

# A MEMBER'S GUIDE TO LONG TERM DISABILITY

MARCH 2018



## Long Term Disability

On November 1, 2013, a new provincial LTD plan came into effect. All ETFO locals are now governed by the same terms and conditions of the plan. Participation in the plan is mandatory for all active full or part-time teacher local members. The plan is administered by the Ontario Teachers' Insurance Plan (OTIP).

Your entitlement to benefits is based on the language in the LTD policy. The LTD policy outlines the conditions you have to meet to maintain your claim.

This booklet is intended to be a generic overview of what's involved in applying for LTD.

## Accommodation and LTD

If you have not been able to continue to perform your assignment because of a medical condition, you should consider at least two possibilities: (a) whether a workplace accommodation of your medical condition might enable you to continue working; and (b) applying for LTD.

School Boards have a legal obligation to accommodate workers with disabilities. This is discussed further in the "Return to Work" section of this booklet.

When faced with a medical condition, it is beneficial to explore the medical need to be off work from your existing assignment as well as the possibility of being accommodated in that assignment or another assignment. This will help you to determine next steps and to work with your local if you require accommodation.

Choosing to apply for LTD does not mean choosing against seeking accommodation. Further, if the accommodation you require is a partial reduction in your assignment, you may still have a valid claim for LTD.

If you wish to discuss a possible medical accommodation, please contact your ETFO local or call the provincial office and ask to speak to a counsellor in Professional Relations Services at 416-962-3836 or 1-888-838-3836.

## Filing an LTD Claim

The decision to apply for long term disability benefits should be made in consultation with your health care practitioners, who have the best understanding of your medical condition, its implications, and whether or not you are disabled from working. To apply, you must complete an LTD application package or kit. This may be obtained from your local ETFO office, your school board, and if necessary, directly from the LTD insurance carrier.

There are three parts to the package that must be completed and returned to the insurer:

### 1. Attending Physicians Statement

This is to be completed by your primary physician, often a family doctor. Your specialist should also complete a statement which can then be submitted to the insurer.

### 2. Plan Administrator's Statement

This statement is to be completed by the LTD policy administrator. In most cases, this is either your school board or your ETFO local.

### 3. Member's Claim Statement or Submission

This is your document to complete. It is your version of your illness, its impact on your life and your career, and any medical treatments you may be undergoing. It is imperative that any information you provide be accurate. It should also be consistent with the information your doctors have reported in the Attending Physician's Statement.

## Timing of Application and Benefits

There is a time limit for completing an application for benefits. You must meet this deadline even if you are involved in other processes such as an approved WSIB claim, working in an accommodated partial assignment, seeking other accommodation or pursuing grievance arbitration. If you are having difficulty with this, contact your ETFO local.

The LTD policy has a waiting period or elimination period between the start of the disability and the start of benefit payments (see Plan Features on the next page). The current ETFO Provincial LTD Policy requires a claim to be submitted before six months after the end of the waiting period (at the latest). The waiting period is the later of 110 working days or expiration of sick leave; and in no event more than 24 months. OTIP is not liable for an LTD claim that is not initiated within this time frame.

During the waiting period, a member might access sick credits (at 100% of salary), short-term sickness benefits (at 90% of salary) or Employment Insurance sick benefits.

LTD benefits will not be approved unless the LTD carrier accepts that total disability persisted continuously through the waiting period and beyond.

Pursuing reasonable medical treatment during this time is imperative.

