



University of Alberta

Disability Leave Program

Academic Staff

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Article I - Definitions

In this document, the following terms shall have the meaning as set forth below; unless otherwise specifically provided:

1. **“Administrator”** means the person designated by the University who is responsible for the administration of this Plan on behalf of the University. This includes but is not limited to dealings with other insurers or government agencies on matters arising from provisions of the Plan. Specific day to day administrative responsibilities may be further delegated by the Administrator.
2. **“Association”** means the Association of the Academic Staff of the University of Alberta.
3. **“Disability”** means the complete inability of an eligible Employee because of accidental bodily injury or sickness, to engage in any occupation or employment for remuneration or profit for which he is reasonable suited by reason of education, training or experience, except that during the applicable Elimination Period, and the next 24 months of any Period of Disability, the Employee is deemed to have suffered total disability while he is wholly prevented by such injury or illness from performing his Regular Duties.

In both cases the Participant must be under the regular, ongoing care of a Physician, who may be required to confirm their medical condition from time to time, but they do not have to be confined to their home or an institution.

4. **“Disability Leave Benefit”** means the monthly income payable for a Totally Disabled Participant or to a Participant with a Progressive Disability in accordance with the terms of this Plan.
5. **“Elimination Period”** means a period of 26 weeks in the aggregate for each Disability following the onset of that specific Disability during which the Employee was disabled.
6. **“Employee”** means an employee in the Service of the Employer who participates in an Employer benefit program that provides for inclusion in the Disability Leave Program.

Notwithstanding anything to the contrary expressed or implied any Employee described above who is on assisted leave, sabbatical or other leave with pay, leave without pay subject to payment of the monthly premium by the Employee, or who is placed on disability leave by the Employer, shall be deemed to be an Employee for purposes of this Program.

7. **“Employer”** means the Governors of the University of Alberta.
8. **“Medical Advisor”** means a Physician retained by the Employer to advise the Administrator on medical questions related to benefit entitlement or other aspects relevant to the Plan, medical issues or treatment, or suitability of a Rehabilitation Program.
9. **“Medical Reference Board”** means a board of one or more physicians established from time to time by the Employer for adjudicating disputes on medical matters arising out of decisions made by the Administrator.
10. **“Medical Specialist”** means a person qualified to provide advice relevant to the medical condition, treatment and rehabilitation of a Participant.
11. **“Monthly Earnings”** means the basic monthly rate of salary plus, where one exists, the market supplement in effect on the date disability leave commenced. When a subsequent period of Total Disability is considered as a continuation of the previous period of Total Disability, the Monthly Earnings shall be determined on the date the previous disability leave commenced.
12. **“Participant”** means an Employee who has joined the Plan and whose membership has not terminated, or who is in receipt of a Disability Leave Benefit.
13. **“Period of Disability”** means the period during which an Employee receives benefits under the Program commencing after the last day of the Elimination Period.
14. **“Physician”** means only a duly qualified physician who is legally licensed to practice medicine.
15. **“Premium”** means the monthly cost of the Program as determined by the Employer from time to time divided by the number of eligible employees.
16. **“Program”** means the Disability Leave Benefit Plan established by the employer for its Employees after July 1 1978, retroactive to take effect July 1, 1978.
17. **“Progressive Disability”** means a medically identifiable disease or condition recognized by the medical profession as chronic, progressive and degenerative in nature, and which restricts the participant’s ability to fully perform the duties of their Regular Occupation, or any gainful occupation where the Participant has already been in receipt of a Disability Leave benefit for more than 24 months.

18. **“Regular Duties”** means the normal duties or duties similar to the normal duties that the employee was performing immediately prior to the commencement of the Elimination Period.
19. **“Regular Occupation”** means the duties equal or similar to those duties performed by the Employee immediately prior to the commencement of the Elimination Period.
20. **“Rehabilitation Program”** means any program with the purpose of returning a Totally Disabled Participant to remunerative employment, as described in Article V, Section 3.
21. **“Service”** means the period during which an Employee holds an academic appointment with the Employer.

