
Collective Agreements and Older Workers in Canada

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Collective Agreements and Older Workers in Canada

*An Analysis of Clauses Pertaining to Older Workers in Major
Collective Agreements: A Tool for Labour Practitioners*

Objectives of the Study

Canada's population will become significantly older over the next several decades. This trend is expected to have a tremendous impact on the workforce and the workplace in general. The purpose of this research is to examine to what degree older workers and ageing in the workforce have been considered in the context of collective bargaining.

The study identifies and analyzes provisions contained in major Canadian collective agreements that may have a direct bearing on the working conditions of older workers. Among other things, this involves evaluating the wording, the scope and the practical implications of various clauses pertaining to older workers. Where appropriate, a description and comparative analysis of pertinent statutory provisions is provided in the study's subsections. This is meant to give the reader an overview of the legislative context within which collective agreements have been negotiated.

This study is intended to help employers, union representatives, labour practitioners and researchers gain a better understanding of current workplace practices and how collective agreements can address emerging workplace issues.

The study consists of six chapters, each dealing with a particular set of provisions found in major Canadian collective agreements: work-time organization; leaves of absence; training, retraining and education; economic security; (anti-)discrimination clauses and practices; and transition to retirement.

OVERVIEW

Chapter 1: Work-time Organization

This chapter analyzes clauses having an impact on older workers with regard to work-time organization. The chapter is subdivided into four sections:

- The **first section** deals with shift work. Shift work related clauses may give older workers preference in the selection of shifts or give them the right to arrange special shift schedules. There may also be general limits imposed upon the use of shift work, such as exempting long-service employees from working irregular or undesirable shifts. More general limits on the use of shift work may also be established, along with rest periods between shifts.
- The **second section** looks at the issue of flexibility in hours of work. Many older workers seek flexible work schedules and practices in order to better manage and balance professional and personal commitments. This is achieved through clauses allowing flexible scheduling and compressed work weeks, as well as clauses ensuring the possibility of trading shifts.
- The **third section** deals with overtime. Subject to operational requirements, the right to refuse overtime work is acknowledged in many collective agreements. Therefore, when overtime is offered by order of seniority, senior employees have the opportunity to accept or refuse overtime. Moreover, many agreements contain provisions that prevent senior employees from having to work extended hours. Finally,

many agreements allow employees to opt for time off or compensatory leave in lieu of overtime pay.

- The **fourth section** focuses briefly on voluntary work reduction, which can be implemented in three different but interrelated ways: work-time reduction, workload reduction or job sharing. In the first case, the working time (normally hours) is the key factor. On the other hand, in workload reduction, the time factor is used in conjunction with the amount of work assigned to the worker. Job sharing is another form of voluntary work reduction, involving two or more employees sharing the same position. These voluntary work reduction measures are often made available to senior employees first.

Chapter 2: Leaves of Absence

This chapter analyzes various clauses with regard to leaves of absence, including annual vacations. The chapter is subdivided into three sections:

- The **first section** deals with annual vacations, including annual vacation entitlements, paid supplementary vacation on the basis of age and/or long service, carry over or pay out for vacation credits and unpaid supplementary vacation. Clauses pertaining to annual vacations usually include a scale whereby longer vacations are granted to employees with more years of service. However, some agreements also include provisions for additional paid vacations as well as clauses regarding the possibility to carry over earned but unused vacation credits.

Moreover, some agreements provide for extended or supplementary vacations in the form of unpaid leave.

- The **second section** covers sick leave entitlements including the calculation, the use and the accumulation of sick leave credits, as well as disability and other health plans. Sick leave provisions are useful in ensuring that employees receive appropriate medical treatment and that they have an opportunity to recover from illness while maintaining their employment as well as their current level of income. Disability and other health plans, such as vision care, hearing aid, prescription drugs and hospital care may also be of great benefit to older workers.
- The **third section** covers special leaves of absence, which typically include personal leave, family care leave, bereavement leave, compassionate leave and deferred salary leave. It also discusses the protection of rights following a leave. These provisions deal with the duration of the leave, whether it is to be with or without pay, and the circumstances in which the employer is required to grant the leave or is entitled to refuse a request for leave.
- The **first section** looks at three types of training provisions commonly found in collective agreements: on-the-job training, training courses and apprenticeship programs. The most important issues with respect to these training programs include their availability, the selection process used to determine who will be trained, and the apportioning of costs (i.e., whether or not employees must disburse part of the training costs, use their free time or take an unpaid leave).
- The **second section** deals with retraining provisions including an employee's right to retraining, especially in cases of technological and organizational change. Amongst the many retraining provisions found in collective agreements, the provisions dealing with the following issues are of particular concern to older workers: eligibility, whether retraining is mandatory, employers' obligations in providing training opportunities, length and timing of these opportunities, and their impact on pay, benefits and seniority. This section also looks at the notion of functional flexibility or multiskilling. An employee's ability to perform a wide variety of tasks may depend on the incentives in place for skill acquisition, and on the training opportunities made available.
- The **third section** examines various types of educational leave. For the purpose of this study, this section focuses on job-related

Chapter 3: Training, Retraining and Education

This chapter highlights various types of provisions pertaining to training, retraining and education. The chapter is subdivided into four sections:

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educational leave, general educational leave and sabbatical leave. Educational leave provisions address the following issues: eligibility, requirements, timing, length of leave, remuneration, impact on benefits and seniority, as well as the issue of responsibility for both employers and employees.

- The **fourth section** deals with various funding schemes used by unions and companies to help them deal with the costs associated with training, retraining and education. This section provides the reader with some examples of recently negotiated training and educational funding schemes.

Chapter 4: Economic Security

This chapter deals with measures designed to ensure job and wage protection for older workers: seniority provisions, as well as various job security and income-related measures. The chapter is subdivided into three sections:

- The **first section** looks at seniority rights and staffing issues (i.e., how seniority is defined, calculated and applied). The extent of protection conferred by seniority clauses varies depending on the unit within which seniority applies. In addition to this, the calculation of an employee's seniority varies from one collective agreement to another. However, most collective agreements have measures that provide job security in cases of work interruption and job changes. This section analyzes these seniority-based clauses, which deal with employment status, change in status, transfers (within and outside

the bargaining unit), bridging of service and portability. Finally, this section briefly looks at how the application of seniority in the workplace may affect employment conditions such as layoffs and recalls, promotions and demotions, as well as transfers, shift assignments and vacation scheduling.

- The **second section** focuses primarily on job security provisions specifically designed for older workers. They include transfers to lighter or less demanding jobs, return to work provisions in cases of injury, illness or disability, as well as provisions dealing with organizational and technological change and relocations. All of these measures seek to provide older workers with employment stability. For example, transfer provisions are beneficial in ensuring that older workers have continued employment suitable to their capabilities. Return to work provisions help to reintegrate older employees into the workplace following a work-related injury or illness, as well as, in some cases, a non work-related injury or illness. Organizational and technological change provisions seek to address the minimization of potentially adverse effects on an older worker's continued employment. Similarly, provisions dealing with relocations include measures that guarantee employment or, at the very least, aim to accommodate the needs of affected workers.
- The **third section** looks at income-related provisions. Recognizing that the issues of job security and income security are intrinsically linked, the following income security clauses

are analyzed: wage maintenance, longevity pay (service pay), severance and termination pay, early retirement packages, and retirement pay or allowance. All of these are important mechanisms designed to protect the income of older workers and, as such, contribute to their economic well-being.

Chapter 5: (Anti-)Discrimination Clauses and Practices

This chapter looks at provisions relating to the issue of age-based discrimination in the workplace and examines their impact on older workers. The chapter is subdivided into three sections:

- The **first section** deals with two types of provisions: those specifically prohibiting any form of discrimination based on age, and those stating that age alone cannot be used to deny an employee access to work-related programs or activities. This section looks at these two types of provisions and comments on the relationship between anti-discrimination clauses and the grievance process.
- The **second section** examines affirmative action measures that may benefit older workers. They include provisions pertaining to minimum hiring quotas, reserved positions and exemptions. This section also examines hiring hall provisions. The primary goal of these affirmative action measures is to achieve employment equity for older workers by facilitating their hiring and retention.
- The **third section** highlights various clauses that may implicitly contain age-based discriminatory elements. These include special wage rates, mandatory retirement, and medical certificates and examinations.

Chapter 6: Transition to Retirement

This chapter focuses on measures designed to ease the passage from full-time employment to complete retirement. It is subdivided into three sections:

- The **first section** focuses on pre-retirement leave or vacations. Clauses pertaining to this issue vary greatly, ranging from granting regular vacation entitlements for the final calendar year of service when service is interrupted to granting a one-year paid leave of absence. Some contracts also include various schemes involving such benefits as vacation entitlements, sick leave credits, sick pay gratuities and superannuation allowances. The duration and requirements of pre-retirement leaves also vary from one agreement to the next. However, eligibility usually depends on the employee's age, years of service or a combination of both.
- The **second section** highlights provisions that are intended to help older workers prepare for retirement. Most retirement preparation programs fall under the general heading of pre-retirement counselling sessions or financial workshops. However, they may include advice and help in areas as diverse as

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health care, housing arrangements, life adjustments, legal matters, organization of leisure time and job-finding skills for a second career.

- The **third section** looks at the issue of phased retirement. This can take one of two forms: a pre-retirement progressive reduction in hours (or days) of work, or work options for employees who are of post-retirement age.

The latter can include a deferred retirement or part-time work for pensioners who wish to remain employed after the "normal" retirement age. These measures allow employees to ease into retirement or, if they wish, to put off retirement. This section also looks at the impact of these options on the benefits coverage of older workers, in terms of both contributions and access.

Collective Agreements and Older Workers in Canada

*An Analysis of Clauses Pertaining to Older Workers in Major
Collective Agreements: A Tool for Labour Practitioners*

About This Study

Collective Agreements and Older Workers in Canada is part of a series of studies on collective agreements conducted by the Labour Program at Human Resources Development Canada (HRDC). The Labour Program has undertaken these studies in the context of its ongoing commitment to track information and conduct research on the changing workplace, on changes in the nature of work itself, as well as on the impact of these changes on workers and employers.

In the spring of 2001, the Labour Program made public its first study in the series: *Work and Family Provisions in Canadian Collective Agreements*. This work/family balance study, the present study, as well as those to come, are meant to help employers, union representatives, labour practitioners and researchers gain a better understanding of current workplace practices and how collective agreements can address emerging workplace issues. The main purpose of the series is to examine to what degree provisions related to a particular issue have been implemented.

The Labour Program intends to update these studies on a periodical basis. Consequently, readers are invited to submit their comments for future revisions at the following address: <http://labour-travail.hrdc-drhc.gc.ca/worklife/caowc-dftacc/comments.cfm>

INTRODUCTION

Introduction

As evidenced by the designation of 1999 as the *International Year of Older Persons*, population ageing has become recognized as a very important social, political and economic issue. It will most likely remain so for the foreseeable future as the baby boom generation enters old age.

The low birth rate as well as an ever-increasing life expectancy are major contributors to the gradual ageing of the population. This situation has raised concerns and elicited speculation about the long-term financial sustainability of Canada's social safety net, particularly with respect to its health care system and public pensions. However, changes in the age structure will also have repercussions on Canadian workplaces as the average age of workers increases.

Inasmuch as the production of goods and services to meet society's needs and ensure economic growth is to be increased or at least maintained, it will be necessary for employers to rely on an ageing labour force. The possible lack of younger job market entrants and the need for experienced workers may also require that employers retain the services of older workers beyond the normal age of retirement. This shift would necessitate major changes in existing incentive structures in collective agreements, to encourage more workers to willingly defer full retirement and continue to be employed, whether as part-time or as full-time employees. It would also entail making changes to the workplace environment and working conditions to ensure that older

workers have the capacity (i.e., skills, health) to remain employed into their later years. In short, human resource management practices and policies will have to take into account and address some of the specific needs of older workers.

Background

In a study such as this one, it is important to consider the overall context with regard to older workers in Canadian workplaces. One element worth noting is the fact that older workers tend to be concentrated in some economic sectors (e.g., manufacturing) more than others (e.g., services). Hence, any workforce downsizing, whether due to globalization or to other economic changes, could make many older workers particularly vulnerable to employment instability. Moreover, many employers now increasingly resort to contingent workers instead of establishing full-time permanent positions. This change in employment relationships further adds to the vulnerability of older workers. Finally, the current shift to a knowledge-based economy and the attendant technological changes have in many circumstances reduced the relative value of some older workers' previous skills and experience, and necessitated retraining for those who wished to remain employed.

Moreover, one must not forget that older workers do not form a homogeneous group. For instance, it is important to take into account the very real differences among older workers on the basis of gender: older women have particular needs and interests that are distinct from those of older men. Since women are still responsible for the majority of housework and family care (in terms of both child rearing and elder care), they must

in many instances interrupt their careers for extended periods of time. In other cases, women have to join the labour force in their later years as new entrants due to changes in their personal or family situation (following a divorce, widowhood, or their spouse's job loss). This often results in a number of women holding jobs that are more precarious and that offer less pay and fewer benefits, due in part to limited prior work experience or obsolete work-related skills. This also means that women are likelier to face economic hardship in their senior years, if they have little pensionable service or if they are relegated to jobs that do not provide pension plans.

Similarly, older workers in different occupations and economic sectors will be faced with different issues and problems. There are very concrete differences between a blue-collar industrial job and a job in the retail sector. Workers employed in occupations requiring strenuous physical work may face premature ageing and become disabled at a much higher rate than those working in less stressful and demanding positions. On the other hand, employees in low-paying service sector jobs with relatively few benefits may face greater economic hardship after retirement.

Objectives of the Study

The purpose of this research is to examine to what degree older workers and ageing in the workforce have been considered in the context of collective bargaining. The study identifies and analyzes provisions contained in major Canadian collective agreements that may have a direct bearing on the working conditions of older workers. Among other things, this involves

evaluating the wording, the scope, and the practical implications of various clauses pertaining to older workers.

Why Analyze Collective Agreements?

As highlighted in the *Work and Family Provisions in Canadian Collective Agreements* study, there are many reasons to analyze contract clauses found in collective agreements:

- The collective bargaining process still remains one of the principal means of regulating industrial relations in Canada. This is clear, considering that almost one third of Canadian workers are unionized and that their working conditions are by and large governed by collective agreements.
- It should be remembered that historically, employers in non-unionized firms have often based their human resource policies on contract clauses found in collective agreements. Likewise, federal and provincial legislation regarding employment standards, occupational safety and health as well as a number of social programs have in many instances been inspired by practices stemming from the collective bargaining process.
- Although provisions appearing in collective agreements are generally the result of a compromise and must therefore be interpreted with caution, it is nevertheless possible to discern some of the union and employer priorities regarding the working conditions of employees in general, and older workers in particular.

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- The comparison of collective agreements in various sectors and for different employment categories also gives an indication of specific needs in a variety of contexts (i.e., different occupations, industries, etc.). This will certainly prove to be useful if appropriate and adapted policies are to be developed in the long term.

Definition of "Older Worker"

Who is an older worker? Many definitions are currently in use, depending on the source of information. For instance, Statistics Canada, in its Spring 1998 issue of the *Labour Force Update*, defined older workers as "workers aged 55 or over"; the National Advisory Council on Ageing refers to individuals aged over 45, while the U.S. Age Discrimination in Employment Act applies to workers who are 40 years of age and more.

Furthermore, a distinction between different subgroups within the broader category of older workers has been widely established by researchers and is commonly used and accepted. Generally, studies on older workers subdivide the group into those aged 55 and over and those aged between 45 and 55. When discussing issues related to age groups, it would appear that the context determines the boundaries between one age group and another.

In this research, an "older worker" is defined as an employee aged 45 or over, unless otherwise specified. Although it may seem to be an arbitrary choice, this definition is in line with previous research conducted at Human Resources Development Canada (HRDC).¹

Methodology

This study is based on contract clauses found in major Canadian collective agreements covering 200 or more employees in sectors under federal jurisdiction and 500 or more employees in sectors under provincial jurisdiction. Relevant provisions were identified and statistics compiled from the Workplace Information Directorate's (WID) Collective Agreement Information Retrieval System (CAIRS) database. Negotech, an electronic document dissemination system that includes contract summaries as well as full-text collective agreements, was also used in order to identify specific examples and clauses. This database included 1,077 agreements covering 2,244,122 employees.²

In all, over four hundred major collective agreements were identified and studied, many of which are quoted in the following chapters and appear in the list of agreement references at the

¹ In *Job Loss and the Older Worker*, published by the Applied Research Branch (ARB) of HRDC, Vol. 2, No.1 (Winter 1995-1996), older workers are referred to as those aged 45 and over. The 1999 study by the Evaluation and Data Development of Strategic Policy, HRDC, 'Older Workers Adjustments Programs' refers to older workers as those aged 45 to 65.

² A large sample of these agreements was analyzed on site at the WID library.

end of this study. Because WID's database was under review at the time of analysis, all the statistics presented in this study, unless otherwise stated, are based on agreements that were in effect in January 1998. Although the statistics are based on 1998 data, efforts were made to quote examples from contract clauses taken from the most recent collective agreements available.

Scope of the Study

In this study, the following limitations apply:

- Most major Canadian collective agreements address health and safety related concerns with regard to the work environment. Due to the complexity of health and safety issues, in terms of both their legislative context and practical applications, this study does not address them directly. However, general health issues are addressed indirectly in a number of chapters in the study. The impact of health and safety issues on older workers is a topic that deserves to be further analyzed in an independent study.
- Only contract clauses contained in major collective agreements have been examined. This excludes informal agreements and practices, employer policies that are not within the purview of collective bargaining, and contracts that apply only to small bargaining units.
- Unionized workers tend to be concentrated in some economic sectors more than others. Consequently, collective agreements from the public, transportation and manufacturing sectors tend to be over-represented among the examples provided in the study.
- This research has focused on clauses that explicitly refer to older workers as well as those that indirectly affect older workers without explicitly referring to them. Some contract clauses have been considered even though their original intent may have been to respond to the needs and demands of other categories of workers such as, for instance, employees with disabilities. Although not specifically targeted at older workers, these clauses can nevertheless be of great interest to them and therefore deserve to be examined. Similarly, some provisions that can be viewed as benefiting all workers may have even greater significance for older employees.
- Numerous examples of contract language are provided to illustrate some of the best examples of practices affecting older workers. However, these examples are not meant to provide an exhaustive list. An analysis of a larger sample of collective agreements might conceivably identify additional noteworthy provisions.
- The collective agreements that were analyzed were those currently available at the WID library. It should be reiterated that at the time of our analysis WID's database was under review. Although efforts were made to consult the most recent agreements, there may be instances where the agreements have been superseded by recently negotiated

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contracts that had not yet been received in print or electronic format at the time the research was conducted.

Legislative Context

Provisions in collective agreements often mirror, or are at least influenced by existing legal requirements, as set by employment standards, occupational health and safety and human rights legislation.³ This is why the legislative context must be taken into account to properly consider and assess the significance of contract clauses.

Research in this area is complicated by the fact that labour is a shared federal-provincial responsibility. The federal government, through the *Canada Labour Code*, regulates a number of sectors, including telecommunications, interprovincial and international transportation (trucking, railways, shipping), airports and airlines, banking, works that have been declared by Parliament to be for the general advantage of Canada or of two or more provinces (e.g., grain

elevators, uranium mining and processing), and federal Crown corporations, not to mention the federal public service.⁴ Moreover, Part I of the *Code* (Industrial Relations) applies to private sector workplaces in the three territories. Fewer than 1 in 10 Canadian workers are covered by the federal jurisdiction.

In turn, the 10 provincial and three territorial governments are responsible for labour legislation covering the balance of employees in their respective jurisdictions. This means that 14 sets of labour legislation exist across Canada, each with its own particularities, reflecting regional economic and socio-political realities as well as the ideological leanings of current and former governments.

Where appropriate, a description and comparative analysis of pertinent statutory provisions is provided in the study's subsections. This is meant to give the reader an overview of the context within which collective agreements have been negotiated rather than a comprehensive and detailed legal analysis.⁵

³ Although outside the scope of this study, labour relations legislation may also have a significant, albeit indirect, impact on collective agreement clauses, inasmuch as it affects the relative bargaining strength of the parties.

⁴ It should be noted that only Part II of the *Canada Labour Code* (Occupational Health and Safety) applies to federal public servants. Employment and labour relations within the federal public service are regulated by other statutes (the *Public Service Employment Act* and the *Public Service Staff Relations Act*).

⁵ Readers who wish to learn more about labour law in Canada may consult documents prepared by the Labour Program's Labour Law Analysis unit, available on its website at: http://labour-travail.hrdc-drhc.gc.ca/doc/spp-psp/eng/index.cfm#cli_rltc. For more detailed information concerning a specific situation, readers should contact the relevant government's labour officials.

Organization of the Study

In order to categorize the widely different provisions found, results of the research have been presented in six separate chapters, each dealing with one particular area. The six broad areas covered are:

- Work-time organization;
- leaves of absence;
- training, retraining and education;
- economic security;
- (anti-)discrimination clauses and practices; and
- transition to retirement.

The study may be read in its entirety, but it can also be used as a reference document. Each chapter, section and subsection may be examined

on its own. Efforts were made to ensure all pertinent information for each type of provision - statistical data, legislative context, and contract clauses - is provided as a self-contained package.

Readers who wish to learn more about Canadian collective agreement provisions in general can also consult other sources, such as *Contract Clauses: Collective Agreement Language in Canada* by Jeffrey Sack and Ethan Poskanzer, *Lancaster's Collective Agreement Reporter*, and *Traité de négociation collective* by Gérard Hébert. Those unfamiliar with contract language terminology can also find useful information in *Words and Phrases: A Dictionary of Collective Agreement Language* by Sack Goldblatt Mitchell.⁶

⁶ Jeffrey Sack and Ethan Poskanzer, *Contract Clauses: Collective Agreement Language in Canada*, 3rd ed. (Toronto: Lancaster House, 1996-); *Lancaster's Collective Agreement Reporter* (Toronto: Lancaster House, 1995-) (10 issues/year); Gérard Hébert, *Traité de négociation collective*, Boucherville (Québec: gaëtan morin éditeur ltée, 1992); Sack Goldblatt Mitchell, *Words and Phrases: A Dictionary of Collective Agreement Language* (Toronto: Lancaster House, 1993).

Work-time Organization

It is generally recognized that a lack of flexibility in working arrangements, specifically with regard to working time, may constitute a barrier for older workers who wish to remain in the workforce.¹ This is especially the case for older female workers who are also caregivers for elderly parents or spouses.

In its 1992 paper concerning the management of an ageing labour force, the National Advisory Council on Ageing (NACA) recommended that "Management and Labour [organizations] work together to increase the availability of alternative work arrangements, including flexible scheduling and job redesign."² It also recommended that "workplace policies be promoted that recognize the care giving responsibilities of employees with regard to all family members who are in need of special care or support, including seniors; and that benefits similar to those related to the care of a dependent child also be provided, when appropriate, for the care of a dependent older person."³

For health or age-related reasons, many older workers need physically less demanding schedules and longer periods of time to rest and recuperate. For the same reasons, a large proportion of older workers would prefer to work part-time or to have an alternative work-time arrangement, in the same line of work, rather than retire completely.

Unions and employers have acknowledged the importance of negotiating the timing of work and have made provisions to cover work schedules, shifts, overtime and work-time reduction. Given the ageing of the population and of the workforce, unions and employers may have an interest in negotiating further provisions to enhance flexibility in working time management and work distribution to take into account the demographic changes in the workplace. Insofar as it affects an increasing proportion of older workers, work-time organization is becoming a key workplace practices issue.

¹ *Canadian Labour Market and Productivity Centre*, Report of the CLMPC Task Forces on the Labour Force Development Strategy (Ottawa, 1990), p. 27.

² *National Advisory Council on Ageing (NACA)*, The NACA Position on Managing an Aging Labour Force, 1992, p. 18.

³ *Ibid.*, p.20.

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This chapter analyzes various clauses that have an impact on older workers with regard to work-time organization.⁴ Clauses related to work-time organization affect the scheduling of work, such as shift work and flexible hours; the amount of time spent on the job, including overtime; and voluntary work reduction.

The chapter is subdivided into four sections, each dealing with a particular set of collective agreement provisions:

- I Shift Work:** This section covers shift selection and special shift schedules, limits to shift work, and rest periods between shifts.
- II Flexibility in Hours of Work:** This section covers flexible scheduling, compressed work week schedules and shift exchange.
- III Overtime:** This section deals with overtime pay, compensatory time off in lieu of overtime pay, accumulation of time off, the right to refuse overtime, and limits to overtime.
- IV Voluntary Work Reduction:** This section deals with work-time reduction, workload reduction and job sharing.

I Shift Work

For various reasons, shift work is often quite unpopular with older workers, especially when it involves working evenings, nights or other undesirable shifts. This is partly because an increasingly fragile sleeping cycle is one of the characteristics of the ageing process.⁵ Irregular work schedules can have adverse effects on the health of older workers, increasing stress and fatigue, compounded by the fact that the speed of recuperation decreases with age. The end result may be higher absenteeism levels, reduced productivity or even an early withdrawal from the labour force.

In addition to its impact on the health of older workers, shift work may also have an adverse effect on their quality of life, particularly with regard to their family and social commitments. Many older workers may wish to have the same work schedules as their spouses, family members and friends, in order to have the opportunity to spend more time with them.

Collective agreements generally address this issue by giving senior employees preference in the selection of shifts or the right to arrange for special schedules. Another option is to exempt

⁴ *It should be noted, however, that flexible and accommodating measures do not alter the basic collective agreements' rules like seniority rights and qualifications and skills requirements, since they apply only to limited situations under specific circumstances. They do offer, however, an opportunity to meet certain needs of older workers.*

⁵ *Catherine Cailloux-Teiger, Antoine Lavoie and Serge Volkoff, L'utilité de l'analyse des structures d'âge dans les entreprises pour l'intervention sur les conditions de travail, in IRAT, Actes du colloque: Le vieillissement au travail, une question de jugement (Montréal, 1989), p. 163.*

long-service employees from working irregular or undesirable shifts. More general limits on the use of shift work may also be established, along with rest periods between shifts.

A. Shift Selection and Special Shift Schedules

Some employers give their senior employees preference in the selection of shifts or may even grant them special schedules or exemptions. This is advantageous to older workers, at least those with many years of service.

Navistar International Corporation Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 127 (1999-2002):

"Senior employees shall have a choice of shifts within their own classification and department when a multiple shift is in effect, and must remain on the shift selected for a minimum of thirty calendar days. (...). However, the Company shall have the right to designate employees to be placed on off-shifts for periods of sufficient length to allow new or inexperienced operators to become capable of performing the required work. A senior employee will not be on the off-shift for any more than a two (2) week period. This two (2) week period may be extended by mutual consent."

Algoma Steel Inc. and United Steelworkers of America, Local 2251 (2000-2002):

"A preferred schedule exists where a part of the scheduled work week consistently involves a number of day shifts in combination with shifts which rotate to afternoons or nights. Where such preferred schedules exist they will (...) be made available to employees in accordance with their seniority."

To accommodate their state of health or simply reward their loyalty, employers may exempt long-service employees, who are normally older workers, from working undesirable shifts or may give them preference in shift selection.

Board of School Trustees of School District No. 43 (Coquitlam) and Canadian Union of Public Employees, Local 561 (1999-2001):

"No employee on staff at December 31, 1965 will be required to work night shift."

Stelco Inc. and United Steelworkers of America, Local 1005 (1996-2002):

"The Company will continue to endeavour to schedule senior service employees to those day jobs that the Company determines exist within each of the assigned maintenance Mechanical seniority departments [and] within each of the six (6) Electrical seniority areas."

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The following agreement uses length of service or age to grant exemption from night shifts. When age is used, even those older workers without long service stand to benefit.

Maritime Employers Association and Longshoremen's Union, Canadian Union of Public Employees, Local 375 (1998-2003):

"Employees who have accumulated thirty (30) years of service or who have reached sixty (60) years of age may, at their request, be exempted from the night shift. A maximum of thirty (30) employees may claim this exemption, based on seniority." [translation]

B. Limits to Shift Work

General limits to the use of shift work also appear in some collective agreements. These usually limit working hours to day shifts and apply to all employees, young and old. However, limits on shift work are generally more beneficial to older employees, since they tend to prefer to avoid variable or irregular shifts for health or personal reasons.

Rodmen Employer Bargaining Agency and Rodmen Employee Bargaining Agency (2001-2004):

"Not more than one shift shall be allowed on a job of less than five (5) days duration, except in emergencies, slip forming, or

special cases requested by the customer and the Union shall be so notified. Any other shift work of less than five (5) days duration shall be paid for at double the regular day shift rate."

Electrical Contractors Association of Ontario and International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario (2001-2004):

"No shift work will be permitted on new construction work without prior approval of the Local Union Business Manager, but shift work shall be permitted on existing units and/or buildings."

By allowing employees to alternate undesirable shifts, shift rotation may be useful in attenuating the impacts of shift work, when no other measure to exempt older workers from shift work is available.

LOF Glass of Canada Limited and Aluminum, Brick and Glass Workers International Union, Local 252G (1994-1997):

"Where employees work on shifts, the shifts shall be rotated, every work week, except in the case of 12-hour shifts, where they shall be rotated every two work weeks."

C. Rest Periods between Shifts

Some agreements give employees time to rest between shifts while allowing them to maintain a regular day schedule, which is important to many older workers for various reasons. Given the health needs and the social commitments of

older workers, they often have to arrange activities outside of work. Having regular shifts is conducive to the sense of stability that they need in order to plan for these other activities. Moreover, rest periods allow older workers to avoid excessive strain in the workplace, thus reducing their job-related fatigue.

Box 1.1

Minimum Daily Rest Periods in Employment Standards Legislation for Adult Workers⁶

Employment standards legislation in six jurisdictions compels employers to provide a minimum daily period of rest for their workers. Employees in both British Columbia and Yukon must be provided with at least eight consecutive hours free from work *between shifts*. Both Saskatchewan and Newfoundland and Labrador require a minimum of eight consecutive hours of rest in each 24-hour period. Alberta legislation stipulates that an employer must not require an "employee to change from one shift to another without at least 24 hours' written notice and eight hours of rest between shifts." Finally, employees in Ontario must have a period of at least 11 hours free from work every day and at least eight hours between shifts (unless the total time worked on successive shifts is less than 13 hours or the employer and employee agree otherwise).

Labour legislation sometimes also sets maximum daily hours of work, which in practice guarantees minimum rest periods. Legislation in Alberta, the Northwest Territories and Nunavut contains provisions concerning daily working time limits, ranging from 10 to 12 hours per day. Employers in Saskatchewan's hotels, restaurants, educational institutions, hospitals and nursing homes must confine the hours of work of each of their employees to a period of 12 hours in a day and may not require them to report to work on more than two occasions in that period. Moreover, although it does not set a

⁶ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program, Human Resources Development Canada (HRDC). This information is based on legislation in force on February 1, 2002.

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(cont'd)

fixed limit, British Columbia's *Employment Standards Act* stipulates that "an employer must not require or directly or indirectly allow an employee to work excessive hours of hours detrimental to the employee's health or safety." Similarly, Yukon's Director of Employment Standards may order a limit to hours of work if an employee complains about being required to work hours that are excessive or detrimental to his or her health.

It should be noted that, in many jurisdictions, the above standards do not apply to particular occupations or industries, to employees with compressed schedules or to emergency situations. In some cases, employers may also request special exemptions, normally with the consent of the employees concerned.

Box 1.2

Weekly Day(s) of Rest in Employment Standards Legislation⁷

All jurisdictions in Canada allow employees to take at least 24 consecutive hours of rest in each week, although in the case of Saskatchewan this is restricted to those who are usually employed for 20 hours or more per week. In Alberta, employees must be given one day of rest in each week of work, two days in each two-week period, three days in each three-week period or four days in each four-week period. In Ontario, employees are entitled to 24 consecutive hours in every work week or 48 hours in every period of two consecutive work weeks.

Some jurisdictions provide longer weekly periods of rest for employees: British Columbia (32 consecutive hours), Yukon (two days) and Saskatchewan (two days in workplaces with more than 10 employees).

A number of occupations and industries are excluded from these standards in some jurisdictions. Special rules may also apply to certain categories of employees, such as domestic servants.

⁷ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program, (HRDC). This information is based on legislation in force on February 1, 2002.

Government of Nova Scotia and Nova Scotia Government Employees Union (1997-2000):

"Every reasonable effort shall be made by the Employer to avoid scheduling the commencement of a shift within sixteen (16) hours of the completion of the employee's previous shift and to avoid excessive fluctuations in hours of work."

Shift changeover provisions are common in the health sector due to the extended shifts worked by nurses and by other health professionals.

Provincial Health Authorities of Alberta and United Nurses of Alberta (2001-2003):

"Except in cases of emergency or by mutual agreement between the Employee and the Employer, shift schedules shall provide for (...) at least twenty-two point five (22.5) hours off duty on a shift changeover between extended shifts."

Some agreements provide for shift premiums to compensate workers for any inconvenience associated with shift work.

Bowater Pulp and Paper Canada Inc. and Communications, Energy and Paperworkers Union of Canada, Local 39 (1998-2004):

"When a regularly scheduled day worker is assigned to work a shift other than days, he shall be given twenty-four (24) hours notice of such change and shall be paid time and

one-half (1½) for the first night shift worked. In no case will a night shift worker be scheduled to work the succeeding day shift or day shift hours."

LOF Glass of Canada Limited and Aluminum, Brick and Glass Workers International Union, Local 252G (1994-1997):

"The intent of the Company's shift differential premium rates shall be to compensate employees who are required to work undesirable shifts, where the majority of the hours of such shifts fall before 6:00 a.m. or after 6:00 p.m. To this end, (...) premiums will apply."

II Flexibility in Hours of Work

In addition to (or, perhaps, instead of) a reduction of their working time, which will be discussed later in this chapter, a number of older workers seek greater flexibility in their hours of work, generally for time management purposes and to accommodate personal commitments. Flexibility in work-time arrangements is increasingly sought in the workplace, and innovative practices are widely discussed in the broader context of work-life balance. Perhaps more than other categories of employees, older workers seek to have flexible schedules that take into account their special needs and concerns.

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This section deals with three forms of flexible work-time practices: flexible scheduling (including flex time), compressed work weeks and shift exchange. Generally, flexible scheduling implies a willingness on the part of the employer to accommodate the needs or wishes of employees by taking into account their preferences regarding their work schedules. More specifically, flex time allows employees to choose the start and finish times of their work schedules without affecting their total weekly hours of work. In a compressed work week, daily working hours are extended but fewer days are worked while maintaining a weekly (sometimes bi-weekly, or even annual) total

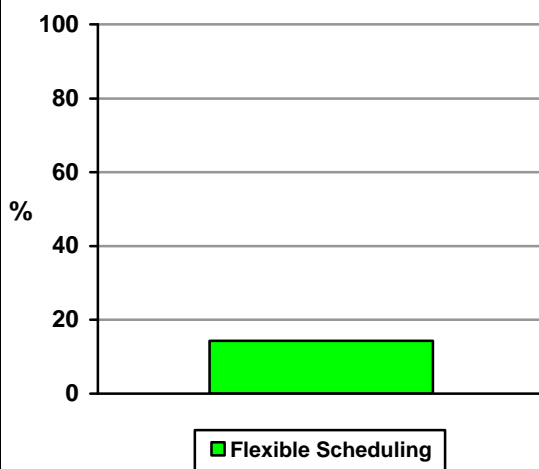
number of working hours. Shift exchange refers to the possibility for two or more employees to simply trade shifts occasionally, when permitted by operational requirements.

