

Disability Rights

in the workplace

Returning To Work From Medical Leave

The return to work process is meant to facilitate a worker's return to their pre-leave position, when the worker is ready to return to work and with an appropriate transition period if required. This applies to nurses returning from sick leave, Short-Term Disability (STD), Long Term Disability (LTD), Worker's Compensation (WCB), unpaid medical leave and Employment Insurance (EI) Medical leave.

Some nurses are able to immediately return to their full duties and schedule while others, on the advice of their physician, may return to work with restrictions related to hours of work, shifts worked and/or work duties. These physical and/or cognitive restrictions can be either temporary or permanent.

Regardless of whether the nurse's disability is temporary or permanent your employer has a **legal duty** to provide you with meaningful productive work that meets your restrictions. This legal obligation is commonly referred to as the **duty to accommodate** (refer to Duty to Accommodate document).

There are three "parties" involved in the duty to accommodate, you, your employer and your union. Any time you are requesting any form of modified work for any period **you must contact your UNA Local representative or you're Labour Relations Advisor** prior to meeting with your employer.

Prior to returning to work from medical leave you need to first discuss with your attending physician a return to work plan.

Returning to Work to Full Duties and Hours of Work

If your physician supports you returning to full duties, regular hours of work and shift pattern and you received either **sick leave or STD benefits** then you should notify your immediate supervisor of your return to work date as soon as possible. In addition, let them know that you are fit to return to your pre-leave position.

If you were receiving **LTD or WCB benefits**, under the UNA Provincial Collective Agreement, you are required to **provide your employer with two (2) weeks notice of your readiness to return to work**. This notice period will allow the employer to provide notice to the nurse who may be filling your position on a temporary basis that this position is ending.

The requirement for two weeks notice is also found in many UNA collective agreements. You should check the provisions regarding disability leave by accessing your agreement on First Class member resources or UNA's website www.una.ab.ca.

If a nurse does not qualify for LTD benefits and has no more sick leave credits she may remain on **medical leave without pay or benefits** up to eighteen (18) months. When she returns to work she is required to provide **one months notice** to her employer. If you are not covered by the UNA Provincial Agreement check your collective agreement for this provision.

Gradual Return to Work

Return to work programs/processes often have a rehabilitative focus. Gradual return to work process involves slowly integrating the nurse back into the workplace with the goal of returning to full duties and hours of work within a relatively short period of time.

The gradual return to work can include working reduced hours, different shift pattern and/or modified duties. This is followed by a gradual increase in the number hours worked and/or duties performed until the nurse is able to resume her pre-leave hours of work, shift schedule, and work duties.

If your physician recommends a gradual return to work **you need to request that she/he provide you, in**

writing, the specific details of the plan including your physical and/or cognitive restrictions related to the recommended changes to hours of work, shift schedule and/or work duties. This information needs to be provided to your employer prior to your return to work. You are **not required** to provide diagnosis or treatment details to your employer.

This process involves a short-term **temporary accommodation** and it is imperative that you **contact your Local representative or your Labour Relations Advisor** to assist you in working with your employer to develop a gradual return to work plan.

Returning to Work With Temporary or Permanent Disabilities

The requirement for the employer to accommodate a workers disability is based on the Alberta Human Rights Code and rulings of the Supreme Court of Canada. The Code defines both physical and mental disability as follows:

“physical disability” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment and physical reliance on a guide dog, service dog, wheelchair or other remedial appliance or device.

“mental disability” means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder.

In UNA collective agreements the terms used in most cases are “*fit to return to work and who is incapable of performing the duties of her or his former position*” or “*incapable of performing the duties of her or his former classification*”. The former position is considered to include category (regular, temporary, casual), classification (staff nurse, assistant head nurse, instructor etc), worksite and number of shifts per shift and shift cycle.

This wording is in contract provisions that set out the notice period required by nurses returning to work after receiving LTD or WCB benefits. The nurse is required to provide **twenty-eight (28) days notice** to the employer who must accommodate the nurse. Again this applies to the Provincial Agreement and you need to check your agreement for the relevant notice provisions

Any time your physician determines that you require some form of modified work you must provide your employer, in writing, with **specific details regarding your physical and/or cognitive restrictions related to the recommended changes to hours of work, shift schedule and/or work duties** prior to your return to work. You also need to provide, if possible, the expected duration of the accommodation. You are **not required** to provide diagnosis or treatment details to your employer.

We urge you to contact your UNA local representative or Labour Relations Officer prior to returning to work with a disability. They can assist you in ensuring that you provide the appropriate medical information to the employer and work with the employer to accommodate your physical or mental disability. In addition, if the employer fails to fulfill it’s duty to accommodate you your union can assist you in obtaining appropriate compensation.