## Plan Features

On March 1, 2018 the Provincial LTD Plan was amended. The chart below outlines the plan features both pre and post March 1, 2018.

|  | <b>Date of Disability - until February 28, 2018</b>  | <b>Date of Disability – March 1, 2018 or after</b>  |
|--|--|---|
| Benefit Level                          | 55% of monthly gross earning   | 50% of monthly gross earning  |
| Maximum Monthly Benefit                | A benefit based on a maximum annual salary of \$150,000.   | A benefit based on a maximum annual salary of \$150,000   |
| Benefit Tax Status                     | Non-taxable  | Non-taxable   |
| Elimination (waiting) Period           | The later of 110 working days or expiration of sick leave; and in no event more than 24 months   | The later of 110 working days or expiration of sick leave; and in no event more than 24 months  |
| Initial Assessment Period              | 24 months  | 24 months   |
| Cost of Living Adjustment (COLA)       | The lesser of 2% or the actual increase in the Annual Consumer Price Index   | The lesser of 2% or the actual increase in the Annual Consumer Price Index  |
| Termination of Benefits (and coverage) | <p>For disabilities commencing prior to age 63, a member's benefits terminate on the <u>earliest</u> of the following:</p> <ul style="list-style-type: none"> <li>• Age 65</li> <li>• When first eligible to at least a 62% unreduced service pension.</li> </ul> <p>For disabilities commencing age 63 or later, a member's benefits terminate on the <u>earliest</u> of the following:</p> <ul style="list-style-type: none"> <li>• 2 years of benefits</li> <li>• Age 70</li> <li>• When first eligible to at least a 62% unreduced service pension.</li> </ul> | <p>A member's benefits terminate on the <u>earliest</u> of the following:</p> <ul style="list-style-type: none"> <li>• The date the member retires</li> <li>• Age 65</li> <li>• When first eligible to at least a 60% unreduced service pension.</li> </ul> |

**Please Note:** Members who are disabled or become disabled prior to March 1, 2018 will continue coverage under the ETFO Provincial LTD Plan in place until February 28, 2018. Members who become disabled on March 1, 2018 or thereafter will be subject to the new common plan criteria.

## Mandatory Early Intervention

Early Intervention is a confidential service provided by OTIP designed to assist you in returning to work earlier, thereby shortening or preventing a long term disability claim.

Your school board will provide your local ETFO office and OTIP with a *Notice of Prolonged Absence* once you have been off ill for 15 consecutive working days or longer. An OTIP Early Intervention Rehabilitation Counsellor will then contact you. The type of assistance that may be provided through the EI program is dependent on the unique circumstances of each case.

## What Does “Total Disability” Mean?

Normally, you are only entitled to LTD benefits if you have sufficient proof that you are “totally disabled”.

LTD benefits are payable during the initial assessment period (own occupation), if you are unable to perform the significant duties pertaining to your own specific assignment as a teacher. After this initial assessment period you may only continue to receive benefits if you are disabled from being gainfully employed at any occupation, not just teaching.

In other words, at some point in your claim when you still are not well enough to teach, you may no longer be entitled to LTD benefits because you are well enough to perform other work.

## Medical Treatment and Medical Proof of Disability

For most LTD claims, medical evidence is the key to a successful claim and you are responsible for providing this information to the insurer.

Medical evidence from your doctors that you have a medical condition is not enough to qualify for LTD benefits. There must be evidence that your medical condition renders you totally disabled. If your doctors disagree about the exact diagnosis of your condition, this may not be a barrier to claiming benefits as long as your doctors share a medical opinion that you are totally disabled because of illness or injury.

After a doctor completes an *Attending Physician’s Statement*, they may also be asked to prepare a report or provide clinical records. Sometimes the LTD carrier will contact your doctor for clarification or input. You should understand that anything you discuss with your doctor may be recorded in the clinical notes and form part of the LTD carrier’s assessment.

The family physician's report is an important element but the insurer relies most heavily on the opinion of a specialist in assessing whether you are totally disabled. It is crucial that such an opinion be obtained as soon as possible. Specialist opinions are only persuasive where they relate to a health condition within the doctor's field of expertise. For example, your psychologist's perspective of how disabling your physical condition is will likely be of limited use.

The more objective and professional the doctors appear in their correspondence, the more credible and reliable the insurer or an adjudicator is likely to perceive their opinions. For this reason, you should not encourage your doctor to act as an advocate for you in the claim. That is not the doctor's role.

