

# Public service unions brace for coming showdown over sick leave

BY KATHRYN MAY, OTTAWA CITIZEN    JANUARY 1, 2014



Treasury Board President Tony Clement responds to a question during Question Period in the House of Commons on Parliament Hill in Ottawa on Tuesday, December 10, 2013.

**Photograph by:** Sean Kilpatrick, THE CANADIAN PRESS

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OTTAWA — A big issue in the Conservative government's upcoming showdown with federal unions over a plan to eliminate accumulated sick leave is what to do with the \$5.2 billion in unused leave that public servants have already banked and rolled over.

Treasury Board President Tony Clement has a few options to choose from when he sends his department's negotiators into 2014's round of collective bargaining with orders to attain a new short-term disability plan to replace accumulated sick leave.

By all accounts, he has been presented with proposals that range from generous and reasonable compromises to a hard-line approach the unions would never accept.

Many suggest that the one he picks will reveal how big a battle the government is willing to wage with its unions.

But the government's sweeping amendments to the Public Service Labour Relations Act will so dramatically weaken the bargaining power of 17 unions that many expect Treasury Board will pretty well get whatever concessions it wants. And if it can't, the government has the ultimate weapon: it can legislate.

Andrew Graham, a former senior bureaucrat and now a professor at Queen's University, says the sick leave negotiations could have been among the most divisive and intractable in years — until the government changed the ground rules.

With those changes, he says, the government can effectively call the shots on which unions get to strike and which go to arbitration to resolve disputes. On top of that, it will have the exclusive right to decide which workers are essential and not allowed to strike.

The amendments also reduce the independence of arbitrators and ensure they base their awards on the government's budgetary priorities and that the recruitment and retention of talent are done at current pay rates.

The amendments mark the biggest overhaul of the law since it was passed by the Pearson government in 1967, giving public servants the right to unionize and to bargain collectively. Clement has said he wanted the changes in place for the 2014 round of bargaining.

The big question is what the unions will do.

They had a bargaining strategy before learning of the reforms, which were included in the omnibus budget bill. Their leaders have since closeted themselves in secret strategy sessions, exploring the options, implications and repercussions — not only for this round of bargaining but into the future.

So far, they have vowed to try to get the government to remove the amendments from the omnibus bill and discuss new legislation.

"The deal this government makes will depend on how much they want labour peace," says Graham.

"And what will the union position be? Are they going to fight what I think is a losing fight? Despite their public and private protestations, they should look around and see how alone they are in this ball game with sick leave and try and cut the best deal they can for their members. They can be stubborn or have a sweetened transition."

But Ron Cochrane, co-chair of the union-management National Joint Council, says that while the government may have the power in this round, it still has an obligation to bargain in good faith.

"The omnibus bill tilts the bargaining in favour of the Harper government but it continues to be governed by the duty to ... make every reasonable effort to conclude a collective agreement," Cochrane says.

The government will approach the talks with a basic design that's built around three critical factors: the number of sick days per year public servants will get, the amount of time the short-term disability plan will cover 100 per cent of salary, and the contribution rates for a revamped long-term disability plan.

An early draft of the business plan obtained by the Citizen shows options that would give public servants between five and seven paid sick days before going on short-term disability. Short-term disability typically covers employees for 26 weeks, offering graduated incomes that drop the longer employees are off work. Long-term disability kicks in after that.

The parties would have to decide whether to allow the carry-over of unused days, but clearly the government wants to stop the accumulation of unused sick leave.

The government's plan has been years in the making. In fact, unions were warned changes were coming when Treasury Board launched a \$5.6-million disability management initiative several years ago to get a handle on the government's record-high absenteeism rates and soaring disability rates, led by an epidemic of mental health claims.

The project team set up to lead the initiative developed a strategy for departments, along with a guidebook, manual and training, and was supposed to provide cabinet with a business plan on next steps last year.

The new strategy is aimed at preventing injury and illness in the workplace and getting managers to actively support workers who are on sick leave by ensuring they get early care and return to work as quickly as possible. The team came up with a four-year plan which would cost \$26 million to unroll and could generate hundreds of millions in savings by 2018.

One of the big changes is early intervention by third-party case managers who would step in to monitor and support sick and ill employees as soon as they go on short-term disability.

But scope of the proposed four-year overhaul is sweeping.

Along with negotiating with unions, the government has to seek tenders for new short- and long-term disability plans. The labour minister has to hammer out new arrangements with the various provincial workers' compensation boards to improve the timeliness and handling of injury-on-the-job claims. At the same time, the Employee Assistance Program has to be retuned and expanded and Health Canada's role in conducting the fitness-to-work evaluations could be shifted to the short- and long-term disability insurers.

