



Health and Safety

Santé et sécurité



December 2010

Maternity-Related Reassignment or Leave

An employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health, or that of the foetus or child. She is entitled to receive her regular pay and benefits pending a decision by a doctor of her choice in accordance with *Section 132 of the Canada Labour Code (CLC) Part II*.

Step 1: A pregnant or nursing employee can cease to work if she believes that continuing any of her current job functions may pose a risk to her health or to that of the foetus or child. The Employer, with the consent of the employee, will notify the workplace committee or health and safety representative (*s. 132(1) CLC Part II*). The Union encourages employees to provide their consent so that employee health and safety representatives are able to assist where required.

Step 2: The employee shall consult with a doctor of her choice to establish whether continuing **any of her current job functions** poses a risk to her health or that of the foetus or child (*s. 132(2) CLC Part II*).

Employees should only consult a specialist in both industrial hygiene and obstetrics. Family practitioners are usually not qualified to assess the risk(s) associated with occupational injuries, diseases and pregnancy. Employees should see their family practitioners only for referral purposes to a combined specialist in industrial hygiene and obstetrics.

Until the employee obtains a decision/medical opinion from their specialist, they should be reassigned (*s. 132(4) CLC Part II*) or sent home on leave with full pay and benefits.

Step 3: The specialist's written medical assessment/opinion should describe the expected duration of the potential risk(s), the activities/conditions to avoid/eliminate the risk(s) as well as any proposed accommodations. This assessment must be based on a bonafide Job Hazard Analysis (JHA) of the employee's position developed and approved by the health and safety committee.

Employees should obtain a copy of the JHA from their employer and confirm with their health and safety/committee representative if the JHA is a bonafide one.

The Employee must provide the Employer with a copy of her specialist's assessment/opinion. Once the specialist has established whether there is a risk, the employee may no longer cease to perform her job under the special provision (s. 132.(1)CLC Part II).

It is crucial that employees obtain a medical assessment from an expert in both industrial hygiene and obstetrics rather than from their own family doctor. The employer may ask pregnant or nursing employees to obtain a medical note from their family doctor. However, an employee should not comply with this request. It is extremely difficult to have a hastily sought medical opinion replaced with that of a specialist at a later date. An improper medical assessment may lead to the employer making a decision that is not in the best interest of an employee, her foetus or her child.

Remember, a pregnant or nursing employee is entitled to a doctor of her choice under the Code. The employer should not be pressuring employees to do otherwise as this would constitute a serious violation of the Code. Should such situations arise, employees should contact their union for assistance.

Step 4:Where the employee's medical specialist supports modification or reassignment, the Employer shall make every reasonable effort to comply with the specialist's directions. Should the Employer after having consulted with the employee conclude such a modification or reassignment is not possible, they will inform the employee in writing. The employee will be entitled to leave. The employee could receive some compensation under the current collective agreement, the Employment Insurance Act or the employer's private insurance plan.

The Employer will have the onus of proving it made every reasonable effort to accommodate the pregnant or nursing employee.

Step 5:Generally, most employers see the value in accommodating pregnant or nursing employees in order to retain them in the workplace. However, where pregnant or nursing employees encounter any difficulties, they should contact their health and safety employee representative and/or union representative for assistance in determining their recourse options.

Where employee's are accommodated, the health and safety committees will participate in the assessment of risks in the employee's workplace.

For more information on this subject, please see Human Resources and Skills Development Canada's (HRSDC) Pamphlet 5 - Pregnant and Nursing Employees : http://www.hrsdc.gc.ca/eng/labour/publications/health_safety/pregnant.shtml .

PSAC Health and Safety Training

PSAC offers Occupational Health & Safety (OHS) training on a regional basis. Please consult your PSAC regional webpage or contact your regional office for more information. In addition, PSAC holds Regional and National Health and Safety

Conferences to bring Health & Safety activists together to discuss and debate workplace health and safety as well as develop strategies to better protect workers and improve our environment and communities.