A. Flexible Scheduling

Flexible scheduling measures can sometimes be beneficial to both employers and employees, in addition to possibly improving service to customers. However, a prerequisite for the successful implementation of any flexible scheduling measures is convenience for the employees involved.

Figure 1.1: FLEXIBLE SCHEDULING PROVISIONS

Percentage of Major Collective Agreements with Flexible Scheduling Provisions



In January 1998, 14.3% of major collective agreements covering 20.8% of employees (466,319) had **flexible scheduling** provisions giving employees the possibility to choose between various schedules, including flex time (choosing the start and finish times of work). However, almost all agreements with flexible scheduling provisions required prior approval by the employer.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998).
Total number of agreements: 1077, covering 2,244,122 employees.

Box 1.3

Flexible Working Time Arrangements in Employment Standards Legislation⁸

Legislation in a number of jurisdictions allows the establishment of more flexible schedules. For the purpose of calculating employees' overtime entitlement, hours of work for employees in the federal jurisdiction, British Columbia, Manitoba, the Northwest Territories, Nunavut, Ontario, Québec, Saskatchewan and Yukon can be averaged over a specified period.

Furthermore, some jurisdictions, namely Alberta, British Columbia, Manitoba, the Northwest Territories, Nunavut, Nova Scotia,⁹ Saskatchewan and Yukon, specifically provide for compressed work weeks, consisting of longer — but fewer — work days in a work week (e.g., a four-day work week, with 10 hours of work per day). It should be noted that nothing precludes the establishment of compressed work weeks in New Brunswick, Newfoundland and Labrador, Prince Edward Island and Québec since these jurisdictions do not set standard daily hours in their legislation.

The establishment of flexible scheduling arrangements is usually subject to a number of conditions, such as obtaining the permission of employment standards officials and/or the consent of a majority¹⁰ of employees affected, or of the union representing them.

Flexible scheduling measures may apply to weekly or bi-weekly work schedules, even to annual schedules, provided that a total average of working hours is observed.

City of Montréal and Syndicat des professionnelles et professionnels municipaux de Montréal (1998-2001):

"At the request of the professional employee, variations in work schedules may be established, subject to the Employer's needs,

⁸ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

⁹ In addition, it should be noted that Nova Scotia's Labour Standards Code does not set standard or maximum daily hours, thereby allowing compressed work weeks *de facto*.

¹⁰ Where employees are not covered by a collective agreement, a qualified majority may be necessary (e.g., 65% of employees affected in British Columbia; 70% in the federal jurisdiction).

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with the agreement of the professional employee and his/her immediate supervisor. Variations in work schedules are based on the annual schedule (1820) or period schedule (70/2). (...). Under this agreement, the professional employee may work more or fewer hours than a normal work week (35 hours), operational requirements permitting, depending on assignments and personal aspirations." [translation]

In the following agreement, a provision authorizing experiments with a modified work week gives local officials power to initiate modified schedules on a trial basis, in response to employees' requests. Locally arranged flexible measures have a decentralizing effect on labour relations, since those measures are not necessarily available to all workers covered by the collective agreement.

Government of Nova Scotia and Nova Scotia Government Employees Union (1997-2000):

"The Employer shall, where operational requirements and efficiency of the service permit, authorize a flexible working hours schedule, if the Employer is satisfied that an adequate number of employees in the unit have requested and wish to participate in such a schedule. Where employees in a unit have indicated a desire to work a modified work week, the delegated official may authorize experiments with a modified work week schedule, providing operational requirements permit and the provision of services are not adversely affected."

Under certain circumstances, union approval is a prerequisite for any flexible scheduling measures to ensure the employer does not act unilaterally without taking into account the needs and interests of employees.

Master Insulator's Association of Ontario and International Association of Heat and Frost Insulators and Asbestos Workers (1998-2001):

"Where the employer and the employees agree, upon approval of the Union office, flexible hours may be worked. Such approval will not be unreasonably withheld by the Union."

Even though consultation with individual employees regarding their respective work schedules may not be considered a form of flexible scheduling, a few agreements give employees the right to be consulted by the employer before determining their schedule. This is the case for some professionals in the education sector.

Comité patronal de négociation des collèges (CPNC) and Fédération du personnel professionnel des collèges (1998-2002):

"Following consultation with each professional employee, subject to the needs of the unit to which each professional employee is assigned (...), at the beginning of each session, the College determines the regular schedule for each professional employee." [translation]

In many workplaces where flex time measures in particular do not yet exist, there is a trend toward introducing them into work scheduling. As a matter of fact, in many agreements without flex time provisions, negotiating parties are increasingly committed to incorporating such provisions in future talks and subsequently in negotiated agreements.

Newfoundland and Labrador Health and Community Services Association and Association of Allied Health Professionals in Newfoundland and Labrador (1999-2001):

"The parties agree to hold discussions in the future re the possible introduction of 'flex time' for Association members."

Ventra Group Inc. and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Locals 1987, 1524 (1999-2002):

"The Company agrees to meet with the [workers' representatives] to discuss opportunities for flex time."

B. Compressed Work Weeks

A compressed work schedule implies an increase in the number of hours worked per day and a decrease in the number of days worked per week. This represents another form of flexible

work-time organization, where longer daily hours are compensated by additional days off work, which may be enticing for some older workers. However, the longer daily hours may call for stamina to withstand greater physical and mental exertion. Consequently, not all older employees may wish to have compressed work week arrangements. In fact, these arrangements are not always initiated by employees; they are sometimes requested by the employer to meet operational requirements.

The following agreement provides for a variety of non-standard shift schedules, including compressed schedules, for logging, manufacturing and maintenance crews.

Forest Products Industries and Industrial Wood and Allied Workers of Canada (2000-2003):

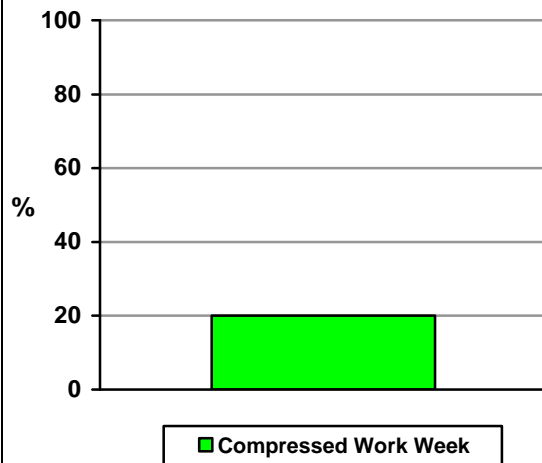
"The parties agree that the following shift schedules will provide the flexibility required to meet the needs expressed above [Alternate Shift Schedules]: compressed schedules consisting of 10 hours per day, 4 days per week; continuous schedules such as 4 days on 4 days off, or 7 days on 7 days off (...)."

It is noteworthy that the following agreement reduces the number of working hours per week to 32 without affecting the full-time status of employees. In fact, this is one case where the compressed schedule leads to a reduction in the weekly working hours, not only in the number of working days.

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Figure 1.2: COMPRESSED WORK WEEK PROVISIONS

Percentage of Major Collective Agreements with Compressed Work Week Provisions



In January 1998, 20.0% of major collective agreements had **compressed work week** provisions covering 22.8% of employees (511,930). However, all agreements with compressed work week provisions required prior approval by the employer.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

Comité patronal de négociation du secteur de la santé et des services sociaux and Fédération des infirmières et infirmiers du Québec (FIQ) (2000-2002):

"Local parties may agree to establish a work schedule with a four (4) day work week. (...) For full-time employees, the regular work week is modified as follows: the regular work week of employees who currently work thirty-five (35) hours [the same applies for 36.25 hours] becomes thirty-two (32) hours

over four (4) days of eight (8) hours per work day." [translation]

Formally authorized compressed work weeks do not generally lead to any loss of the rights provided for in agreements, nor do they alter the working conditions of employees.

Bell Canada and Canadian Telephone Employees' Association (1998-2002):

"The working conditions applicable to employees working a compressed week shall be those contained in the Collective

Agreement currently in force between the parties (...)."

Employees; and (ii) prior approval of such exchange has been given by the Employee's immediate supervisor (...)."

C. Shift Exchange

Shift exchange is a form of flexibility that can be accommodating to workers wishing to exchange shifts with each other. This measure can be useful for those older workers who wish to take time off but would prefer not having to rely on existing leave provisions (due to insufficient leave or vacation credits, or the inability to satisfactorily meet conditions such as length of service). Some employers approve shift exchanges as long as the quality and the safety of the work performed are not affected. Shift exchange clauses appear in some collective agreements. In many instances, however, exchanges tend to be informal arrangements between employees and their managers.

Provincial Health Authorities of Alberta and United Nurses of Alberta (2001-2003):

"Employees may exchange shifts among themselves, provided that: (i) the exchange is agreed to, in writing, between the affected

Air Canada / Canadian Airlines International Ltd. and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1990 (2000-2004):

"Employees may arrange for another employee to work their shift subject to the supervisor's approval (...). Other than in exceptional circumstances, advice of the trade will be provided to the supervisor in writing, in advance, and will be signed by the employees involved. All time credits and shift premiums for the scheduled shift will be credited to the employee who was scheduled to work the shift."

Government of Nova Scotia and Nova Scotia Government Employees Union (1997-2000):

"Provided sufficient advance notice is given and with approval of the Employer, employees may exchange shifts if there is no increase in cost to the Employer."

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III Overtime

Overtime is a key issue for many older workers, since it may have a direct long-term impact on their health as well as on their availability to pursue leisure activities and meet personal or family responsibilities. Although some older workers may take advantage of overtime pay rates to supplement their income, others may wish to decline or at least limit overtime hours, while others may prefer to be compensated for overtime by taking time off.

Many collective agreements contain time off provisions to compensate for overtime and/or determine the rate of financial compensation, where applicable. The right to refuse overtime work is also acknowledged in many collective agreements, subject to operational requirements.

A. Compensating Overtime

A large number of major collective agreements contain overtime compensation provisions giving employees two options: (1) payment at one and one half or double time; or (2) time off or compensatory leave. It would be irrelevant to try to determine which is generally more beneficial to older workers. What is important is to have the two options rather than being confined to one.

In the following agreement, both options are offered to employees. As previously discussed in this section, such flexibility is an added advantage to overtime compensation.

British Columbia Buildings Corporation and B.C. Government and Service Employees' Union (1999-2002):

"Overtime compensation shall be monetary, or in time-off at the employee's option. If the employee chooses time off, such time off will be scheduled by mutual agreement between the employee and their Supervisor."

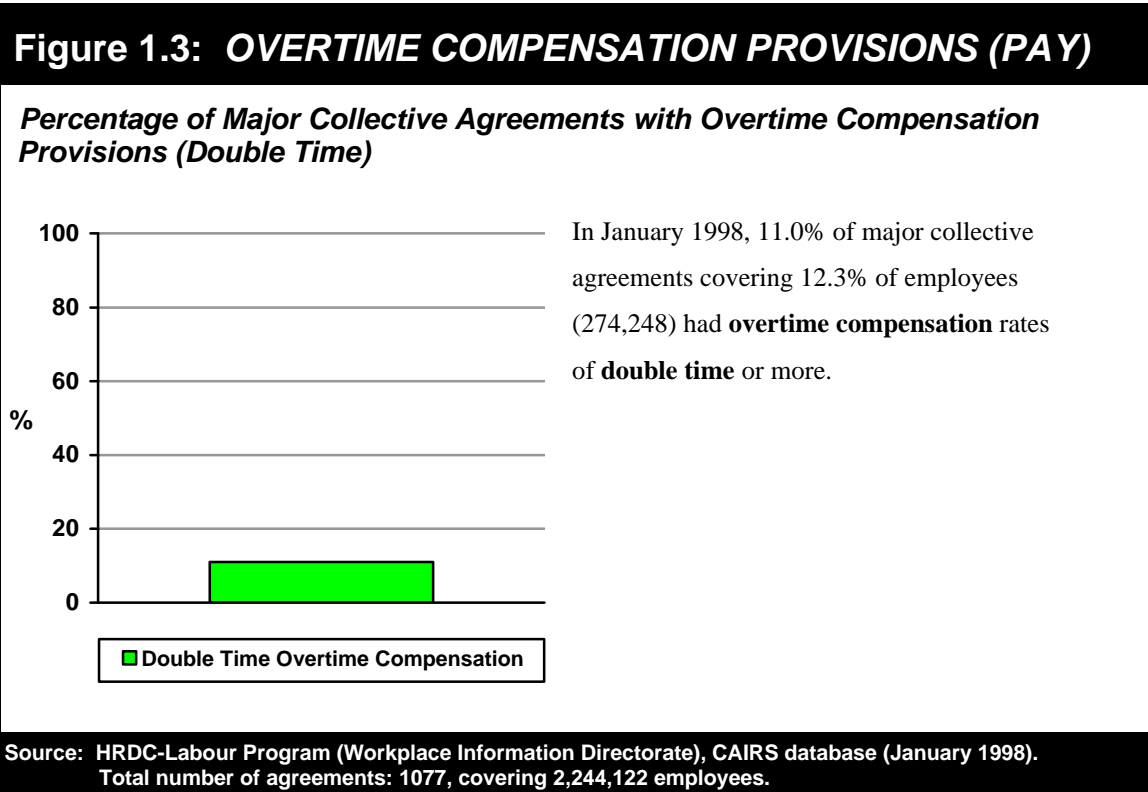
The next agreement offers both options, subject to agreement between employees and the employer.

Government of Ontario and Ontario Public Service Employees Union (1999-2001):

"Where there is mutual agreement, employees may receive compensating leave in lieu of pay at the overtime rate or may receive pay at the overtime rate in lieu of compensating leave."

1. Financial compensation:

Financial compensation is one form of overtime compensation that may appeal to those workers whose financial needs are greater than their need for time off, especially when they can receive compensation at a double rate.



Overtime compensation is often at a double rate in the construction industry, as shown in the following agreements.

Master Insulator's Association of Ontario and International Association of Heat and Frost Insulators and Asbestos Workers (1998-2001):

"Overtime rates at the rate of double time shall be paid for all work performed on Monday to Friday inclusive, in excess of the

maximum hours of work provided for [eight (8) hours between 7:30 a.m. and 5:00 p.m., Monday to Thursday inclusive and four (4) hours Friday between 7:30 a.m. and 12:00 noon, for regular work week of thirty-six hours]. Overtime rates at the rate of double time shall be paid for work performed on Saturdays or Sundays, or for work performed on any Statutory Holidays [except Labour Day, when work performed will be paid at triple time]."

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Construction Management Bureau Limited and Cape Breton Island Building and Construction Trades Council (1999-2002):

"Hours worked beyond the required hours to achieve a forty (40) hour week shall be paid at the overtime rate of pay as (...) double time (2x) the hourly rate. Should employees be required to work on a paid holiday, they shall be paid in addition to the holiday pay, double time (2x) the employee's classified rate for all hours worked."

In the following agreements, overtime compensation rates increase to double time only after two or four overtime hours have been completed beyond the normal daily schedule.

British Columbia Buildings Corporation and B.C. Government and Service Employees' Union (1999-2002):

"Overtime worked shall be compensated at the following rates: 1) time and one-half for the first two (2) hours of overtime on a regularly scheduled work day; and 2) double time for hours in excess of [section] 1) and (...) for all hours worked on a day of rest."

Bell Canada and Canadian Telephone Employees' Association (1998-2002):

"For full-time employee payment for overtime work shall be made: (a) at the employee's hourly rate multiplied by one and one-half (1½) times the hours worked; (b) for

overtime worked in excess of four (4) hours in one (1) week, at the employee's hourly rate multiplied by two (2) times the hours worked."

In the following agreement, the overtime compensation rate increases to double time only for hours worked in excess of 48 hours in a weekly schedule.

Boeing Canada Technology Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 2169 (1999-2002):

"For time worked in excess of eight hours within a twenty-four hour period, an employee shall be paid one and one-half times his base rate. For all time worked by an employee in excess of forty hours in his normal work week shall be paid at one and one-half times his base rate. For all time worked in excess of forty-eight hours in his normal week by an employee shall be paid at double his base rate."

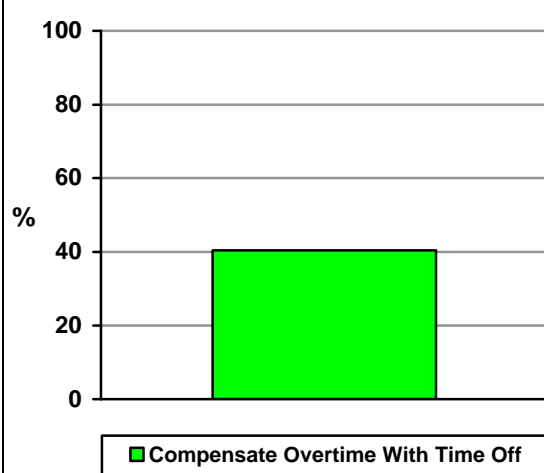
2. Time off or compensatory leave:

Time-off provisions are of great interest to older workers, whose need for additional time to rest or for personal or family obligations can be greater than that of other age group.

Some agreements permit that payment of overtime be replaced by a compensatory leave. Time off credited to employees may be taken as a compensatory leave. Whether taken

**Figure 1.4: OVERTIME COMPENSATION PROVISIONS
(TIME OFF)**

Percentage of Major Collective Agreements with Overtime Compensation Provisions (Time off)



In January 1998, 40.4% of major collective agreements covering 49.2% of employees (1,103,292) had provisions to **compensate overtime with time off**.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

Box 1.4

Time Off in Lieu of Overtime Pay in Employment Standards Legislation¹¹

Alberta, British Columbia, Manitoba, Ontario, Québec and Yukon specifically provide for compensatory time off in lieu of overtime pay in their employment standards legislation, where employees and employers agree. Each hour of overtime work must be compensated with one and a half hours of paid time off at a later date, normally within a fixed period (e.g., within the following year).

A similar provision has recently been adopted in Newfoundland and Labrador. It is expected to come into effect in July 2002.

¹¹ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

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occasionally in terms of days or fractions of days, or accumulated over a longer period of time for a future leave of absence, time off provides older workers with much-needed time-management flexibility.

NAV Canada and Canadian Air Traffic Control Association (1999-2001):

"An employee at his or her request, shall be granted time off in lieu of overtime at the appropriate overtime rate. The employee and his or her supervisor shall attempt to reach mutual agreement with respect to the time at which the employee shall take such lieu time off. However, failing such agreement, such lieu time will be accumulated. (...). Where an employee has not utilized accumulated time off in lieu of overtime by the end of the fiscal year, the unused portion will be paid off at the appropriate overtime rate."

Government of Canada and Public Service Alliance of Canada (2000-2003):

"Overtime shall be compensated in cash except where, upon the request of an employee and with the approval of the Employer, overtime may be compensated in equivalent time-off with pay. (...). The Employer shall grant compensatory time off at times convenient to both the employee and the Employer."

Under certain agreements, overtime is compensated at the regular rate and the employee is required to take time off, thus

adding flexibility to work scheduling. This amounts to limiting the overall payout for overtime while allowing employees to have more flexible work-time arrangements by taking time off occasionally.

Comité patronal de négociation du secteur de la santé et des services sociaux and Fédération de la santé et des services sociaux (CSN) (2000-2002):

"Employees who work overtime are compensated at the straight-time rate for the number of hours worked, as follows: 1 — compensatory time off in lieu of overtime within the thirty (30) days that follow. Local parties may agree on any other deadline; 2 — if the employer cannot grant time off in lieu of overtime within the deadline set, cash payment shall be made for the overtime." [translation]

3. Accumulation of time off:

A number of overtime clauses provide for the possibility to accumulate time-off credits at the applicable overtime rate for future use.

Provincial Health Authorities of Alberta and United Nurses of Alberta (2001-2003):

"Overtime may be accumulated and taken in time off at a mutually acceptable time at the applicable premium rate."

Under certain agreements, failure to take a compensatory leave for all or part of accumulated time-off credits once a pre-established limit has been reached, leads to cash payments by the employer at the overtime rate.

British Columbia Assessment Authority and Canadian Union of Public Employees, Local 1767 (2001-2003):

"The deferred overtime bank shall be utilized in the following way: 1. Once the maximum of ten (10) days deferred time-off in lieu of overtime has been reached, the accumulation shall cease and the employee will be reimbursed for future overtime. (...) 2. When as a result of taking accumulated time-off, the total in the employee's bank falls below ten (10) days, the employee may again accumulate up to ten (10) days maximum."

Some agreements allow employees to accumulate time-off hours instead of receiving cash payment for overtime, up to an annual limit.

City of Windsor and Windsor Police Association (1999-2000):

"Members may elect to be paid bi-weekly for overtime or may elect to bank overtime hours to be taken in 'time-off'. (...) Accumulated overtime shall not exceed sixty (60) hours as of the 31st day of October. Hours in excess of sixty (60) hours shall automatically revert to 'cash payment'."

The following agreement provides for the partial banking of overtime, allowing employees to receive financial compensation for one third of their overtime credits while banking the rest for future use, such as covering their vacation shutdown period.

Inco Limited and United Steelworkers of America (1999-2002):

"Each employee who works overtime has the option of receiving pay for such work at the applicable overtime rate [1½], or banking the time worked at the applicable basic rate and receiving pay for one-half (½) of the time worked at the applicable basic rate, provided that he does not have sufficient vacation entitlement to cover the vacation shutdown period. (...). If for any reason the employee is not required to use the banked time to cover the vacation shutdown period he will receive payment for such banked time at the applicable basic rate."

B. Right to Refuse Overtime

Although some older workers might benefit from overtime provisions to increase their income or to take time off later on, many others would prefer to have the option to refuse overtime for a variety of reasons, including safety or health considerations or family responsibilities.

Clauses pertaining to the right to refuse overtime without being penalized by employers protect older workers from the obligation to work overtime.

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Weldwood of Canada Limited and Industrial Wood and Allied Workers of Canada, Local I-424 (2000-2003):

"No employee covered by this agreement who refuses to work overtime shall be subject to any penalties whether the refusal be singular or in concert."

Intercontinental Mitchell's Gourmet and United Food and Commercial Workers, Local 249-P (1998-2003):

"Overtime work shall be kept to a minimum. It is further agreed that overtime work shall be voluntary and that no employee

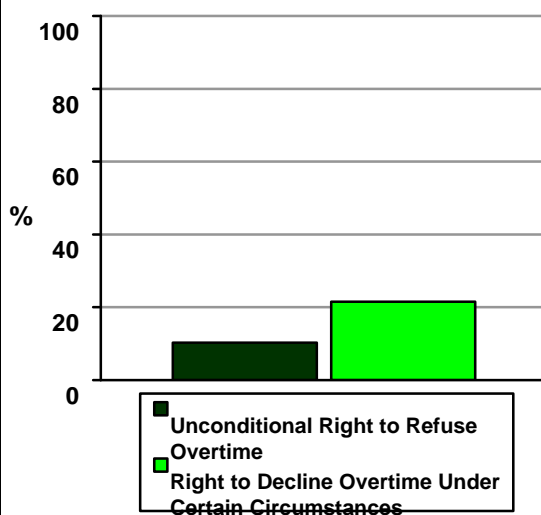
shall be compelled to work overtime or shall be discriminated against for refusal to work overtime."

British Columbia Assessment Authority and Canadian Union of Public Employees, Local 1767 (2001-2003):

"All employees shall have the right to refuse to work overtime, except when required to do so in emergency situations, without being subject to disciplinary action for so refusing."

Figure 1.5: RIGHT TO REFUSE OVERTIME PROVISIONS

Percentage of Major Collective Agreements with Right to Refuse Overtime Provisions



In January 1998, 10.3% of major collective agreements covering 12.3% of employees (275,957) had provisions giving workers an **unconditional right to refuse overtime**, and 21.5% of agreements covering 20.3% of employees (456,210) had provisions giving workers the **right to decline overtime under certain circumstances**.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

Box 1.5

Right to Refuse Overtime in Employment Standards Legislation¹²

Employment standards legislation in the majority of Canadian jurisdictions does not provide employees with an explicit right to refuse overtime. However, there are some exceptions.

Manitoba's *Employment Standards Code* stipulates that an employer's management rights do not include an implied right to require an employee to work overtime, except in cases of emergency. Most employees in Ontario may refuse to work overtime beyond a set limit: after eight hours in a day (or after the end of a normal working day, if longer) or 48 hours in a week. However, an agreement to work in excess of these hours that was made at the time of the employee's hiring and has been approved by the Director of Employment Standards is irrevocable unless both the employer and the employee agree to its revocation. Except in the case of emergency circumstances, an employer in Saskatchewan cannot require an employee to work more than 44 hours in a week without his or her consent. Finally, employees in Yukon may refuse to work overtime for just cause, provided that the refusal and cause for refusing are given to the employer in writing.

It should be noted that some jurisdictions allow employees to refuse to work on Sundays and/or public holidays.

The following agreement stipulates that overtime is on a voluntary basis only and that weekend overtime is sharply limited. Such flexible measures are largely accommodating to those older workers who do not wish to work overtime.

Québec Fashion Apparel Manufacturers Guild and Québec Joint Council of the International Ladies Garment Workers Union (1998-2002):

"Overtime is worked on a voluntary basis and must be distributed as equitably as possible among employees who perform the

¹² Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

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same work and want to work overtime in the department or unit where the overtime is required. Working on Sunday shall not be allowed at any time." [translation]

In the following agreement, overtime becomes voluntary after a certain number of mandatory working hours has been reached. However, this limitation to overtime is suspended in emergency situations.

Navistar International Corporation Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 127 (1999-2002):

"Daily hours in excess of ten (10) hours worked per shift Monday through Thursday (...) and hours in excess of eight (8) hours per shift on Friday shall be voluntary except as otherwise provided in this Memorandum of Understanding." Weekend overtime is normally voluntary, although the employer may require employees to work up to four overtime hours during the weekend, unless they have worked 44 hours or more during the week. In emergency situations, however, "the provisions of this Memorandum of Understanding that limit or restrict the right of the company to require employees to work overtime, shall be suspended."

C. Limits to Overtime

Restricting recourse to overtime by employers may be of benefit to older workers' health and quality of life. Although they do not give an unconditional right to refuse overtime, some agreements impose limits on mandatory overtime, including the right to decline overtime under certain conditions.

Recourse to overtime is sometimes unavoidable due to operational requirements or special circumstances. Although it may not be possible for employers and unions to eliminate overtime work or to always offer it on a voluntary basis, in many agreements, both parties have reached a middle position whereby employers have made a commitment to try to limit overtime as much as possible.

Northern Sawmills Inc. and Communications, Energy and Paperworkers Union, Local 384 (1999-2003):

"The Company shall endeavour to limit overtime and Sunday work as much as possible."

Canada Post Corporation and Public Service Alliance of Canada (1999-2001):

"Subject to the operational requirements of the service, the Employer shall make every reasonable effort to avoid excessive overtime (...)."

Provincial Health Authorities of Alberta and United Nurses of Alberta (2001-2003):

"The Employer shall endeavour to minimize the use of mandatory overtime."

Sydney Steel Corporation and United Steelworkers of America, Local 1064 (1993-1999):

"The Company will endeavour to curtail overtime wherever possible. Normally, overtime shall be on a voluntary basis. Nevertheless, it is recognized that in some situations, in order to keep a department, or a section of a department, in operation, the voluntary aspect of this clause cannot be adhered to."

Sometimes, recourse to overtime may be limited simply by balancing out the workload and offering overtime hours to spare employees, as in the following agreement.

Direct Integrated Transportation Inc. and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 4209-II (1999-2000):

"The employees on the overtime list will not be offered work until everyone on the spareboard has achieved 45 hours, or there is no one from the spareboard available/qualified to do the work. Employees can be offered a 'load', shorter trip, or other work

rather than a full day's work in order to limit overtime, provided the Company cannot artificially split a shift to avoid overtime."

Another measure to curb the use of overtime is to offer part-time and casual employees (who usually have lower job security and shorter working hours than their permanent and full-time colleagues) the possibility to work the extra hours, thus avoiding overtime for the regular employees.

Air Canada / Canadian Airlines International and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1990 (2000-2004):

"Part-time employees may be used if the overtime is required for a period which is not in conjunction with a full-time employee's shift and, in any case, may be used prior to recalling a full-time employee."

Sometimes, overtime is used by employers in job loss situations as a countermeasure to a reduced workforce. The following agreement prevents this particular use of overtime.

Québec Fashion Apparel Manufacturers Guild and Québec Joint Council of the International Ladies Garment Workers Union (1998-2002):

"Any overtime is prohibited when there are layoffs of employees in the same unit or trade where the employees are asked to work overtime, when the necessary equipment is available." [translation]

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Limits to weekly based overtime can take the form of minimum rest periods. To this can be added prohibitive pay rates (e.g., double time) as a financial disincentive for employers who would otherwise resort to overtime.

Cement Mason's Provincial Collective Agreement, Ontario (1998-2001):

"Employees working excessive overtime shall be allowed an eight (8) hour rest period before commencing work again. The employer agrees that double time rate will be paid to any employees called back to work in lieu of the above."

Another method of restricting recourse to weekly based overtime is to impose consecutive day limits.

Canada Safeway Limited and United Food and Commercial Workers Union, Local 2000 (1997-2003):

"No employee shall be required to work more than six (6) consecutive days."

IV Voluntary Work Reduction¹³

Studies have shown that older workers are much more likely than core-age workers to work part-time.¹⁴ This is often a voluntary decision

on the part of those full-time older workers who prefer to maintain their current job, with a reduction in hours, rather than quitting for a part-time position elsewhere. Voluntary work reduction allows older workers to minimize income reduction and the loss of benefits and seniority.

One of the advantages of voluntary work reduction plans in comparison to finding a part-time job elsewhere is that workers may maintain and continue to accrue seniority and years of service while also contributing to pension plans. In contrast, a change to part-time employment status may entail a loss of benefits as well as lower job security. Furthermore, voluntary work reduction leaves the door open for older workers to return to full-time work.

There are a number of ways to implement voluntary work reduction, among them work-time reduction, workload reduction and job sharing. In the first case, working time is the key factor, in that the work schedule is reduced from full-time to part-time. In workload reduction, the amount of work assigned to the employee is reduced. A reduction in working hours normally follows workload reduction. For instance, in the education sector workloads may be calculated not on the basis of daily or weekly hours, but rather by considering the number of courses, of teaching hours, of preparations and of students. Job sharing, the third form of voluntary work reduction considered here, involves a reduction in working hours for each partner in the arrangement.

¹³ See also the section on phased retirement in Chapter 6, "Transition to Retirement."

¹⁴ National Advisory Council on Ageing (NACA), The NACA Position on Managing an Aging Labour Force, 1992, pp. 16-18.

A. Work-time Reduction

Among other advantages, work-time reduction provisions may encourage older workers to maintain their current employment, while using their additional leisure time to pursue other activities. In 2000, close to 60% of part-time older workers cited personal reasons for choosing to work part-time.¹⁵ As a flexibility measure, work-time reduction does not necessarily imply a permanent part-time status, as the reduction may be only temporary. In some agreements, work-time reduction provisions apply only to employees with a certain number of years of service.

British Columbia Assessment Authority and Canadian Union of Public Employees, Local 1767 (2001-2003):

"An employee with a minimum of five (5) years of service may, once every ten years, apply to work less than full-time for up to two consecutive years. The employee must work a minimum of forty (40) hours during a two-week averaging period, scheduled at the local level and will be eligible for benefits as follows: 1. The employee will be responsible, on a pro rata basis, for the cost of maintaining the following benefits: Medical, Dental, and Extended Health. 2. Sick Leave and special leave will apply only to the time the employee

is scheduled to work. 3. The following will be earned on a pro rata basis: vacation, statutory holidays, seniority, increments, trial period, probation and progression."

Government of Québec and Association professionnelle des ingénieurs du gouvernement du Québec (1998-2002):

"The employee may also, with the agreement of the Deputy Minister, be given partial leave without pay for the purpose of temporarily reducing the length of the work week to a minimum of fourteen (14) hours (...). The maximum leave period is two (2) years, unless a new agreement is reached on expiry of the first agreement." [translation]

Government of Saskatchewan and Saskatchewan Government and General Employees Union (1997-2000):

"Variable hours is the voluntary reduction by a permanent full-time employee of his hours of work. Variable hours do not require a backfill be appointed and ensures the employee's rights to the permanent full-time position. Variable hours will apply to situations where a job sharing arrangement involving a backfill is not reasonable (e.g.: specialized type of job, too few hours made available for backfill, etc.)."

¹⁵ Statistics Canada, Catalogue no. 89F0133XIE. Last adjusted October 24, 2001.

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B. Workload Reduction

Voluntary work reduction can also be achieved through such means as a voluntary reduction in workload. Clauses pertaining to workload reduction are found in numerous agreements between college and university administrations and respective faculty associations. It is noteworthy that workload reduction measures are made available only to employees with a certain number of years of service. Priority is given to those with the highest combined years of age and service. Normally, faculty members on reduced workload continue to receive benefits.

Board of Governors of Ryerson Polytechnic University and Ryerson Faculty Association (1999-2001):

"A tenured Faculty member will be granted up to fifty percent reduction in teaching workload with a proportionate reduction in salary, provided that: 1) the Faculty member has a minimum full-time service of five years; 2) the reduction normally will be effective for a twelve-month period; Similar provisions are also available to Councillors and to Librarians."

University of New Brunswick and Association of University of New Brunswick Teachers (1998-2001):

"An Employee may apply for a temporary workload reduction at any time. The Parties agree that the workload for full-time Employees may be reduced by the University

of New Brunswick, upon request by the Employee (...). Employees of the bargaining unit undertaking such reduced load appointments shall continue to be considered full-time, shall remain in the bargaining unit, and shall have all the rights, protections, duties and responsibilities of this Collective Agreement (...)."

The following agreement explicitly gives the teacher who is on workload reduction the possibility to apply for an extension or to return to full-time teaching.

Toronto District School Board and Elementary Teachers Federation of Ontario / Ontario Secondary School Teachers (2000-2002):

"A full-time Teacher who, prior to March 1, requests to teach part-time commencing the following school year either for a specified period of one or two school years or without any period being specified shall be granted the request to teach part-time. (...) A Teacher who requests and is granted assignment as a Part-time Teacher for a specified period will return to full-time teaching at the end of the period (...). A Teacher may apply for an extension of the Teacher's part-time assignment and such extension shall be subject to the approval of the Director."

Sometimes voluntary workload reduction plans have more than one purpose: one obvious goal is to provide the flexibility and the leisure time needed by workers in general and by older workers in particular. Another goal can

be to minimize job losses for employees when work shortages occur. In both situations, workload reduction plans seem advantageous to older workers, whether in reducing their work commitments or in protecting their employment stability.

Queen's University and Queen's University Faculty Association (2000-2002):

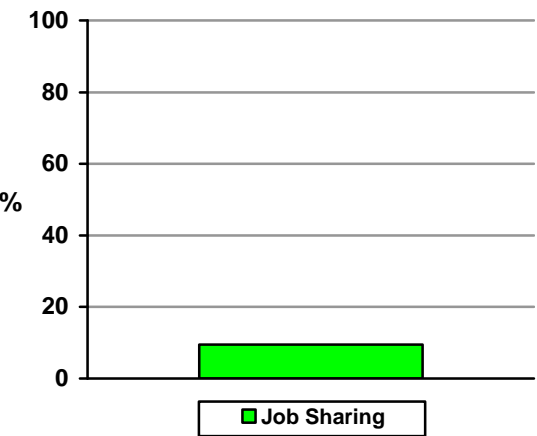
"The University must continue to offer all forms of voluntary reduction and redeployment options offered within the past twelve (12) months in an effort to reduce the extent of layoffs, (...)."