The LTD insurer looks for "objective medical evidence" in assessing the merits of a claim. Objective evidence includes, but is not limited to, test results, medications, x-rays, CT scans, MRIs, etc. which may help to illustrate the severity of the disability. The insurer is often resistant to accepting claims based on "subjective" complaints (i.e., symptoms you report experiencing) where there is no objective evidence verifying a basis for disability.

In order to be eligible for LTD benefits, you must be receiving reasonable and customary care for your medical condition on an ongoing basis. The insurer will expect you to be receiving care and treatment with a recognized specialist who has expertise in your area of illness. For example, they will expect a report from an oncologist if the condition is cancer-related, an orthopedic surgeon if there are broken bones or spinal problems, or a psychiatrist or psychologist if there are mental health issues such as depression. You are expected to be compliant with reasonable treatment recommendations made by each of your treating healthcare providers.

## Surveillance

As part of its assessment of a claim for LTD benefits, the insurer may conduct surveillance on you, without your knowledge. The insurer sometimes uses this as a means of assessing your functional abilities and the veracity of your reporting to them and your doctors.

## Duration of Benefits

As long as you can prove that you are "totally disabled" and comply with your obligations under the LTD policy, LTD benefits should continue to be paid. Your policy sets out when payments will cease. Frequently, termination of benefit payments will occur on the earliest date of a number of possible circumstances such as: an age limit, a minimum pension level having been reached, or death (see Plan Features). Your policy provides for termination or suspension of benefit payments in the event of a range of other circumstances. Consult your policy for specifics.

## Appealing a Negative Decision

If your claim is denied, you will receive a letter explaining the reasons for the denial and your appeal rights.

When an LTD claim is denied, this is often because the insurer does not feel that the medical evidence proves you are disabled. It may be that there is no report on file from a specialist or there are no objective tests outlining the nature and severity of the illness. It is imperative that all your health-treating physicians provide this information when it is requested of them.

You should share the denial letter with your doctor and specialist in order to decide what additional information is needed to support an appeal.

There are time limits for pursuing legal action against the insurer and many have deadlines for pursuing an appeal. You should make yourself aware of such time limits. Your denial letter will include information about contractual time limits. If you miss a time limit for pursuing legal action, you may not be able to pursue your claim any further. This is an important issue to discuss with a legal representative well before the expiry of any time limit.

## Denied Appeals

If you file an appeal and it is denied, suing the LTD carrier may be your only recourse. ETFO provides some assistance in pursuing claims (through litigation or arbitration) after an appeal is denied. It is imperative that you contact ETFO for such assistance long before any limit is set to expire in your claim.

## Provincial Assistance with LTD Claims

### Procedure

The ETFO Executive has established guidelines for assisting members in LTD disputes. The provincial office may only become involved with a member's claim once all appeal avenues have been exhausted. To qualify for support, all cases must also meet ETFO's LTD Case Selection Criteria. Legal assistance will not be provided automatically.

If ETFO agrees to extend legal support, a member will be asked to execute a joint retainer agreement which will set out the extent of the legal services ETFO is supporting. Included in the retainer will be a clause where the member agrees that in the event of a lump sum settlement the member will contribute to ETFO the lesser of five per cent (5%) of the negotiated lump sum settlement amount or \$5,000.

Return to work and medical accommodation issues associated with an LTD claim will be dealt with by ETFO locals, and where necessary, in consultation with ETFO's Professional Relations Services (PRS) staff. An OTIP Rehabilitation Consultant with the insurance carrier may also be involved (see Rehabilitation Consultant).

## ETFO Case Selection Criteria

ETFO **will not** provide representation to member in the following LTD circumstances:

1. If the member has retired or resigned from employment with the school board and the provincial office was not involved in the member's claim prior to the retirement/resignation date.
2. If the time limit for initiating a legal action against the insurer has expired or there is insufficient time to review a claim prior to the expiration of a time limit.
3. If the member has retained their own legal counsel.
4. If, in ETFO's opinion, the claim is not sufficiently strong to succeed in litigation against the insurer. (i.e., case insufficiently supported by medical documentation and/or no ability to obtain any additional supportive medical evidence).