Article II – Eligibility and Membership

1. Effective Date

The Program is effective on July 1, 1978. Prior to this date similar coverage was provided under the Group Total Disability Insurance Policy issued by the Teachers' Insurance and Annuity Association.

2. Eligibility

An Employee whose Service commenced on or before the effective date of the Program as described in Section 1 of this Article is eligible for coverage under the Program commencing on the effective date. An Employee whose Service commences after the effective date of the Program as described in Section 1 of this Article is eligible for coverage under this Program commencing on the date on which his/her Service commences.

3. Actively at Work

Employees who are absent due to sickness or injury on the date upon which they normally would have commenced Service shall not be eligible for coverage until they are determined to be medically fit to perform all of the Regular Duties of the position to which they were appointed as determined by the Employer, and they report to work.

4. Continued Participation during Leaves of Absence

- (a) An Employee who is on assisted leave, sabbatical or other approved leave with pay shall be eligible for coverage throughout such leave, subject to the termination provisions of Section 5 of this Article.
- (b) An employee who is on approved leave of absence without pay shall be eligible for coverage throughout such leave, subject to the termination provisions of Section 5 of this Article and subject to payment of the monthly Premium by the Employee.

5. Termination of Eligibility

An eligible Employee shall cease to be eligible for disability leave coverage at the earliest of the following:

- (a) the date he ceases to be an Employee as defined in Article I,
- (b) the date of retirement being June 30 following the attainment of age 65, or on August 31 following the attainment of age 65 if the staff member was appointed to the academic staff prior to July 1, 1966.
- (c) the date of death.

Article III – Description of Benefits

1. Monthly Benefit

Eligible Employees who become disabled and whose Disability continues throughout the Elimination Period shall be eligible to apply for disability leave benefits in accordance with Article V. These benefits will be paid monthly in arrears commencing the first day following completion of the Elimination Period and will be equal to 70% of Monthly Earnings subject to the maximum benefit in effect under this Program as follows:

- (a) effective from July 1, 1978 to June 30, 1982 \$3,000 per month;
- (b) effective from July 1, 1982 to June 30, 1983 \$4,283 per month;
- (c) effective from July 1, 1983 \$4,283 per month adjusted by amounts equivalent to adjustments in the appropriate salary scale made after June 30, 1983; and
- (d) effective from July 1, 2004 \$8,750 per month adjusted by amounts equivalent to adjustments in the appropriate salary scale made after June 30, 2005.

2. Pension Contributions

During the Period of Disability an Employee will receive, in addition to the benefits described in Section 1 of this Article an additional monthly benefit equal to the required Employee's contribution to the Universities Academic Pension Plan. This amount will be remitted directly to that Pension Plan by the Employer together with the Employer's required contribution to the Pension Plan.

3. Benefit Adjustment

The monthly benefits described in Section 1 of this Article, subject to the maximum monthly benefit will be adjusted by amounts equivalent to adjustments in the appropriate salary scale made during the Period of Disability.

4. Coordination of Monthly Income

The Disability Leave Benefit as described in Section 1 of this Article will be coordinated with disability benefits from other sources as follows:

- (a) The Disability Leave Benefit will be directly reduced by any benefit payable under Workers' Compensation legislation, excluding pension awards established prior to the claim for Disability Leave, provided this injury is in no way contributing to the current Total Disability.

- (b) The Disability Leave Benefit will be directly reduced by any benefit payable under Canada or Quebec Pension Plan benefits in respect of the Employee only (primary benefit) which the Participant receives, or which the Participant would have been entitled to receive had a satisfactory application been submitted. Such amount does not include benefits payable under these plans to another member of the Participant's family.
- (c) If "Total income from all sources" as defined in subsection (d) of this Section exceeds 75% of Monthly Earnings, then the Disability Leave Benefit will be further reduced so that the "Total income from all sources" equals 75% of Monthly Earnings.
- (d) "Total income from all sources" includes:
 - (i) the disability leave benefit described under "Basic Benefit" in subsection 1 of this Section,
 - (ii) the monthly benefit payable under the Canada or Quebec Pension Plan other than the primary benefit described in subsection (b) of this section,
 - (iii) any other disability benefits from other plans (available through employment),
 - (iv) any monthly pension paid from retirement plans other than the Universities Academic Pension Plan available through employment,
 - (v) any indemnity for loss of time from plans required or provided by any No Fault Auto Insurance law,
 - (vi) any other remuneration received from any employer or from self employment while disabled but excluding 50% of rehabilitation earnings as described in Section 3 of Article V.