The following are additional resources provided by PSAC:

PSAC Health and Safety e-network - Register today at
<http://www.pfac-afpc.org/news/2009/what/20090330-e.shtml>

[PSAC Health and Safety Tool Kit](#)
[Awareness Kit on Scent-Free Environments](#)
[Multiple Chemical Sensitivity](#)

http://www.pfac-afpc.org/what/healthsafety/H&S_Publications-e.shtml

Selection of Health and Safety Committee Members and of Representatives Using 'Managerial Functions' as Criterion

It is important Locals ensure those persons who participate as management representatives on workplace health and safety committees or as representatives are persons who actually exercise “managerial functions”.

There has been some debate as to whether or not those management representatives selected by the employer truly exercise “managerial functions” as provided for by the Canada Labour Code Part II and its Regulations.

In order to assist Locals in determining if the right people are participating as management representatives, they should be guided by Human Resources and Skills Development Canada's (HRSDC) *Interpretations, Policies and Guidelines (IPG)* on the matter. HRSDC's full interpretation can be viewed by accessing the following link:
<http://www.hrsdc.gc.ca/eng/labour/ipq/006.shtml> .

In brief, although there is no single definition of “managerial function”, HRSDC determined “managerial functions” are those functions which indicate whether an employee is management oriented in terms of his/her responsibilities. The duties and responsibilities performed need to “seriously impact” on the employment status of other employees.

In order to ensure consistent and uniform application of the Code and its Regulations, the “managerial functions” criteria to be met can be summarized as follows:

1. decision-making authority in financial, operational, personnel and policy matters;
2. the power to make decisions or effective recommendations that materially affect the conditions of employment of others, i.e. recommendations that are usually acted upon;
3. the power to hire, fire, suspend, demote, transfer or otherwise discipline employees;
4. the person acts as a step in the grievance procedure.

Supervisors typically do not meet the criteria identified and therefore are not an acceptable alternative as management representative to workplace safety and health committees. Exceptions may be made with consultation and approval of the Occupational Health and Safety (OHS) Policy Committee.

Should you require any clarification or assistance regarding this issue, please contact your Union Co-Chairperson for the OSH Policy Committee.

LOCK-OUT AND TAG-OUT PROGRAM

Workplace health and safety committees should implement Lock-Out and Tag-Out Procedures where necessary in order to control hazardous energy.

The Lock-Out and Tag-Out program establishes uniform methods for disabling powered equipment, machinery and electrical circuits prior to inspection, servicing, maintenance, or repairs in order to ensure workers are protected from accidental or unexpected activation.

Lock-Out means, in respect of any equipment, machine or device, that the equipment, machine or device has been rendered inoperative and cannot be operated or energized without the consent of the person who rendered it inoperative.

Tag-Out is defined as the practice of using tags in conjunction with locks to increase the visibility and awareness that machinery/equipment is not to be energized or activated.

The Employer, employees and Occupational Health and Safety Committees all have distinct roles and responsibilities. A Lock-Out and Tag-Out program should clearly define the roles and responsibilities of each.

The Employer is responsible for instructing and training all persons who may be required to follow the Lock-Out and Tag-Out procedures, while employees are responsible for complying with any established procedures and taking the required training. Health and Safety Committees participate in the development, the implementation and monitoring of Lock-Out and Tag-Out procedures.

When Lock-Out and Tag-Out procedures are developed, Committees should ensure these comply with the Canadian *Occupational Health and Safety Regulations*, more specifically subsections:

- *1.8(1) Alternate Media*
- *8.12(1) Isolation of Electrical Equipment*
- *8.23(1) Switches and Control Devices*
- *11.4(1) Confined Space Entry*
- *13.16(1) Use, Operation, Repair and Maintenance of Machine Guards*
- *18.9(1) Dive Plan*

At a minimum, Lock-Out and Tag-Out Procedures should include the following:

- *Preparation for shutdown*
- *Equipment shutdown*
- *Equipment isolation*
- *Equipment specification*
- *Lock-Out and Tag-Out application*
- *Control of stored energy*
- *Verify Isolation of Equipment*
- *Extended Lock-Out and Tag-Out*
- *Release from Lock-Out and Tag-Out*
- *Group Lock-Outs*

Making it Home Safely Every Day is what Health and Safety is all about. Make sure that injuries and tragedies don't happen at your worksite.