C. Job Sharing

As a form of work-time reduction, job sharing allows two employees to split one job, with responsibilities and working time divided between them. Unlike other forms of work-time reduction, job sharing involves more than one worker, thus requiring the approval of the employer as well as the commitment of the two (or more) sharers to deliver the same quality of work. Another feature of job sharing is that the job being shared remains classified as one full-time position. Unions usually have concerns when the number of permanent full-time positions within the organization may be affected by any type of work reduction measures.

Figure 1.6: JOB SHARING PROVISIONS

Percentage of Major Collective Agreements with Job Sharing Provisions



In January 1998, 9.5% of major collective agreements covering 16.3% of employees (365,700) had **job sharing** provisions.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

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The purpose of job sharing programs is explained in the agreement between the City of Winnipeg and its municipal employees. Although this particular program is mainly designed for relatively young parents and students, it can also be beneficial to older employees who wish to reduce their work-time.

City of Winnipeg and Canadian Union of Public Employees, Local 500 (1999-2002):

"The City and the Union jointly affirm that programs which encourage employees to retain their employment with the City are of mutual benefit. One method of ensuring that this occurs is a formal job sharing arrangement. Job sharing provides a systematic method of restructuring full-time work in order to accommodate the particular needs of employees (these include child care and further education), and provides the organization with an opportunity to retain skilled employees who might otherwise be forced to resign from their jobs."

Despite the relatively low percentage of agreements providing for job sharing, studies have shown that many companies offer informal job sharing arrangements to their employees, even though they may not appear in collective agreements.¹⁶ Although the primary advantage, for employers, of a job sharing program is to maintain stability among qualified staff, the

advantage for older employees is to have the opportunity to reduce their work-related responsibilities without losing their job security and their benefits. Normally, seniority is accumulated on a pro rata basis for each participant in a job sharing plan. Here are a few examples of job sharing provisions.

City of Winnipeg and Canadian Union of Public Employees, Local 500 (1999-2002):

"Requests for job sharing will be employee initiated (...). If the employee wishes to job share, the employee is responsible for finding a job sharer. Positions filled through job sharing must lend themselves to this type of staffing arrangement. (...). Applicants for job sharing must be in positions of the same classification. The job to be shared must be currently held by one of the incumbents requesting job sharing. If an employee has obtained permanent status prior to job sharing, the permanent status will be retained. (...). Upon the conclusion of these longer job share arrangements, job sharers shall be returned to a comparable position at not less than the same wages. Should a comparable position not exist, the employees will be entitled to exercise their seniority rights.(...). If there is more than one request for job sharing in the same classification and the Department is unable to grant all requests, first consideration

¹⁶ H el ene Paris, *The Corporate Response to Workers with Family Responsibilities* (Ottawa: The Conference Board of Canada, November 1989), p. 35. According to a 1989 Conference Board survey, roughly 60% of employers (n=108) with unionized employees who offered job sharing did so unofficially (i.e., outside the purview of collective bargaining). Although these numbers are now outdated, they do give an indication as to the relative importance of collective bargaining as compared to employer policies in this case.

will be given to the senior applicant. Where available, prior to the development of a job sharing agreement, individuals will be given the option of part-time work. (...). Rates of pay, EI and CPP contributions, holidays, vacations, tool allowances, service accrual and increments are calculated on a pro-rata basis. Other benefits are received on the same basis as for part time employees."

Children's Aid Society of Toronto and Canadian Union of Public Employees, Local 2316 (2000-2002):

"When two (2) workers wish to share a job, the following will apply: (a) Each job sharing arrangement will replace one full-time bargaining unit position. The job will be split into two (2) half-time positions. (b) Job sharing will be limited to one (1) bargaining unit position per team or supervisor unless otherwise agreed to by the parties. The request for job sharing will be made by two (2) current full-time bargaining unit employees who have completed their probationary periods. (...). Seniority and Service as well as all Seniority or Service related benefits will be prorated for all purposes during the job sharing period."

Calgary School District No. 19 and Alberta Teachers' Association (2000-2001):

"Where two teachers on continuing contract wish to share one full-time teaching position, they may apply to the chief superintendent

of schools or the delegated authority for a shared job assignment. Such application must be made no later than March 31 of the school year immediately preceding the year in which the job sharing is to take place. (...). The arrangement, including the proportion of work performed by each teacher, must be mutually decided and agreed to by the Board. Benefits and the cost of premiums are prorated. Once approved, the shared job assignment is guaranteed for a period of one school year, but may be renewed thereafter."

City of Windsor and Windsor Police Association (1999-2000):

"Job sharing means that two (2) non probationary members occupy one (1) complement position, the duties of which they are both qualified to perform, such that they equally share the pay and hours of work. (...). Service accumulation for seniority is to be pro-rated at 50% for each participant, such that the member earns a maximum of six (6) months credited service for each year of service in the job sharing arrangement."

Under certain agreements, union consent is required for any job sharing plan, probably to ensure that union concerns are not overlooked with respect to maintaining permanent full-time employment. Therefore, job sharing is not meant to be a conversion of existing full-time positions into part-time positions.

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Canadian Broadcasting Corporation and Communications, Energy and Paperworkers Union of Canada (CEP) (1998-2001):

"Job sharing can occur where there is agreement among the employer, CEP and the staff employees in the same group and classification who wish to share a job. (...). It is agreed that job sharing results from two (2) staff employees sharing a full-time staff position in the employees' workplace, and as such, the shared position will continue to be identified as a full-time staff position. The sharing of hours of work shall be determined by the parties to the sharing arrangement."

Job sharing provisions are sometimes used as countermeasures to layoffs. While employees will have reduced schedules and income, other benefits may continue as if they were still full-time employees, if proper contributions are made.

BC Institute of Technology and BCIT Faculty and Staff Association (1998-2001):

"Two or more Regular Employees in a Department which has received layoff notice may reduce their respective workloads and salaries to the extent necessary to

remove the need for layoff in a Department. The Employer agrees to maintain all benefits for Employees in such a case — including pensions — at a level consistent with their respective 100% salary levels, provided that affected Employees elect to make their required level of pension and Long Term Disability contributions to accomplish this."

Conclusion

Work-time arrangements are a major determining factor of the working conditions of all workers and of older workers in particular. Older workers may need additional flexibility with respect to work schedules, limits on the use of shift work and overtime, job sharing and other work reduction opportunities, and special consideration (exemptions or preference, where possible) in the implementation of provisions pertaining to work-time arrangements. Although they may not have been negotiated with older workers in mind, collective agreement provisions dealing with these arrangements reflect the concerns of a large proportion of older workers. Such provisions show the responsiveness of employers and unions to the needs and concerns of workers, including older workers seeking more flexibility in the workplace.

Leaves of Absence

With more older workers in the workplace,¹ leaves of absence and flexible arrangements surrounding their use are becoming increasingly important. Leaves can accommodate older workers' needs and concerns related to health matters, family responsibilities and personal fulfilment.

With fewer younger workers entering the labour force and more older workers leaving it, a labour shortage may be looming. Should this happen, employers may turn to older workers as an important source of qualified labour. Under this scenario, leave of absence provisions in collective agreements may give employers an advantage. In fact, any projected short supply in the labour force may necessitate attempts to reduce the tendency toward early retirement. One way to encourage older workers to remain in the workforce is to offer them tangible incentives such as more flexible work arrangements, including the possibility to take various leaves of absence when needed, without affecting their participation in the workforce. Extended annual vacations and various leaves of absence provide ageing workers with temporary periods of time off, thus reducing the necessity for early retirement.

This chapter analyzes various clauses having an impact on older workers with regard to leaves of absence as well as annual vacation. It will examine provisions related to:

- I Annual Vacations:** This section covers annual vacation entitlements, paid supplementary vacations on the basis of age and/or length of service, carry over (or pay out) of vacation credits and unpaid supplementary vacations.
- II Sick Leaves and Health Plans:** This section covers sick leave entitlements (including calculation, use and accumulation of sick leave credits) and disability and other health plans.

¹ Human Resources Development Canada has estimated that by 2016, around 44% of the working population will be between the ages of 45 and 64, compared to 32% in 1996. Source: Statistics Canada historical data. Projection from the Applied Research Branch, HRDC.

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III Special Leaves of Absence: This section covers short-term and long-term leaves for personal reasons, including "pressing necessity" leave; family care leave; bereavement leave; compassionate leave and deferred salary leave.² This section also deals briefly with the protection of rights following a leave.

I Annual Vacations

Paid annual vacations are of great interest to all workers, allowing them a temporary absence from work that is significantly longer than regular holidays, weekends and short leaves of absence. Generally, the need for time to rest is compounded by the ageing process. Annual vacations provide older workers with leisure time and opportunities to focus on their overall

well-being by pursuing fulfilling activities such as travelling, fitness programs, personal hobbies or simply spending time with family.

A large number of collective agreements contain clauses pertaining to paid annual vacations. These usually include a scale whereby longer vacations are granted to employees with more years of service. Furthermore, some agreements provide for additional paid or unpaid vacations as well as for the possibility to carry over unused vacation credits.

A. Annual Vacation Entitlements

Annual vacation credits are generally calculated on the basis of years of service. Older employees with longer years of service with the same employer will benefit from such annual vacation provisions.

Box 2.1

Annual Vacations in Employment Standards Legislation³

All jurisdictions in Canada provide for annual vacations (also termed "annual holidays" or "annual leave") in their employment standards legislation. Labour laws in Canada set the minimum length of annual vacations at two weeks after one year of employment,

² Training, educational and sabbatical leaves are covered in Chapter 3, while pre-retirement leave is dealt with in Chapter 6. Family-related leaves were extensively studied in *Work and Family Provisions in Canadian Collective Agreements*, edited by C. P. Rochon (Hull, Quebec: Human Resources Development Canada, Labour Program, 2000).

³ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

(cont'd)

with vacation pay set at 4% of wages.⁴ The exception is Saskatchewan, where the minimum is three weeks of vacation, with vacation pay equivalent to 3/52 of wages. Québec and New Brunswick allow employees with less than a year of service to accumulate one day of vacation per month worked in the reference year (up to the maximum two weeks). Employees in Québec who have completed one year of uninterrupted service with the same employer are entitled, if they apply for it, to an additional unpaid leave to increase their annual vacation to a total of up to three weeks. This unpaid leave need not follow immediately the period of paid vacation. However, it may not be divided or replaced by a compensatory indemnity.

In many jurisdictions, employers must grant an additional week of paid vacation to their employees after completion of a specified length of service: after five consecutive years of employment in Alberta, British Columbia, Manitoba and Québec; after six years in the Northwest Territories, Nunavut and the federal jurisdiction; after eight years in New Brunswick; and after 15 years in Newfoundland and Labrador. Workers in Saskatchewan are entitled to four weeks of annual holidays after completing 10 years of employment with the same employer.

Vacations must be given to employees not later than four months (New Brunswick, Prince Edward Island), 10 months (federal jurisdiction, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Yukon, Northwest Territories, Nunavut) or 12 months (Alberta, British Columbia, Québec, Saskatchewan) after the date of entitlement. Legislation normally stipulates that, in the absence of mutual agreement, an employer can decide when the vacation will be taken, provided advance notice is given.⁵

⁴ Vacation pay is based on "vacationable earnings," which is defined differently in each jurisdiction. Always included are the employee's regular wages or salary and, normally, commissions received in the vacation pay year. Some jurisdictions also specifically include vacation pay (which was collected in the previous vacation pay year), overtime wages and holiday pay as vacationable earnings. Employees are entitled to receive vacation pay even if they do not qualify for a vacation.

⁵ This minimum notice period is one week in New Brunswick and Nova Scotia; two weeks in the federal jurisdiction, Alberta, Newfoundland and Labrador, Prince Edward Island, and Manitoba (15 days in the latter case); and four weeks in Quebec and Saskatchewan. The other jurisdictions do not specifically require employers to provide advance notice. A new provision in Newfoundland and Labrador's Labour Standards Act, expected to come into force in July 2002, will require that an employer, if he or she cancels or changes the dates of an employee's previously approved vacation, reimburse the employee's reasonable vacation-related expenses that are not otherwise recoverable. A similar provision currently exists in Saskatchewan.

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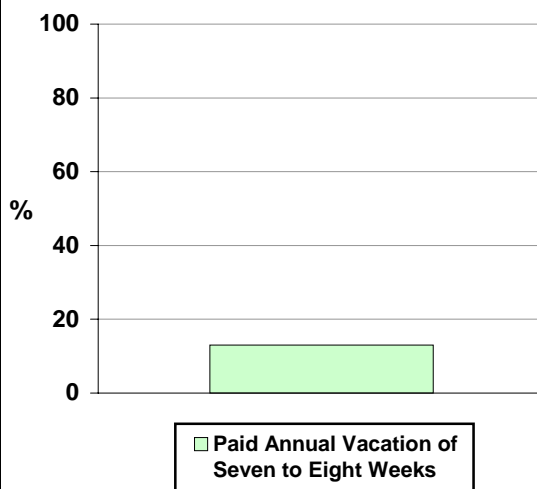
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Some jurisdictions require employers to provide annual vacations in one unbroken period (Alberta, Nova Scotia, Prince Edward Island, Saskatchewan) or in periods of at least one week (British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Québec). However, employees in certain provinces may request to take their vacations in two or more periods. This is recognized explicitly in Alberta and Ontario — where employees can request to take their vacations in one-day increments — as well as in Québec and Saskatchewan (although in the latter case, the minimum period of vacation must be at least one week).

Most jurisdictions provide for a one-day extension of vacations if a general holiday occurs within the vacation period.

Figure 2.1: *EXTENDED ANNUAL VACATION PROVISIONS*

Percentage of Major Collective Agreements with Extended Annual Vacation Provisions



In January 1998, approximately 13% of major collective agreements covering approximately 15% of employees had provisions pertaining to **paid annual vacation of seven to eight weeks** for long-service employees. Statistics show that extended annual vacation (seven weeks and over) is still an exception in major Canadian collective agreements.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998).
Total number of agreements: 1077, covering 2,244,122 employees.

The following agreement has an interesting annual leave provision. Employees earn 15 days of annual vacation credit in their first two years of employment and accumulate subsequently an average of one additional day of vacation credit with every year of service.

British Columbia Ferry Corporation and B.C. Ferry and Marine Workers' Union (1998-2003):

"A regular employee who has earned ten days' pay per month shall have an annual vacation entitlement as follows: first and second [year]: 15 [days]; third: 16; fourth: 17; fifth: 18; sixth: 19; seventh: 20; eighth: 22; ninth: 23; tenth: 24; eleventh: 25; twelfth: 26; thirteenth to fourteenth: 27; fifteenth to eighteenth: 28; nineteenth: 29; twentieth: 31; twenty-first: 32; twenty-second: 33; twenty-third and twenty-fourth: 34; twenty-fifth to thirtieth: 36; thirty-first and thereafter: 40."

The following agreements are relatively generous in terms of vacation benefits to senior employees. These employees can expect a six-week paid annual vacation after 22 or 24 years of service and a seven-week vacation after 30 years of service.

Stelco Inc. and United Steelworkers of America, Local 1005 (1996-2002):

"An employee shall be entitled to an annual vacation with pay in accordance with the following schedule, on the basis of his/her

service at July 1st in each year: One (1) year of service but less than five (5) years — two (2) weeks. Five (5) years of service but less than nine (9) years — three (3) weeks. Nine (9) years of service but less than fifteen (15) years — four (4) weeks. Fifteen (15) years of service but less than twenty-two (22) years — five (5) weeks. Twenty-two (22) years of service but less than thirty (30) years — six (6) weeks. Thirty (30) years of service or more — seven (7) weeks."

Forest Industrial Relations Limited and Industrial Wood and Allied Workers of Canada (2000-2003):

"The annual vacation for employees with one (1) or two (2) years' service covered by this Agreement shall be two (2) weeks. (...). The annual vacation for employees with two (2) to seven years' service (...) shall be three (3) weeks. (...). The annual vacation for employees with seven (7) to fifteen (15) years' service (...) shall be four (4) weeks. (...). The annual vacation for employees with fifteen (15) to twenty-four (24) years' service (...) shall be five weeks (...). The annual vacation for employees with twenty-four (24) to thirty (30) years' service (...) shall be six (6) weeks (...). The annual vacation for employees with thirty (30) years' service (...) shall be seven (7) weeks (...)."

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Weldwood of Canada Limited and Industrial Wood and Allied Workers of Canada, Local I-424 (2000-2003):

"The annual vacation for employees with twenty-four (24) to thirty (30) years service covered by this Agreement shall be six (6) weeks, The annual vacation for employees with thirty (30) years service covered by this Agreement shall be seven (7) weeks, (...). The additional one (1) week vacation provided for in this Section may be taken consecutively with the vacation periods."

B. Paid Supplementary Vacations

Many employers reward older workers' loyalty with long-service recognition measures, such as additional vacation time, while many others use both age and length of service as determining criteria in granting older workers additional paid vacation time. Older workers stand to benefit from such measures, which give them more time to rest while reducing their annual workload.

Fletcher Challenge Canada Limited and Communications, Energy and Paperworkers Union, Local 1123 (1997-2003):

"After completing five (5) or more years of continuous service with the Company, an employee shall, in addition to the regular vacation to which he/she is entitled, become eligible to receive a Supplementary Vacation

with pay each five (5) years as set forth below: after five (5) years of completed continuous service: one (1) week of supplementary vacation; after ten (10): two (2); after fifteen (15): two (2); after twenty (20): three (3); after twenty-five (25): three (3); after thirty (30): four (4); after thirty-five (35): four (4); after forty (40): five (5)."

In the following agreement, workers are granted additional vacation time with pay when they reach a certain age. However, these supplementary vacations cannot be combined with other paid supplementary vacations granted under a separate length of service recognition measure. Should retirement age be lowered, the standard age used to determine eligibility for supplementary vacations will be lowered accordingly, so that employees may still benefit from these paid supplementary vacations, years before retirement.

SaskPower and Communications, Energy and Paperworkers Union of Canada, Local 649 (1998-2001):

"At the age of 58, permanent, full-time Employees shall be entitled to five (5) additional vacation days each year until retirement, provided the Employee is not earning vacation leave under the 25 year provision (...). If the compulsory retirement age is lowered from sixty-five (65) years of age, the age at which an Employee becomes eligible for this provision shall be reduced by the same number of years."

Some agreements provide employees with additional vacation credits to recognize their long service when they reach a certain benchmark, such as completing 25 years of service and attaining a certain age.

Bowater Pulp and Paper Canada Inc. and Communications, Energy and Paperworkers Union of Canada, Locals 142 and 251 (1998-2004):

"Starting in the calendar year in which an employee completes twenty-five (25) years of continuous employment, an employee who is entitled to vacation leave with pay, in addition to the normal vacation leave entitlement, is entitled to vacation leave privileges applicable as follows: 60 years, one (1) week; 61 years, two (2) weeks, 62 years, three (3) weeks; 63 years, four (4) weeks; 64 years, five (5) weeks." [translation]

Abitibi-Consolidated Inc. and Communications, Energy and Paperworkers Union of Canada, 21 locals (1998-2004):

"After 25 years of service and upon attainment of 60 years of age, one additional week's vacation [is credited] for each additional year of service, to a maximum of 5 weeks' vacation at age 64."

The following agreement allows employees to have their long-service recognition credits reimbursed to them upon request. This flexibility measure gives older workers a choice between

taking their paid supplementary vacation or cashing in all outstanding service recognition credits.

Manitoba Hydro and Association of Manitoba Hydro Staff and Supervisory Employees (2000-2003):

"An employee with thirty-four (34) or more years of service will accumulate on straight time hours paid, up to five (5) working days long service recognition credits during each year of service. (...). At the end of each vacation year, outstanding long service recognition credits in excess of (5) days will be paid off. On request, an employee may have all outstanding long service recognition credits paid off."

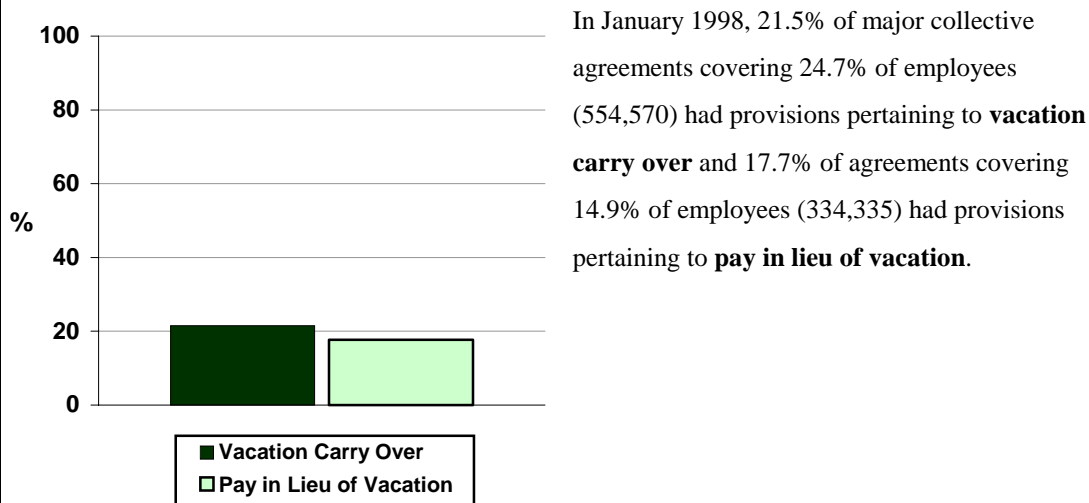
C. Carry Over of Vacation Credits

Many agreements provide for the possibility to carry over vacation credits into a subsequent year, sometimes allowing employees to accumulate vacation credits indefinitely. Some agreements provide for a pay-out option, which is another flexibility measure that may benefit older workers. Although periodical breaks from work are necessary for a healthy and balanced life, options to carry over vacation credits or have them reimbursed can be advantageous to older workers, offering them an opportunity to accumulate their vacation credits for future use, or to have a financial compensation instead.

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Figure 2.2: PAID VACATION CARRY OVER PROVISIONS

Percentage of Major Collective Agreements with Paid Vacation Carry Over Provisions



In January 1998, 21.5% of major collective agreements covering 24.7% of employees (554,570) had provisions pertaining to **vacation carry over** and 17.7% of agreements covering 14.9% of employees (334,335) had provisions pertaining to **pay in lieu of vacation**.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998).
Total number of agreements: 1077, covering 2,244,122 employees.

The following agreement gives employees the flexibility to accumulate vacation credits indefinitely, for future use. This measure enhances workers' ability to engage in long-term vacation planning.

Saskatchewan Workers' Compensation Board and Saskatchewan Government and General Employees Union (1997-2000):

"[after 120 days of service] Employees shall be allowed one and one-quarter (1¼) days leave with pay for each completed month of

service. Any unused days of the foregoing amounts shall accumulate from year to year without limit."

The following agreements provide for only limited carry over of vacation credits, up to a maximum of two years' entitlement.

British Columbia Ferry Corporation and B.C. Ferry and Marine Workers' Union (1998-2003):

"An employee may carry over up to seven days' vacation leave per vacation year for two consecutive vacation years, to a

maximum of 14 days, which must be taken not later than the third consecutive vacation year."

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"An employee may accumulate their unused vacation entitlement to a maximum of two (2) years entitlement as of December 31st of any year."

The following agreement limits the carry over of vacation credits to one year, unless there is mutual consent to go beyond one year.

Government of Canada and Public Service Alliance of Canada (2001-2003):

"Where in any vacation year the Employer has not granted all of the vacation leave credited to the employee, the unused portion of the employee's vacation leave shall be carried over into the following year. Carry-over beyond one (1) year shall be by mutual consent."

Some agreements allow for a carry over of vacation credits into retirement year, thus resulting in an earlier retirement date or in a financial compensation.

GO Transit, Toronto and Amalgamated Transit Union, Local 1587 (2000-2003):

"[The] employee may elect to carry over all or part of his/her unused vacation to his/her retirement year when the employee has

declared his/her retirement to be effective in the next calendar year. This carry over may be used for retirement bridging purposes or be paid out at 100% at the retirement date."

D. Unpaid Supplementary Vacations

Some agreements provide for extended or supplementary vacations in the form of unpaid leave. Supplementary vacations may be taken separately or be used to extend annual vacations. Such provisions apply to all employees, both young and old. However, they have an added advantage for those older workers who, for health or personal reasons, may wish to extend or supplement their vacation time at their own expense.

In a number of agreements, provisions pertaining to unpaid supplementary vacations also apply to a wider range of unpaid leaves of absence.

Provincial Health Authorities of Alberta and Canadian Union of Public Employees (2001-2004):

"Leave of absence shall be without pay and may be granted (...) for any reason which the employer and regular employee agree upon, including extended vacations, (...). Permission for leave of absence will not be unfairly withheld and where permission is denied reasons will be given."

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The following agreement provides for unpaid leaves of absence for extended vacations, among other purposes, up to a maximum of six months. If they are taken during the summer, such leaves are permitted once every three years. Workers who avail themselves of this provision may take a substantial period of time off, which may be of interest to some older workers.

Weldwood of Canada Limited and Industrial Wood and Allied Workers of Canada, Local I-424 (2000-2003):

"The Company will grant leave of absence up to a maximum of six (6) months without pay to employees for (...) extended vacations purposes. It is agreed that employees requesting leave of absence for extended vacations during the period June 15th to Sept. 15th, shall only be granted such leave, once every three (3) years, and that a record be kept for the purpose of rotating such leaves."

The following agreement allows employees to take additional vacation days without pay up to a maximum of 20 days for the purpose of extending their annual vacation. Many older workers may be willing to supplement their paid vacations with additional days, at their own expense, for health or personal reasons.

Comité patronal de négociation des collèges (CPNC) and Fédération du personnel professionnel des collèges (1998-2002):

"A professional employee may, with the agreement of the College, add leave without pay to the period of vacation leave to a total of twenty (20) work days." [translation]

The following agreement guarantees a fixed number of days off without pay in each year of service, but without any possibility to carry over any unused portion of the guaranteed days off. Although accommodating to employees, this measure does not necessarily entail any other advantage.

Delta Cable Communications and International Brotherhood of Electrical Workers, Local 213 (2000-2006):

"Guaranteed days off without pay to include a total of twenty-five (25) working days in a calendar year are guaranteed by the Company. The twenty-five (25) guaranteed days off must be taken as follows: a minimum of one (1) block of five (5) days; any combination of blocks of two (2) days or blocks of five (5) days that does not exceed [the remaining] twenty (20) days."

II Sick Leaves and Health Plans

Ageing workers are on average more susceptible than their younger counterparts to various health problems. Paid sick leave provisions are useful in ensuring that employees receive appropriate medical treatment and that they have an opportunity to recover from illness while maintaining their employment and income security. When used for preventive purposes, including regular medical check-ups, sick leaves may help detect potential problems before they reach serious proportions where longer treatments (and longer leaves of absence) may become necessary. Sick leave provisions are necessary to protect older workers' health, thus helping them to maintain their working capacity and their overall performance and productivity.

A. Sick Leave Entitlements

Sick leave plans in collective agreements generally provide for maintenance of an employee's income when he or she is absent from work due to illness or non-occupational injury. Short-term sick leave entitlements, including paid sick leave credits, vary from one agreement to the next. Almost 50% of major Canadian collective agreements provide for paid sick leaves. Such provisions are essential for all workers, and for older workers in particular, both for financial and job protection purposes in case

of health-related absences. This section covers the allocation of sick leave credits, how they can be used and whether they can be accumulated and/or carried over into subsequent years.

1. Calculation of sick leave credits:

More than other age groups, older workers have health-related needs that require occasional absences from work. This subsection focuses on eligibility for sick leave credits and how these are calculated in different major collective agreements. Outlining the allocation of credits is a prerequisite to the study of their different applications in the next section.

The following agreement grants the same sick leave credits to permanent and to temporary employees, up to a maximum of 23 days a year. However, one part of the credits is not fully funded.

Hydro One Inc. and Ontario Society of Energy Professionals (2001-2002):

"Employees are granted 23 days of sick leave a year — eight (8) days at full pay and 15 days at three-quarter pay. (...). Temporary employees with more than 12 months' service are entitled to sick leave credits equal to eight days at 100% and 15 days at 75% per annum."

Compared with other agreements in the education sector, the following agreement has a lower length of service requirement and provides for up to 90 school days of paid sick leave.

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Calgary Roman Catholic Separate School District. No. 1 and Alberta Teachers' Association (2000-2001):

"Teachers with less than six months service will receive two days per month of paid sick leave, for the purpose of necessary medical or dental treatment or because of

accident, sickness or disability. Teachers in the employ of the Board for more than six months will be granted up to 90 school days. After 90 school days of continuous absence due to medical disability, no further salary shall be paid and the long-term disability plan shall take effect."

Box 2.2

Sick Leave Provisions in Employment Standards Legislation⁶

Employment standards legislation in seven jurisdictions contains provisions allowing employees to take a job-protected leave of absence in case of sickness or other medical emergencies. All such leave is unpaid. Normally, employers may require that employees provide a medical certificate if they take a sick leave.

In Québec, employees with three months of uninterrupted service who must take a leave of absence due to illness or accident are entitled to 17 weeks of employment protection against dismissal, suspension or transfer. A similar provision in the federal jurisdiction covers employees with three months of continuous employment with regard to an absence due to illness of up to 12 weeks. In the federal jurisdiction, an employee may be assigned to a different employment if he or she is unable to perform his or her previous work. In Québec, an employee may be reassigned to comparable employment after returning from an absence of four weeks or more.

Newfoundland and New Brunswick provide employees with five days of sick leave per year if they have been employed with the same employer for a continuous period of six months and 90 days, respectively. Employees in the Yukon are entitled to one day of sick leave per month of employment with an employer, up to a maximum of 12 days. Employers are prohibited from dismissing or laying off an employee during the leave period.

⁶ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002. More information about sick leave may be found in the document "Family-related and other leave," available on the Internet at: http://labour-travail.hrdc-drhc.gc.ca/pdf/pdf_e/family_e.pdf.

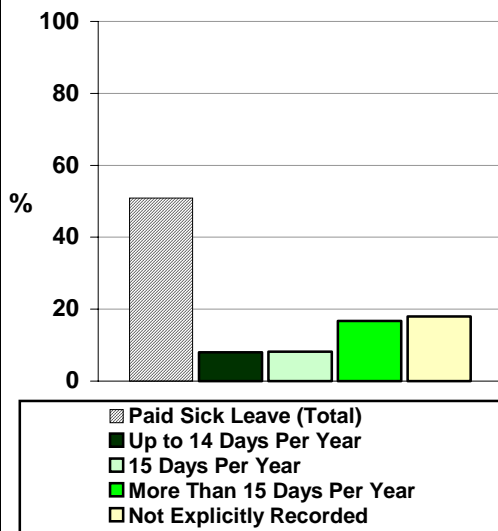
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In Saskatchewan, an employer may not dismiss, suspend, lay off, demote or discipline an employee with at least 13 weeks of service who is absent due to a personal illness or injury, or due to the illness or injury of a dependant who is a member of the employee's immediate family. An employee's job is protected for absences not exceeding 12 weeks per year in case of serious injury or illness, or 12 days in a calendar year for illnesses or injuries that are not serious. Employees are not entitled to the latter leave of absence, however, if they have a demonstrated record of chronic absenteeism that is unlikely to improve. The period of job protection is extended to 26 weeks for employees on workers' compensation.

Finally, statutory emergency leave provisions in Ontario allow eligible employees to take up to 10 days of unpaid leave per year in certain situations, such as an illness, injury or medical emergency concerning them or involving a close relative.

Figure 2.3: PAID SICK LEAVE PROVISIONS

Percentage of Major Collective Agreements with Paid Sick Leave Provisions



In January 1998, 50.9% of major collective agreements covering 58.9% of employees (1,317,664) had **paid sick leave** provisions, according to the following breakdown:

up to 14 days per year: 8.0% of collective agreements covering 8.9% of employees (198,767);

15 days per year: 8.2% of agreements covering 11.3% of employees (252,491);

more than 15 days per year: 16.7% of collective agreements covering 12.7% of employees (283,996);

not explicitly recorded in database: 18.0% of agreements covering 26.0% of employees (582,410).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

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Some agreements extend sick leave protection to probationary and part-time workers.

Ontario Power Generation Inc. and Ontario Society of Energy Professionals (2001-2003):

"Probationary and regular employees will accumulate 8 sick leave credits (a credit equals 8 hours, 7.5 or 7 hours, whichever applies to the employee) per year of service at 100% of the employee's base pay. (...). Regular part-time employees shall receive a pro-rated number of sick leave credits."

The following agreement provides for "attendance credits" to be used for sick leaves as well as for other personal reasons. These credits are separate from the annual vacation credits. This agreement features a relatively generous amount of credits, one and a half days per month, and extends their use to include situations that are not normally associated with sick leave allocation.

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"All probationary and permanent staff employees are entitled to attendance credits on the following basis: one and one-half (1½) days for each full calendar month of work (...). A deduction will be made from the accumulated attendance credits for all absence due to illness. (...). Employees will be granted up to four (4) days per year (...) in order to engage in personal and/or preventative medical or dental care."

2. Use of sick leave credits:

This subsection focuses on the different applications of sick leave credits. Flexibility with respect to a broader use of sick leave credits has a beneficial impact on workers.

The possibility to use sick leave credits for medical appointments is a productive long-term measure that could lead to early detection of health conditions, where treatment is generally easier. When workers are not allowed to use sick leave credits for medical visits, conditions may go undetected until they become more serious; then longer sick leaves may be needed. Some agreements allow for one half day of time off for medical consultations without affecting sick leave credits.

Black Gold Regional Division No. 18 and Alberta Teachers' Association (2000-2001):

"Sick leave with pay shall be granted to a teacher for the purpose of obtaining necessary medical or dental treatment or because of accident, sickness or disability."

Hydro One Inc. and Ontario Society of Energy Professionals (2001-2002):

"An employee may attend a medical consultation, receive dental treatment or be absent because of sickness for less than one-half day without reduction of sick leave credits and/or pay."

Regional Municipality of Durham and Durham Regional Police Association (1999-2003):

"Members may use up to eight (8) hours per year out of their sick leave bank for the purposes of attending doctor or dental appointments."

The following agreement rewards employees who reported sick for one day only in one year by offering them a one-week leave without pay. Where applicable, such a clause can be of great interest to those older workers who do not need to use their sick days. They have the option of taking a short leave of absence without pay at their convenience.

Labatt's Brewery and Teamsters, Brewery, Soft Drink and Miscellaneous Workers' Union, Local 1999 (1997-2002):

"An employee who had established seniority rights on November 1 will be paid for six (6) sick days at his or her normal rate of pay in November of each year. The employee receives one (1) day at his or her current year rate and five (5) days at the rate for the following year. (...). On October 31 of each year, an employee who has missed only one day because of illness will receive one (1) week of leave without pay that will not be counted as annual leave." [translation]

The following agreement allows workers to borrow attendance credits from unearned future entitlements. Although the number of days

that can be borrowed is limited to six, such a measure offers flexibility to workers with extended periods of illness.

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"In the event of absence due to illness during the first four (4) months following their return to full-time work, an employee who qualified for and was in receipt of Long Term Disability benefits (...), and who has exhausted all attendance credits, may borrow up to six (6) attendance credit days."

The following agreement provides for an extended sick leave period paid at 75% for up to six months after all sick leave credits have been exhausted. This provision is beneficial to workers who do not qualify for long-term disability benefits.

Ontario Power Generation Inc. and Society of Energy Professionals (2001-2003):

"When employees have exhausted their sick leave credits and are on sick leave, they will be paid at 75% of their base rate for a period of up to 6 months. Employees who are on continuous sick leave for 6 months and who qualify will be placed on Long Term Disability."