## Financial Assistance

If you are without any income because benefits have not yet commenced or your LTD claim is denied, you may seek financial aid through one of more of the following agencies or government programs.

- **Employment Insurance (EI) Sickness Benefits**

These benefits are available from the federal government. They may be paid for a maximum of 15 weeks after a two-week waiting period. You must have accumulated 600 hours of insurable employment in the 52 weeks preceding the claim. There is an application process that requires your record of employment (ROE) from the school board along with a medical certificate signed by your doctor confirming you are medically unable to work. The ROE is completed by the employer after your last day of paid work and the exhaustion of any sick leave. For more information please see ETFO's "*A Member's Guide to EI*" at [www.etfo.ca/adviceformembers](http://www.etfo.ca/adviceformembers) .

- **Ontario Disability Support Program (ODSP)**

This form of social assistance from the Ontario Government includes financial assistance provided to a person with a disability, accommodation resources,



basic living expenses, prescription drugs and basic dental care. There are eligibility requirements. For more information please check the website at [www.mcass.gov.on.ca](http://www.mcass.gov.on.ca) or look for the telephone number in the blue pages of the telephone book under Provincial Government: Disability.

- **Canada Pension Plan (CPP) Disability Pension**

This disability pension is available to anyone who has made sufficient contributions to the Canada Pension Plan and whose disability prevents them from working in any capacity on a long term basis. There is an application process and there are eligibility requirements. Further information about this process can be found at [www.hrhc-drhc.gc.ca](http://www.hrhc-drhc.gc.ca).

- **Ontario Teachers' Pension Plan (OTPP) Disability Pension**

As a member of the Ontario Teachers' Pension Plan, you may apply for a full or partial disability pension if you are unable to work due to a disability or illness. However, accessing this pension is commonly an **absolute last resort** since doing so has serious implications for your long-term pension status as well as your employment status with the school board. For more information about this pension, please contact the ETFO provincial office or go to [www.otpp.com](http://www.otpp.com).

In addition, there may be other resources for financial aid within individual communities and these should be investigated as well.

## Return to Work

You have the right to return to work at any time following an LTD leave if you are medically fit to work. You may also be entitled to an accommodated partial return if you are fit to work reduced hours only.

You are required to provide the school board with a medical certificate stating you are cleared to return to work and you must give the employer prior notice of the date of your return.

If you are not fully recovered but are well enough to return to work in some capacity, medical accommodation may be requested. Consult your local. Sometimes a partial accommodation may occur while an approved LTD claim continues.

School Boards have legal obligations to accommodate workers with disabilities back to work. They are not required to do this if the accommodation would cause undue hardship. However, their obligations are quite extensive.

If you require a medical accommodation, you will need to produce a list of medical restrictions and limitations from your treating physician. Entitlements to accommodations are based on medical need, not worker preference. You should discuss any return to work plan with your doctor(s) and your local prior to accepting a school board's offer.

Some employers will request your permission to write to your doctor for additional information or to speak directly with your doctor for reasons related to your absence under the collective agreement. There are limits to what information an employer may require. There may also be limits on how the employer is entitled to obtain such information. Although every circumstance needs to be carefully considered, in general, you should never sign away your right to privacy by giving your employer full and open-ended access to your medical history. You should review the request with your local ETFO office before signing. If the school board wants information, it can put its request/concerns in writing to you and you can return to your doctor for a further report. This also applies to any medical information needed if you request a medical accommodation as part of a return to work plan.

## ETFO's Role in Return to Work

ETFO will participate in return to work plans or medical accommodation discussions. Members have a right to union representation throughout the entire process. Local representatives regularly advocate on behalf of members returning from medical leaves, including LTD leaves.

## Rehabilitation Consultants

Sometimes, a rehabilitation consultant may be involved in a member's return to work as part of the LTD process. This consultant can be helpful but is not your advocate. The consultant is hired by the LTD carrier. The consultant may not fully know or appreciate the local collective agreement provisions or the school board's protocols and human rights obligations. Even where a consultant is involved, you should consult your local ETFO representative for assistance. Local representatives seek to ensure fairness and reasonableness in safely and efficiently returning members to the workplace.