5. Repayment of Benefits Paid In Arrears

A Participant is required to immediately advise the Administrator of any Canada or Quebec Pension Plan disability benefits, or other benefits or income considered to be a Direct or Indirect offset as described in 4 (d) paid to the Participant subsequent to approval of their claim for Disability Leave benefits.

A Participant is required to reimburse the Plan an amount calculated by the Administrator for the entire period during which they received Disability Leave benefits and subsequently were paid Canada or Quebec Pension Plan disability benefits or any other benefits or income as noted in 4 (d).

6. Cessation of Benefit

The Disability Leave Benefit payable under the Program shall cease at the earliest of:

- (a) The date the Participant is no longer Totally Disabled or is determined not to have a Progressive Disability;
- (b) The date of death;
- (c) The date the Participant is no longer under continuing medical care or treatment by a Physician, or fails to comply with the requirement to provide medical evidence as specified by the Administrator;
- (d) The date the Participant fails to co-operate in or comply with a Rehabilitation Program approved by the Administrator;
- (e) The end of an approved Rehabilitation Program;
- (f) The date the Participant engages in any gainful employment, except pursuant to an approved Rehabilitation Program; or
- (g) The date the Participant retires as defined in Article II (5 b).

Article IV– Subrogation

4.01 Definitions

For purposes of Article IV:

- a) **Benefit** shall mean any Disability Leave Benefits payable under this Plan together with all sick leave benefits including Medical Leave, leave with pay, or costs under the Supplementary Health Care benefit;
- b) **Interest** means interest calculated in accordance with the provisions *Alberta Judgment Interest Act*, S.A. 1984 c.J-0.5 and amendments and regulations thereto;
- c) **Judgment** shall mean an Order of the court of competent jurisdiction;
- d) **Participant** shall mean any Employee of the University of Alberta who is entitled to Disability Leave Benefits or Medical Leave Benefits;
- e) **Plan** means the Disability Leave Program
- f) **Settlement** shall mean an agreement whereby the participant agrees to accept any sum of money representing past or future loss of income, either by lump sum, periodic payment, or through the purchase of an annuity, or any combination of the above;
- g) **Subrogated Claim** shall mean the Plan's right of subrogation for claims originating prior to 26 January 2004, which arises when the Participant, as a wrongful act or omission of a third party, recovers:
 - i) damages representing the amount of any Benefits paid or payable under the Plan, whether or not the Participant recovers, in whole or in part at all, any additional damages from the third party; and
 - ii) amounts representing the amount of any Benefit paid or payable under the Plan, from the Participant's insurer under a Family Protection Endorsement or other similar insurance coverage.

4.02 Plan's Right of Subrogation

In the event that the Plan pays a Disability Leave Benefit as a result of an act or omission of a third party, the Plan is subrogated to the amount of the benefits paid or payable to the Participant plus interest. The following provisions shall apply:

- a) the Participant shall advise the Administrator of any claim for loss of income being advanced by the Participant against a third party or his/her own insurers pursuant to a Family Protection Endorsement;
- b) the Participant shall include in its claim advanced against a third party or his/her own insurers pursuant to a Family Protection Endorsement the amount of the Benefits paid or payable under the Program arising as a result of any disability which was caused by the act or omission of a third party together with, if the Participant remains disabled as a result of the actions or omissions of a third party, the amount of all anticipated future Benefits;