A number of agreements specify after how many days of sick leave absence a medical note is required.

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Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"An employee absent for illness may be required to provide a medical report that establishes that they were unable to work due to illness. This will not be required unless the absence is for more than five (5) days (...)."

Calgary Roman Catholic Separate School District No. 1 and Alberta Teachers' Association (2000-2001):

"The teacher shall provide a declaration on a form to be provided by the Board, where the absence is for a period of three days or less. A teacher who is absent for necessary medical or dental treatment or because of accident, sickness or disability for more than three consecutive school days shall present a medical certificate to the Board. When the sickness extends for a period of over one month, the employee may, at the discretion of the Board, be called upon to furnish a further medical certificate at the end of each month during the duration of the sickness."

3. Accumulation and carry over of sick leave credits:

Accumulation of sick leave credits into another year is advantageous to those older workers who may face an unexpectedly long illness during their career.

In addition to accumulation and carry over of sick leave credits into subsequent years, the following agreement provides for a partial restoration of previously used credits, until the 15th year of service, and for full restoration after the 16th year of service. This long-service recognition measure may be beneficial to many older workers.

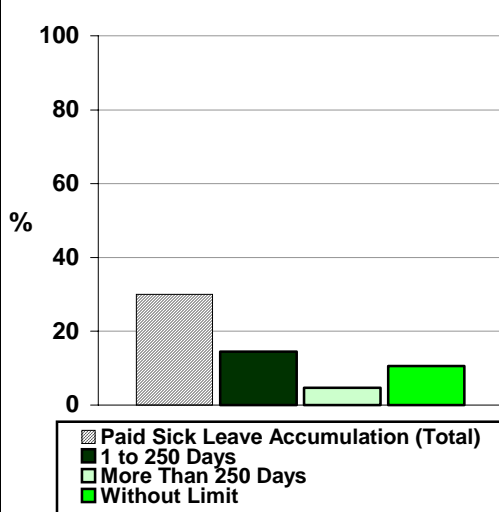
Hydro One Inc. and Ontario Society of Energy Professionals (2001-2002):

"These grants [sick leave credits] accumulate continuously each year if not used, up to a maximum of 200 days at three-quarter pay and no limit to the number of days at full pay. In the year in which an employee completes six years of service, all sick leave used in the first year of service will be restored. In the 7th year of service, all sick leave used in the 2nd year of service will be restored. This will continue until the employee has completed 15 years of service. In the 16th year of service, all sick leave used in the 11th through to the 15th years of service will be restored. In every year after 16 years of service, sick leave credits will be restored at the end of the year following the year in which they were used."

The following agreement provides for unlimited accumulation of sick leave credits, in addition to a relatively advantageous rate of one and one half days of sick leave credits per month of service.

Figure 2.4: PAID SICK LEAVE ACCUMULATION PROVISIONS

Percentage of Major Collective Agreements with Paid Sick Leave Accumulation Provisions



In January 1998, approximately 30% of major collective agreements covering 30.2% of employees (675,287) had provisions pertaining to **paid sick leave accumulation**, according to the following breakdown:

accumulation of 1 to 250 days: 14.5% of collective agreements covering 14.6% of employees (327,861);

accumulation of more than 250 days: 4.7% of agreements covering 3.5% of employees (76,915);

accumulation without limit: 10.6% of collective agreements covering 12.1% of employees (270,511).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

Regional Municipality of Durham and Durham Regional Police Association (1999-2003):

"All members shall accumulate sick leave credits at the rate of one and one-half (1½) days for each month's service, to a total of eighteen (18) days for each year's service to be added to the credits already accumulated (...) without a maximum amount."

Career interruptions are not uncommon, but their impact on sick leave credits can be detrimental to workers. In the case of older workers, career interruptions may be caused by family obligations, such as elder care or serious illness in the family, or by other factors. In addition to enabling teachers to carry over their sick leave credits, the following provision may be useful to teachers who had a career interruption, allowing their previously unused sick leave credits to be reinstated.

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Edmonton Catholic Regional Division No. 40 and Alberta Teachers' Association (2000-2002):

"In the second and subsequent years of employment with the Board, [teachers] shall be entitled to carry forward the unused portion of sick leave from the previous year. In the case of a teacher who has had previous service with the Edmonton Catholic Regional Division No 40 and re-enters its employ within 26 months of leaving (...) the sick leave accumulated (...) during the period of employment with the Edmonton Catholic Regional Division No 40 shall be reinstated to the credit of the teacher."

A number of agreements provide for pay out of sick leave credits when employment is terminated. Some agreements allow for only partially refundable credits with some restrictions, while in other agreements sick leave credits are simply eliminated.

Regional Municipality of Durham and Durham Regional Police Association (1999-2003):

"After four (4) years of continuous service, a member shall be entitled to an amount equal to his salary for one-half (1/2) the number of days standing to his credit, but not in excess of the amount of one-half (1/2) year's earnings at the rate received by him immediately prior to termination of his service."

Hydro One Inc. and Ontario Society of Energy Professionals (2001-2002):

"There will be no payout of unused sick leave credits when an employee leaves the service of Hydro One."

B. Disability and Other Health Plans

This section deals with insured health benefits and long-term disability plans. Although these insured plans are not normally discussed within the framework of leaves of absence, they are associated with the overall health conditions of employees, with a closer link to sick leave provisions. Health-related benefits tend to be offered to all employees irrespective of age. However, such plans may be of greater use to older workers than to their younger counterparts since older workers are more likely to need health-related benefits such as vision care, hearing aid, prescription drugs, extended disability or hospital care.

Meritor Systems and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Locals 127 and 1067 (2001-2004):

"The parties hereto have agreed to the establishment of a Group Life, Transition & Bridge Survivor Income, Accidental Death

and Dismemberment, Weekly Indemnity, Extended Disability Benefit, Semi-Private Hospital, Prescription Drug Programme, Vision Care Expense Insurance, Dental Care Insurance, Nursing Home Benefit, Prosthetic Appliance and Durable Equipment Insurance & Hearing Aid Expense Insurance Plan, and Clarica Out of Province Emergency and Travel Assistance Benefit. The Company at its sole expense will pay the entire cost of the programme, except for Dependent Life Insurance which is paid in full by the employee. Vision care and Hearing aid benefits are available to employees after completion of one year of service."

Some agreements provide for a 100% employer-funded extended health insurance plan. Given their age-related medical needs, older workers are likely to use the medical benefits offered by such fully funded plans.

J.M. Schneider and Schneider Employees' Association (1999-2005):

"The Company will provide an Extended Health Insurance Plan and pay 100% of the insurance premiums for the following benefits: managed Health Care Drug Plan at 100% of all eligible expenses for the Drug Benefit and the Supplementary Health care Benefit. Maximum dispensing fee payable is \$6.00. Vision Care at \$100 every twenty-four months. Hearing Aids at \$500 every ten years. (...). Dental Care: the Company will provide a Dental Care Insurance Plan and pay 100% of the insurance premiums for the

following benefits: Basic restorative and preventative at 80% reimbursement. Dentures and denture repairs at 50% reimbursement. Crowns and Bridges at 50% reimbursement (...)."

Air Transat and Canadian Union of Public Employees, Airline Division (1999-2001):

"The company has agreed to maintain, on behalf of CFC [Commercial Flight Crew] who have completed a three (3) month waiting period, a flexible group insurance plan. The company will pay 100% of the premiums for the following compulsory coverage for employees: life insurance (one times the annual salary); death and mutilation by accident (one times the annual salary); short-term disability insurance; health (basic care); dental (basic care) and 50% of the premiums for the following compulsory coverage for dependants: health (basic care); and dental (basic care)." [translation]

Other agreements provide for a long-term disability plan funded on a 50/50 cost-sharing basis between employer and employees.

Weldwood of Canada Limited and Industrial Wood and Allied Workers of Canada, Local I-424 (2000-2003):

"The contributions from both the industry and the employee will be increased by eight cents (8¢) per hour per employee per hour worked, so that the contributions will be fifty-five cents (55¢) per hour per employee

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per hour worked of which the industry will contribute twenty-seven and one-half cents (27½ ¢) and the employee will contribute twenty-seven and one half cents (27½¢). A Board of Trustees will be constituted with equal representation from the Union and the Industry, to be responsible for establishing the terms of the Plan and the on-going administration."

Hydro-Québec and Canadian Union of Public Employees, Locals 1500, 2000 and 957 (1999-2003):

"Management has agreed to pay fifty percent (50%) of the premiums on behalf of trainees and permanent and temporary employees for the private health insurance plan, the life insurance plan and the complementary group life insurance plan. For trainees and permanent employees, management has also agreed to pay fifty percent (50%) of the premiums for the dental care plan."
[translation]

The following agreements offer protection to workers who ceased employment due to illness or accident. This measure may benefit older workers who happen to be in the described situation.

Hydro-Québec and Canadian Union of Public Employees, Locals 1500, 2000 and 957 (1999-2003):

"Insurance coverage of an insured employee ceases automatically (...) on the day that the person ceases to be an employee of

Hydro-Québec except, where the termination of employment is because of illness or an accidental injury, the person is deemed to be employed by the company during the waiting period and then for the period of time that the employee is entitled to receive benefits under the plan." [translation]

Ontario Power Generation Inc. and Society of Energy Professionals (2001-2003):

"The Long Term Disability Plan provides financial security and rehabilitative employment features to regular employees during their absence from work due to extended sickness or injury."

Nursing services as well as other auxiliary medical services are offered to employees in the following agreement, up to pre-fixed maximum amounts.

Air Canada and Air Canada Pilots Association (2000-2004):

"Coverage for out of hospital nursing services that are determined to be reasonably or medically necessary will be increased to \$150 per day and \$7500 per year for each eligible person. The eligible expenses for the services of chiropractors, osteopaths, naturopaths, and podiatrists will each be covered to a maximum of \$50 per visit and \$100 for x-ray limited to \$1000 per year per eligible person or \$2000 per family per year."

III Special Leaves of Absence

Collective agreements commonly provide for various leaves of absence to accommodate workers for a number of purposes. Leave provisions, and notably leaves with pay and benefits, are of interest for the majority of older workers, especially those who have care-giving responsibilities and those who need additional time off for health reasons, for personal and social activities or in order to prepare for retirement. Leave of absence provisions cover leaves for personal reasons, family care leave, bereavement and compassionate leaves, and deferred salary leave. This section also deals briefly with the protection of rights following a leave.

Leave of absence provisions deal with the duration of the leave, whether it is to be with or without pay, and the circumstances in which the employer is required to grant the leave or is entitled to refuse it. Many collective agreements stipulate that where the employer may grant a leave, approval of the leave will not be unreasonably denied or withheld.⁷ Furthermore, most labour arbitrators hold that management must exercise its discretion reasonably, in good faith and without discrimination.

The maximum length of special leaves can be quite different from one agreement to another. The degree of job protection for employees on

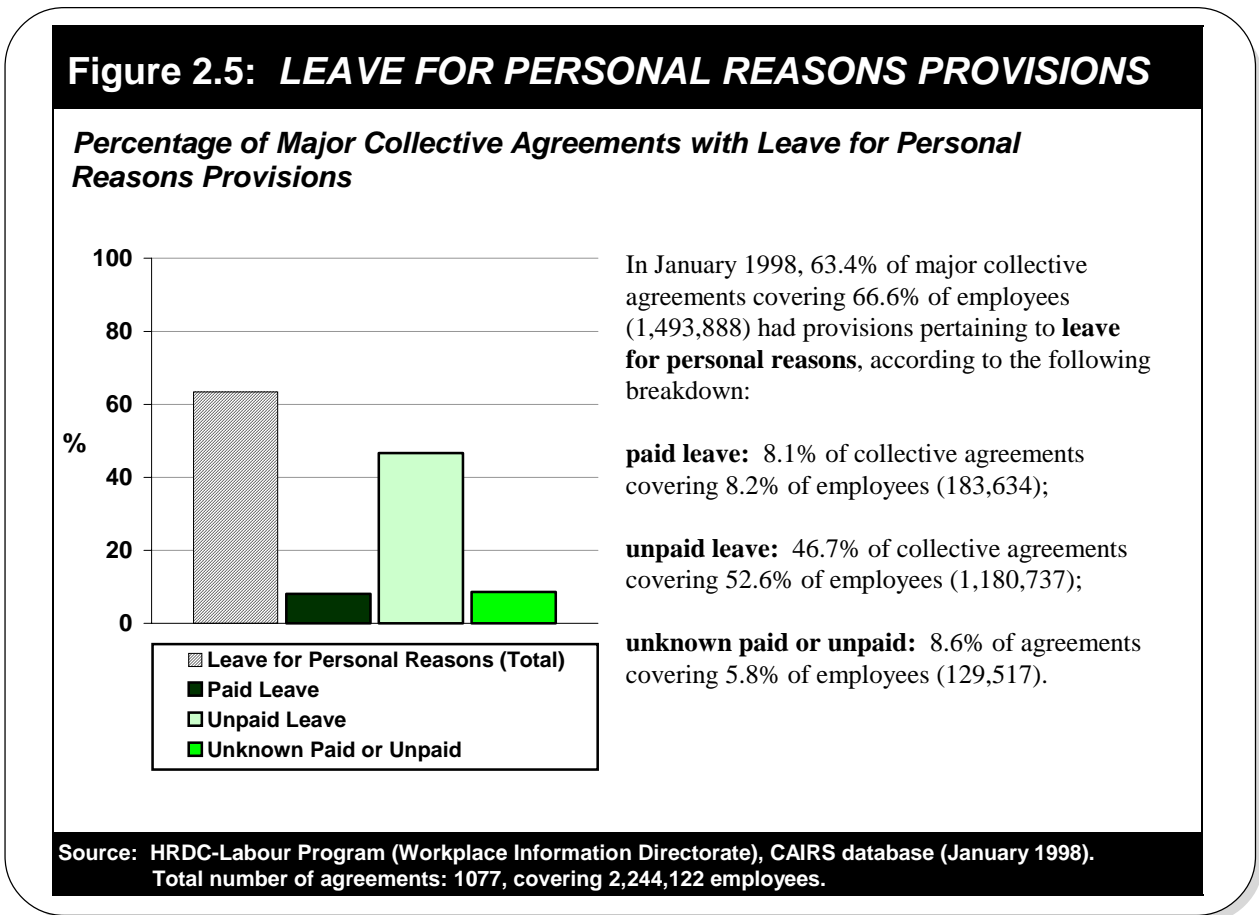
leave is also variable. Some agreements give employees the right to return to their former positions. But in other cases, employees on leave may incur the risk of being laid off if their job has been filled and no openings are available. The latter situation may render leave provisions virtually useless for those workers who need to take a leave but have concerns regarding their future employment prospects. Finally, a number of agreements give employees the right to maintain and accumulate seniority while on a leave of absence.

A. Leaves for Personal Reasons

Many collective agreements provide for personal leaves to accommodate employees in situations where an absence from work is justified. Because many older workers have increasingly demanding family responsibilities and personal needs, they are more than usually likely to face situations requiring their absence from work. Leaves for personal reasons can be with or without pay. This often depends on the duration of the leave and on the circumstances behind the employee's request for leave.

A distinction is made in this section between short-term leave and long-term leave. Short-term leaves, which can be up to three months long and are sometimes paid, are granted to employees to deal with temporary circumstances. A long-term leave, which is for longer periods than three months and which is usually unpaid, covers

⁷ Jeffrey Sack and Ethan Poskanzer, *Contract Clauses: Collective Agreement Language in Canada, 3rd edition* (Toronto: Lancaster House, 1996-2001), p. 18-28 and p. 18-61.



longer-term situations. The three-month dividing line is based on provisions found in a number of agreements. In this section, "pressing necessity" leaves will be dealt with under short-term leaves. Personal leaves generally have a wider scope and application than other types of special leaves, the latter being more specifically defined in terms of their respective purposes and conditions.

When determining whether to grant a leave and when, preference is sometimes given to employees with longer service, which is generally favourable to older employees.

Fletcher Challenge Canada Limited and Communications, Energy and Paperworkers Union, Local 1123 (1997-2003):

"Granting of leave is a matter between the employees and the mill management. The Company will consider length of service and will endeavour to arrange leave of absence to suit the employee's wishes. Employees with ten or more years of service will be given special consideration." [translation]

1. Short-term leave with or without pay (up to three months):

A "pressing necessity" leave is normally for a few days with pay, allowing employees to deal with urgent matters. Some agreements give managers enough flexibility to grant their employees leaves of absence, normally with pay, for urgent matters that may occur under unusual circumstances. Unforeseeable events, such as fire or accidents, and more dramatic personal or family situations are usually considered by employers as sufficient grounds to grant a "pressing necessity" leave. It must be noted that in collective agreement provisions similar leaves are sometimes labelled differently, as emergency leave, leave for exceptional circumstances, leave for urgent matters, and so on.

SaskPower and Communications, Energy and Paperworkers, Local 649 (1998-2001):

"Special leaves of absence, with pay, shall be granted at the discretion of the out-of-scope supervisor in cases of pressing necessity. Such leaves shall not exceed what, in the opinion of the supervisor, is a reasonable period of time. Payment for such leaves may be deducted from accrued sick leave credits."

The following agreement has an emergency leave provision where the issue of pay is not settled. However, the possibility of granting the leave with pay is not excluded.

Concordia University and Concordia University Part-time Faculty Association (1997-2002):

"Department chairs / Unit heads may grant a paid or unpaid leave for a period not exceeding seven (7) consecutive working days (...) to respond to certain circumstances or an emergency situation which may arise in a member's personal or family life necessitating an absence from teaching responsibilities."

Considering the many uncertainties that affect a worker's personal and family life, especially when the age factor and all related responsibilities are taken into account, provisions that accommodate workers for personal or family commitments can be extremely helpful.

Air Canada and Canadian Union of Public Employees, Airline Division (1998-2001):

"Where the requirements of the service permit, an employee who submits a written request may be granted a personal leave of absence without pay for up to three (3) months."

Black Gold Regional Division No. 18 and Alberta Teachers' Association (2000-2001):

"A teacher has three days of absence for personal reasons available with pay provided he (...) pays the cost of a substitute"

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Box 2.3

Emergency Leave in Employment Standards Legislation (Ontario)⁸

Since September 2001, employees in Ontario whose employer normally employs 50 people or more are entitled to an unpaid leave of absence in case of a personal illness, injury or medical emergency, or in case of a death, illness, injury, medical emergency or an urgent matter involving a close relative.⁹

Eligible employees may take up to 10 days of emergency leave per year, provided they notify their employer and give, if asked to do so, reasonable evidence of their entitlement to the leave. However, professionals (e.g., lawyers, architects, pharmacists, nurses), teachers and students in the professions may not avail themselves of this leave if doing so would constitute an act of professional misconduct or a dereliction of professional duty.

for the day(s) he was absent. Additional leaves of absence may be granted by the Board with or without pay for reasonable cause."

City of Kingston and Canadian Union of Public Employees, Local 109 (1998-2001):

"Each employee shall be granted three (3) personal days per year with pay, for any reason deemed appropriate by the employee,

subject to operational requirements. Such requests shall not be unreasonably withheld."

Comité patronal de négociation des collèges (CPNC) and Fédération du personnel professionnel des collèges (1998-2002):

"A professional employee is entitled (...) to authorized leave of absence, without loss of salary, (...) for a maximum of two (2) days per fiscal year for personal reasons (...)." [translation]

⁸ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002. More information concerning Ontario's emergency leave provisions may be found in the document "Family-related and other leave," available on the Internet at: http://labour-travail.hrdc-drhc.gc.ca/pdf/pdf_e/family_e.pdf.

⁹ A "close relative" is defined as a parent, step-parent or foster parent of the employee, the employee's spouse or the employee's same-sex partner; a child, step-child or foster child of the employee, the employee's spouse or the employee's same-sex partner; a grandparent, step-grandparent, grandchild or step-grandchild of the employee, the employee's spouse or the employee's same-sex partner; the spouse or same-sex partner of a child of the employee; the employee's brother or sister; or a relative of the employee who is dependent on the employee for care or assistance.

Sometimes, there are restrictions or conditions with respect to personal leaves, pertaining to the employee's status and years of service.

City of Calgary and Amalgamated Transit Union, Local 583 (2000-2003):

"Leave of absence, other than maternity, bereavement, mourner's and family leave, shall be considered only upon application from permanent employees having two (2) or more years continuous service."

Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 2213 (1999-2002):

"A short-term leave of absence will consist of more than thirty (30) calendar days but will not exceed ninety (90) calendar days. (...). However, this will not preclude an employee from returning to work to initiate a second request for leave. (...). Requests will be approved in order of seniority among those on hand at the time of granting (...)."

Other agreements are less restrictive when it comes to granting leaves for personal reasons. Every case is examined on its own merits based on the justifications submitted with the request for leave.

DDM Plastics Inc. and International Association of Machinists and Aerospace Workers, Local 2792 (1999-2002):

"The Company may grant a personal leave of absence for legitimate personal reasons. Seniority on personal leaves will accumulate for a maximum of sixty (60) calendar days. (...). An employee requesting an Emergency leave will be given every consideration by the Company, and time limits [for request procedures] will not apply."

Some agreements offer additional flexibility with respect to funding whereby the employee has the option of taking his or her leave with pay by charging it wholly or partially against attendance credits.

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"A leave of absence from work will be granted for justifiable personal reasons such as the employee's marriage, religious holidays, or sickness/injury in the immediate family requiring the employee's presence. The Manager may approve a request for leave for other justifiable personal reasons. Where an employee who is granted a leave of absence (...) has sufficient attendance credits, the leave of absence will be with pay and charged against attendance credits."

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The following agreement offers flexibility by allowing a leave of absence to be divided into shorter periods, thus accommodating workers who may prefer such non-consecutive periods of absence.

Comité patronal de négociation du secteur de la santé et des services sociaux and Union québécoise des infirmiers et infirmières (CEQ) (2000-2002):

"After one year of service in the establishment, on April 30, any employee is entitled each year, with the Employer's agreement on dates, to leave without pay for a maximum of four (4) weeks. The leave without pay may be divided into periods of at least one week each." [translation]

The following agreement offers flexibility by allowing the employee to remain on the company's health plan if he or she is willing to pay all necessary contributions while on leave.

Government of Québec and Association professionnelle des ingénieurs du gouvernement du Québec (1998-2002):

"For each period from April 1 in one year to March 31 in the following year, employees are entitled to a maximum of two (2) periods of leave without pay for a cumulative maximum of twenty (20) working days, or for employees with shorter hours, thirty (30) calendar days. (...) While on leave without pay, employees may continue to participate in the basic health insurance plan

if they apply when the leave starts and pay all the premiums, including the employer's portion." [translation]

2. Long-term leave without pay (over three months):

Older workers often need greater flexibility and appreciate added leisure time, especially when they are financially secure or at least willing to be temporarily deprived of income. Long-term leaves allow employees to take an extended period of time off, up to one or two years, normally without pay, for personal reasons. Such provisions show responsiveness to the increasingly demanding personal and family commitments of many older workers. Although a long-term leave generally implies a temporary loss of income due to work interruption, it can nevertheless provide older workers with greater flexibility and leisure time.

The following two agreements provide for the possibility to take a renewable one-year maximum long-term leave. This measure offers employees an opportunity to pursue their personal objectives without having to cease employment. In both cases, however, operational requirements apply.

Government of Québec and Association professionnelle des ingénieurs du gouvernement du Québec (1998-2002):

"An employee may, upon request, for a valid reason, operational requirements permitting, be given permission for leave of absence without pay for a period not to

exceed twelve (12) months; however, the permission for leave of absence may be renewed." [translation]

Air Transat and Canadian Union of Public Employees, Airline Division (1999-2001):

"Operational requirements permitting, CFC [Commercial Flight Crew] employees who have completed the probationary period may, upon written request submitted no later than the 12th of the month preceding the leave without pay, be granted leave without pay for a maximum period of one year. This leave may be renewed." [translation]

Some agreements limit both the maximum leave period and the frequency of leave within a specified period.

Bridgestone / Firestone Canada Inc. and Syndicat des travailleurs(euses) de Bridgestone / Firestone de Joliette (CSN) (1999-2005):

"An employee is entitled, every five (5) years, to leave without pay for a period of thirty (30) days to six (6) months (...)." [translation]

Confédération des syndicats nationaux et ses organismes affiliés and Syndicat des travailleuses et des travailleurs de la CSN (1998-2001):

"Such leave [leave without pay for personal reasons] for a maximum period of twelve (12) months may be granted only after four

(4) years of service and no more than once every five (5) years." [translation]

In some agreements, certain conditions apply to long-term personal leaves, such as length of service requirements and union consent. When length of service is the key factor determining leave entitlement, a particular advantage is given to older workers.

SaskEnergy and Communications, Energy and Papermakers Union of Canada, Local 649 (1998-2001):

"An employee who supplies reasonable notice shall be granted unpaid personal leave of absence on the following basis: a) operations permitting; b) no undue financial strain is placed on the Company; c) no undue strain is placed on employees in the area. Leave shall be granted for periods not to exceed the total accumulated seniority of the employee, up to a maximum of 12 months. Seniority and superannuation rights and credits shall be maintained and accumulated. (...). The approval of the Union must be obtained."

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"An employee may be granted personal leave without pay for personal reasons for a maximum period of two (2) years. (...). An employee must have continuous service exceeding seven (7) years duration to qualify for the maximum period."

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Government of Québec and Association professionnelle des ingénieurs du Québec (1998-2002):

"After seven (7) years of continuous service, an engineer is entitled, (...) once (1 time) per period of at least seven (7) years, to leave without pay for a period not exceeding twelve (12) months." [translation]

Spruce Falls Inc. and Joint Union Coalition Agreement¹⁰ (1999-2005):

"Extended Leave Eligibility: An employee must have been a full time employee for one (1) year and have bona fide interest in returning to his position."

B. Family Care Leave

In the context of an ageing society and with respect to older workers, family leaves to care for elderly parents or for an aged spouse are likely to become increasingly relevant, and to become perhaps as prevalent as family leaves to care for young children. Considering the fact that women are still disproportionately responsible for providing family care — and the growing tendency in Canada to shift from hospital care to home-based care in recent years — family care clauses may have an important impact on middle-aged and older women in the workforce.

The following agreements reflect a commitment by the employer and the union to take the necessary steps to accommodate workers who need a leave of absence for personal or family-related reasons.

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"The corporation acknowledges the need for employees to balance both their work and family responsibilities and will recognize such when granting time off work for family responsibility reasons. Such leave will not be unreasonably denied. The union acknowledges that employees should make every reasonable effort to have alternate arrangements in place to take care of family responsibilities."

Alcan Smelters and Chemicals Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 2301 (1999-2002):

"Both Parties recognize that unforeseen circumstances may arise which require special consideration in developing methods offering help to employees with complex or serious personal problems. Both Parties agree to take the circumstances into consideration in developing responses to individual situations."

¹⁰ Communications, Energy and Paperworkers Union of Canada, Locals 89 and 256; Office and Professional Employees International Union, Local 166; International Brotherhood of Electrical Workers, Local 1149; Industrial Wood and Allied Workers of Canada, Local 2995.

Box 2.4

Leave for Family Responsibilities in Employment Standards Legislation¹¹

Employment standards legislation in four provinces provides for a short period of leave to allow employees to deal with specific family responsibilities or emergencies involving close relatives. Three provinces provide unpaid leave (five days per year in British Columbia and Québec;¹² three days per year in New Brunswick) to fulfil obligations relating to the care, health or education of a child. In British Columbia and New Brunswick, this also applies to responsibilities involving other members of the employee's immediate family.

In Ontario, eligible employees can avail themselves of the province's statutory emergency leave provisions to deal with an urgent matter involving a close relative.

It should be noted that a fifth province, Newfoundland and Labrador, adopted amendments to the *Labour Standards Act* that, once they come into effect,¹³ will add a new family responsibility leave provision. This will allow eligible employees to take a combined total of seven days of unpaid sick leave or family responsibility leave in a year.¹⁴

Some agreements allow workers to charge their family care leave against their sick leave credits. Although such provisions provide a measure of flexibility for employees, the use of sick leave credits for other purposes may not suit the needs of those older workers who have to use their sick

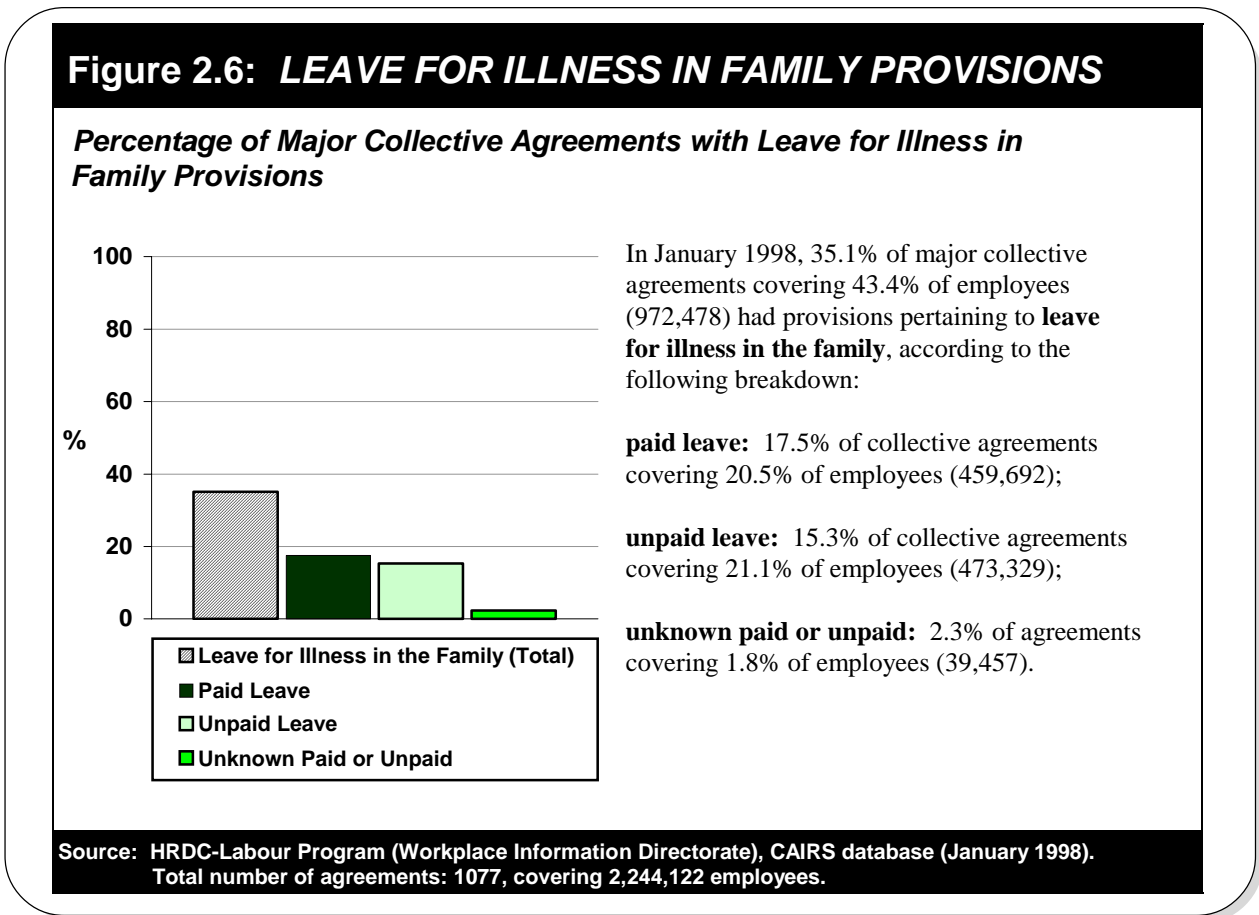
days for medical reasons. Nevertheless, this flexibility measure may be a sign of an evolving situation whereby family-related responsibilities are increasingly acknowledged as being as important as health-related needs.

¹¹ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002. More information about leave for family responsibilities may be found in the document "Family-related and other leave," available on the Internet at: http://labour-travail.hrdc-drhc.gc.ca/pdf/pdf_e/family_e.pdf.

¹² To be entitled to family responsibility leave, employees in Quebec must have taken all reasonable steps to assume their child care obligations by other means and to limit the duration of the leave.

¹³ Newfoundland and Labrador's Minister of Labour announced that amendments to the Labour Standards Act should come into force on July 1, 2002.

¹⁴ To be eligible, employees covered by this provision will be required to have been employed under a contract of service with the same employer for a continuous period of 30 days.



SaskEnergy and Communications, Energy and Paperworkers Union of Canada, Local 649 (1998-2001):

"Leave with pay for Family Responsibilities granted under this Clause shall be deducted from the employee's sick leave credits. Leave granted under this Clause shall relate to family responsibilities associated with the employee's immediate family as defined below: a) spouse, b) dependent children, c) parents, or d) any relative residing in the employee's household. Employees shall be granted leave for the actual time required,

(to a maximum of one-half day) to handle family appointments (...). An employee shall be granted leave (to a maximum of one (1) day) to provide for the care of a sick member of the employee's family."

Government of Manitoba and Manitoba Government Employees' Union (2000-2003):

"An employee shall be entitled to up to five (5) days of leave with pay in each fiscal year to be granted on the recommendation of the

employing authority as follows and charged against the employee's sick leave credits: the leave shall be for the purpose of attending to family responsibilities which are real, immediate and unavoidable and which necessitate the employee's absence from work."

In the context of a rapidly ageing population and increasing life expectancy, it is now becoming more commonplace for working-age individuals to provide care for their parents, spouse or other elderly relatives. Tasks associated with elder care can range from occasionally accompanying someone to an appointment to providing the equivalent of full-time nursing care. Collective agreements commonly deal with elder care leave under the broader provisions of family care leave or long-term personal leave.

Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 2213 (1999-2002):

"Employees will be allowed a maximum of three (3) days in each calendar year for the care of their sick or injured spouse, parents or dependent child. For pay purposes, accrued sick leave credits shall be reduced when an employee is absent up to a maximum of three (3) days per year."

Regional Municipality of Durham and Durham Regional Police Association (1999-2003):

"On approval of the Chief of Police or his designee, members may use sick leave for the purposes of caring for their sick child or elder care of their parents."

As seen in the previous paragraphs, family care leaves may be used to meet some elder care obligations, although such leaves may have a broader application than elder care and are normally meant to cover a range of immediate family members. However, an elderly parent may require full-time care for a longer period of time than can be granted under short-term personal or family leaves. In order to help employees balance family responsibilities and work requirements, and as an alternative to career interruption, some agreements allow employees to take a long-term leave for various personal reasons, including the care of an elderly family member.

McMaster University and McMaster University Staff Association (2001-2003):

"Other Leaves of Absence without Pay. The following leave of absence for periods up to twelve months may be granted at the discretion and approval of the supervisor: a personal leave may be granted for a variety of reasons such as extended vacation time, child or elder care needs (etc.). The Employee may continue to participate in the Employer benefit plans, provided she pays both the Employee and the Employer benefit plan premiums in advance."

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C. Bereavement Leave

Bereavement leave may become increasingly relevant in the context of population ageing. Although most employment standards legislation in Canada provides for a leave of absence in case of death in the immediate family, many collective agreements have their own bereavement leave

provisions. A relatively recent innovation in contract language that could be of particular interest to older workers is the inclusion of grandchildren and of close friends in the bereavement leave provisions of many collective agreements. Most provisions provide for three to five days of paid bereavement leave, depending on the degree of kinship between the employee and the deceased person.

