

This is intended to be a brief outline of basic instructions. There are many situations that will fall outside of the guidance provided herein. If you have any further questions, please don't hesitate to contact your RVP, if you are a local president, or if you are an RVP, the UHEW National Office.

Two-year point of Long-term disability (LTD)

There are a number of things that happen at the two-year point of disability: the definition of disability changes within the LTD insurance coverage from not being able to perform the duties of your own position to not being able to perform the duties of any commensurate occupation (including your own position); so, at the two-year point the insurer may request more medical information to ensure the Member meets the new definition to continue the insurance benefits. Passing the two-year point with the insurance company is important. If the Member is not able to return to work, without further approval of their LTD benefits, their benefits will cease at the two-year point.

Approval also allows the Member to receive a coordination of benefits between Public Service (PS) Disability pension benefits (if applied for and approved), CPP or QPP Disability benefits (if applied for and approved), and LTD benefits. (Note: The insurer can compel the Member to apply for CPP or QPP benefits, as outlined within the policy.) At the age of 65, the LTD benefits will stop and the PS Pension (based upon years of service) and CPP/QPP will revert to the Member's regular benefit entitlement.

Options letters

The employer is obligated to keep the Member "on strength" if there is a reasonable expectation of return to work within the foreseeable future. Foreseeable future is generally defined as six months in case law. However, Public Service Workers have the benefit of the TBS Directive on Leave and Special Working Arrangements (Directive on Leave and Special Working Arrangements- Canada.ca) which extends that six months to two years. Options letters should not be sent to Members prior to the two-year point. If you find the letters are being sent out earlier, raise this at your Local Union Management Consultation Committee (LUMCC), Regional Union Management Consultation Committee (RUMCC), etc.

Options letters vary slightly and should, in theory, be tailored to the employee's situation. They are form letters and can have four options (Return to work, resignation, retirement, retirement on medical grounds). On occasion the employer removes one or more of the options from the letter provided. If there is an option removed from the Member's letter that the Member would like to pursue (i.e. return to work), explore whether that is a viable possibility with the Member that could be medically supported. If so, work with the employer to ensure that it has the documentation it requires to support that option. This may involve the Member attending a Fitness to Work evaluation by Health Canada or an Independent Medical Evaluator (IME), and/or the attending physician filling out additional forms, etc.

There is a deadline on each letter which varies from completely unreasonable to a month or two from issuance of the letter. It is very important to take some sort action and at minimum communicate with the employer when a letter is received. Ideally, the Member will contact the Union immediately after a letter is received, although, more often than not, contact is made with minimal time left to take thoughtful, prudent action. The Union's role when faced with this situation is to request an extension on the deadline outlined. The extension allows the Union representative the time necessary to assist the Member through the process and help to obtain the expertise particular to the medical situation.

In the event that an options letter is issued, and no action is taken, as stated in the letter, the employer will move to administratively terminate the Member. This is obviously not ideal, and worse, has serious negative financial and benefit entitlement implications including the withdrawal of the option of medical retirement. If you experience this situation, liaise with the issuer of the letter or the labour relations contact listed. Explain the situation and try to negotiate an extension to the lapsed deadline (on occasion, despite the deadline lapsing the process to start the administrative termination has not started, so extensions may be possible). If that is not successful, file a grievance citing the No Discrimination clause of your collective agreement, grieving the termination, and continue assisting the Member with their options. Filing a Canadian Human Right Complaint is another measure that may be pursued within one year.

What to do and what to choose is as individual as each Member and is absolutely the Member's choice!

We can help by finding information, providing guidance, assist in comparing the options, be a sounding board, etc., although we cannot make such decisions for our Members. Often it is a process of elimination. The way the options letters are written, the Member can be falsely led to believe that the hurdle is to simply choose one of the options listed and that is the end of it. Unfortunately, that is not the case and each of the options requires different processes and procedures to follow.

The first step for all Members is to schedule an appointment with their physician and have an honest conversation about their health, armed with information about what various routes mean in terms of benefit entitlements. If their health professional does not believe that they will be fit to return to work within the foreseeable future, that rules out the possibility of return to work and the Member is then tasked with reviewing the other options.