- c) the Participant agrees to cooperate with the Administrator and to provide all records, transcripts, reports and information with respect to the calculation or allocation of any loss of income claim. In addition, the Participant agrees to attend at Examination for Discovery or trial at the request of the Administrator;
- d) the Plan shall have the right (but not the obligation) to maintain an action in the name of the Participant to recover its Subrogated Claim and the Administrator may at all times engage a solicitor to recover its Subrogated Claim and for this purpose, the Participant shall permit the Administrator to engage his/her solicitor to pursue its Subrogated Claim;
- e) the Participant shall not settle his/her claim without the prior written consent of the Administrator. Any Settlement by the Participant without the consent of the Administrator shall be deemed to be a fundamental breach by the Participant of his/her obligations under the Plan and in addition to any remedies available to the Administrator, the Administrator may forthwith terminate payment of any Benefits payable under the Plan; and
- f) the Participant shall not sign a Release, which releases the Subrogated Claim of the Plan, without the written consent of the Administrator;

4.03 **Recovery of 100% of Claim**

Where, as a result of a Judgment or Settlement, the Participant has recovered 100% of his/her damages, including, but not limited to, general damages, special damages, loss of income, loss of housekeeping capacity and interest, the Participant shall pay to the Administrator 100% of the Benefits, paid or payable, less a proportionate share of legal fees.

4.04 **Recovery of less than 100% of Claim**

Where as a result of a Judgment or Settlement, the Participant does not recover 100% of his/her damages, including, but not limited to, general damages, special damages, loss of income, loss of housekeeping capacity and interest, the Participant shall pay to the Administrator, a percentage of its Benefits paid which is equal to the percentage of total recovery made by the Participant in relation to all of his/her damages, less a proportionate share of the legal fees paid.

4.05 **Settlement without Consent of the Administrator**

In the event that the Participant settles without the consent of the Administrator, in addition to any other remedies available to the Administrator, and notwithstanding any express term of any Settlement:

- ii) the amount of the Settlement shall be deemed to have been paid firstly with respect to any claim which the Plan may have a Subrogated Claim and for which the Participant has received benefits arising from the act or omission of a third party;
- iii) the amount of recovery shall be deemed to have been paid with respect to the future benefit as of the date of settlement and the Plan shall offset the full amount which would otherwise be offset on a Settlement with the consent of the Plan Administrator; and
- iv) the balance, if any, shall be deemed to have been paid with respect to the other claims of the Participant.

Article V – Benefit Limitations and Special Provisions

1. Benefit Limitations

No benefit is payable for Disabilities resulting from

- (a) declared or undeclared acts of war,
- (b) participation in, or in consequence of having participated in, the commission of an indictable offence.
- (c) a sickness due to alcoholism, drug addiction or the use of any hallucinogenic or stimulating agent taken voluntarily unless
 - (i) the sickness is specifically documented as being an organic condition, or
 - (ii) the Employee is undergoing an alcoholic or drug addiction rehabilitation program that has received prior approval but only while the Employee is participating in the program of rehabilitation.

2. Recurrent Disabilities

Successive periods of Disability suffered by an eligible Employee shall be deemed to occur in the same Period of disability, (i.e., no new Elimination Period is required) except when:

- (a) the later Disability is due to causes wholly different from those of the prior Disability, or
- (b) the later Disability is due in whole or in part to causes related to the prior Disability and the employee completes at least 6 consecutive months of Service in their Regular Occupation, excluding Service during a Rehabilitation Program, before the commencement of the later Disability.

3. Rehabilitation

- (a) A disabled Employee may be required by the Employer to participate in an approved Rehabilitation Program which will include one or more of the following activities:
 - (i) employment in the Employee's Regular Occupation but on a less than full-time basis, or
 - (ii) employment in another occupation more compatible with the nature of the Disability, or
 - (iii) participation in a formal vocational training program.