Box 2.5

Bereavement Leave in Employment Standards Legislation¹⁵

Ten jurisdictions in Canada provide for bereavement leave in their employment standards legislation.¹⁶ Its duration ranges from one day to one week, depending on the jurisdiction. Paid bereavement leave is available in only three jurisdictions (three days in the federal jurisdiction, one day in Québec and in Newfoundland and Labrador).¹⁷ To qualify for paid leave, continuous employment of three months in the federal jurisdiction and of one month in Newfoundland and Labrador is required. In Saskatchewan, an employee must have been employed for three months to be entitled to unpaid bereavement leave. Where available, bereavement leave applies in the event of the funeral or death of an employee's spouse, father, mother, child or sibling. In a smaller number of jurisdictions, it also covers grandparents, parents-in-law, and other persons, such as guardians or wards.

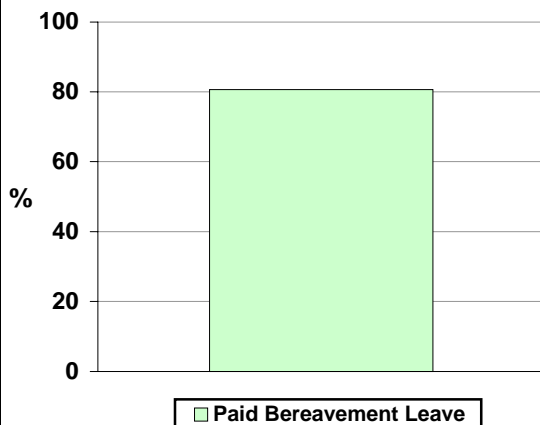
¹⁵ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002. More information concerning bereavement leave may be found in the document "Family-related and other leave," available on the Internet at: http://labour-travail.hrdc-drhc.gc.ca/pdf/pdf_e/family_e.pdf.

¹⁶ These are the federal jurisdiction, British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon. Eligible employees in Ontario can also avail themselves of the emergency leave provisions of the Employment Standards Act, 2000 for bereavement purposes.

¹⁷ In Newfoundland and Labrador, employees are entitled to one paid day and two unpaid days of absence. In Quebec, one day with pay and three days of leave without pay are provided in case of a death in the immediate family; one unpaid day is accorded for the death of a grandparent, a grandchild or an inlaw.

Figure 2.7: BEREAVEMENT LEAVE PROVISIONS

Percentage of Major Collective Agreements with Bereavement Leave Provisions



In January 1998, 80.6% of major collective agreements covering 82.4% of employees (1,849,740) provided for **paid bereavement leave**.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

In most agreements, the maximum length of paid bereavement leave is determined by factors such as family relationship. Some agreements provide for a five-day leave while limiting its application to death in the immediate family only. Other agreements extend the use of bereavement leave to cases involving more distant family members while reducing the duration of the leave.

In the following agreement, paid bereavement leave of five days is provided in case of a death in the employee's extended family, including grandchildren and in-laws.

Government of New Brunswick and Canadian Union of Public Employees, Local 1253 (1998-2001):

"An employee with seniority shall be granted bereavement leave in the event of the death of the employee's mother, father, wife, common law spouse, husband, son, daughter, brother, sister, mother-in-law, father-in-law, grandparents, grandchild, sister-in-law, brother-in-law, son-in-law, daughter-in-law, without loss of regular pay for five consecutive calendar days terminating no later than two (2) calendar days after the funeral (...)."

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The following agreement provides for five days for the death of an immediate family member and for three days in the case of other relatives.

Air Transat and Canadian Union of Public Employees, Airline Division (1999-2001):

"The company must grant CFC [Commercial Flight Crew] employees leave of absence, without loss of salary, in the event of the death of a family member as described below. Spouse, common-law partner, child, father, mother, brother, sister, legal guardian, adoptive parents: 5 consecutive days. Father-in-law, mother-in-law, brother-in-law, sister-in-law, and any relative permanently residing in the employee's household or with whom the employee permanently resides: 3 consecutive days. Grandfather, grandmother, and spouse's grandfather and grandmother: 1 day." [translation]

Although it provides for an extended bereavement leave when the deceased is an immediate family member, the following agreement limits the number of leave days that are paid.

Air Canada / Canadian Airlines International and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1990 (2000-2004):

"When a death occurs in the immediate family of an employee, the employee shall be granted bereavement leave up to seven

(7) calendar days, at the employee's option, of which not more than three (3) will be with pay."

The following agreement accommodates employees' needs by providing for extended paid bereavement leave when foreign travel or other arrangements are required.

Concordia University and Concordia University Part-time Faculty Association (1997-2002):

"A member is entitled to five (5) consecutive working days of paid leave in the event of the death: of a spouse, of a child, of the child of a spouse, of a father, of a mother, of a sister, of a brother. In exceptional circumstances or in the event of an out-of-country death of the aforementioned family members, a member is entitled to ten (10) consecutive working days of paid leave."

In the following agreement, duration of leave is linked to kinship to the deceased person, with one added feature: flexibility as to whether the leave is continuous or not. Furthermore, distance is taken into account, giving employees one or two additional paid days for travelling purposes.

Comité patronal de négociation des collègues (CPNC) and Fédération du personnel professionnel des collègues (1998-2002):

"A professional employee is entitled to authorized leave of absence, without loss of salary, in the event of the death of a spouse,

child, or spouse's child: five (5) working days; the leave may be discontinuous; A professional employee is entitled to authorized leave of absence, without loss of salary, in the event of the death of a father, mother, father-in-law, mother-in-law, brother, sister: three (3) working days; the leave may be discontinuous. A professional employee is entitled to one (1) additional day if the event takes place more than two hundred and forty (240) kilometres [from the employee's residence] and two additional days if the event takes place more than four hundred and eighty (480) kilometres [from the employee's residence]." [translation]

Many agreements contain provisions allowing employees to take a one-day leave to attend the funeral of a close friend or distant relative, without loss of pay. Older workers are more likely to have ageing friends and relatives and to need this type of leave.

City of Calgary and Amalgamated Transit Union, Local 583 (2000-2003):

"Leave with pay to attend funeral services only, of persons related more distantly than those listed (...), may be granted at the discretion of Management. A relative shall be defined as mother, father, brother, sister, wife, husband, common-law spouse, child or foster child, grandchild, guardian, mother-in-law, or father-in-law and grandparent of the employee or spouse, brother or sister of current spouses and current spouse of brother or sister."

SaskEnergy and Communications, Energy and Paperworkers Union of Canada, Local 649 (1998-2001):

"A maximum one (1) day leave with pay may be granted to attend the funeral of a close friend, relative or fellow employee."

Black Gold Regional Division No. 18 and Alberta Teachers' Association (2000-2001):

"Leave with pay up to one day per school year may be granted by the Board for the purpose of attending the funeral of a close friend (...)."

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"In the event of a death involving someone other than a designated family member (for example, an extended family member, co-worker or close friend), requests for paid leave to attend the funeral will not be unreasonably denied."

D. Compassionate Leave

Although compassionate leave is considered synonymous with bereavement leave in a number of agreements, it may have a wider application, such as a serious illness in the family or other highly stressful situation. Compassionate leave provisions tend to accommodate workers facing

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personal or family-related dramatic events. As shown in the examples below, compassionate leaves are generally given for a few days, without loss of salary, in critical situations involving family members.

Black Gold Regional Division No. 18 and Alberta Teachers' Association (2000-2001):

"Leave necessitated by critical illness or death of a spouse, child, step-child, parent, step-parent, guardian, parent-in-law, grandparent, son-in-law, daughter-in-law, brother, sister, grandchild, brother-in-law, sister-in-law, grandparent of spouse and other close member of the teacher's household shall be granted with full salary by the Board as follows: up to and including five teaching days for critical illness; up to and including five teaching days for death."

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"Up to a maximum of two (2) days leave with pay (per incident) may be granted to allow the employee to make arrangements to take care of the situation in the event of a sudden, serious or incapacitating illness or injury (...) involving a parent, spouse, or child of an employee (...)."

The following agreement provides for a long-term compassionate leave without pay, allowing employees to deal with situations requiring an extended absence from work.

Weldwood of Canada Limited and Industrial Wood and Allied Workers of Canada, Local I-424 (2000-2003):

"The Company will grant up to a maximum of six (6) months without pay to employees for compassionate reasons" when an applicant provides a bona fide reason. However, an interpretation article annexed to the Agreement states that "The company will only be obliged to grant extended compassionate leave to employees in cases of emergency such as illness or death in the family, or in cases where the individual is designated to act as Administrator of an estate."

E. Deferred Salary Leave

More common in the education sector and in the public service than in any other sector, deferred salary leaves, termed pre-paid leaves in some agreements, have the advantage of allowing workers to take a leave of absence of up to one year while spreading the loss of income over several years in order to minimize the immediate financial impact. For instance, this can be

achieved by working full-time for four years, then taking one year off while being paid at 80% of full salary over the five-year period. When the time off is taken at the beginning of the covered period, the leave is called "anticipated." When the time off is taken at the end of the covered period, the leave is called "deferred." Deferred leave provisions allow older employees to enjoy extended free time to rest or pursue other goals, without having to incur a sudden and substantial loss of income.¹⁸

The following agreements offer protection for the purposes of calculating credited years of service. In addition, seniority is used to determine eligibility, as well as priority, when many applicants are interested in a deferred salary leave.

Comité patronal de négociation des collègues (CPNC) and Fédération autonome du collégial (2000-2002):

"The time period under the leave with deferred or advance pay plan may be two (2) years, three (3) years, four (4) years or five (5) years. (...). The leave period may be for six (6) months or twelve (12) months. (...). Where the College must select among requests to participate in the leave with deferred or advance pay plan from a number of professors, requests shall be accepted in order of seniority. (...). For the purposes of calculating the instructor's retirement

pension, one (1) year of service is recognized for each year of participation in the leave with deferred or advance pay plan." [translation]

Concordia University and Concordia University Part-time Faculty Association (1997-2002):

"A regular part-time faculty member on deferred salary leave shall earn seniority credits they would have normally received had they not taken a deferred salary leave, calculated as the average from the last three years in which the member taught (...)."

Flexibility with respect to salary arrangements is provided for in the following agreement, whereby the loss of income is spread over a longer period of time, thus reducing the financial impact on employees.

British Columbia Ferry Corporation and B.C. Ferry and Marine Workers' Union (1998-2003):

"Plan participants may defer a minimum of 10% to a maximum of 33.33% of their gross monthly regular pay. (...). The overall deferral period cannot be less than one year, and cannot exceed six years. (...). The leave period will be a minimum of six consecutive months and a maximum of twelve consecutive months. [Participants] must complete both

¹⁸ *The effects on benefits of a deferred salary leave were covered in Work and Family Provisions in Canadian Collective Agreements, edited by C. P. Rochon (Hull, Quebec: Human Resources Development Canada, Labour Program, 2000), pp. 114-115.*

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the deferral and leave period within a seven-year time frame. Participants will continue to accrue service and group seniority during the period of leave. (...). In the event that deferred leave is not taken under above, all monies, plus interest accrued, will be paid to the employee in a lump sum payment."

Some agreements provide for the deferment of salary when taking a long-term leave without pay to which the employee is eligible. The purpose is to spread the employee's salary over the leave period. This may entail a tax advantage for the employee. However, tax regulations normally apply.

Insurance Corporation of British Columbia and Office and Professional Employees' International Union, Local 378 (1999-2003):

"The Deferred Salary Plan, hereinafter referred to as the DSP, is a program which permits employees to defer salary, for the purpose of funding an approved leave of absence without pay. (...). Regular employees who have completed two full years continuous employment with the Corporation may participate in the DSP. The DSP must be taken in conjunction with a leave of absence without pay already provided for in the Collective Agreement, to which the employee is eligible."

Government of Québec and Association professionnelle des ingénieurs du gouvernement du Québec (1998-2002):

"For any leave without pay for less than twelve (12) months (...), the employee may elect to spread the salary reduction over a period not to exceed twelve (12) months preceding or immediately following the date the leave started, but including the leave period." [translation]

Some employers are showing a willingness to discuss with employees' representatives the possibility of introducing deferred salary leave provisions into their collective agreements.

Canadian Broadcasting Corporation and Canadian Media Guild (1999-2001):

"Letter of agreement — deferred salary leave: the Corporation agrees that during the life of this collective agreement it will enter into good faith negotiations with the Union to discuss the possibility of implementing a pre-paid leave plan."

F. Protection of Rights Following a Leave

Some agreements have specific provisions to protect workers' rights when they take or when they come back from a leave of absence. Such

protection is a key consideration for those older workers who rely on leave provisions to reconcile their work requirements with their personal and family responsibilities, and who would have concerns about their employment stability if protective measures did not exist.

Confédération des syndicats nationaux et ses organismes affiliés and Syndicat des travailleuses et des travailleurs de la CSN (1998-2001):

"A permanent employee may be granted leave without pay for personal reasons, operational requirements permitting, based on the following terms and conditions: with accumulated seniority and right of return to the employee's position for leave of no more than one month per year; the leave may be spread over several periods, not exceeding four (4) periods per year; with accumulated seniority and right of return to the employee's position for leave of more than one month (...). In this case, the employee accumulates seniority to a maximum of twelve (12) months." [translation]

Bridgestone / Firestone Canada Inc. and Syndicat des travailleurs(euses) de Bridgestone / Firestone de Joliette (CSN) (1999-2005):

"The employer may, at the employee's request, grant permission for a leave of absence of less than thirty (30) days; the employee accumulates seniority during the leave of absence and retains his/her position." [translation]

Conclusion

In today's workplace, work intensity and work pressures are rising, and are likely to continue to rise in various ways due to a series of technologically related factors and other workplace developments.

All these factors are contributing to increased workload and stress. Leaves of absence are becoming an indispensable tool to fight stress on the job as well as stress from other sources. They provide workers in general, and older workers in particular, who are more prone to work-related health conditions, with temporary periods of relief from work.

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Although the existence of various leave of absence provisions does not in itself guarantee the elimination of work-related difficulties, these provisions do provide workers in general, and older workers in particular, with the leisure time they need as a counterweight to an increasingly stressful work environment. Moreover, leaves of absence for specific purposes accommodate older workers facing personal or family illness, the death of someone close to them or any other urgent situation. Collective agreements providing for extended annual vacation leave on the basis of age or length of service offer an additional benefit to older workers.

Due to population ageing, the number of older workers is expected to increase, and accommodating measures will be required to respond to their emerging needs. The gradual ageing of the workforce may also call for retention measures to offset a possible labour shortage. In order to help accommodate and retain older workers — as a major step toward increased labour participation — a set of adjustments and incentives may be necessary. By accommodating the special needs of older workers, leaves of absence, among other measures, may be conducive to a reduction in early retirements, thus postponing any resulting loss of skills and experience.

Training, Retraining and Education

Training, retraining and education are important determinants of a worker's ability to perform and adapt to workplace changes. They are therefore key to providing improved employment opportunities and, in turn, job security for the economic well-being of older workers. Training is also conducive to better and, especially, safer working conditions.

Technological and organizational change may render an employee's skills obsolete and dramatically depreciate the value attached to previously accumulated work experience. Training and retraining are therefore essential if older workers are to update their skills, acquire new qualifications and remain competitive in the labour market.

This chapter highlights training, retraining and educational leave provisions found in major Canadian collective agreements. The chapter is subdivided into four sections, each dealing with a particular set of provisions:

- I Training:** Training provisions deal with on-the-job training, training courses and apprenticeship programs.
- II Retraining:** Retraining provisions deal with an employee's right to retraining, especially in cases of technological and organizational change. Some also deal with the notion of functional flexibility or multiskilling.
- III Educational Leave:** Educational leave provisions deal with various types of leave. For the purpose of this study, we will focus on job-related educational leave, general educational leave and sabbatical leave.
- IV Training and Education Funding:** This fourth section deals with various funding schemes used by unions and companies to help them deal with the costs associated with training, retraining and education.

It is important to note that although no training provisions specifically designed for older workers have been found in major Canadian collective agreements, some contract language can help protect the interests of ageing employees or even give (some of) them an advantage

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Statistics highlighting the importance of training and education amongst older workers:¹

- According to Statistics Canada, the unemployment rate in 1997 for workers aged 55 and more ranged from 9.1% for those with the lowest levels of education to 3.1% for those with graduate degrees.
- The risk of layoff is much greater for older workers with low education levels. The majority (56%) of workers aged 55 and over who were laid off in 1995 and 1996 had not graduated from high school, and a further 27% had no post-secondary education.
- Once laid off, older workers are much less likely to find subsequent employment. However, their level of education also makes a large difference in the probability of obtaining a new job. In 1995-1996, more than two thirds of older workers without post-secondary education were still without a job a year after layoff, as compared to about a third of those with post-secondary degrees. This explains in part why older workers with lower education levels also tend to leave the labour force at a younger age.

in obtaining a share of training, retraining and education resources. This is typically the case when provisions stipulate that age cannot be used as a criterion to exclude older workers. Even more important is the use of seniority to determine eligibility for training or retraining. The existence of employer-funded training funds controlled by unions may also benefit older workers insofar as they are designed to distribute resources in an equitable fashion (i.e., not discriminating on the basis of age or the number of years left before retirement).

Conditions for Training, Retraining and Educational Leave

Almost all collective agreements with training, retraining or educational leave clauses indicate that employees who wish to undertake training at the employer's expense must submit a written application and obtain the prior approval of their managers. Such approval often depends on available resources and on whether the training can satisfy the needs of the employer (e.g., can contribute to greater worker output).

¹ *Statistics Canada, Labour Force Update: Older Workers, Spring 1998, pp. 21-23, 27.*

The selection of applicants for training, retraining or educational leave is commonly based on seniority ranking. In addition to seniority, other factors such as qualifications, aptitudes, knowledge, prior education, minimum length of service, and work records are often considered.

Finally, another condition frequently required is that the number of employees on leave or training must not interfere with the requirements and efficiency of operations in a department. However, some unions have negotiated provisions whereby an employer is required to maintain a list of trained backup operators sufficient to meet the requirements of operations while employees are absent for training purposes.

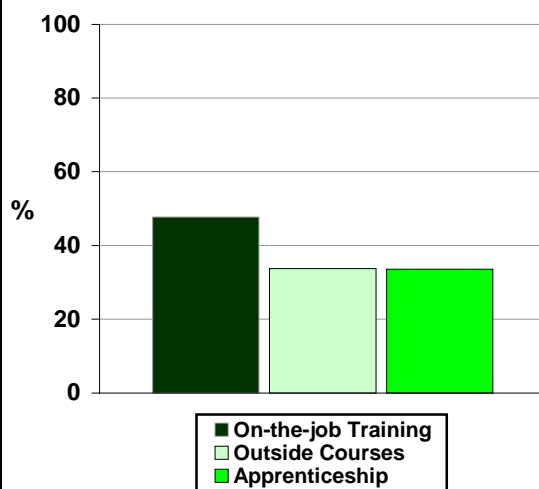
Some agreements also give the employer the right to recruit a temporary replacement for the period of an employee's absence, provided the employee is reinstated after the period of training.

Obligations of Employees Who Have Received Training

Employees who have received special training for a particular position are sometimes "locked in" for a period of time. They may be expected to fill vacancies in that classification or they may be obligated to bid on any assignment for which they were trained or they may be ineligible to apply for another position within the company.

Figure 3.1: TRAINING PROVISIONS

Percentage of Major Collective Agreements with Training Provisions



In January 1998, 47.7% of major collective agreements covering 54.2% of employees (1,216,440) had provisions pertaining to **on-the-job training** compared to 33.7% of agreements and 42.4% of employees (950,566) covered by provisions for **outside courses**. Provisions pertaining to **apprenticeship** training were found in 33.6% of agreements covering 33.9% of employees (760,359).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998).
Total number of agreements: 1077, covering 2,244,122 employees.

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In some cases, employees having completed training for a specific position may be required to fill future vacancies for that position, regardless of location and regardless of whether it is a permanent or temporary position.

If an educational leave is paid, employees must generally continue working for their employer for a certain period of time (e.g., equivalent to the length of the educational leave).

I Training

This section focuses on three types of training provisions commonly found in collective agreements: on-the-job training, training courses and apprenticeship programs.

The most important issues with respect to these training programs include their availability, the selection process used to determine who will be trained, and the apportioning of costs (i.e., whether or not employees must disburse part of the training costs, use their free time or take an unpaid leave). Older employees can benefit the most when agreements specify that all training-related expenses must be paid for by the employer and that training is to be offered, on a regular basis, to all employees, or at least be made available on the basis of length of service. Nevertheless, additional factors are usually considered as well, such as qualifications, aptitudes, prior education, and work records. These may or may not constitute a barrier for older workers, depending on how employers apply these criteria — and whether unfair assessments can be grieved.

A. On-the-Job Training

On-the-job training may be provided to: any newly hired employee; any employee who moves from one position to another or who is assigned to duties requiring new knowledge; or any employee who moves from one class of employment to another (i.e., promotion). Clauses dealing with on-the-job training typically refer to training opportunities, preference for training based on seniority, as well as specification of timing and rate of pay for both trainees and trainers when the latter are senior employees of the company.

Many collective agreements formally recognize the importance of providing training opportunities to ensure a qualified workforce, to upgrade skills and to facilitate the acquisition of new skills.

Fording Coal Limited and United Steelworkers of America, Local 7884 (1996-2001):

"The Company and the Union recognize the importance of assisting employees to improve their knowledge and skills so that each employee may realize advancement in responsibility and pay."

One concrete measure toward attaining this goal is the creation of a Joint Education and Development Committee.

Insurance Corporation of British Columbia and Office and Professional Employees' International Union, Local 378 (1999-2003):

"The Corporation and the Union believe in the benefits of employee training and development. The purpose of training is to provide for upgrading of an employee's knowledge, skills and abilities in order to meet the requirements of their present position, or to develop toward future career alternatives."

Pratt & Whitney Canada Inc. and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 510 CAW-Canada) (1999-2002):

"(...) employee training must be an integral part of a healthy management to achieve corporate objectives and thereby continuously improving employees' performance and maximizing corporate operations. As in the past, management will continue to contribute generously in the continuous training of employees."

St. Lawrence Seaway Management Corporation and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 4320 (CAW-Canada) (2001-2003):

"Employees shall be encouraged to learn the duties of other positions and every opportunity shall be afforded them to learn the work of such other positions in their own

time or during their working hours when it will not unduly interfere with the performance of their duties. The Corporation will not unreasonably withhold training opportunities to any employee who has indicated a desire to learn the work of other positions. For this purpose, applicants for training for promotion shall be selected in order of seniority except as otherwise agreed between the Corporation and the Union."

As stipulated in the previous example, a number of collective agreements require that training opportunities be allocated in accordance with seniority, and that senior employees who apply for promotion to a vacancy must be given a trial and training period. Such provisions are beneficial to older workers as they generally have more seniority than younger workers.

City of Edmonton and Canadian Union of Public Employees, Local 30 (2001-2002):

"Training opportunities shall be provided to employees on the list in order of seniority."

Government of New Brunswick and Canadian Union of Public Employees, Local 1253 (1998-2001):

"In filling job vacancies, including promotions, reclassifications, transfers and new positions, the job shall be filled within forty (40) working days of the vacancy by the senior applicant, provided he is able to perform the job. (...) Consideration for promotion shall be given to the senior applicant who does not possess the required qualifications but is preparing for

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qualifications prior to filling the vacancy. At the discretion of the employer, such an employee may be given a trial period to qualify within a reasonable length of time and will revert to his former position if the required qualifications are not met within such time."

Time spent by employees for training is typically provided on company time during regular hours and compensated at the usual rate of pay for their classification.

Imperial Tobacco Canada Limited and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 323T (2000-2004):

"When an employee is being trained on a job in a higher rate of pay for one (1) continuous hour or more, he will be paid a rate which is immediately below the rate of the job for which he is being trained, during the training period. An employee demoted or moving laterally will retain his previous rate until completion of training, at which time he will assume the job rate."

In the event that training is scheduled on a day of rest or when employees are required to work overtime while receiving training, many companies provide for payment of time and a half.

Spruce Falls Inc. and Joint Union Coalition Agreement (1999-2005):

"Any employee being trained for an occupation shall be paid time and one-half when it is necessary for him to work overtime

while receiving such training. The rate of pay will not be changed until he is competent to handle the new occupation alone. However, if called in on a day of rest for such training, all hours worked will be paid at time and one-half. a) Every effort will be made not to schedule training on days of rest. b) The rate of pay applicable when training will be the rate of pay of the job the employee would have worked if he was not training."

In addition to an employee's regular salary, many employers provide training premiums to employees who are called upon to train other employees. This type of provision is particularly beneficial to older workers, as they are often called upon to train their fellow employees because of their extensive experience and knowledge.

Canadian Broadcasting Corporation and Canadian Media Guild (1999-2001):

"When an employee is assigned to train (...) s/he shall be entitled to a training premium of nineteen dollars and fifty cents (\$19.50) per day in addition to his/her normal pay."

Legacy Hotels Corporation and Hotel Employees and Restaurant Employees Union, Local 75 (1999-2002):

"A certified (by the Company) employee required by the Company to act as a trainer will receive a premium of fifty (50¢) cents in addition to his/her hourly rate of pay for all hours assigned to training other employee(s)."

Clauses pertaining to formal mentoring programs are also found in major collective agreements.

Ontario Hospital Association and Ontario Nurses' Association (1998-2001):

"Nurses may, from time to time, be assigned a formal mentorship role for a designated nurse. (...) The Hospital will pay the nurse for this assigned additional responsibility a premium of sixty (60¢) cents per hour, in addition to her or his regular salary and applicable premium allowance."

Involving older workers in such activities not only formally recognizes and validates their knowledge and experience, but ensures valuable corporate memory is not lost. Furthermore, such programs can have a positive effect on retaining valuable older employees.

B. Training Courses

A number of agreements provide employees with the opportunity to improve their skills through training courses, seminars, conferences, conventions and workshops that may take place on or off the premises.

Provisions regarding training courses may include a reference to reimbursements for tuition, registration fees, books and materials, accommodation and/or any other financial assistance required. Details regarding application and selection for such training courses may be specified in the collective agreement. Also, some agreements give preference to senior employees, while others

specify that employees taking training courses will not suffer a loss of earnings. Finally, some agreements provide for monetary incentives to encourage employees to enroll in training courses.

In 1998, almost one third of major Canadian collective agreements contained clauses pertaining to training courses. In almost 90% of cases, these clauses stipulated that the employer would pay the full cost of tuition and other related expenses.

Bravo! Canada, City-TV, MuchMusic Network and other divisions of Chum Productions Limited and Communications, Energy and Paperworkers Union of Canada (2000-2003):

"If the Company requests that an employee attend a particular course, seminar or continuing education program, and the employee agrees, the Company will pay one hundred per cent (100%) of the costs."

Insurance Corporation of British Columbia and Office and Professional Employees' International Union, Local 378 (1999-2003):

"The Corporation will reimburse the full cost of books and tuition fees and such other expenses as may be approved by the Corporation of any course where such training is directly related to the employee's job. The Corporation will make full reimbursement to the employee upon the successful completion of each term in case of courses lasting more than one (1) year."

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A.G. Simpson Company Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (1998-2001):

"Programs approved will be reimbursed by the Company, to include all necessary books and tuition fees, upon successful completion."

Société des Casinos du Québec Inc. and Canadian Union of Public Employees, Local 3939 (1998-2002):

"Registration and tuition fees, books and necessary learning materials, travel costs and expenses for meals outside the region shall be fully reimbursed by the employer, in accordance with established policies and budgets, upon the presentation of vouchers." [translation]

The most common factors considered in determining the amount to be paid by the employer are whether or not the course is at the employer's request and whether or not it is directly related to the employee's job or is in some way beneficial to the company. Approval and proof of successful completion of the course are usually required. The following provision highlights these stipulations.

BC Gas Utility Limited and Office and Professional Employees' International Union, Local 378 (2000-2002):

"The full cost of training (tuition fees, required textbooks and such other expenses as may be approved by the Company) will be

reimbursed to a working employee upon successful completion of such training or course, where: 1. Written approval has been obtained from the Company prior to the commencement of such training or course, and 2. The Company agrees that this additional training bears direct relevance to the employee's current job or recognized career path within the Company.

One-half the cost of training (tuition fees, required textbooks and such other expenses as may be approved by the Company) will be reimbursed to a working employee upon successful completion of such training or course, where: 1. Written approval has been obtained from the Company prior to the commencement of such training or course, and 2. The Company agrees that this additional training would be helpful in broadening the individual's abilities in a work-related way or could be of future use to the employee in working with the Company."

Selection for training courses is often based on seniority.

Government of Newfoundland and Labrador and Newfoundland and Labrador Association of Public and Private Employees (2001-2004):

"In the process of selection from those applicants who are members of the bargaining unit, seniority shall prevail, provided that the senior applicant meets the required qualifications for admission to the course."

Some agreements contain provisions guaranteeing employees no loss in wages, benefits or seniority when attending training courses that take place within regular work hours and are authorized by the employer.

Regional Health Authorities of Prince Edward Island and International Union of Operating Engineers, Local 942 (2000-2003):

"Where an employee is required or requested to up-grade herself through an Employer approved training courses and such request comes from the Employer, the employee will suffer no loss of remuneration or benefits while on training."

Board of School Trustees of School District No. 36 (Surrey, B.C.) and Canadian Union of Public Employees, Local 728 (1999-2001):

"Where the Board has authorized an employee to take a course(s) of instruction the employee will not suffer a loss in wages, benefits or seniority."

Highland Valley Copper and United Steelworkers of America, Local 7619 (1998-2003):

"The Company agrees that where it is necessary in the opinion of the employer for an employee(s) to take a course in order to continue to work in his present classification

and such course is only available at a time when the employee is normally at work to: i) where possible offer work on a different schedule such that the employee can attend the course without losing time — or if that is not possible, — ii) pay for the working time lost to attend the course."

Lastly, some agreements include incentives for employees to take study courses.

Inco Limited and United Steelworkers of America, Locals 6200 and 6500 (2000-2003):

"The Company will pay to each employee who successfully completes such a study course and amount equal to the employee's basic rate for one-half (1/2) of the standard hours specified for the completion of such study course."

C. Apprenticeship Programs

Many employers provide apprenticeship programs. Although these are usually designed to train students and potential future employees, they can also provide unskilled employees with the opportunity to receive occupational and vocational training.

As was the case with on-the-job training and training courses, the employer absorbs almost all costs relating to apprenticeship programs.

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Canada Post Corporation and Canadian Union of Postal Workers (2000-2003):

"The Corporation shall pay the full cost of any formal apprenticeship program required by the Corporation and any actual and reasonable living out expenses for an employee who is required to live away from his or her home during such training."

Fletcher Challenge Canada Limited and Pulp, Paper and Woodworkers of Canada, Local 2 (1997-2003):

"The Company will pay 100 per cent of the cost of text books specified by the Apprenticeship Branch. The apprentice will keep these books as his personal property."

Most agreements provide that the selection of applicants to apprenticeship programs is to be based on such criteria as seniority, skill, aptitude, qualifications and learning capacities. However, individual agreements attach a varying degree of importance to each of these criteria, especially seniority rights, thereby varying the impact on older workers, who, generally speaking, tend to have more years of seniority.

Highland Valley Copper and United Steelworkers of America, Local 7619 (1998-2003):

"The selection [of apprentices] shall be based upon the seniority of applicants who are qualified (...) and who successfully complete the preapprenticeship examination (...)"

Reynolds Metals Company Limited and Syndicat national des employés de l'aluminium de Baie-Comeau (CSN) (1998-2003):

"The Employer shall offer permanent vacant trade apprenticeship positions to production employees. (...) The Employer shall choose the employees on the basis of their abilities, education and seniority." [translation]

PPG Canada Inc. and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (1999-2002):

"Selected applicants will be subject to a battery of tests and be interviewed for an assessment of their qualifications. Selection of apprentices under this program shall be based on the test results referred to (...) above as well as the applicants' skill, efficiency and ability to perform the work. The above being relatively equal, seniority shall govern."

Canada Post Corporation and Canadian Union of Postal Workers (2000-2003):

"The most senior applicants who meet the requirements must pass an aptitude test administered by a school or college chosen by the Committee and recognized for technical training programs."

More importantly for older workers, some agreements contain provisions pertaining to apprenticeship training that specifically indicate

that age cannot be used as a criterion to reject applicants. This is a way to ensure that older workers are not discriminated against when trying to enroll in apprenticeship programs that would enable them to apply for skilled jobs. (Anti-discrimination clauses and practices will be studied in more detail in Chapter 5 of this study.)

Inco Limited and United Steelworkers of America, Local 6166 (1999-2002):

"It is understood that age alone will not prevent entrance into the apprenticeship training program."

Conifer (Council on Northern Interior Forest, B.C.) and Industrial Wood and Allied Workers of Canada (2000-2003):

"There will be no age limit for applicants [wishing to participate in the apprenticeship program]."

II Retraining

This section focuses on three types of retraining provisions: provisions that recognize an employee's right to retraining or include a reference to retraining, provisions that deal specifically with the issue of retraining due to technological or organizational change and, lastly, provisions that seek to enhance and promote an employee's functional flexibility.

Access to appropriate training and learning resources, and notably the right to retrain for a new position should one's job become redundant, may be essential to ensure continued employment for older workers. Indeed, older workers can often be more vulnerable to technological and organizational changes than younger workers, particularly when considering the increasingly widespread use of information technologies. This is partly because they tend, on average, to have lower levels of formal schooling, but perhaps more importantly because of stereotypical perceptions of older workers as being "technophobic" and less apt to master new technologies and new working arrangements. Contract language pertaining to an employee's right to retraining, especially if it contains as few restrictions as possible, can therefore be central to the economic welfare of older workers.

A. Right or Reference to Retraining

The acquisition of new skills may become necessary in situations involving vacancies, transfers or promotions. Under these circumstances, clauses reinforcing an employer's commitment to retraining or recognizing an employee's right to retraining are intended primarily to ensure employee job security and the smooth flow of operations. Such provisions may specify who is eligible for retraining, and under what circumstances. They may also stipulate whether retraining is mandatory. Finally, some agreements provide

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educational funding as part of a severance package to assist employees in their retraining efforts. (Other funding schemes will be discussed in section IV.)

As previously stated, some retraining provisions seek to ensure employee job security by implicitly stating that future human resource needs will be met internally by retraining current employees.

Hudson Bay Mining and Smelting Company Limited and United Steelworkers of America, Locals 7106 and 8262 (2000-2002):

"It is understood that if new skills are required, the Company shall take steps to provide training for employees so that, by and large, new skill requirements are met from within the existing work force."

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"Where possible and feasible, eligible employees will be given the opportunity to undertake a planned retraining program for targeted vacancies to secure ongoing employment."

Some agreements specify who the retraining program is intended for (e.g., displaced workers) as well as who is eligible to participate (e.g., full-time employees).

Harmac Pacific Incorporated and Pulp, Paper and Woodworkers of Canada, Local 8 (1997-2003):

"The Company agrees to participate in a program of training or retraining for another job within the operation for those employees who are displaced under the circumstances set forth herein." [i.e., permanent mill closure, job elimination, etc.]

Comité patronal de négociation des collègues and Fédération du personnel professionnel des collègues (1998-2002):

"When an employee changes occupations as a result of a transfer, the College shall submit, if necessary, a retraining project to facilitate the professional's integration into the new job. The College and the professional shall agree on the retraining terms and conditions." [translation]

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"The Retraining Development Plan may include use of existing training opportunities such as apprenticeship training, in-house training, course rebate program, external courses and seminars. This program is only available to full-time permanent employees whose positions have been declared redundant or who have been displaced by

redundant employees and who have both the potential and interest in pursuing the retraining opportunity."

Retraining may or may not be mandatory for targeted employees. However, refusing retraining may entail certain risks.

