefit does not insure your income beyond the capped amount (roughly \$113,000). If you

need to insure income above this amount, you are advised to pursue independent income insurance.

More Questions?

If you have any further questions or concerns about your rights while on LTD, please do not hesitate to contact the QUFA Grievance Officer, Peggy Smith.

Note

¹<https://www.queensu.ca/humanresources/policies/time-away/sick-leave>)

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