- (b) An Employee's entitlement to disability leave benefits will not be prejudiced at any time during his participation in a Rehabilitation Program except as follows:
 - (i) Disability Leave benefits will be reduced by 50% of the income received during a Rehabilitation Program.
 - (ii) The "all sources maximum" of 75% of Monthly Earnings described in subsection c) of section 4 of Article III, is increased to 100% of Monthly Earnings.
 - (iii) Disability Leave benefits will cease 48 months after the commencement of the Rehabilitation Program unless the Employee has again become Disabled.

4. Progressive Disabilities

- (a) A Participant with a Progressive Disability may qualify for Disability Leave Benefits beyond 48 months of participation in a Rehabilitation Program if all of the following conditions are satisfied:
 - I. The Participant provides medical evidence of a Progressive Disability that is satisfactory to the Administrator; and
 - II. The Progressive Disability, in the judgment of the Administrator, has reached a stage where the Participant is, and will continue to be, unable to perform a substantive portion of the duties of their Regular Occupation for the foreseeable future; and
 - III. The Administrator determines, after consulting with a Medical Advisor, the Participant's attending Physician, or an appropriate Medical Specialist that a Participant with a Progressive Disability can continue to work on a part time basis, or on a reduced work load basis in their Regular Occupation, or in alternative employment.
- (b) Where a Participant receives a Disability Leave Benefit due to a Progressive Disability and employment income with respect to part-time work, reduced work or alternative work, the LTD Benefit will be coordinated with such income under the Program as follows:
 - I. The Disability Leave Benefit will be reduced by 50% of the employment income received;
 - II. The "all sources maximum" of 75% of Monthly Earnings described in subsection c) of section 4 of Article III, will be increased to 100% of Monthly Earnings.

- (c) If a Participant's Progressive Disability is subsequently determined to become a Total Disability, this section will no longer apply and the Participant will qualify for full Disability Leave Benefits under the terms of the Plan, but no second Elimination Period will be required provided there is no interruption in Disability.
- (d) Benefits payable under this section may continue as long as the above requirements continue to be met.

Article VI – Claims Administration

1. When the illness of an Employee who has been granted Medical Leave is expected to exceed 26 weeks in the aggregate, the Employee will submit an application for Disability Leave to the Administrator on claims forms provided by the Administrator for this purpose.
2. The Administrator will review the application to determine the Employee's eligibility for disability leave benefits and the amount of benefits payable. The Administrator will consult with the Medical Advisor on questions requiring medical advice. The Administrator may consult with the attending Physician or other health care providers or Medical Specialists in order to adjudicate the claim or determine appropriateness of a Rehabilitation Program, job accommodation or medical treatment.
3. Employees in receipt of Disability Leave Benefits may be required by the Administrator
 - (a) to provide medical evidence from time to time and to undergo periodic examination by a Medical Specialist chosen by the Administrator to establish that the Total or Progressive Disability continues to exist;
 - (b) to actively participate and co-operate in the development and implementation of a Rehabilitation Program where such program is recommended;
 - (c) to apply for any government sponsored disability benefit for which the participant is eligible and to make an appeal, from time to time, if the government sponsored disability benefit is denied or terminated; and
 - (d) to provide all other reasonable information as requested by the Administrator.

Failure to meet any of the above requirements within the time frames specified by the Administrator will result in immediate cessation of Disability Leave benefits.

4. A Participant may request a review of a decision regarding their claim for Disability Leave Benefits, in writing, within 30 days of the date of notification of such decision. The only recognized dispute resolution processes under the Program are the Medical Reference Board for disputes based on medical evidence and the Administrative Review Committee for disputes involving plan interpretation.

(a) Disputes Based on Medical Evidence

It is the responsibility of the Participant to arrange for and submit any new medical evidence to the Administrator within 90 days from the date of the request to have the decision reviewed. The Administrator will review the Participant's new medical information in conjunction with other information already contained in the claim file, and may consult with a Medical Advisor, the attending Physician, or other health care providers or Medical Specialists in order to adjudicate the claim.

The Administrator will advise the Participant in writing of the decision resulting from the review. If the Participant disagrees with the interpretation of the medical evidence, they may request a review by a Medical Reference Board. This must be requested in writing, within 30 days of notice of the decision resulting from a dispute under this provision.