Inco Limited and United Steelworkers of America, Local 6166 (1999-2002):

"(...) any employee (...) may at any time be required by the Company to accept any training in any occupational classification which is offered to him by the Company (...)"

Gilde des manufacturiers de vêtements de mode du Québec and Conseil conjoint québécois du syndicat du vêtement, textile et autres industries (1998-2002):

"Any employee who is unable or unwilling to take a training or retraining course shall retain the same classification, or the equivalent, in the bargaining unit. If no alternative trade is available, the parties shall discuss the problem in order to resolve it." [translation]

Retraining may also be offered as part of a severance package, to help affected employees find new jobs. In the event of a lay-off, such a clause can be beneficial to older workers who may need to upgrade their skills in order to secure new work opportunities.

Canadian Broadcasting Corporation and Canadian Media Guild (1999-2001):

"Any employee who has completed his/her probationary period, and has been selected for employment by the contractor, will be laid-off without right of recall from the Corporation. (...) In addition, the employee will immediately receive educational funding equal to one (1) week's salary per completed year of service or major portion thereof."

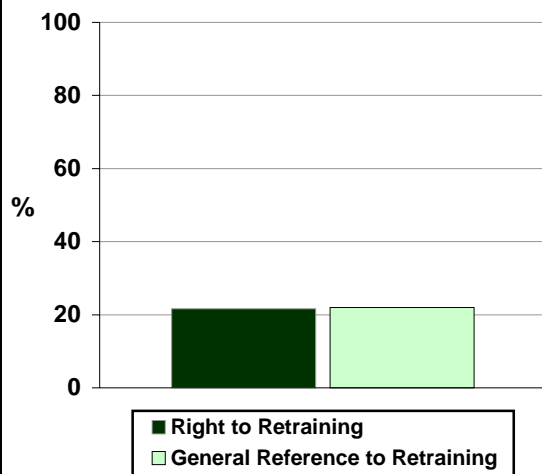
B. Technological Change

Measures designed to cushion the impact of technological change are found in a number of collective agreements. One such measure is to provide retraining opportunities to assist employees in developing the skills required to properly operate the new technologies that have been introduced into the workplace. Amongst the many technological change provisions found in collective agreements, the provisions dealing with the following issues are of prime importance to older workers: recognition by the employer of the need to minimize the negative effects, requirement on the part of the employer to provide training opportunities, and specification of the length and timing of the training opportunities as well as their impact on pay, benefits and seniority.

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Figure 3.2: TECHNOLOGICAL CHANGE PROVISIONS

Percentage of Major Collective Agreements with Training/Retraining Provisions



In January 1998, a requirement on the part of the employer to provide training to employees subjected to the introduction of **technological change** was specified in 21.6% of major collective agreements covering 22.3% of employees (501,451) while a **general reference to retraining** under these circumstances was present in 22.0% of agreements covering 23.1% of employees (518,690).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998).
Total number of agreements: 1077, covering 2,244,122 employees.

In the *Canada Labour Code* "technological change" means: "(a) the introduction by an employer into his work, undertaking or business of equipment or material of a different nature or kind than that previously utilized by the employer in the operation of the work, undertaking or business; (b) a change in the manner in which the employer carries on the work, undertaking or business that is directly related to the introduction of that equipment or material."²

Many provisions dealing with these changes include a commitment by both parties to minimize their negative effects on both the

workplace and the workforce. Some agreements specifically mention the need to minimize their impact on senior employees.

Fording Coal Limited and United Steelworkers of America, Local 7884 (1996-2001):

"(...) both parties also recognize the importance of lessening the effects of technological change as much as reasonably possible on the security and earnings of employees, particularly those more senior in service, who may be displaced as a result of technological change."

² Canada Labour Code R.S.C 1985, c.L-2, s. 51(1); 1999, c.31, s. 162(d)

Following are examples of provisions requiring employers to provide training to employees subjected to the introduction of technological change.

Aéroports de Montréal and Syndicat des employé(e)s des aéroports de Montréal (CSD) (1998-2001):

"If the implementation of technological change renders an employee unable to perform his or her duties, the Employer must provide the employee with job-related retraining, provided that the employee has the knowledge and potential required to undergo retraining." [translation]

Laurentian Bank of Canada and Laurentian Trust of Canada Inc. and Office and Professional Employees' International Union, Local 434 (2000-2001):

"The Bank agrees to provide the training needed to enable employees to continue to hold the position they are in, or a position in the same class." [translation]

Some agreements recognize the specific training needs of older workers, whereas others ensure that the required training will be made available to them.

Saskatchewan Telecommunications and Communications, Energy and Paperworkers Union of Canada (2001-2004):

"It may be necessary to do a reasonable amount of retraining to assist senior employees to acquire the skills necessary in some of the new technologies."

MTT and Atlantic Communication and Technical Workers' Union, Locals 201, 202 and 203 (1999-2002):

"Senior employees³ from the affected group in which the change occurs, with the ability to learn and willing to take the necessary training will be trained to maintain the new equipment."

Many agreements address other issues of importance to all workers, including older workers, such as the length and timing of the training period and its impact on pay, benefits and seniority.

Halifax Regional Municipality and Halifax Civic Workers' Union / CUPE Local 108 (2000-2004):

"Where new or greater skills are required than are already possessed by affected employees under the present methods of

³ The term "senior employees" is not defined in the collective agreement.

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operation, such employees shall, at the expense of the Employer, be given a period of time not to exceed nine (9) months, during which they may perfect or acquire the skills necessitated by the new method of operation. There shall be no reduction in wages or salary rates during the training period of any such employee or while the employee is in the reclassified position. Should the introduction of new methods of operation create a need for the perfection or acquisition of skills requiring a training period of longer than nine months, the additional training time shall be provided unless the Employer can prove it is unreasonable or economically prohibitive. The training provided in this article shall be given during the hours of work whenever possible. Any time devoted to training due to technological change shall be considered as time worked. Employees who attend training outside normal working hours, shall be provided with time off in lieu, at straight time rates, at a time to be mutually agreed between the employee and the supervisor."

Government of New Brunswick and New Brunswick Public Employees Association (1997-2002):

"If as a result of change in technology the Employer requires an employee to undertake additional training, the training will be provided to the employee. Such training shall be given during the hours of work whenever possible. Any training due to technological change shall be at the Employer's expense without loss of pay to the employee."

Board of School Trustees of School District No. 61 (Greater Victoria, B.C.) and Canadian Union of Public Employees, Local 947 (2000-2003):

"Should the introduction of technological change result in substantial changes in an employee's procedures or position and/or increased skills and abilities required, then the Board will provide training and equipment up to a maximum of three (3) months with no loss of pay, benefits or seniority."

C. Functional Flexibility or Multiskilling

Functional flexibility refers to an employee's ability to perform a wide variety of tasks. Access to a flexible workforce can help firms to better respond to labour output requirements, thereby enabling them to remain competitive and improve productivity. However, success in these endeavours will depend on the incentives that workers have for skill acquisition and on the training opportunities made available.

Providing older workers with the opportunity to acquire new skills not necessarily related to their current duties enhances their professional flexibility, and thus their job security. Increasingly, agreements include provisions providing for employee cross-training thereby ensuring that companies meet their qualification and skill requirements. The following examples highlight provisions pertaining to the issue of functional flexibility or multiskilling.

The first example, taken from a letter of understanding, addresses the issue of workplace flexibility and the training required to ensure its successful implementation and realization.

Hudson Bay Mining and Smelting Company Limited and United Steelworkers of America, Locals 7106 and 8262 (2000-2002):

In this agreement, both parties recognize the relationship between

"employment security, employment empowerment and the flexible use of employee skills"

aimed at meeting production targets and cost-cutting goals, in order to ensure the continued viability of the enterprise. This would allow employees to perform any work provided they possess the necessary knowledge and skills to do so safely. The letter of understanding further states that a subcommittee will be established with responsibility for reviewing training programs designed to provide employees with the necessary knowledge and skills to perform additional duties safely. To this end, job training and education with respect to processes, and the business generally, will be provided and individual development will be encouraged by providing opportunities and resources to allow employees to reach their full potential within the organization.

The second example highlights an incentive mechanism that rewards employees who successfully complete and utilize new skills acquired through a special training program intended to enhance employee flexibility.

Weyerhaeuser Saskatchewan Limited and Communications, Energy and Paperworkers Union of Canada, Local 1120 (1997-2003)

have introduced a Flexibility Premium whereby, effective June 1, 1999,

"The following payments will be made for flexible work practices: Maintenance employees — 95¢ per hour and Operations and all other employees — 40¢ per hour. To be implemented as follows: Upon ratification of the collective agreement, 45¢ per hour for maintenance employees and 20¢ per hour for operating and all other employees. Immediate utilization of existing skills that may not have been previously used due to restrictive work practices. Employees assisting each other regardless of departmental occupation 25¢ per hour for maintenance employees and 20¢ per hour for operators and all other employees upon successful completion of each modular training program and utilization of skills acquired as a result of this training. There will be two training modules for maintenance employees and one module for operations and all other employees."

Furthermore, the employer and unions will meet to discuss a module-based training program that will enhance the existing skills of employees. The employer will also design and introduce new training programs to facilitate the implementation and evolution of flexible work practices.

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The following two examples highlight provisions that offer certain employees the opportunity to acquire new skills through cross-training and job rotation training.

Canada Safeway Limited and United Food and Commercial Workers Union, Local 2000 (1997-2003):

"The Employer shall make cross-training in Deli, Seafood and Meat Wrapping available by seniority to all qualified Clerks where hours are (or become) available. The cross-training program shall be designed and implemented so that all employees are given equal opportunity to be cross-trained."

British Columbia Hydro and Power Authority and Office and Professional Employees' International Union, Local 378 (1997-2002):

"Selection for job rotation training will be made only from those employees whose job performance and potential warrant it. It is intended that job rotation will provide selected employees with wider experience and knowledge, to the joint benefit of the individual and the Employer. (...) The selection of employees for job rotation will be the responsibility of Division Managers, but employees may apply to be considered for this training. However, employees are not obligated to accept invitations to take part in job rotation."

Finally, many universities grant their teaching staff members an educational leave of absence to allow them to train for another discipline, thereby increasing their professional flexibility.

University of Saskatchewan and University of Saskatchewan Faculty Association (1998-2001):

"Educational leave is intended to assist employees in completing post-graduate work, or to undertake courses of study for the purpose of enhancing their ability to perform their duties, increasing their professional flexibility, or allowing them to be considered for alternative positions in the University."

Board of Governors of Dalhousie College and Dalhousie Faculty Association (1998-2001):

"With the agreement of the Department or other similar units affected, and the Board, a Member may undertake retraining for new duties. When such retraining involves a period of leave, the Member's salary and benefits shall continue and the cost of retraining shall not be the responsibility of the Member. The Member shall carry his or her rank, tenure status and years of service toward sabbatical or special leave during and after the period of retraining."

III Educational Leave

Various terms are used when referring to educational leave in collective agreements: career development leave, professional development leave, skills development leave, staff development leave, personal professional development leave, professional improvement leave and educational improvement leave.

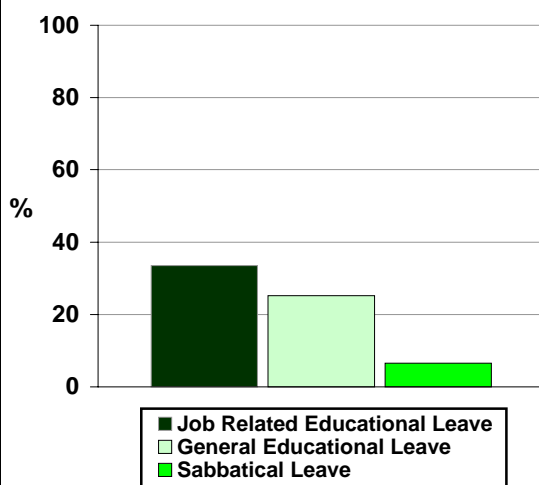
Regardless of the term used, we can regroup educational leave for training and education purposes under three broad headings: job-related educational leave, general education leave and

sabbatical leave. In this section, we will focus on these three types of leave and their potential impact on older workers.

Educational leave and sabbaticals give employees the opportunity to take time off to pursue their studies — usually in a recognized educational institution — or undertake activities linked to learning and "personal development." The duration of such leave, its effects on benefits and seniority, and whether it is remunerated or not varies according to each agreement. Obviously, a paid education leave with full benefits and accrual of seniority would be the ideal situation for all employees, particularly older workers,

Figure 3.3: EDUCATIONAL LEAVE PROVISIONS

Percentage of Major Collective Agreements With Educational Leave Provisions



In January 1998, **job related educational leave** provisions, either paid or unpaid, were the most frequently cited, that is, in 33.5% of major collective agreements covering 48.5% of employees (1,089,960), while **general educational leave** provisions were identified in 25.2% of agreements covering 33% of employees (753,616) and **sabbatical leave** provisions in 6.5% of agreements covering 6.9% of employees (155,557).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

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who may have significant financial obligations or who may depend to a greater extent on health benefits.

Generally speaking, educational leave provisions address the following issues: requirements (e.g., formal written request, management approval, proof of attendance, successful completion), timing (i.e., during or outside normal scheduled hours) and length of leave as well as the impact on seniority rights (i.e., accrued or non-accrued) and other benefits (e.g., sick leave credits). Finally, job-related educational leave provisions address more specifically the issue of responsibility for both employers and employees.

However, issues pertaining to years of service are perhaps the most relevant to older workers. First, most agreements stipulate a minimum number of years of service as a prerequisite to being granted a leave. Second, the approval of such leave is sometimes determined according to seniority, especially when there is a limited number of openings available or when requests are submitted simultaneously. In both of these instances, older workers tend to be at an advantage compared with newer or younger employees.

Lastly, the question of remuneration is very important. Some agreements grant leave with full or, partial pay whereas others grant leave without pay. Also, some agreements allow for employees to take advantage of a deferred salary plan.

A. Job-Related Educational Leave

This type of leave is granted to an employee where in the opinion of the employer, it is likely to be of assistance to the individual in furthering his or her career development and to the organization in achieving its goals. This could include a course given by the employer or a course offered by a recognized educational institution. It also includes work-related meetings, workshops, seminars, conferences, conventions and study sessions as well as research and scholarly work.

Here are a few examples of job-related educational leave provisions with pay.

Emergency Health Services Commission and Canadian Union of Public Employees, Local 873 (2000-2005):

"An employee shall be granted leave with pay to take courses at the request of the Employer."

Vancouver International Airport Authority and Public Service Alliance of Canada (2001-2004):

"The Employer shall grant education leave with pay during an employee's normally scheduled hours for the purpose of taking any courses, seminars or training required by the Employer. The Employer (...) will pay course registration fees and tuition."

Regional Health Authorities of Prince Edward Island and Prince Edward Island Nurses' Union (1999-2002):

"Employees authorized by the Employer to attend professional or technical provincial meetings and workshops shall be granted leave of absence with pay. The parties to this Agreement share a desire to improve professional standards by giving Employees the opportunity on occasion to participate in seminars, work-shops, or university courses, short courses or similar out-service programs to keep up to date with knowledge and skills in their respective fields."

The following example highlights the conditions typically associated with leave of absence with pay.

Ottawa-Carleton District School Board and Ontario Secondary School Teachers' Federation (2000-2001):

"Leaves of absence with pay provided for in this Article will be granted subject to the following conditions: a) Continuation of salary and benefits entitlements; b) Without deduction of sick leave credits; c) Without interruption of seniority or experience credit; d) A teacher on any form of leave is not eligible for any other form of leave until the expiry of the initial leave period; e) Upon request by the Superintendent or designate, acceptable evidence verifying the need for the absence will be provided by the teacher."

Moreover, some agreements provide for a paid educational leave for technological change.

Hydro-Québec and Canadian Union of Public Employees (1999-2003):

"Management agrees to grant paid leave for any work required by the application of this clause [technical or technological change] until a cumulative bank of 125 person-days per year is exhausted." [translation]

Vidéotron Limitée and Canadian Union of Public Employees, Local 2815 (1999-2001):

"When technological change calls for new qualifications or qualifications exceeding those already possessed by the employees assigned on the basis of current work methods, the employees may, at the Company's expense, take advantage of a reasonable period in which to develop or acquire qualifications called for by the new work methods. (...) There shall be no reduction in salary rate for these employees while they are being retrained or when they are reclassified in the new position." [translation]

However, not all job-related educational leaves are paid. Some agreements allow for unpaid job-related educational leaves. Although this situation is not ideal, it can nevertheless be beneficial to older workers who wish to upgrade their knowledge and skills.

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PPG Canada Inc. and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (1999-2002):

"An employee with one or more years of seniority may apply in writing for a leave of absence [without pay] for the purpose of attending a recognized primary, secondary or trade school, college or university full time. Such leave will be granted providing that the course of instruction is related to the employee's employment opportunities with the Company. (...) Such leaves of absence will be limited in duration to one (1) year, subject to extension upon application. Seniority will accumulate during such leaves."

Job-related educational leave provisions also include examination and/or convocation leaves.⁴ This type of leave is granted to an employee for the purpose of writing an examination, defending a master's or doctoral thesis or attending a graduation ceremony that takes place during the employee's scheduled hours of work.

British Columbia Ferry Corporation and British Columbia Ferry and Marine Workers' Union (1998-2003):

"Leave with basic pay to write examinations for a certificate or other qualification may be approved to a maximum of five working days."

Thames Valley District School Board and Elementary Teachers' Federation of Ontario, Thames Valley Local (2001-2002):

"Up to one (1) day per school year shall be available for the Teacher to attend the Teacher's own graduation ceremonies and/or the convocation of a child, spouse or partner."

Government of New Brunswick and New Brunswick Public Employees Association (1997-2002):

"Where an employee takes courses or training the Employer may authorize for that employee: (a) leave of absence with pay for the purpose of writing examinations; (b) payment of the expenses of writing examinations; and (c) payment of travelling expenses in accordance with Travel Regulations."

B. General Educational Leave

General educational leave is granted to employees to enable them to upgrade their knowledge and skills through various learning programs at the request of either the employer or the employee. Such leave is not necessarily directly related to one's job. Therefore, most general educational leave provisions are without pay. However, in some cases, they are partially paid, as highlighted by the following example.

⁴ Note: Examination and convocation leaves are not necessarily limited to job-related courses.

Emergency Health Services Commission and Canadian Union Public Employees, Local 873 (2000-2005):

"An employee shall be granted leave without pay, or leave with partial pay, to take courses in which the employee wishes to enroll."

Many agreements have clauses ensuring that seniority rights continue to accrue during such a leave of absence.

General Motors of Canada Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (1999-2002):

"(...) employees with one (1) or more years of seniority who desire to further their education, may make application for a leave of absence for that purpose. One continuous leave of absence for such education will be granted to eligible employees for a period not to exceed twelve (12) months. Additional leaves of absence may be granted at the option of Local Management. Except as otherwise provided (...) seniority shall accumulate during such leaves of absence."

Others simply guarantee that seniority rights will not be affected one way or the other (i.e., no gain or loss).

Shoppers Drug Mart Store and United Food and Commercial Workers, Local 1518 (1997-2001):

"Employees with four (4) years or more of continuous service with the Employer shall

be entitled to an educational leave of absence for up to one (1) year without gain or loss of seniority as of the time the employee leaves. (...) Seniority shall be the determining factor in scheduling the leave."

Some agreements go further, and, in addition to ensuring seniority rights, provide job protection, albeit for a limited time.

Bristol Aerospace Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 3005 (CAW-Canada) (1999-2002):

"Upon the request of an employee, leave of absence without pay may be granted for educational purposes up to a maximum of three (3) years. No employee shall lose seniority rights during personal leave of absence not exceeding twelve (12) consecutive months, but shall continue to accumulate seniority during such periods. An employee on leave of absence for longer than twelve (12) months shall maintain the seniority held at the time the limit of accumulation is reached, but shall not continue to accumulate further seniority until the employee returns to work. The return to work of an employee after a personal leave of absence in excess of three (3) months shall be conditional upon the existence of a vacant position, in their classification or other work in which the employee is able to do [sic], at the time of their return."

This final example is representative of the conditions typically associated with general educational leave.

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Weyerhaeuser Saskatchewan Limited and Communications, Energy and Paperworkers Union of Canada, Local 1120 (1997-2003):

"Conditions for such leave will be as follows: a) Requests must be submitted at least thirty (30) calendar days in advance of the leave. b) The leave will not exceed twenty-four (24) cumulative months throughout their employment. c) Educational leaves will be limited to one (1) person per crew on a first come, first served basis with mill seniority determining eligibility in the case of simultaneous requests. d) All accumulated time off entitlements must be exhausted prior to the leave period commencing. e) For the first six (6) months of the two (2) year leave, all benefit coverage (exclusive of W.I. and L.T.D.⁵) will continue. Company, department and job seniority will also continue during this period. f) For any period exceeding the six (6) months referred to above, seniority accumulation and benefit coverage will cease until the employee resumes active employment. Supplementary Health and Dental coverage will be available to the employee at their expense. Life Insurance coverage will only be made available (at employee expense) for up to twelve (12) months in any block of leave. Credited service for pension purposes will not be granted during this time."

C. Sabbatical Leave

A sabbatical leave is another type of leave granted to employees to allow them to pursue opportunities related to study, research or other work-related interests. A sabbatical leave can be particularly beneficial to older workers as a means of enabling them to remain competitive in the middle or late stages of their career.

As made evident by the following examples, sabbatical leave provisions are most prevalent in the education, health and social services industries. The vast majority of sabbatical leave provisions (paid, partly paid or unpaid) found in major Canadian collective agreements are in these sectors.

The following provision represents a good summary of the intent to grant a sabbatical leave.

York University and York University Faculty Association (1999-2001):

"The purpose of sabbatical leave is to serve the objectives of the University by affording employees a regular opportunity to maintain and enhance their academic and professional competence free from normal on-campus teaching/professional and service obligations. Sabbatical leave is intended to promote high levels of scholarly

⁵ W.I.: Weekly Indemnity; L.T.D.: Long-Term Disability.

and professional activity by employees through sustained periods of concentrated study, contemplation, and creative work, and through the extension of the range of contacts of employees to other people, places, experiences, and ideas. (...) Tenured faculty members in the Professional or Alternate Stream are entitled to one (1) full year of sabbatical leave after six (6) years of service, (...) Normally a faculty member will take sabbatical leave every seventh (7) year."

The following examples describe the general conditions of admissibility, the length of leave as well as the level of remuneration.

Université Laval and Syndicat des professeurs et professeures de l'Université Laval (1999-2004):

Once they have acquired at least six years' seniority,

"professors shall receive remuneration equivalent to 90 per cent of their salary during their sabbatical year. However, their contribution and that of the Employer to the group benefits package and pension plan shall continue to be based on an amount corresponding to 100 per cent of their salary." [translation]

Université de Montréal and Syndicat général des professeurs de l'Université de Montréal (2000-2003):

"A professor taking a year's sabbatical comprising a 12-month stretch or two six-month periods during a six-year period shall

receive an amount equal to 90 per cent of his or her salary, plus the fellowships or outside funding obtained. A professor on sabbatical leave lasting six months shall receive 100 per cent of his or her salary, plus the fellowships or outside funding obtained." [translation]

University of New Brunswick and Association of University of New Brunswick Teachers (1998-2001):

"Tenured faculty members shall be eligible, upon application to the University of New Brunswick, for consideration for sabbatical leave as follows: a) after six years of full-time service at the University of New Brunswick, one year's leave at 85 per cent of regular salary, or b) after six years of full-time service at the University of New Brunswick, six months' leave at 100 per cent of regular salary, or c) after three years of full-time service at the University of New Brunswick, six months' leave at 85 per cent of regular salary."

Halton Catholic District School Board and Ontario English Catholic Teachers' Association (2000-2002):

"In order to qualify for Sabbatical Leave, a teacher must be employed for seven (7) years by the Halton Catholic District School Board and must have accumulated at least eighty (80) days of cumulative sick leave credit. (...) Payment of salary while on Sabbatical Leave shall be a minimum of 70 per cent of the salary the teacher would receive if

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teaching that year for the Board. Additional salary allowances of 10 per cent for each subsequent year of experience to a maximum of 10 years or 100 per cent of salary will be paid to the teacher granted leave."

One of the rare examples taken from a sector other than education, health and social services is:

Government of New Brunswick and New Brunswick Public Employees Association (1997-2002):

"An employee may be granted sabbatical leave for varying periods of up to one year for approved study or travel, or industrial attachment where direct application to the employee's area of responsibility exists. Employees covered by this Agreement shall become eligible for sabbatical leave upon completion of seven (7) years of service with the department or agencies covered by this Agreement, and shall receive allowances in lieu of salary of up to seventy-five per cent (75%) of the employee's basic salary."

IV Training and Educational Funding

With the exception of companies located in Québec, Canadian companies are not required by law to invest in training. The Province of Québec is the only Canadian jurisdiction that requires employers by law to finance training activities.

However, companies and unions have negotiated many different types of funding schemes in order to finance training and educational opportunities. The funding schemes that exist in major collective agreements are numerous and varied.

Agreements containing such provisions usually require employers to either wholly or partially finance some type of general training and education fund. Such financing can either be a fixed amount (e.g., \$25,000 per year) or an amount proportionate to the number of hours worked by union members (e.g., 1¢ per hour). These funds can be administered by the employer, by the union or jointly. These schemes can be of great use to all workers, including older workers, wishing to upgrade their skills, enhance their basic literacy and numeracy skills or simply further their own professional development in whichever way they choose.

The following are examples of recently negotiated training and educational funding schemes.

General Motors of Canada Limited and National Automobile, Aerospace Transportation and General Workers Union of Canada (CAW-Canada) (1999-2002)

have established a Training Fund of \$1,000,000 to support the development of training programs. In the second and third year of the agreement the company will finance the Fund by a total of 16 hours per worker, and workers will be entitled to the equivalent of 8 hours of training during working hours. The training programs will be determined by the Training Review Committee,

Box 3.1

An Act to Foster the Development of Manpower Training (Québec)⁶

The purpose of the *Act to Foster the Development of Manpower Training*, which was passed by Québec's National Assembly in 1995, is to improve the qualifications, skills and performance of workers through continuing education.

Under this Act, all employers whose total payroll for a calendar year exceeds \$250,000 are required to allot an amount representing at least 1 per cent of their payroll to provide training to their employees, including apprentices. This amount may also be used to the benefit of trainees or teachers undergoing refresher training in the workplace. Eligible training expenditures include, but are not limited to, training support (e.g., by directly paying for or by reimbursing training-related costs), the provision of personnel, premises or equipment, the granting of paid education leave, or contributions to a collecting body or to the construction industry training fund. Moreover, all expenditures incurred in relation to the implementation of a training plan that is the subject of an agreement between an employer and a certified union are eligible training expenditures. Such an agreement may or may not be part of a collective agreement.

An employer whose total eligible training expenditures are less than the minimum required amount must pay into the *Fonds national de formation de la main-d'oeuvre* a contribution equal to the difference between these two amounts (i.e., an amount equal to 1 per cent of payroll minus training expenditures for a year). However, an employer whose eligible training expenditures exceed the minimum amount required by the Act can carry forward the excess amount to the following year.

working in conjunction with local training committees. Other training and education-related funds to which the employer contributes include a union educational leave plan called the Union Education Fund (5¢ per hour worked) and the Health and Safety Training Fund (3¢ per hour worked).

Legacy Hotels Corporation and Hotel Employees and Restaurant Employees Union, Local 75 (1999-2002):

This agreement provides for a Life-Long Learning Fund whereby the employer will contribute 1¢ per hour worked per employee

⁶ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program, HRDC. This information is based on legislation in force on February 1, 2002.

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covered by the bargaining unit. Inasmuch as the Company and the Union recognize that education is a continuing process and have a joint belief in providing support to upgrade existing employees, the fund will be used exclusively to upgrade employees' work-related skills and/or knowledge and to assist employees in the solving of day-to-day challenges in the workplace.

City of Winnipeg and Canadian Union of Public Employees, Local 500 (1999-2002)

The agreement between the parties provides for the establishment of a Human Resources Development Fund of \$3 million for the purposes of education, training and staff development. A joint committee will discuss and implement decisions with respect to education, training and staff development requirements associated with the deployment of CUPE members affected by organizational restructuring and any new or expanded training programs that are in the interest of both the employees and City as well as methods of selecting candidates for such training.

Westfair Foods Limited and United Food and Commercial Workers Union, Local 777 (1997-2003)

have negotiated an Education and Training Fund to which the employer contributes 10¢ per hour for every hour worked by members of the bargaining unit.

Conclusion

The benefits to both employer and employee of providing on-going training and education opportunities are obvious. However, as stated in our introduction, no training provisions specifically designed for older workers have been found in major Canadian collective agreements. Nevertheless, the impact of training, retraining and education provisions on older workers is not inconsequential. In fact, many provisions are clearly beneficial to older workers, given that access to these types of opportunities is almost always based on seniority. Furthermore, our study reveals that many training and education provisions specifically refer to senior workers, thereby recognizing that their needs may differ from those of other workers. On the other hand, our study also reveals that the breadth, depth and frequency of these opportunities, as well as the resources allocated to them, vary greatly depending on the sector and the company.

Economic Security

Older workers frequently encounter great difficulty when they are looking for a new job. Despite the fact that their current overall unemployment rate is proportionately lower than that of most other age groups, they can expect to be unemployed longer than their younger counterparts, and they are more likely to leave the labour force permanently after a job termination. Indeed, a 1996 study shows that older workers were more than twice as likely as core-age workers (63% compared with 30%) to still be without a job one year after being laid off.¹ This vulnerability makes job security provisions very relevant for older workers.

It should be remembered that older female workers may face even greater challenges than their male counterparts, often being in lower-paid and more precarious jobs. The fact that they are likelier to withdraw from the labour market for an extended period of time to raise children and/or care for other relatives usually leaves them with less seniority and accumulated pensionable service. Sometimes, after the loss of a spouse (i.e., because of death or divorce), women have to find employment in their later years, despite having, in many cases, little or no workplace experience. Not surprisingly, they may be in a disadvantageous position in the labour market in terms of finding and retaining decent employment. Moreover, this situation makes it difficult for them to take advantage of protective measures (i.e., employment stability and income security provisions) found in collective agreements that are designed for employees with long service.

The most widespread mechanism to protect employees is the use of seniority when determining layoffs, recalls and promotions. As a general rule — although this is not always the case — older workers have more seniority than their younger counterparts. Yet, at a time when Canadian employees can expect to change jobs and employers occasionally during their working years, and when job losses in an industry can be massive (i.e., through plant closures or relocations), standard seniority provisions may not suffice to guarantee the continued employment of older workers, not even those with many years

¹ *Statistics Canada, Labour Force Update: Older Workers, Spring 1998, pp. 21-22. Statistics Canada defines "older workers" as workers aged 55 and over. (This definition is more restrictive than definitions used by other agencies, which often refer to older workers as employees who are at least 45 years old.) "Core-age workers" are defined by Statistics Canada as workers aged 24 to 54.*

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of service. This is why additional contract clauses aiming to further protect the jobs and income of all union members have sometimes been negotiated.

This chapter deals with a variety of clauses found in recent major Canadian collective agreements pertaining to the economic security of older workers. It is subdivided into three main sections:

- I Seniority Provisions:** This section looks at the scope of seniority unit, its application, as well as the various ways it is calculated.
- II Job Security Provisions:** Job security provisions include transfers to lighter or less demanding jobs, return to work provisions, as well as provisions dealing with organizational and technological change and relocations.
- III Income-Related Provisions:** This section deals with income-related provisions, including wage maintenance, longevity pay, severance and termination pay, early retirement packages, and retirement pay or allowance.

I Seniority Provisions

Seniority is one of the key methods used to give a measure of job and wage protection to union members with long service. The principle behind seniority clauses is that the order of promotions,

layoffs and recalls, as well as other issues such as choice of vacation dates and eligibility for training opportunities, be based on employees' length of service. Historically, most unions have viewed seniority as a relatively equitable and unambiguous criterion designed to restrict arbitrary and discriminatory management practices.

Seniority provisions tend to protect older workers, since length of service self-evidently increases with age. However, there are instances where older employees can have a relatively low seniority ranking, and therefore be at a disadvantage as regards job security. This can be the case if they are late entrants into the labour force, or if they change jobs or employers, get promoted or otherwise transferred out of a seniority unit, or have their seniority frozen or eliminated after being laid off for an extended period of time. Workers who have interrupted their service for a number of years to raise children² or care for other family members — women in the vast majority of cases — usually lose any previously accumulated seniority, unless "bridging" provisions have been included in a seniority clause. Also, in industries with an ageing workforce and constantly decreasing labour needs — as evidenced in long periods of time without recruitment and gradual cutbacks in the workforce — an older worker with a long service record could nevertheless be the most junior employee in a bargaining unit.

It should also be noted that even the most extensive seniority clauses may provide only limited protection for older workers in some

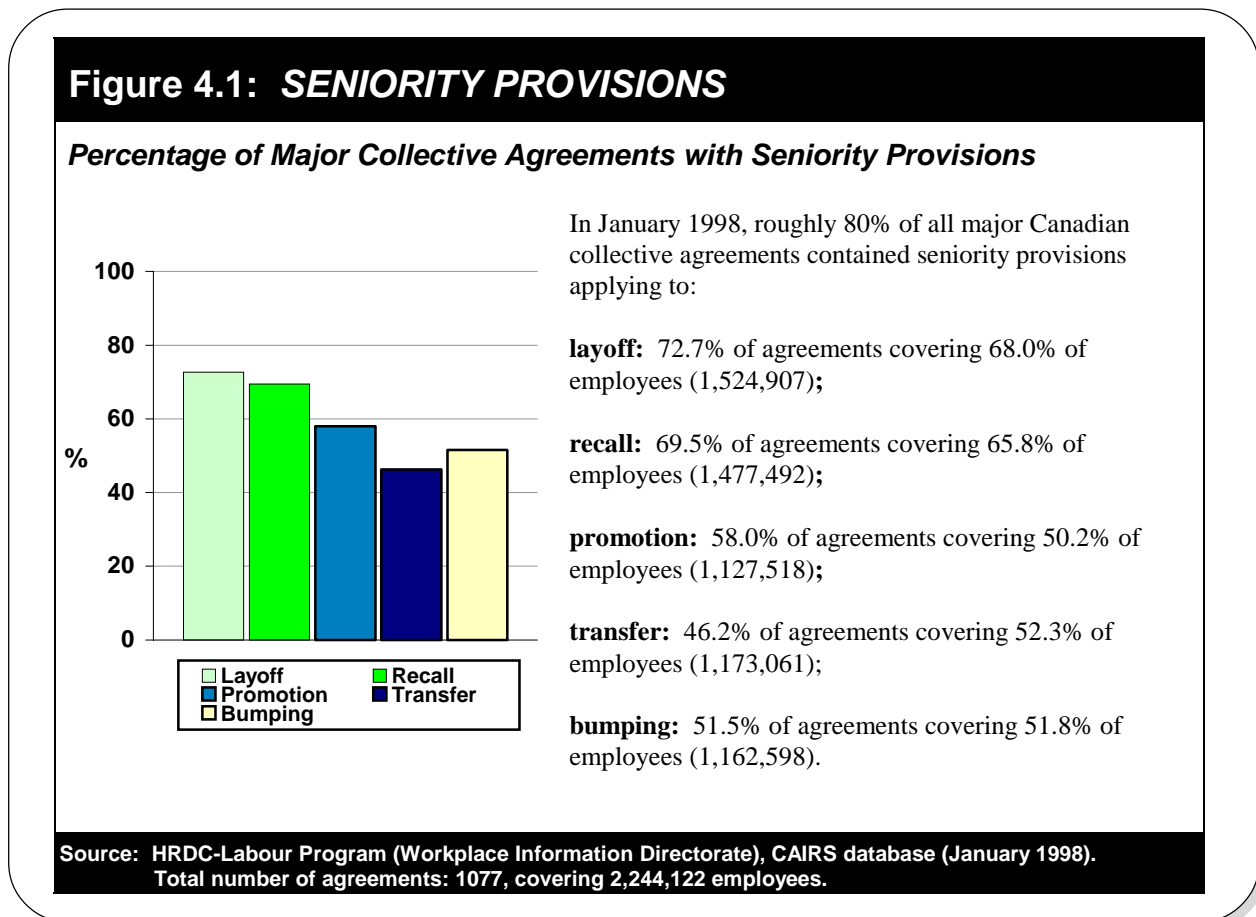
² However, employment standards legislation in all Canadian jurisdictions gives women on maternity leave the right to maintain, and sometimes continue accruing, seniority.

situations. This may be the case, for example, when an entire department or plant is shut down, or when a job classification is eliminated. Seniority never confers absolute protection: it is subject to an employee's capacity (and willingness) to perform his or her work. Moreover, unless additional job protection clauses have been added to an agreement, no amount of seniority, per se, will guarantee employment for an older worker when no work is available. In this sense, seniority, albeit quite important, is only a "temporary first line of defense"³ for the economic security of older workers.