The determination of fit to return to work (RTW) does not mean RTW without any accommodations. It should be expected, at minimum, that the Member will require a gradual return to work after a lengthy absence, as well as refresher training, in addition to accommodating any functional limitations their health professional may outline. If the employer suggests that fit to return to work means returning to work without accommodations, the Union rep should aim to educate them immediately,

and, if that is not effective, file a Duty to Accommodate (DTA) grievance citing the no discrimination article of your collective agreement. Also, filing a Canadian Human Right Compliant is another measure that may be pursued within one year.

Unless the Member has the years of service plus age to take a regular retirement without penalty (Rule of 85), medical retirement will generally be the next option to review. (More below w/ medical retirement heading).

Time passes quickly once letters are received; an addition to your role is to negotiate extensions in writing with the employer to allow the Member the time to go through the processes properly. Doctor's appointments are difficult to obtain immediately (especially in summer!), forms take additional time to complete, Health Canada takes time to do their work, etc. On occasion the employer will have unrealistic expectations surrounding how fast or quickly things can be accomplished, and they will need to be enlightened.

Medical Retirement

This is a benefit available to a group of our most vulnerable Members. It is a process to be approved for medical retirement (two medical forms to be completed by the Member's doctor) and sent off to Health Canada. Wait time to hear back from them varies from 3 weeks to months and we have no hard-fast way to predict how long it will take to hear back from Health Canada. Health Canada then produces a one-page form letter outlining approved or not approved for medical retirement. (They check a box and sign.) This is sent to the Pension Centre and the Member. Ideally the Member has a claim for LTD approved beyond the two-year point prior to applying, although it is not essential.

Recommended course of action to apply for medical retirement:

Obtain the work description for the Member's current position (you can do this on the Member's behalf), through the department's Disability Management section or the Member's manager.

If the Member believes that their health professional will recommend medical retirement, ensure the Member contacts the Pension Centre for a Medical Retirement Kit. Contact information for the Pension Centre [here](#).

Member to obtain a Doctor's appointment to discuss options letter received from the employer, as well as the Member's health condition(s) and what can be expected as reasonable for the foreseeable future (Six months).

Member to inform you of when the appointment is, and report back to you on how long the doctor believes the forms will take to be completed.

If the Member believes that medical retirement will be the route to go, bringing the forms necessary to apply for medical retirement (two forms, plus job description) and

having started to enter the information is prudent. The Member would be well-advised to contact the PS Pension Centre and request a "buy-back kit": this will outline what time they are able to buy-back, as well as options for payment schedules. The goal is to maximize one's pensionable time, and we encourage Members to consider purchasing as much time as they are entitled to, to increase their benefits at the age of 65 (at the age of 65 the medical retirement ceases, and benefits change to regular benefits, CPP disability benefits change to regular CPP, over and above the cessation of LTD coordination of benefits.).

Advising the Pension Centre that medical retirement is being considered will prompt the Centre to send several forms regarding updating beneficiary information, as well as other benefits available to them, as well as the deficiencies the Member is owing (DI premiums for periods of DI not approved, pension deficiencies, supplementary death benefit premiums, etc.). Members work at the Pension Centre and are very capable of answering questions that the Member may have.

From there, the following will need to happen:

- obtaining the forms from the treating physician,
- reviewing the forms for completeness, seeking and entering any missing information
- making a copy for the Member's records
- sending the forms to the address listed on the forms to Health Canada
- Member should advise Union representative when the forms are sent in
- Waiting for a response from Health Canada, and if approved, the Member will require your assistance in drafting a resignation letter.

The employer should be agreeable to most extensions, although, like most negotiations, communication is key. The Member is not obligated to provide a decision at this point. Advising the employer that an appointment has been made to discuss the letter and what options are feasible for their particular health situation is reasonable.

Reasonable extensions should be seriously considered:

From the applicable TBS Policy ([Directive on Leave and Special Working Arrangements- Canada.ca](#)) Section 2.2 of Appendix B:

If it is clear that a person will not be able to return to work within the foreseeable future, the person with the delegated authority is to consider granting such leave without pay for a period sufficient to enable the person to make the necessary personal adjustments and preparations for separation from the core public administration on medical grounds.