

Employer LTD Coverage Obligations Can Continue Past Age 65 Absent Clear Language in the Collective Agreement



Kate Ross

Under the terms of most benefit plans, employees are not entitled to long-term disability (LTD) coverage past the age of 65. However, in a recent case out of Ontario, *Canadian Union of Public Employees, Local 1999 v Markham Stouffville Hospital*, 2018 CanLII 111617 (ON LA), the majority of an Arbitration panel found the Employer liable for LTD coverage for employees who continued to work past age 65 based on the wording of the Collective Agreement, even though they were ineligible for coverage under the terms of the insurer's benefit plan. This case reinforces the need for clear and unambiguous language around LTD eligibility.

How the terms of the Collective Agreement overrode the terms of the benefit plan

The Collective Agreement provided that:

“The Hospital will pay 75% of the billed premium towards coverage of *eligible employees* under the long-term disability portion of the Plan (HOODIP) or an equivalent plan as described in the *August, 1992 booklet....*” (emphasis added)

The issue in this case was whether an employee over the age of 65 was an “eligible employee”. The text of the Insurer's plan had an eligibility section that stated “a person under the age of 65 is *eligible* to be a Member...” However, the Collective Agreement referred only to an August 1992 booklet (the “Booklet”), which described the plan and some of the eligibility criteria but did not give an age limit on eligibility.

Although the Employer argued that the text of the Insurer's plan was incorporated into the Collective Agreement as it was referenced in the Booklet, the majority of the arbitration panel disagreed. Instead, the majority found that because other provisions of the Collective Agreement referenced the text of the Insurer's plan directly, the choice to reference only the Booklet meant that only the provisions of the Booklet were incorporated into the Collective Agreement.

Because the neither Booklet nor the Collective Agreement limited “eligibility” to employees under age 65, the majority found that the Employer was obligated to provide coverage to employees who continued to work past their 65th birthdays. In reaching this decision, the majority stated that clear and unambiguous language is required to support a determination that benefits end at age 65, and in this case the language was not sufficiently clear.

The Employer's nominee dissented, calling the majority's decision unreasonable

In dissent, the Employer nominee found that the decision reached by the majority was patently unreasonable. The Booklet did not give a definition of who was an “eligible employee,” and so the definition should derive from the Plan text. Also, he stated that the decision of the majority led to an absurd result: the continuation of benefits for employees whose LTD benefits would have ended at age 65 in certain circumstances described in the Booklet.

Key takeaways for employers

Collective Agreements that incorporate LTD plans must clearly state the eligibility requirements for coverage. If your Collective Agreement relies on a secondary document to define eligibility, it is vitally important that the secondary document align with the text of your Insurer's benefit plan. Without clear and unambiguous language to limit eligibility for LTD or other benefit plans, employers may be on the hook to provide benefits whether or not coverage is actually available through the insurance provider.

Questions? Contact Us

Kate Ross is an associate at Barteaux Durnford. Her practice encompasses all areas of labour and employment law, including advising employers on management issues and terminations in unionized and non-unionized settings, drafting workplace policies, and representing employers at labour arbitrations, administrative tribunals, and before all levels of court in Nova Scotia.

Barteaux Durnford is Atlantic Canada's only homegrown management-side employment and labour law boutique and is recognized by Canadian Lawyer as one of the Top 10 Labour and Employment Boutiques of 2018-19. We help employers solve workplace issues so they can get on with business.



Follow us on LinkedIn

BarteauxDurnford
LABOUR & EMPLOYMENT LAWYERS

1701 Hollis Street, Suite L106
Halifax, Nova Scotia B3J 3M8

Tel: (902) 377-2233
Fax: (902) 377-2234
barteauxdurnford.com



This update is for general information purposes only and does not constitute legal advice, nor does accessing this document create a solicitor-client relationship with Barteaux Durnford. While this update is current to March 27, 2019, like all areas of law, labour and employment matters are highly fact-specific and subject to change. Please contact Barteaux Durnford if you require clarification or specific legal advice.