This section deals with seniority rights and staffing issues (i.e., how seniority is applied) as well as other issues related to the calculation of seniority (i.e., employment status, change in status, transfers both within and outside the bargaining unit, bridging provisions, and portability).

A. Scope of Seniority Unit

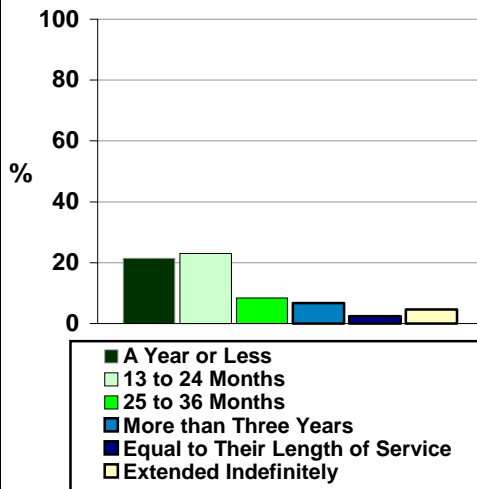
As previously mentioned, seniority clauses are typically based on an employee's length of



³ Ewan Clague et al., *The Aging Workers and the Union* (New York: Praeger, 1971), p. 116.

Figure 4.2: RETENTION OF SENIORITY DURING LAYOFF PROVISIONS

Percentage of Major Collective Agreements with Retention of Seniority During Layoff Provisions



In January 1998, roughly two thirds of all major Canadian collective agreements with a seniority clause provided for the **retention of seniority during layoff**, usually for a set period of time:

a year or less: 21.5% of agreements covering 20.4% of employees (453,685);

13 to 24 months: 23.0% of agreements covering 22.8% of employees (510,565);

25 to 36 months: 8.4% of agreements covering 4.6% of employees (102,293);

more than three years: 6.7% of agreements covering 6.8% of employees (154,045);

equal to their length of service: 2.4% of agreements covering 3.1% of employees (69,589);

extended indefinitely: 4.6% of agreements covering 12.0% of employees (269,003).

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

continuous service with an employer. However, the extent of protection conferred by seniority clauses varies greatly from one collective agreement to another. It depends to a large extent on the scope of the provision (i.e., the unit within which seniority applies, whether it is a department, a classification, a plant, a geographic area, or, as in many cases, a bargaining unit). A broad seniority unit (e.g., plant-wide) enhances job opportunities for senior employees because their seniority rights are recognized throughout a wider area and are not limited to a smaller, more restrictive unit.

Cambridge Memorial Hospital and Service Employees International Union, Local 204 (1995-2001):

"Seniority will operate on a bargaining unit wide basis."

Kellogg Canada Inc. and Bakery, Confectionery, Tobacco and Grain International Union (2000-2003):

"Plant-wide seniority as used herein shall mean the period reflected by the Company's employment records of an employee's continuous service in the plant."

Bertrand Faure Components Limited and United Steelworkers of America, Local 8694 (2000-2003):

"Seniority as referred to in this Agreement shall mean length of unbroken service in the employ of the Company and shall be on a company basis."

Sometimes, an agreement will include two or more seniority units.

Québec North Shore and Labrador Railway and United Steelworkers of America, Local 9344 (1999-2004):

"There are two (2) categories of seniority: Company seniority, based on the date when the employee began his continuous service with the Company, and classification seniority, based on the date when the employee was assigned a classification after his qualifications were established." [translation]

BC Gas Utility Limited and International Brotherhood of Electrical Workers, Local 213 (1999-2001):

"Seniority shall accrue on an agreement-wide basis and shall be referred to as union seniority. Seniority shall also accrue by classification and shall be referred to as classification seniority. Three seniority units within two geographic regions shall also exist. These four terms, union seniority, classification seniority, regional seniority, and unit seniority are defined hereunder. Union Seniority: This is established by the

date of entry into BC Gas, Inland Natural Gas, Columbia Gas or any predecessor Company as a regular employee and qualifying for I.B.E.W. membership. (...) Regional seniority is established for employees in the region where they are employed on July 28, 1989, for so long as they remain employed in that region, except that employees who transferred to another region between July 28, 1989 and June 2, 1991 established regional seniority in both regions as at the date of job selection to each region. Should an employee who established regional seniority in both regions transfer to another region s/he shall forfeit regional seniority in the region they are leaving. (...) Unit Seniority is established by the date of selection to that particular Unit regardless of classification. Classification Seniority: This is the date specified by the official notification of selection to a classification in a specific Seniority Unit. An employee may establish classification seniority in the manner outlined above in any or all units."

Government of Saskatchewan and Canadian Union of Public Employees, Local 600-3 (2000-2003):

"The principle of seniority shall be applied first upon a classification basis (...); second, upon an institutional service unit basis (...); third, upon an institutional basis; and fourth, upon the basis of membership in the Union."

In cases where an agreement includes two or more seniority units, each unit has its own separate seniority ranking, which is then used for

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various entitlement and benefit determinations depending on the agreement. For example, department seniority may apply to layoffs and promotions, while company seniority (or "length of service") would be used to determine the length of vacations and access to some benefits.

Canadian Broadcasting Corporation and Syndicat des technicien(ne)s et artisan(e)s du Réseau Français de Radio-Canada (1999-2003):

"Seniority commences from the date of hiring by the Corporation and is based on the length of continuous employment. It is used to determine the order of layoffs, integrations, annual leave-taking (...) Union seniority is based on length of continuous employment in the bargaining unit governed by this agreement or in one of the former union groups that were merged when the unit was created. It is used only for the purpose of promotion and pay calculation."
[translation]

B. Application of Seniority

The terms and conditions of employment (i.e., layoff and recall, promotion and demotion, as well as transfer, shift assignment and vacation scheduling) to which seniority applies vary from one agreement to the next, as made evident by the following examples.

Fenwick Automotive Products, City Wide Automatic Transmission Services and FAPCO Automotive Inc. and United Steelworkers of America (1998-2002):

"The parties recognize that job opportunity and security shall increase in proportion to length of service. It is, therefore, agreed that in all cases of vacancy, promotion, transfer, lay-off, termination and rehiring after lay-off, senior employees shall be entitled to preference."

New Dominion Stores and Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 414 (1997-2001):

"Seniority is the principle of granting preference to full-time employees in matters of promotion, demotions due to staff reduction, layoff, and recall after layoff in accordance with length of continuous employment provided the senior employee has the necessary ability to perform the normal requirements of the job in a competent manner."

Société québécoise de développement de la main-d'oeuvre and Fédération des employées et employés de services publics inc. (1998-2002):

"Employees may use their seniority in the case of staff movements, such as layoff, recall, promotion, transfer or voluntary

demotion, as long as they have the necessary qualifications to meet the normal requirements of the position concerned; the normal requirements must be relevant and related to the pith and substance of the work to be performed." [translation]

Halifax Regional Municipality and Halifax Civic Workers' Union (CUPE), Local 108 (2000-2004):

"Seniority shall be used in determining preference or priority after the minimum required qualifications have been met as established by the Employer, and shall include but not be limited to promotion, transfers, demotion, lay-off, recall, permanent reduction of the workforce, training, scheduling of vacation, vacation entitlement, shift selection, as set out in other provisions of this collective agreement. Seniority shall operate on a bargaining unit wide basis."

C. Calculation of Seniority

Generally speaking, employees accrue job seniority on and from the date they start their job and they accrue section seniority on and from the date they start their employment in a job classification within a section. There are, however, other factors, related mostly to status and transfers, that affect the calculation of a

worker's seniority. In addition to this, there are measures that provide job security in cases of work interruption and job changes. This section looks at these situations in terms of their impact on older workers.

1. Employee status:

Not all older workers work full-time. In fact, a significant number of them work part-time. Whether previous experience as a casual or part-time employee inside or outside the bargaining unit is to be counted toward seniority depends on the terms of the collective agreement. For older workers who find themselves in non-standard employment (i.e., part-time, temporary, seasonal), it is important that their seniority be maintained whether or not their service has been interrupted.

Many agreements include provisions that specify how seniority is to be calculated, not only for regular full-time employees, but also for part-time and temporary employees, as well as for job sharers.

Canadian Imperial Bank of Commerce and United Steelworkers of America, Local 2104 (B) (1998-2001):

"Seniority for employees not scheduled to work 37½ hours per week will be calculated by equating days worked with full time years of employment using 235 days worked as equal to one (1) calendar year."

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Workers' Compensation Board of British Columbia and Compensation Employees' Union (1998-2002):

"Permanent part-timers and job sharers will have their seniority pro-rated according to the relationship their work schedule bears to a full-time work schedule."

Board of Governors of Ryerson Polytechnic University and Ontario Public Service Employees Union, Local 596 (1998-2001):

"Seniority may be accumulated in a career or term position on a full-time, part-time or partial year basis, or in any combination thereof. The seniority of term, partial year or part-time employees shall be determined on a pro-rata basis in accordance with the proportion of hours worked to full-time employment."

CFCF Inc. and National Association of Broadcast Employees and Technicians (CLC), Local 614 (1993-2001):

"For non-permanent employees, the Employer shall keep a record of service for each single occasion the employee is called to work. Service shall accrue at the rate of half a day (1/2) for a call of four (4) hours in a day, and a full day (1) shall be credited for a call over four (4) hours."

2. Change in status:

Another important question, especially for those older workers who wish to reduce their working time, is whether it is possible to transfer seniority from a full-time to a part-time position.

Some agreements establish rigid barriers between seniority for part-time and seniority for full-time employees, which may be a strong disincentive for older workers who wish to change their employment status.

In other cases, however, provisions enable full-time employees to carry at least part of their prior seniority with them when transferring to a part-time job.

Diversicare I Limited Partnership and Service Employees International Union, Local 204 (2001-2003):

"When an employee transfers from the full-time bargaining unit to the part-time bargaining unit, seniority in terms of days and years accumulated in the full-time unit shall be transferred to part-time status and converted to seniority in terms of one (1) year equals 1800 hours."

Visiting Homemakers Association and Service Employees International Union, Local 204 (1999-2001):

"An employee whose status is changed from full-time to part-time shall receive credit for her full service and seniority."

Canada Safeway Limited and United Food and Commercial Workers Union, Local 175 (1997-2001):

"In the event an employee's status changes from full-time to part-time, either at the direction of or with the permission of the Company, his seniority date will be his original date of continuous service."

Canadian Imperial Bank of Commerce and United Steelworkers of America, Local 2104 (B) (1998-2001):

"If a full-time employee becomes a part-time employee in the bargaining unit, the employee's full-time seniority will be transferred into part-time seniority."

3. Transfers (within and outside the bargaining unit):

A number of agreements allow employees to retain and, in rare cases, to continue accumulating seniority if they are transferred to a job outside the bargaining unit but with the same employer. Such a clause is typically used to protect older employees who have been offered a transfer (including within the ranks of management) by affording them the time to decide whether they wish to remain in their new position or return to their previous one without penalty. It may also serve as an incentive to accept promotions.

Québec North Shore and Labrador Railway and United Steelworkers of America, Local 9344 (1999-2004):

"Where an employee covered by this collective agreement is appointed to an

administrative or supervisory position, the employee shall retain and accrue his seniority date(s) during one or more accrual periods outside the bargaining unit not exceeding twelve (12) months, in the event that he rejoins the bargaining unit." [translation]

Manitoba Public Insurance Corporation and Manitoba Government Employees' Union (2000-2002):

"An employee who is temporarily assigned to a position which is outside the bargaining unit shall continue to accrue seniority and shall pay Union dues. Such assignments shall not exceed twenty-four (24) months without the consent of the Union."

Québec Cartier Mining Company and United Steelworkers of America, Locals 5778 and 6869 (1996-2001):

"An employee who is transferred to a job not covered by this agreement shall retain his seniority rights for two (2) years, just as if he had remained in the bargaining unit, and shall continue to pay union dues for two (2) years, which shall be equivalent to the amount of the last dues paid by the employee when he was a member of the unit. He may, after giving one month's notice to the Company, exercise his seniority and rejoin his unit in the position that he held at the time of his transfer, on the basis of his seniority rights." [translation]

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Transfer clauses are also used to protect employees who have been transferred to a new bargaining unit through some type of employer reorganization.

Saskatchewan Institute of Applied Science and Technology and Saskatchewan Government and General Employees' Union (2000-2003):

"When bargaining Units or parts of units are transferred/devolved through government/ employer re-organization, employees being transferred will be credited with full seniority earned in their previous Bargaining Unit."

4. Bridging of service:

Bridging provisions are designed to protect previously accumulated seniority when service with an employer is interrupted. These provisions allow seniority to be calculated on the basis of total employment rather than according to continuous service. This is especially important for employed women, who generally bear a disproportionate share of household responsibilities — including child and elder care — and often withdraw from the labour market for extended periods of time.

Northern Telecom Canada Limited and Canadian Union of Communication Workers (2000-2004):

"An employee whose term of employment has been broken and who is subsequently re-employed, shall be credited with previous continuous service (...) provided that the employee had six (6) months or more of

previous continuous credited service when the term of employment was broken."

Previous continuous service is credited at the time of re-employment if the period of service break was one month or less. Otherwise, previous service is credited after an employee has completed one year of continuous service or the time equivalent to the service break, whichever is less.

Canadian Broadcasting Corporation and Syndicat des technicien(ne)s et artisan(e)s du Réseau Français de Radio-Canada (1999-2003):

"Where an employee has accrued one (1) or more years' seniority and is laid off, authorized to be absent or transferred to another position within the Corporation that is not covered by this agreement: (a) return before one (1) year: continuity of service for the purposes of service or union seniority is deemed to be uninterrupted if he resumes his employee status within one (1) year; (b) return after more than one (1) year: if he resumes his employee status after more than one (1) year, his service or union seniority upon his return to work is that which he had acquired by the date of his layoff, transfer or authorized absence." [translation]

Northwestel Inc. and International Brotherhood of Electrical Workers, Local 1574 (1999-2001):

"Effective January 1, 1999, part time and temporary employees shall be able to retain their seniority for twelve (12) months, for any

seniority acquired in 1999 or later, if re-hired within twelve (12) months of their last date of service. If there has been any break in service that exceeds twelve (12) months then any prior seniority will not accrue."

**Manitoba Telecom Services Inc.,
MTS Communications Inc.
and Communications, Energy and
Paperworkers Union of Canada
(1998-2001):**

"A Regular employee will be allowed to accumulate separate periods of Regular or Term service (bridge) providing: a) An employee had a period of Regular Part-time or Regular Full-time service of at least six (6) months before service was interrupted. b) The employee has completed four (4) years of continuous service since service was last broken. c) The period or periods of service being considered do not predate break in service which exceeds four (4) years."

The following example is noteworthy because it recognizes previous service that was interrupted for care-giving purposes (including elder care).

**British Columbia Buildings Corporation
and B.C. Government and Service
Employees' Union (1999-2002):**

"Upon written application, a regular employee shall be credited with seniority accumulated during previous service with the Corporation in accordance with the following: a) The employee's resignation

must have been for the purpose of caring for a dependent child/children, parent or spouse. The written resignation must indicate the reason for termination. b) The employee must have completed two (2) years' service as a regular employee prior to their resignation. c) The employee must have been re-employed within six (6) years and must not have been engaged in full-time remunerative employment for any period in excess of six (6) months during that time excepting employment with the Corporation as a temporary employee. d) Upon completion of a probationary period (six (6) months), as a regular employee following re-employment, the employee shall be entitled to all rights and benefits to which they would have been entitled had the total of combined periods of employment been unbroken. e) Former employees who meet the conditions outlined above will have internal applicant status when applying for re-employment and shall, for the purpose of the selection process, be credited with the years of service accumulated prior to the effective date of termination."

5. Portable seniority:

Although very infrequent, some clauses give employees who change employers or who are transferred to a new bargaining unit the possibility of having some of their previous service (or "experience") recognized. This can be important for some displaced older workers as they at least do not have to start over from the bottom of the seniority ladder.

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Nova Scotia Association of Health Organizations (NSAHO) and Nova Scotia Nurses Union (2000-2003):

"In the event the Employer hires a Nurse to a regular position to commence work within three (3) months of the Nurse leaving employment with any of the [6] Employers [belonging to NSAHO] (...), when the Nurse has not been terminated for cause or retired in accordance with the NSAHO Pension Plan, the Nurse shall have service with the previous Employer recognized for vacation entitlement, retirement allowance, increment placement and seniority. Accumulated sick leave benefits shall be recognized by the hiring Employer."

Zehrs Markets and United Food and Commercial Workers Union, Local 1977 (2000-2006):

"In the case of a new full time employee who has previous comparable full time experience in a self serve or deli food store, he may be paid at the starting rate of his classification on the wage progression schedule during his probationary period, but at the end of his probationary period of twenty-five (25) worked days he shall be credited with his previous comparable full time experience in determining his wage rate, up to a maximum of the eighteen (18) month level on the wage progression schedule and the difference between his credited rate and the rate at which he started shall be paid retroactive to his starting date."

British Columbia Assessment Authority and Canadian Union of Public Employees, Local 1767 (2001-2003):

"Seniority is defined as (...) total time in the employ of the Employer from whom the employee was designated [sic] plus all time with previous employers, provided that such time was uninterrupted public service in an assessment related work circumstances [sic] in the employ of a British Columbia municipality or in the employ of the Crown in the right of the Province of British Columbia."

At least one agreement includes a seniority transfer provision as part of a clause on technological change. This provision applies to employees transferred to another plant owned and operated by the same company.

Sidbec-Dosco (ISPAT) Inc. (Contrecoeur Complex) and United Steelworkers of America, Local 6586 (1997-2003):

"Employees moved from one plant to another [in case of relocation or cessation of operations] shall maintain their seniority for the purposes of pension, vacation, leave and other benefits. They may also maintain their seniority for purposes other than the aforementioned, if an agreement to that effect is reached between the parties concerned." [translation]

II Job Security Provisions

Given the fact that laid off older workers, especially those with less formal schooling, often encounter obstacles finding new jobs and are much likelier to completely withdraw from the labour force (i.e., to become "discouraged workers"), job security clauses can be particularly important for their economic security.

Provisions pertaining to job security typically include clauses that guarantee no job losses, layoffs, reduction of hours, or "contracting-out." Although the contract language in these provisions does not ordinarily differentiate among categories of employees other than by seniority, a few clauses specifically pertain to older workers.

Université du Québec à Montréal and Syndicat des professeurs et professeures de l'Université du Québec à Montréal (CSN) (2000-2003):

"(...), the University, whether or not for reasons beyond its control, may not lay off a tenured professor. This is the case for the closure, merger or division of a department, research or design centre or program, and for the reduction or absence of student enrollment, whether from causes within or outside the University (...) Professors aged fifty-five (55) or older shall have the option (...) of accepting or rejecting reassignment, with or without refresher education, without being laid off."
[translation]

The following example was taken from an agreement in the longshoring industry, where working hours tend to be irregular. This clause guarantees older workers, defined as employees aged 60 years and older, a minimum number of hours of work as a form of employment security.

Maritime Employers Association and International Longshoremen's Association, Local 1657 (1995-1997):

"Special Job Security Plan for Employees Aged 60 Years and Older — (...) The employer will allow a maximum of ten (10) employees to adhere to this special plan, according to seniority; Each employee who adheres to this special job security plan will be guaranteed the equivalent of eight hundred (800) hours during a period of twenty (20) weeks beginning the first Sunday of May" with vacation pay.

In addition to the two previous examples, many agreements contain job security measures that are also specifically designed for older workers. They include transfers to lighter or less demanding jobs, return to work provisions, as well as provisions dealing with organizational and technological change and relocations.

A. Transfers to Lighter or Less Demanding Jobs

One method of protecting older (and/or disabled) workers is through the use of transfer provisions. These usually permit employees who become

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incapable of meeting their job requirements due to age-related physical decline to be transferred voluntarily to jobs that are less stressful and/or less physically demanding ("lighter" jobs). These measures may be beneficial in ensuring that these workers have continued employment.

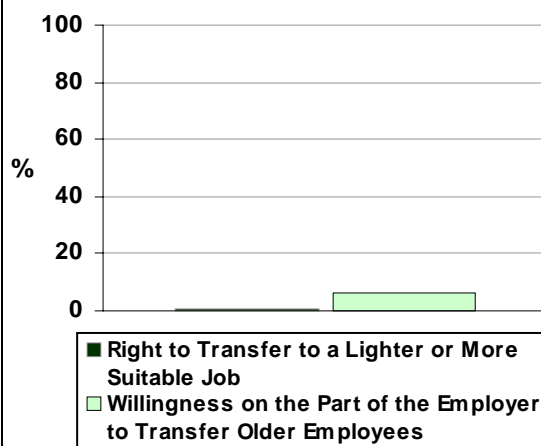
Although many of the following provisions refer to health-related issues (i.e., disease, injury or physical conditions), they were chosen primarily because they also refer to age.

Inco Limited and United Steelworkers of America, Locals 6200 and 6500 (2000-2003):

"If an employee is temporarily or permanently unable to perform his regular work due to age, disease or injury, the Company will endeavour to find employment in his own Department or failing his Department another Department, which in the opinion of a duly qualified medical practitioner is suitable for him. In making

Figure 4.3: OLDER WORKERS PROVISIONS

Percentage of Major Collective Agreements with Provisions Pertaining to Transfer to a Lighter or More Suitable Job

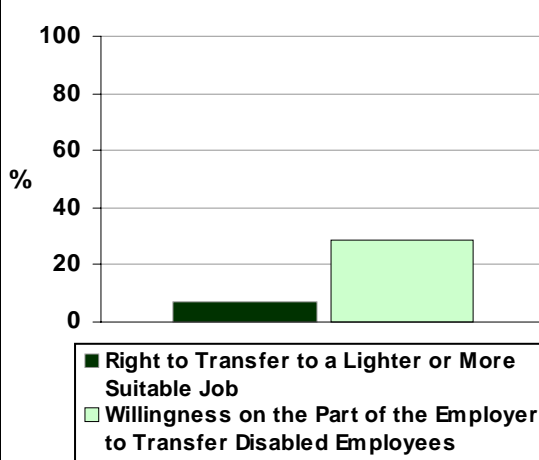


In January 1998, less than 1% of major Canadian collective agreements covering 0.6% of employees (14,274) gave older workers the **right to transfer to a lighter or more suitable job**. However, another 6.2% of collective agreements covering 5.2% of employees (116,310) expressed a **willingness on the part of the employer to transfer older employees** if a job was available.

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

Figure 4.4: DISABLED WORKERS PROVISIONS

Percentage of Major Collective Agreements with Provisions Pertaining to Transfer to a Lighter or More Suitable Job



In January 1998, provisions for disabled employees were much more common than those for older workers: 6.7% of agreements covering 4.7% of employees (104,464) gave the **right to transfer to a lighter or more suitable job** and 29.0% of agreements covering 36.2% of employees (813,310) expressed a **willingness on the part of the employer to transfer disabled employees** if a job was available. In some cases, older workers with a permanent impairment were able to use these

Source: HRDC-Labour Program (Workplace Information Directorate), CAIRS database (January 1998). Total number of agreements: 1077, covering 2,244,122 employees.

such an assignment, the Company may disregard the seniority provisions of this Agreement except that such incapacitated employee shall not be assigned to take over a job occupied at the time by another employee."

Uniroyal Goodrich Canada Inc. and United Steelworkers of America, Local 677 (2001-2004):

"Where an employee cannot perform satisfactory work due to age, health, or other physical conditions, such employee shall

be transferred to other work which is more suitable, if such work is available. However, the employee so transferred shall not displace an employee who has more credited service."

Government of New Brunswick and Canadian Union of Public Employees, Local 1252 (1999-2003):

"Without the necessity of a posting (...), when an employee who has become incapacitated by a handicap, an illness, advancing years or a temporary disability, is unable to

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perform his regular duties, the Hospital will make every reasonable effort to relocate the employee in a position or job consistent with his disability, incapacity, or age. The Hospital shall not displace any other employee, except a probationary employee, from his position, in order to effect this relocation."

Manitoba Health Care Facilities and Canadian Union of Public Employees (1999-2002):

"An employee, who through advancing years or disablement is unable to perform her regular duties, shall be given preference for transfer to any suitable job which is open and which requires the performance of lighter work for which she is capable. She would be paid at the same increment step in the new job as she was in her previous job."

As well as giving the right to transfer to lighter work, some agreements also provide for the maintenance of wages, at least during a certain period of time.⁴

City of Windsor and Canadian Union of Public Employees, Local 543 (1999-2001):

"The Corporation will consider on an individual basis the request of the Union on behalf of an employee who is within 5 years of normal retirement to work at an alternate position conducive to his/her physical abilities with no loss of pay or seniority."

Alcan Smelters and Chemicals Limited and Syndicat des travailleurs de l'aluminerie Alcan Shawinigan (CSN) (1998-2003):

"An employee who is unable to meet the physical requirements of his job may have priority over other more senior employees when a job vacancy arises in his seniority promotion area for which the wage rate is equal to or less than that of his permanent employment on condition that: (a) he has reached the age of forty-five (45) and accrued twenty (20) years of continuous service (...) and (b) he is capable of meeting the requirements of that job (...) Any employee who (...) is assigned to a job for which the basic wage rate is less than his current basic wage rate is entitled, if he has three (3) or more years of continuous service, to have his current basic rate maintained for five (5) years." [translation]

In some cases, older workers, without being transferred to another job, may be voluntarily exempted from particular tasks.

Maritime Employers Association and Longshoremen's Union (CUPE) Local 375 (1998-2003):

"All employees must hold the classification of "cargo officer" (PCALE), except for employees who have accrued thirty (30) years of service. The latter may request that the "cargo officer" (PCALE) classifications, and any others involving work in a ship's hold,

⁴ The issue of wage maintenance is addressed in more detail in section III of this chapter.

as well as the so-called "securing" classifications, be withdrawn. The withdrawal of the aforesaid classifications also applies to employees who have reached the age of sixty (60)." [translation]

Some agreements contain a "faithful service" clause whereby employees are rewarded for their long and faithful service to the Company by being given the option of transferring to lighter or less demanding work. In most cases, the number of years of service required to qualify is not specified, but rather left at the discretion of the employer.

Canadian National Railway Company and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 100 (CAW-Canada) (2001-2003):

"Employees who have given long and faithful service in the employ of the Company and who have become unable to handle heavy work to advantage will be given preference of such light work in their line as they are able to handle (subject to pension regulation age limits) as mutually agreed between the proper officer of the Company and the respective Regional Vice-President. Neither party shall unreasonably withhold their agreement."

Northern Sawmills Inc. and Communications, Energy and Paperworkers Union of Canada, Local 38x (1999-2003):

"An employee who, over the years has given good faithful service to the Company and who, through advancing years or temporary disablement is unable to perform his regular duties shall be given preference of any light work available, at the wages payable at the time for the position to which he is assigned."

Other agreements contain an "older worker" provision. Unlike the previous examples, these clauses are more general and do not necessarily refer to disability or illness.

British Columbia Assessment Authority and Canadian Union of Public Employees, Local 1767 (2001-2003):

"An employee who, through advancing years, is unable to perform the employee's normal duties, shall be provided with alternate suitable employment."

Government of New Brunswick and Canadian Union of Public Employees, Local 2745 (1997-2002):

"Where possible, an employee who is unable to perform her normal duties shall be provided with alternate suitable employment"

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provided such alternate employment is available and such employee shall not displace an employee with more seniority."

Finally, instead of focusing specifically on transfers to less physically demanding jobs, some agreements may contain a more general commitment to help older workers retain their job.

Corporation of the City of New Westminster and Canadian Union of Public Employees, Local 387 (2000-2002):

"Within the limitation imposed by the unwillingness of the Employer to create unnecessary work, the Employer is willing to make every conceivable effort in cooperation with the Union in order to provide opportunities for older, partially disabled or otherwise handicapped employees to retain employment."

Bridgestone / Firestone Canada Inc. and Syndicat des travailleurs(euses) de Bridgestone / Firestone de Joliette (CSN) (1999-2005) has an elaborate system designed to retain employees with permanent partial disabilities due to accidents or illnesses. As a first step, the Employer must make reasonable attempts to modify the disabled employee's work station to adapt it to the latter's abilities. Should this be impossible,

"(...) the employee will displace according to inverse seniority, an employee who holds a position in a work area that is appropriate for his health condition and in accordance with the medical reports and providing that he meets the requirements (...) and is qualified after receiving the training and work experience provided (...)" [translation]

B. Return to Work Provisions

Some agreements contain provisions designed to help employees return to work following a work-related injury or illness, as well as, in some cases, a non work-related injury or illness. These provisions ensure a certain degree of employment stability in times of personal uncertainty due to health-related problems. Older workers are more vulnerable to injuries and disabilities that develop over time, and these provisions can be helpful to those who are physically challenged as a result of such injury, illness or disability. This section looks at a variety of return to work provisions related to injury, illness and disability, including rehabilitation programs and committees.

Box 4.1

Labour Law Provisions Regarding the Right to Reinstatement After an Absence Due to a Work-Related Injury⁵

A worker's right to be reinstated after a period of absence due to a work-related injury⁶ is specifically provided for in eight Canadian jurisdictions. Provisions concerning this issue have been enacted as part of either workers' compensation or labour standards legislation.

Workers' Compensation Legislation

Workers' compensation legislation in six jurisdictions requires that employers re-employ eligible workers (Newfoundland and Labrador, Nova Scotia, Ontario) or allow them to "return to work" (Québec) or "resume work" (New Brunswick and Prince Edward Island) after an absence due to an employment injury.

In all six provinces, employers covered by these provisions are required to reinstate eligible workers deemed fit, by the relevant compensation board or commission, to perform the essential duties of their pre-injury employment or to perform other suitable work. Normally, a worker must be reinstated in the position held on the day of the injury or in alternative employment with comparable terms and conditions. However, where this is not possible, an employer may be permitted to instead offer the first suitable work that the worker can perform and that does not pose a health or safety hazard, subject to any seniority provisions.⁷ Provisions in Newfoundland and Labrador, Nova Scotia and Ontario impose a duty to accommodate the work or the workplace to the needs of a worker, to the extent that such accommodation does not cause the employer undue hardship. In Québec, a worker's seniority and uninterrupted service continue to accumulate during the period of absence from work due to an employment

⁵ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

⁶ Although the definition of "injury" or "accident" varies in each jurisdiction, it typically covers occupational diseases.

⁷ In Nova Scotia, a worker who has been provided suitable work but who is (or becomes) able to perform work that is more comparable to his or her pre-injury work must be offered such work by the employer, should any become available.

(cont'd)

injury. Retirement and insurance plans also continue during that period, provided the worker pays his or her share of premiums, where applicable. Legislation in New Brunswick and Prince Edward Island stipulates that a worker who resumes work is entitled to maintain the seniority and benefits accrued until the period of absence from work.

Not all workers and employers are covered by provisions regarding worker reinstatement. In five provinces (Québec being the exception), workers must have been in their employer's service for at least 12 continuous months immediately prior to the date of their injury to qualify for reinstatement. Moreover, in Newfoundland and Labrador, Nova Scotia and Ontario, reinstatement provisions do not apply to employers who have fewer than 20 workers; this is also the case in New Brunswick for employers with fewer than 10 workers. Sometimes, certain categories of workers are also specifically excluded. For example, large segments of the fishing industry (except undertakings where 25 or more workers are usually employed) are not covered in New Brunswick. Special provisions apply to the construction industry in all six provinces.

An employer's legal duty to reinstate a worker normally expires after a certain period of time. In Ontario, for example, this obligation ends two years after the date of the worker's injury, one year after the worker is able to perform the essential duties of his or her pre-injury employment, or when the worker attains 65 years of age, whichever is earlier. Furthermore, in Nova Scotia, New Brunswick and Prince Edward Island, an employer is no longer bound to reinstate a worker if the latter declines a suitable offer of re-employment. Nevertheless, in Newfoundland and Labrador, Nova Scotia, Ontario and Québec, an employer who terminates a worker's employment within six months of the worker's date of reinstatement is presumed not to have met his legal obligations, unless it can be shown that the termination was not related to the worker's injury, or was for a good and sufficient reason.

Labour Standards Legislation

In the federal jurisdiction and in Saskatchewan, the right to return to work after a work-related injury is provided for in labour standards legislation.

Employers covered by federal legislation are prohibited from dismissing, suspending, laying off, demoting or disciplining an employee because of an absence from work due to a work-related illness or injury. They are also required, "where reasonably practicable," to return an employee to work after such an absence. An employee who is no longer

(cont'd)

able to perform his or her previous work functions may be assigned to a different position, with different terms and conditions of employment. Pension, health and disability benefits, as well as seniority, continue to accumulate during the entire period of absence, provided that the employee makes the necessary contributions, where required. For the purpose of calculating other benefits, employment upon return to work is deemed to be continuous with employment prior to the absence. The employer's obligation with respect to reinstating an employee begins on the date that, according to a valid medical certificate, the employee is fit to return to work (although the certificate may include qualifications) and ends 18 months thereafter. An employer who, within nine months of the employee's return to work, lays off, terminates the employment or discontinues a function of that employee must demonstrate to an inspector that this was not because of the absence from work.

In Saskatchewan, an employer may not dismiss, suspend, lay off, demote or discipline an eligible employee because of an absence due to illness or injury.⁸ In the case of an employee receiving workers' compensation benefits, this protection is provided for a minimum of 26 weeks. To be eligible, an employee must have been in the employer's service for at least 13 consecutive weeks prior to the absence.

Finally, it should be noted that provisions regarding the right to return to work in New Brunswick and in Prince Edward Island, although contained in their workers' compensation legislation, are enforced in accordance with their respective employment standards statutes and are considered to be part of the latter.

1. Injury, illness and disability:

Some agreements provide for alternative suitable work for employees who are unable to perform their regular duties due to work-related injury, illness or disease.

National Sea Products Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 1944 (CAW-Canada) (2001-2001):

"The Company shall provide work to injured workers, providing suitable work can be found and the medical condition of the employee is such that they can perform the work."

⁸ Also see Box 2.2 in this study: "Sick Leave Provisions in Employment Standards Legislation."

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Iron Ore Company of Canada and United Steelworkers of America, Local 5795 (1999-2004):

"Should an employee contract an industrial disease from Company work processes which renders the employee unable to maintain necessary standards of health on the job he/she was regularly performing, the employee will be moved to some other job for which he/she is qualified."