The unions are in a tough spot. They have been a part of the disability management initiative and they also have concerns about the way sick leave and disability is now managed. Many, however, feel the existing system is workable and can be fixed rather than charging ahead with a wholesale overhaul.

Many of the problems with the existing system are embedded in the design of the plan, which has remained unchanged for 40 years. Managers are failing to monitor and track the use of sick leave like they should, a weakness that when combined with a generous sick leave benefit has invited abuse.

Canada's public servants now get 15 days of fully paid sick leave a year. They can carry over any unused days and roll them over year to year, which they do at a cost of \$325 million a year. A big question is what will happen to all that banked sick leave that many public servants feel they earned.

The government is worried about a run on banked sick leave from public servants who may want to use it before they lose it. Steps are being taken to ensure that doesn't happen.

But the government also has a fiscal imperative to deal with banked sick leave, which if reported as an ongoing employee benefit that could be payable in the future would be worth \$5.2 billion for the core public service and separate agencies. The government is under pressure to record its total compensation costs, including sick leave and disability costs, in its books.

"They want to get rid of it from two perspectives," says Graham. "First, as a contingent liability on the books and as a residual entitlement. They could let it die out but that would take a long time — it would be years — or they could do what Ontario did and make a deal with unions which essentially gave a lump sum for earned sick leave."

The joint council's Cochrane says the unions want to see a business case for the overhaul. They have long suspected the reforms are driven by getting the \$5.2-billion liability for accumulated sick leave off the books to help reduce the deficit before the 2015 election. Treasury Board officials say that amount isn't officially on the books and acknowledge the liability is much less than \$5.2 billion because not all public servants will use their banked leave and whatever is left can't be cashed out.

But some critics say the Conservatives don't want to shell out more money to public servants, especially when they're still paying them billions of dollars for buying out of the accumulated severance pay for voluntary departures the government eliminated during the last round of bargaining.

Rather, the government could kill unused sick credits or it could compromise and offer to carry them over to be used only to top up the 70-per-cent salary typically guaranteed by short-term disability plans.

But banked sick leave is just one of the many variables that will be up for discussion.

The number of discretionary sick days will also be a contentious issue. The government would like to limit those 15 days to between five and eight a year. It also wants no further year-over-year accumulation of unused days.

Once those days are used, a short-term disability plan would kick in that would be managed by a plan administrator. With short-term disability comes case management — done by a third party — to help all workers get the rehabilitation, support and medical care needed to get back to work faster.

Another big issue on the table will be the sick leave formula to replace salaries while on short-term disability. The task force recommended a graduated scale that starts at 100-per-cent salary and would fall to between 70 and 75 per cent the longer an employee remains on disability. The parties will have to negotiate the number of days that will be on full pay.

Short-term disability is typically about 26 weeks before long-term disability begins. The hope is that earlier intervention will mean fewer employees will have to resort to long-term disability.

The government will have to call new tenders for its two existing long-term disability plans — one for unionized workers managed by Sun Life Assurance and another managed by Industrial Alliance for executives. The plans could be merged into one and the waiting period would be extended from 13 weeks to 26 weeks that someone could be on short-term disability. Public servants now get 70 per cent of their salary under the existing plan. That's unlikely to change.

Contribution rates for long-term disability will also be up for discussion. Employees now pay 15 per cent of contributions and the government covers the rest. A move to shift half or three-quarters of the cost to employees could also be on the table.

The unions did have input into the disability initiative and the government is well aware of their concerns, which could be addressed as trade-offs or "inducements" to help reach a settlement.

Unions have long raised concerns that young or new employees can't bank enough sick leave to cover recurring or chronic illnesses. At the same time, healthy older workers who have built up lots of sick leave have to exhaust it all if they fall ill before getting the rehabilitation they need. And then the bank is empty if they relapse. Others simply abuse sick leave and feel entitled to use it as they ease into retirement.

The government would prefer to negotiate with all unions, representing employees in both the core public service and separate agencies, all at once. It wants a uniform transition to a new system and to avoid having two systems with some still operating under the old system and others under a new one.

Unions expect the government will approach negotiations similar to the special round of bargaining it called several years ago to get rid of severance pay for voluntary departures.

In that case, the government targeted the largest union, the Public Service Alliance of Canada, struck a deal and then offered the same take-it-or-leave deal to all the other unions. Many objected and took it to arbitration, which eventually sided with the government because the largest union had accepted the deal.

But PSAC President Robyn Benson has been unequivocal in her refusal to negotiate sick leave in this round: “We won’t trade it, sell it, swap it, lose it or give it away.”

Cochrane agrees: “The fact that this government is so anti-employee and will go to the extreme to get its way makes it the bully in the schoolyard that needs to be put in its place. Hopefully the employees will recognize the bully and stand up to it.”

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