Request for a Medical Reference Board

A Participant may request that a Medical Reference Board be appointed to review disputes arising from the interpretation of previously submitted medical evidence in support of the application for, or continuation of Disability Leave Benefits, or participation in a Rehabilitation Program.

The Medical Reference Board shall be established by the Administrator within 30 days of receiving the Participant's request. The Board shall consist of a Vocational Rehabilitation consultant appointed by the Employer in consultation with the Association, and two Physicians with medical specialties appropriate to the issue under review as determined by the Medical Advisor. One Physician will be appointed by the Employer. The second Physician will be appointed by the Participant. Both Physicians must not have had any prior involvement with the Participant, either directly or indirectly. The procedures to be followed by the Medical Reference Board shall be determined by the Administrator.

No decision, order, directive, declaration, ruling or proceeding of the Medical Reference Board shall be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered or proceeding taken in any court, whether by way of injunction, declaratory judgement, prohibition, quo warrant or otherwise, to question, review, prohibit or restrain the Medical Reference Board or any of its proceedings. All medical determinations made by the Medical Reference Board shall be final and binding upon the parties.

(b) Disputes Based on Administrator's Interpretation of the Plan

A Participant may request a review of an interpretation of the plan which results in denial or discontinuation of their Disability Leave Benefit. In such an event, the Participant must present to the Administrator in written form, within 30 days, the reasons for disputing the interpretation. The Administrator shall refer the request to an Administrative Review Committee established by the Employer for this purpose.

No decision, order, directive, declaration, ruling or proceeding of the Administrative Review Committee shall be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered or proceeding taken in any court, whether by way of injunction, declaratory judgement, prohibition, quo warrant or otherwise, to question, review, prohibit, or restrain the Administrative Review Committee or any of its proceedings. All decisions of the Administrative Review Committee shall be final and binding upon the parties.

Article VII – General Provisions

1. Advisory Board

An Advisory Board will be established by the Employer and shall include at least one person named by the Association to:

- (a) advise the Administrator on the administration of the Program;
- (b) determine questions arising from interpretation of the Program other than medical questions referred to the Medical Reference Board; and
- (c) recommend to the Employer and the Association changes to the Program.

2. Insurance

The Employer may at any time enter into an insurance agreement with an insurance company to provide all or a part of the benefits provided under this Program, and in particular may enter into a “Stop Loss” agreement with an insurance company to limit its liability under this Program.

3. Other Employment Income

A Participant has an obligation to advise the Administrator of earnings or payments from any employment in which they were engaged at the onset of Disability, or at the time they become so engaged while in receipt of benefits under this Program, and is required to divulge such detail as deemed necessary by the Administrator.

4. Misstatements

In the event it is found that any material fact has been incorrectly stated, the Administrator is empowered to make or cause to be made such adjustments or terminate payments in respect of such Participant, for the purposes of the Plan, as the Administrator, shall deem equitable.

5. No Right To Employment

The Program shall not be construed to create or enlarge any right of a Participant to remain in the employment of the Employer, nor shall it interfere in any manner with the right of the Employer to discharge a Participant at any time. Discharge of an Employee while in receipt of Disability Benefits does not impact continued receipt of Disability Leave Benefits where eligible.

6. Liability

No person, Employee or former Employee, Participant or former Participant shall have any recourse under any provisions of this Plan against any past, present or future Governor, Officer, or Employee of the Employer who shall be free from all liability, except in the case of willful misconduct.

6. Currency

All premiums to and payments under the Program shall be payable in the lawful currency of Canada.

7. Construction

The Program shall be construed and enforced in accordance with the laws of the Province of Alberta.

8. Amendment of the Plan

The Employer expects and intends to maintain the Program indefinitely, but reserves the right to amend, modify or discontinue the Program either in whole or in part, subject to the requirements of any applicable legislation, Agreement, or policy.

Where the amendment directly or indirectly affects the benefits due to the Participants, notice shall also be given to the Participants.