## Possible Return to Work Outcomes

Every return to work plan is different and each case is based on the member's medical documentation. In general, you might return to:

- 1) your prior assignment;
- 2) your prior assignment with modifications in duties or hours (accommodation);
- 3) your same school with a different but comparable assignment on a temporary or long-term basis; and

4) a different school with a different assignment.

Your physician or specialist does not decide what type of assignment you should have. The workplace parties, which include the school board, ETFO and the member, must have input and are responsible for the process.

## The Right to Return To Work When Ready

Your school board may try to persuade you to return to work at a different time other than what you are seeking. For example, the board may prefer that you return at the beginning of a school year (even if LTD benefits stopped in May) or at the start of the next term (often January). A principal may claim it is not possible to insert you into the school when you are actually ready to work due to staffing issues. They may point to the fact that a long-term occasional teacher was in place during your absence and the principal may want the LTO to remain for the sake of continuity and so as not to disrupt the students.

Despite the above, you still have the right to return to work from LTD when you are medically cleared as fit to return to work with or without modifications. If you are medically cleared to return to work your LTD benefits will likely end and you will often need to return to work to have any income.

ETFO understands this may sometimes provide challenges for a school board but your right to return still prevails. It is imperative that there be local or provincial Federation involvement such as a Professional Relations Services (PRS) counsellor from the ETFO provincial office. The PRS counsellor will be able to assess whether there are actually collective bargaining barriers for returning to work or whether a grievance needs to be filed because the employer appears to be thwarting the process.

## Ongoing LTD Claims: Applying for Canada Pension Plan Disability Benefits

If your LTD claim is approved, you will be obligated to apply for CPP disability benefits. If it is approved, the amount of CPP benefits you receive will normally be offset against your LTD benefit. In other words, your LTD benefits will be reduced by the amount of CPP you receive.

You may feel this is unfair given LTD benefits are non-taxable (under this policy) and CPP disability benefits are taxable. CPP disability benefits may be paid on an individual basis and on behalf of dependents. Some policies require that both amounts reduce the LTD amount. The current provincial LTD plan only requires a member's portion from the off-set.

As long as you are disabled and are not receiving CPP benefits, you will be viewed as a non-contributor for CPP for your period of disability. When CPP calculates your pension at age 65 the amount of pension available to you will be less. If CPP disability benefits are approved you are deemed a disabled contributor and your pension will be richer at age 65.

For further information about CPP disability benefits go to Service Canada at [www.hrhc-drhc.gc.ca](http://www.hrhc-drhc.gc.ca).

If you are approved for CPP disability, you should also apply for the Federal Disability Tax Credit. This may help you reduce any tax payable. For further information about the Federal Disability Tax Credit, go to Canada Revenue Agency at [www.cra-arc.ca](http://www.cra-arc.ca).

## LTD Premiums While On Leave

Under the provincial plan, LTD coverage is mandatory for both full-time and part-time leaves. In other words, you cannot opt out of the plan while you are on a leave. The LTD contract limits continued participation during a leave of absence to a maximum of 24 consecutive months of leave or the leave period defined in the local collective agreement.

Please note: the statutory maternity/parental leave is not included in the 24 months.

## Pregnancy and LTD

If you are in receipt of LTD benefits and you become pregnant, your LTD benefits should not be affected by your pregnancy.

You are not generally obligated to report your pregnancy to anyone while you are on LTD. However, if the original disability resolves and complications from your pregnancy are the reason for ongoing disability, this will have to be reported. Further, this information tends to be revealed to the insurer when regular medical updates are requested for the LTD claim.

If you are on a pregnancy or parental leave when you develop a disabling illness, you should file a claim immediately in order to commence your waiting period. You will not be eligible to receive LTD benefits until the end of your leave but your leave time will count toward your waiting period.

You need to consult the LTD contract to be certain of how these issues will be determined.

## ETFO Fees

Membership fees for a member on an approved LTD leave are waived during the LTD period.

## Ontario College of Teachers (OCT) Fees

A member on LTD is not required to pay the Ontario College of Teachers' (OCT) fee.

However, if you are going to be off for a short period of time it is recommended that you continue to pay the fee. If your membership lapses, the OCT levies a re-instatement charge in addition to the actual fee.

If you will be off indefinitely or for a significant period of time it may be more appropriate to continue payment of the fee. Nevertheless, payment of the OCT fee is ultimately your choice.

## ETFO Employee Life and Health Trust Benefits

ETFO members who are in the ETFO ELHT benefits plan on the date that the LTD benefit commences continue to have benefits at the same level of coverage. For the first 24 months of LTD benefit, continuation in the ETFO ELHT benefits plan is dependent on paying premiums on the same basis as when members were actively at work. For full-time ETFO members actively at work, the health, dental and basic life coverage are premium free. A monthly premium is paid for additional life coverage.

## Ontario Teachers' Pension Plan

ETFO members who are in receipt of LTD benefits continue to earn credit in the Ontario Teachers' Pension Plan without making pension contributions.

## LTD Buyouts

Occasionally, a member on LTD will be approached by an LTD carrier about the possibility of receiving a one-time lump sum settlement of the member's ongoing LTD claim for monthly benefits. Whether a lump sum figure is in a member's best interests will depend on the member's own personal circumstances including financial needs and opportunities as a whole. The member may wish to obtain legal and/or financial advice before accepting such an offer.

While such an offer may appear attractive in order to cease contact with the insurer, there are some issues specific to teachers that should be considered before making any decision. For example, pension plan rules may affect how the lump sum settlement will be treated in terms of future pension contributions.

If a member has been offered a buy-out, they may call and request to speak to the LTD counselor-on-duty at the provincial office for more information on issues to consider.

## Long Term Disability (LTD) Procedures

1. To qualify for support, all cases must meet the *Case Selection Criteria* for LTD assistance. Legal assistance will not be provided automatically.
2. Upon receipt of the LTD claim file, it will be reviewed to determine the issues in dispute and whether additional information is needed to support the claim.
3. If additional medical information is needed to support the file, ETFO staff will attempt to obtain this information. The medical documentation must objectively support the definition of disability in the LTD policy.
4. The member will be contacted to review the issues in dispute and discuss possible next steps.
5. In their discretion, ETFO staff may seek a legal opinion as to the merits of the file for proceeding to arbitration or litigation with the insurance carrier.
6. Medical evidence in a LTD file must be sufficiently strong to consider proceeding to arbitration or litigation.
7. ETFO staff will determine whether to advance a claim to arbitration or litigation with the insurance carrier or whether to extend legal support in some other limited way.
8. If ETFO staff agrees to extend legal support, the member will be asked to execute a joint retainer agreement which will set out the extent of the legal services ETFO is supporting. Included in the retainer will be a clause where the member agrees that in the event of a lump sum settlement, the member will contribute the lesser of five per cent (5%) of the negotiated lump sum settlement amount or \$5,000.
9. Return-to-work and medical accommodation issues will be dealt with by ETFO locals and where necessary, in consultation with ETFO Professional Relations Services (PRS) staff.

## Long Term Disability (LTD) Case Selection Criteria

ETFO **will not** provide representation to members in the following LTD circumstances:

1. If the member has retired or resigned from employment with the school board, and the provincial office was not involved in the member's claim prior to the retirement/resignation date.
2. If the time for initiating legal action against an insurer has expired or there is insufficient time to review a claim prior to the expiration of a time limit.

3. If the member has retained their own legal counsel.
4. If, in ETFO's opinion, the claim is not sufficiently strong to succeed in litigation against the insurer. (i.e., case insufficiently supported by medical documentation and/or no ability to obtain any additional supportive medical evidence).

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# NOTES

## Professional Relations Services

**Elementary Teachers' Federation of Ontario (ETFO)**

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