In the event of an accident, sickness or disability, some agreements allow for certain exceptions to be made to existing seniority provisions in favour of affected employees. The following two examples make allowances for both work-related and non work-related injury, illness or disability.

Sidbec-Dosco (ISPAT) Inc. (Complexe de Contrecoeur) and United Steelworkers of America, Local 6586 (1997-2003):

"a) All employees who, as a result of illness or injury, cannot maintain the standards of efficiency and safety required in the performance of their normal duties can, by mutual agreement of the parties, be exempt from the seniority provisions of this collective agreement. In these situations, the Company will make an effort to assign this employee to tasks for which he/she is qualified and capable. b) All employees who, as a result of a work-related accident or professional illness acquired while under the employ of the Company, cannot maintain the standards

of efficiency and safety normally required by the Company in the performance of their normal duties can, by mutual agreement of the parties, be exempt from the seniority provisions of this collective agreement. In these situations, the Company shall make an effort to assign this employee to existing or new tasks for which he/she is qualified and capable of or able to be trained for."
[translation]

Ford Motor Company of Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Locals 200, 584, 707 and 1520 (CAW-Canada) (1999-2002):

"(a) In the event of a [Windsor, Bramalea, Oakville, St. Thomas] employee suffering a disability from sickness or accident, the following exception shall be made to the provisions of this agreement in favour of such employee. The company's medical advisors shall establish the employee's physical capabilities and he/she shall then be placed in work that he/she is able to perform if such work can be found in his/her classification, or in his/her department, or in the plants at [location of plant]. Work will be sought in the order indicated and if found the disabled employee shall be moved to such work consistent with his/her seniority. (b) In the event that the disability is a major disability further exception may be made to the seniority provisions of this agreement in

favour of such employee but in the event of a layoff or recall after a layoff, he/she shall be subject to the seniority provisions of this agreement which would have applied had he/she not been disabled. Following recall after a layoff, exception may again be made to the seniority provisions of this agreement in favour of such employee. (c) Notwithstanding the foregoing provisions of this section (...), any employee who has been incapacitated at his/her regular work by injury or compensable occupational disease while employed by the company may be employed in other work (...) which he/she can do, by mutual agreement between the company and the union, without regard to any seniority provisions of this agreement."

Finally, some agreements guarantee the right to return to work within a determined period of time to employees on leave due to a work-related injury or illness.

Corporation des concessionnaires d'automobiles de la régionale de Québec and Syndicat national des employés de garage du Québec (1999-2002):

"The employer must immediately take back an employee who has been absent for less than three (3) years because of an accident on the job or an occupational illness if the medical report of the attending physician or of the Workplace Health and Safety Board indicates that the employee can return to work." [translation]

2. Rehabilitation programs and committees:

Rehabilitation programs can play a meaningful role in maintaining employment and facilitating the return to work of workers with partial disabilities or of workers who have suffered long illnesses. This may be important for some older workers who might otherwise opt for early retirement or rely solely on long-term disability payments. This responsibility is often assigned to rehabilitation committees.

Inco Limited and United Steelworkers of America, Locals 6200 and 6500 (2000-2003):

"(...) with respect to employees who are either temporarily or permanently unable to perform their regular work due to age, disease or injury (PPD's) [Permanently Partially Disabled Employees]. The Company will establish a Rehabilitation Group, consisting of the Safety and Miscellaneous Department, the Modified Work Centre and the Reconditioning Shop. This Group will provide temporary rehabilitation and work hardening employment to PPD's for the purpose of returning them to value-added work. (...) Any PPD may, on the basis of his ability, knowledge, training, skill, medical condition and seniority within the Group, be assigned to a vacancy in any Department, notwithstanding any other provision of the Collective Bargaining Agreement."

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City of Winnipeg and Canadian Union of Public Employees, Local 500 (1999-2002):

"Employees who have been accepted by the City as permanently partially disabled (i.e., they will probably never be able to perform the duties and responsibilities of their former occupation), as determined by either the Workers' Compensation Board, the Employee Benefits Board or by mutual agreement between the City and the Union, shall be eligible for placement through the Rehabilitative Employment Program."

The following example is wider in its scope as it protects employees not covered by workers' compensation.

SaskEnergy Inc. and Communications, Energy and Paperworkers Union of Canada, Local 649 (1998-2001):

"The [Rehabilitation] Committee will provide support, rehabilitation and a structured return to work program for any Employee who suffers illness, injury or disability not covered by Workers' Compensation. The Committee will keep in mind their obligation to all Employees throughout this process."

C. Organizational and Technological Change

Considering the potentially adverse impact of organizational and technological change on the job security of older workers, and indeed of all

workers, many unions have negotiated specific clauses to protect their members.

Common measures include, amongst others, guarantees that no layoff or job or wage loss will occur as a result of organizational or technological change.

City of Montréal and Syndicat des professionnelles et professionnels municipaux de Montréal (1998-2001):

"No professional shall be let go or laid off or have his salary reduced as a result of or with respect to any technical or technological advances, or changes in the Employer's structure, administrative system or work procedures. If it is necessary for the Employer to abolish a position as a result of technical or technological advances, or changes in its administrative structures or work procedures, the professional affected shall be laid off and (...) relocated to another position without loss of salary (...) Where the Employer abolishes one or more positions of the same function in an administrative unit, professionals shall be relocated by inverse seniority to the function within the smallest administrative unit, unless more senior professionals prefer to be relocated." [translation]

Hydro-Québec and Syndicat Professionnel des Ingénieurs d'Hydro-Québec (1999-2003):

"No permanent employee working in the corporate office shall be laid off or have his salary or salary level reduced as a result

of technical or technological changes, or changes in administrative structure."
[translation]

Workers' Compensation Board of British Columbia and Compensation Employees' Union (1998-2002):

"The Board guarantees that there will be no layoffs of employees and/or involuntary salary reductions as a result of technological change."

As previously discussed, many agreements guarantee training opportunities to affected employees.⁹

Amalco Foods (Dominion Stores Division) and Retail Wholesale Canada, Canadian Service Sector Division, United Steelworkers of America, Local 597 (1997-2003):

"An employee who is displaced from his/her job, by virtue of technological change, will be given the opportunity to fill other vacancies for which he/she is qualified, and has the ability to perform, according to his/her seniority. Should the employee not be qualified, he/she shall be given a ninety day training period. This ninety day training period will be provided for the employees affected. Training, whether on or off the job shall be paid for by the Company."

In some agreements, there is recognition that changes may have particular effects on older employees. Consequently, agreements may consider age a factor when choosing appropriate measures to protect employees.

Abitibi-Consolidated Inc. (Port-Alfred Division) and Syndicat national des pâtes et papiers de Port-Alfred (1998-2001):

"Industrial conversions may affect employees in a number of different ways depending, inter alia, on factors such as the employee's seniority, education, age and marital status. It may be necessary to resort to various combinations of measures to ensure that the interests of both the employee and the Port-Alfred plant are adequately protected."
[translation]

D. Relocations

Geographic mobility (i.e., the willingness and capacity to move to another geographic location) tends to decrease with age, due to family and community ties, and the financial burden associated with the sale of a house and moving expenses. Older workers are thus more likely to be reluctant to relocate — even though it may be the only way to keep their job — since it can cause them emotional and financial difficulty.

⁹ For more examples, refer to Chapter 3: "Training, Retraining and Education."

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1. Limits to relocations:

One method of protecting the interests of older workers is to impose limits on management's right to unilaterally force the relocation of employees. However, in some cases, this protection may not cover newly hired employees.

NAV Canada and Canadian Air Traffic Control Association (1999-2001):

"An employee with fifteen (15) or more years of service shall not be required to accept an assignment that would require the employee to relocate."

Real Canadian Superstore et al. and United Food and Commercial Workers Union, Local 1400 (1998-2001):

"The Employer agrees that, if an employee has a good and sufficient reason for not accepting a transfer, the employee will not be forced to accept such transfer."

Canadian Press and Broadcast News Limited and Canadian Media Guild, Local 213 (2001-2003):

"While Québec City is part of the Montreal bureau, it is understood that no employee, (...), shall be required to move from Montreal to Québec City without consent. Employees assigned or hired directly to work in Québec City after Jan. 1, 2001, shall be subject to assignment to Montreal."

Some agreements, without granting a complete right to refuse, do impose limits on involuntary relocations.

Canadian Broadcasting Corporation and Canadian Media Guild (1998-2001):

"Except in circumstances involving a staff reduction (Article 31), the Corporation shall not permanently relocate an employee against his/her wishes unless the employee occupies a position where mobility is a condition of employment. The Corporation shall not use the provisions of this Article in a capricious manner. The Corporation shall make every reasonable effort to avoid relocating an employee against his/her wishes. An employee subject to a relocation against his or her wishes shall be entitled to: a) full discussion; b) the reasons, in writing, for the relocation. If an employee feels a relocation is contrary to the provisions of Article 21.1 [this article], the employee has the right to grieve under the following procedure."

British Columbia Buildings Corporation and B.C. Government and Service Employees' Union (1999-2002):

"It is understood by the parties that as a general policy employees shall not be required to relocate from one geographic location to another against their will. However, the Corporation and the Union recognize that in certain cases relocations

may be in the interests of the Corporation and/or the employee. In such cases, an employee will be fully advised of the reason for their relocation, as well as the possible result of refusal to be relocated."

A more standard protection for some older workers is the use of seniority ranking to determine who will be forced to relocate.

Go Transit and Amalgamated Transit Union, Local 1587 (2000-2003):

"Employees required to relocate as a result of a reduction of work in a location shall be transferred in inverse order using classification seniority, and may first select open and available position(s) at any location, or may displace less senior employees within their classification from existing positions using classification seniority, and such displaced employees shall follow the same procedure. Refusal to select will result in the employee being released irrespective of seniority. (...) Employees who are forced to relocate or who are displaced in accordance with the above will be entitled to submit an application for preferential relocation (...)."

It should be noted that, in some cases, older workers may wish to relocate in order to maintain their employment. This may happen when an employer transfers his or her operations — or part thereof — to another location.

Canadian Broadcasting Corporation and Canadian Media Guild (1998-2001):

"An employee whose job is moved to another geographic location shall have the right to move with the job. If the employee refuses to move, he/she will be reassigned to an appropriate and available position. If no position is found, the employee will be laid-off and given re-employment rights (...)."

2. Moving expenses:

One way to ease the burden linked to relocation in cases of postings, assignments and recalls is to provide financial help to cover moving expenses.

Canadian Broadcasting Corporation and Syndicat des technicien(ne)s et artisan(e)s du Réseau Français de Radio-Canada (1999-2003):

"Moving expenses shall be paid to employees who accept employment in another branch (...)." [translation]

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"When there is no position in the current geographic location at the employee's current salary grade and the employee is willing to relocate, the Employer will pay the costs of relocation to any vacancy in the

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province that is no more than two (2) salary grades lower than the employee's current salary grade. Once the Employer approves the relocation, the offer to relocate becomes final and binding."

Red Deer Catholic Regional Division No 39 and Alberta Teachers' Association (1999-2001):

"A Board requiring a teacher to transfer to another school exceeding a distance of 70 km shall pay the reasonable moving expenses necessarily incurred by his/her family as a result of such transfer, providing such transfer requires a change of residence."

AT&T Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 2000 (CAW-Canada) (2001-2003):

"When an employee applies on a bulletin (...) and is the successful applicant, he will be eligible for the following relocation:
1. Payment of door-to-door moving expenses for the eligible employee's household goods and his automobile including packing and unpacking, insurance and up to one month's storage; the mode of transportation to be determined by the Company. 2. An employee who relocates under the terms of this provision will be provided with: Paid Leave: a) 1 — 200 kilometers — 1 day b) 201 — 500 kilometers — 2 days c) 500 kilometers plus — 3 days 3. An employee who has relocated under the terms of this provision will be reimbursed for 100% of the

aforementioned costs by submitting a detailed expense account (receipts included) to his supervisor."

III Income-Related Provisions

Usually, income security is closely tied to job security: having a secure job helps guarantee secure wages. Nevertheless, some income security clauses can be analyzed separately. Such is the case for wage maintenance clauses and provisions designed to provide a replacement income, through early retirement measures, for older workers who lose their jobs. Contract clauses offering pay supplements to long-service employees, as well as those offering severance, termination and retirement pay are also of interest when considering the long-term income of ageing workers.

This section deals with income-related provisions, including wage maintenance, longevity pay, severance and termination pay, early retirement packages, and retirement pay or allowance.

A. Wage Maintenance

Wage maintenance clauses can be an important mechanism to protect the income of older workers. Although the following two examples are technically job security provisions, they

guarantee a certain income level. As previously stated, the issues of job security and income security are intrinsically linked.

Université Laval and Syndicat des employés et employées de l'Université Laval (1999-2002):

"Job security (...) provides the permanent employee with a guarantee of employment, including remuneration at the usual pay rate of the last position that he held as of right and in force at the time of abolition for the annual number of hours of work in that position, as well as the pay progression provided under this collective agreement." [translation]

Université de Sherbrooke and Syndicat des employées et employés de soutien de l'Université de Sherbrooke (2000-2004):

"No regular employee with twenty-four (24) months or more of active service may be laid off, dismissed or discharged, or have his regular rate of pay reduced." [translation]

Some agreements provide wage protection to employees who have been adversely affected by organizational or technological changes introduced into the workplace. These clauses are especially important to older workers who are

approaching retirement, as lower wages can have negative consequences on future pension payments.

Workplace Safety and Insurance Board and Canadian Union of Public Employees, Local 1750 (1999-2002):

"No employee will have actual salary reduced at the time of implementing an Organizational/Technological Change."

British Columbia Hydro and Power Authority and International Brotherhood of Electrical Workers, Local 258 (1997-2002):

"An older worker, as defined [an employee whose age plus service equals 65], who is not capable of adapting to new skills or who declines training shall, if the employee so chooses, utilize seniority to apply for any job vacancy to which [sic] the employee is capable. Should an employee choose this option, their rate of pay shall be red circled¹⁰ if selected for a lower paid job. Should the employee decline this option, they shall receive one week's severance pay for each year of service with the Employer."

Many agreements contain clauses guaranteeing employees no loss of wages when affected by a transfer due to one of the following reasons: job redundancy, reassignment or shutdown.

¹⁰ For the purpose of this clause, red circling means that "the employee's present rate shall be maintained until the job rate overtakes."

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Government of New Brunswick and Canadian Union of Public Employees, Local 1418 (1997-2000):

"When an employee is transferred to a lower classification as a result of the Employer's request he shall maintain his rate of pay until the rate of pay of his new classification catches up to his rate. When an employee is transferred to a lower classification as a result of the employee's request he shall be paid the rate within the range of rates established for such new classification which is closest to his present rate."

Northwestel Inc. and International Brotherhood of Electrical Workers, Local 1574 (1999-2001):

"In the event an employee must take a lower rated job in order to remain at their headquarters, or to remain in the employ of the Company, the employee's rate will be protected until the applicable rate of the lower job equals or is higher than the employee is receiving."

Ontario Council of Regents for Colleges of Applied Arts and Technology and Ontario Public Service Employees Union (2000-2003):

"In applying the provisions of Article 15.4 [Layoff Procedure], persons being paid above the rate for their payband as a direct result of the commencement of the CAAT

[Colleges of Applied Arts and Technology] Support Staff Classification System on June 1, 1986, shall be deemed to be in the payband which has a maximum rate closest to, but no lower than, their actual rate."

Finally, other agreements, while providing wage protection, do so for a limited period of time.

Air Canada and International Association of Machinists and Aerospace Workers (1999-2002):

"Above basic employees, who have accepted a transfer who are working in a lower classification, shall have their rate of pay and progression protected at the applicable rate of their former classification for a period not to exceed three (3) years, effective from date of transfer."

B. Longevity Pay (Service Pay)

In a number of agreements, workers with many years of service may be eligible for "longevity pay" or "service pay" in the form of a yearly lump sum bonus or a small increase in hourly wages. One way or the other, this income supplement may be somewhat beneficial for the living standards of some older workers, especially in sectors where salary levels have been frozen or only slightly increased over time.

Regional Municipality of York Police Services Board and Regional Municipality of York Police Association (2000-2002):

"Each member of the Bargaining Unit, qualified by the service requirements, shall receive in appreciation of long service the following service pay award annually which shall be due to him on his anniversary date of his entitlement (...): After five (5) years service \$80.00. After ten (10) years service \$200.00. After fifteen (15) years service \$300.00. After twenty (20) years service \$400.00. After twenty-five (25) years service \$500.00. After thirty (30) years service \$600.00."

Bombardier Inc. / Canadair and International Association of Machinists and Aerospace Workers, Montreal Aircraft Lodge 712 (1997-2001):

"Any employee with more than three (3) years seniority at the end of the reference year (...), will be pensionable for a [service recognition] bonus of \$15 per year of seniority."

City of Winnipeg and Canadian Union of Public Employees, Local 500 (1999-2002):

"All employees covered by this Agreement shall receive service pay for each month of actual service employment as hereinafter

provided. (...) \$7.50 per month after completion of 10 years service; \$15.00 per month after completion of 15 years service; \$22.50 per month after completion of 20 years service; \$30.00 per month after completion of 25 years service; \$37.50 per month after completion of 30 years service; \$45.00 per month after completion of 35 years service."

C. Severance and Termination Pay

Severance and termination pay provisions exist in a number of collective agreements. According to Sack and Poskanzer, "although usage varies, severance pay and termination pay are, strictly speaking, separate benefits designed for different purposes."¹¹

First, termination pay, or pay in lieu of notice of termination, is designed to tide an employee over until he or she finds another job. The amount paid out to an affected employee usually accrues with the number of years of service. As such, older workers tend to benefit from higher termination pays. This could possibly buy them more time for their job search.

¹¹ Jeffrey Sack and Ethan Poskanzer, *Contract Clauses: Collective Agreement Language in Canada*, 3rd ed. (Toronto: Lancaster House, 1996-2001), pp.17-58.

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Canada Safeway Limited and United Food and Commercial Workers Union, Local 2000 (1997-2003):

"Commencing with completion of the probationary period, full-time employees, when terminated by the Employer, unless guilty of rank insubordination, dishonesty, drunkenness, obvious disloyalty or absence without leave, unless having a bona fide reason for such absence, shall receive notice in writing or pay in lieu of notice as follows: After first sixty (60) calendar days up to two (2) years of continuous service, one (1) week's

notice in writing or one (1) week's wages in lieu thereof. From two (2) years up to five (5) years' continuous service, two (2) weeks' notice in writing or two (2) weeks' wages in lieu thereof. More than five (5) years' continuous service, four (4) weeks' notice in writing or four (4) weeks' wages in lieu thereof."

A number of agreements provide a small degree of protection to all employees in case of a plant closure or important organizational change by providing for prior notice or financial compensation in lieu.

Box 4.2

Notice of Termination in Employment Standards Legislation¹²

The employment standards legislation of every jurisdiction in Canada contains provisions regarding termination of employment. In all cases, these require employers,¹³ when they terminate the employment of an employee, to provide advance notice of the termination. Alternatively, employers can provide pay in lieu of termination notice ("termination pay") at least equivalent to the normal wages the employee would have received had he or she worked during the notice period. Employers may also be required to provide termination pay in cases of constructive dismissal (e.g., where an employee resigns after his or her employer makes a major change with respect to compensation, responsibilities, or other terms and conditions of employment) or after an employee has been laid off for a specified period.

¹² Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

¹³ Some jurisdictions also require employees to provide notice to their employer before terminating their contract of employment.

(cont'd)

The period of notice that employers must give in cases of individual termination varies across Canada. In most jurisdictions, it depends on an employee's length of service, with long-service employees entitled to longer notice periods, reaching up to eight weeks in six provinces¹⁴ and all three territories. To qualify, employees must have a minimum length of service, ranging from one to six months — three months of service being the typical requirement — depending on the jurisdiction.

The employment standards legislation of most jurisdictions in Canada also contains provisions regarding group terminations. In British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan, employers must provide advance notice (or pay in lieu) to the employees affected when terminating the employment of a specified group of employees¹⁵ within a certain period.¹⁶ The statutory minimum length of notice for group terminations ranges from four to eight weeks in Saskatchewan, to 10 to 18 weeks in Manitoba. Such notice normally increases with the number of employees involved and tends to be greater than what is required for an individual termination of employment. In fact, eligible employees in British Columbia who are not covered by a collective agreement are entitled to notice of individual termination (or pay in lieu) in addition to notice of group termination. With the exception of Alberta and Prince Edward Island, all jurisdictions in Canada require that employers provide a notice of group termination to specified government officials, normally the Minister of Labour or the Director of Employment Standards. In some cases, such as in the federal jurisdiction, there is also a statutory obligation to notify the bargaining agent representing the affected employees.

¹⁴ These provinces are Alberta, British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan. Amendments to Newfoundland and Labrador's Labour Standards Act slated to come into effect on July 1, 2002, will extend to six weeks the minimum statutory notice of individual termination for employees with 15 years or more of service with the same employer.

¹⁵ In Manitoba, Newfoundland and Labrador, and Ontario, a group termination notice must be given when an employer terminates the employment of 50 or more employees. However, the group termination of employment provisions of Ontario's Employment Standards Act, 2000 do not apply where a group of employees whose employment is terminated at an establishment represents not more than 10% of employees employed there for at least three months, and the termination was not caused by the permanent discontinuance of part of the employer's business at the establishment. In British Columbia, employers must give notice of group termination when 50 or more employees from the same location lose their jobs permanently. In Nova Scotia and Saskatchewan, such notice must be given for groups of 10 employees or more. This is also the case in New Brunswick; however, notice must be given only if a group of 10 employees or more whose employment is terminated also represents at least 25% of the employer's workforce.

¹⁶ Within a four-week period in all of these provinces, with the exception of British Columbia, where a two-month period applies.

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(cont'd)

Statutory notice of termination provisions do not cover persons specifically excluded from their scope (e.g., professionals, agricultural employees, construction workers, employees of seasonal operations). Nor do they normally apply to employees who have been dismissed for just cause; whose employment ceases when their fixed term of employment expires or after completing the task for which they were hired;¹⁷ who have refused a reasonable offer of alternative work; who are employed under an arrangement whereby they may elect to work or not when requested to do so by their employer; who are being laid off for a temporary period; or who have reached the age of retirement. Generally, employers are not required to provide notice of termination when a contract of employment has been rendered impossible to perform because of a fortuitous or unforeseeable event (e.g., following the destruction of a plant due to a natural disaster), where such an event did not result from the employer's conduct. In the common law, this is referred to as the "doctrine of frustration." Moreover, termination of employment provisions contained in a collective agreement may supersede legislated standards.

Even if an employer meets statutory requirements when terminating the employment of an employee or a group of employees, these constitute only a minimum. In some cases, an employer may, under the common law, have to provide additional notice or financial compensation when dismissing an employee without just cause.

It should be noted that the various Canadian jurisdictions specifically prohibit employers from laying off, firing or otherwise penalizing an employee who exercises or wishes to exercise certain rights conferred by the relevant employment standards, labour relations, occupational health and safety or human rights legislation.

Moreover, three jurisdictions, Québec, Nova Scotia and the federal jurisdiction, have legislation providing for the reinstatement and compensation, in certain instances, of employees who have been unjustly dismissed. This applies to employees with at least 12 months of continuous service with the same employer in the federal jurisdiction, three years in Québec, and 10 years in Nova Scotia. However, not all employees meeting service requirements are covered by such provisions. For example, employees under federal jurisdiction who are subject to a collective agreement and employees in Québec who have access to remedial procedures in an agreement cannot file a complaint for unjust dismissal under labour standards legislation.

¹⁷ However, in five jurisdictions (British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario), employees who continue to work for a specified period (normally three months) beyond the fixed term of employment are entitled to notice of termination. In addition, employees covered by the relevant sections of Ontario's employment standards legislation are entitled to notice of termination where their term expires or the task for which they were hired is not completed more than 12 months after their employment started.

Manitoba Hydro-Electric Board and International Brotherhood of Electrical Workers, Local 2034 (2000-2003):

"Employees in redundant positions will be provided with as much advance notice as possible but not less than 90 days prior to their redundancy date."

Bridgestone / Firestone Canada Inc. and Syndicat des travailleurs(euses) de Bridgestone / Firestone de Joliette (CSN) (1999-2005):

"In case of full and final closure of the plant, the Employer shall give six (6) months' notice or the equivalent in wages to each employee." [translation]

On the other hand, severance pay¹⁸ is a benefit that serves to compensate the employee for his or her years of service and commitment to

the employer's business and for loss of employment and seniority rights and reduction of pension entitlement. Severance pay provisions are typically payable when employees are subject to a long-term layoff, termination of employment, dismissal due to technological change, or plant closure. Some agreements extend these benefits to cover separation due to resignation, retirement, illness or death, while other agreements exclude payment in the case of discharge for cause.

Consumers Glass and United Steelworkers of America (1997-2001):

"Subject to the seniority provisions of this Agreement, employees who become permanently displaced as a result of the closing of the plant or a department or as a consequence of technological changes, shall be entitled to a severance allowance in

Box 4.3

Severance Pay in Employment Standards Legislation (Ontario and the Federal Jurisdiction)¹⁹

In addition to statutory notice of termination requirements, two jurisdictions in Canada, Ontario and the federal jurisdiction, provide for the payment of severance pay by employers when terminating the employment of certain employees. This includes cases of constructive dismissal and permanent (or long-term) layoff.²⁰

¹⁸ The following information pertaining to severance pay was taken from Jeffrey Sack and Ethan Poskanzer, *Contract Clauses: Collective Agreement Language in Canada*, 3rd ed. (Toronto: Lancaster House, 1996-2001), pp. 17.58-17.64.

¹⁹ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

²⁰ Also see Box 4.2: "Notice of Termination in Employment Standards Legislation."

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In Ontario, an employee with five years of service or more with the same employer is entitled to severance pay if his or her employer has a payroll of \$2.5 million or more, or if he or she is part of a group of 50 or more employees whose employment was severed, within a six-month period, as a result of the permanent discontinuance of part or all of the employer's business at an establishment. Severance pay is calculated by multiplying the employee's regular wages for a regular work week by the number of years of employment completed, plus a pro-rated amount for any additional months of employment completed, to a maximum of 26 weeks' wages. Periods of employment need not have been continuous or active for severance pay purposes and the legislated notice of termination period must be included in determining severance pay, even if pay was provided in lieu of notice.

Ontario's statutory severance pay provisions do not apply to persons not covered by the *Employment Standards Act, 2000*. In addition, they do not apply to employees engaged in construction or in the on-site maintenance of certain works. Nor do they apply to employees whose employment was severed as a result of a permanent discontinuance of part or all of an employer's business that was caused by the economic consequences of a strike; whose contract of employment has become impossible to perform or has been frustrated, subject to some exceptions; who, after having his or her employment severed, retires and receives an actuarially unreduced pension reflecting any service the employee would have earned were it not for the severance of employment; who refuses an offer of reasonable alternative employment with the employer; who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer; or who is employed under an arrangement where he or she may elect to work, or not, when requested to do so by the employer.

In the federal jurisdiction, an employer who terminates the employment of an employee with at least 12 consecutive months of continuous service must pay the latter two days of wages — at his or her regular rate for regular hours — for each completed year of employment, with a minimum payment of five days' wages. This does not apply, however, when an employee is fired for just cause, temporarily laid off, or entitled to a pension under specified pension plans. It should be noted that periods of temporary layoff (including strikes and lockouts) and absences permitted or condoned by the employer are deemed not to constitute a break in an employee's continuous employment.

accordance with their seniority. The amount of severance allowance to which an employee shall be entitled shall be: 5 years but less than 7 years — 3 months pay; 7 years but less than 10 years — 4 months pay; 10 years but less than 15 years — 5 months pay; 15 years or more — 12 months pay."

Workers' Compensation Board of British Columbia and Compensation Employees' Union (1998-2001):

"Surplus employees may, at any time, elect to have their employment terminated with severance pay due to a shortage of work. Such employees will be entitled to severance pay in the amount of ten (10) working days' of straight-time salary for each completed year of service to a maximum of one (1) years' pay."

D. Early Retirement Packages

Although early retirement packages obviously do not help retain older workers in the workplace, they may offer them a measure of income protection should they be subject to layoff following the restructuring or closing of a workplace.

Marine Atlantic Inc. and United Steelworkers of America, Local 1976 and International Longshoremen's Association, Council of Trade Unions (2001-2005):

"An employee who is working in a group, at a location, which is being adversely affected by a technological, operational or organizational change will, provided he is 55 years of age or older and the total of his age and allowable pensionable service equals 85 or more and elects to receive an early retirement pension, be entitled to receive a monthly separation allowance until the age of 65 which, when added to his company pension, will give him an amount equal to a percentage of his average annual earnings over his best five-year period, as defined under the Company's pension rules (...) provided this would prevent another employee in his group at that location with two or more years of service from being laid off."

DaimlerChrysler Canada Inc. and Canadian Auto-Workers (1999-2002):

The income protection agreement negotiated by the two parties provides a relatively high level of protection to older employees, should there

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be a plant closing. In such a case, employees with 28.1 years or more of credited service; or who are age 54 or older but under age 60 and with a combined age and years of service of 85 or more; or who are age 60 with 10 years of service or over age 61 with at least 9.1 years of service may be eligible for regular early retirement. Special early retirement is available for employees aged over 55. Employees aged between 50 and 55, or who are over 48.1 years of age with 9.1 years of credited service and attain 50 while placed on layoff, are eligible for pre-retirement income maintenance program (PRIMP) benefits. These benefits are

"equal to the sum of the basic and supplementary benefits rates in effect under the provisions of the applicable pension plan at date of commencement of PRIMP benefits, multiplied by the employee's credited service at the date of plant closure or, if later, the date at which the employee attains age 50 with at least 10 years of credited service."

PRIMP benefits are indexed to the cost of living and may be extended to a surviving spouse. Health care and group insurance coverage is also maintained. Employees between 50 and 55 years of age are also eligible for a lump sum retirement allowance. PRIMP benefits end when an employee becomes eligible for special early or regular retirement.

Older employees may sometimes become completely unemployable due to illness or disability. Early retirement through a compassionate pension can give a worker a dignified exit with a relatively secure income.

In a letter of understanding between **BC Transit and National Automobile, Aerospace, Transportation and General Workers Union of Canada Local 333, (CAW-Canada) (2001-2004):**

"The Parties agree to establish a voluntary early retirement/long-term disability 'top-up' program to provide a monetary incentive for those who are totally disabled and who are sixty (60) years of age or older."

E. Retirement Pay or Allowance

Finally, retirement pay or allowance is another measure found in collective agreements that can help older workers ease the financial transition from full-time employment to retirement.²¹

Government of Nova Scotia and Nova Scotia Government Employees' Union (1997-2000):

"An employee who is retired because of age, or mental or physical incapacity, shall be granted a Public Service Award equal to one (1) week's pay for each year of service to a maximum of twenty-six (26) years. The award will include a prorated payment for a partial year of service."

²¹ Other issues related to the transition from full-time employment to retirement are dealt with in Chapter 6: "Transition to Retirement."

Government of Prince Edward Island and Canadian Union of Public Employees, Locals 1145, 1770 and 1775 (1999-2002):

"The Employer shall pay an employee retirement pay based on the following eligibility requirements: (a) When an employee having ten (10) or more years of continuous service retires at age 55 or more; or (b) When an employee has thirty (30) years of continuous service; or (c) When an employee, who was engaged after his/her 55th birthday, retires at age 65 or more; or (d) When an employee having more than ten (10) years of continuous service dies. (In this instance retirement pay shall be paid to the employee's estate); or (e) When an employee having five (5) or more years of continuous service retires due to a permanent disability which prevents him/her from continuing employment. Such retirement pay shall be calculated at his/her daily rate of remuneration at the date of retirement and shall be based on the following: (a) six (6) days pay for each of his/her first twelve (12) full years of continuous service; (...) (b) five (5) days pay for each full year of continuous service from thirteen (13) years to twenty-one (21) years inclusive. (c) a partial year of continuous service in the

final year will be prorated. In no case shall retirement pay exceed one hundred and twenty (120) days pay."

Some retirement allowances are offered as part of an early retirement incentive program.

Kwantlen University College and Kwantlen College Faculty Association (1998-2001):

"The employer may offer to any faculty member or a faculty member may apply for one of the early retirement incentive alternatives described herein, (...) The retiring allowance shall be paid in annual installments, to a maximum of three (3) installments of one-third of annual salary, to be paid on agreed-upon dates acceptable to the faculty member and shall be based on scale salary without allowances at the date of retirement (i.e. last day worked) in the following amounts: (...) 1 [full year to retirement] 20% of annual salary; 2 [full years to retirement] 40% of annual salary; 3 [full years to retirement] 60% of annual salary; 4 [full years to retirement] 80% of annual salary; 5 or more [full years to retirement] 100% of annual salary."*

* "This amount could be subject to change by virtue of a new or renewed collective agreement that provided a salary increase applicable on the last day worked."

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Conclusion

Economic security is an important issue for older workers. Collective agreements contain seniority as well as job and income security provisions designed primarily to give employees an equitable measure of economic security based on their length of service. Seniority rights are used to determine many working conditions (e.g., layoff, recall, promotion). Agreements that contain broader seniority units (i.e., plant-wide as opposed to department-wide) may be more beneficial to older workers.

However, seniority alone may not be adequate to ensure job and income security. For this reason, unions have negotiated other job and wage protection measures. In fact, many of these are designed specifically for older workers. Many job security provisions recognize the potentially adverse impact of ageing on the performance of duties, and therefore make appropriate allowances in the form of transfers, relocations, retraining, and rehabilitation programs. In addition to these provisions, income-related provisions such as wage maintenance, longevity pay, severance and termination pay, early retirement allowances and retirement pay give older workers added protection against organizational and technological changes as well as plant slowdowns and shutdowns.

(Anti-) Discrimination Clauses and Practices

Research has shown that one of the perceived factors limiting the employment prospects of older workers (i.e., to maintain employment or to obtain a new job) is age-based discrimination in the workplace and in the labour market.¹

Some people have stereotypical views about older workers, considering them to be less productive, less flexible, unable or unwilling to adapt to new technologies or to upgrade their skills, prone to absenteeism, and less capable of engaging in physically demanding or stressful work.

Several studies have demonstrated that such generalizations are quite inaccurate and certainly do not reflect the working capacity of older workers.² Nevertheless, these stereotypical views may often lead to discriminatory practices that negatively affect older workers in terms of hiring, promotions, job security, access to training and other benefits, and remuneration.

The *Canadian Human Rights Act* and provincial human rights codes forbid age discrimination in employment — with exceptions in some cases regarding mandatory retirement and bona fide occupational requirements. In January 1998, roughly 17.9% of all anti-discrimination clauses found in major Canadian collective agreements specifically referred to the federal or provincial human rights code. Notwithstanding this, many collective agreements include provisions that give older unionized employees greater protection from discriminatory practices and harassment. As we will see in this chapter, some go further and include affirmative action measures for older workers. However, the use of such measures is not widespread, as is made evident by the limited number of examples presented. There are also some contract clauses that may be considered discriminatory or that may have an unintended adverse impact on older workers.

¹ Gilles Guérin and Michel Hébert, *Les obstacles rencontrés par les personnes de 45 à 64 ans à la recherche d'un emploi* (Montréal: École de relations industrielles, Université de Montréal, November 1989); International Labour Office, "Problèmes et perspectives des travailleurs âgés dans une société vieillissante," Chap. 2, *Le travail dans le monde*, Vol. 8, 1995.

² Susan Underhill, *Aging Workers in the Workplace: A Canadian Perspective* (Ottawa: HRDC, 1999).

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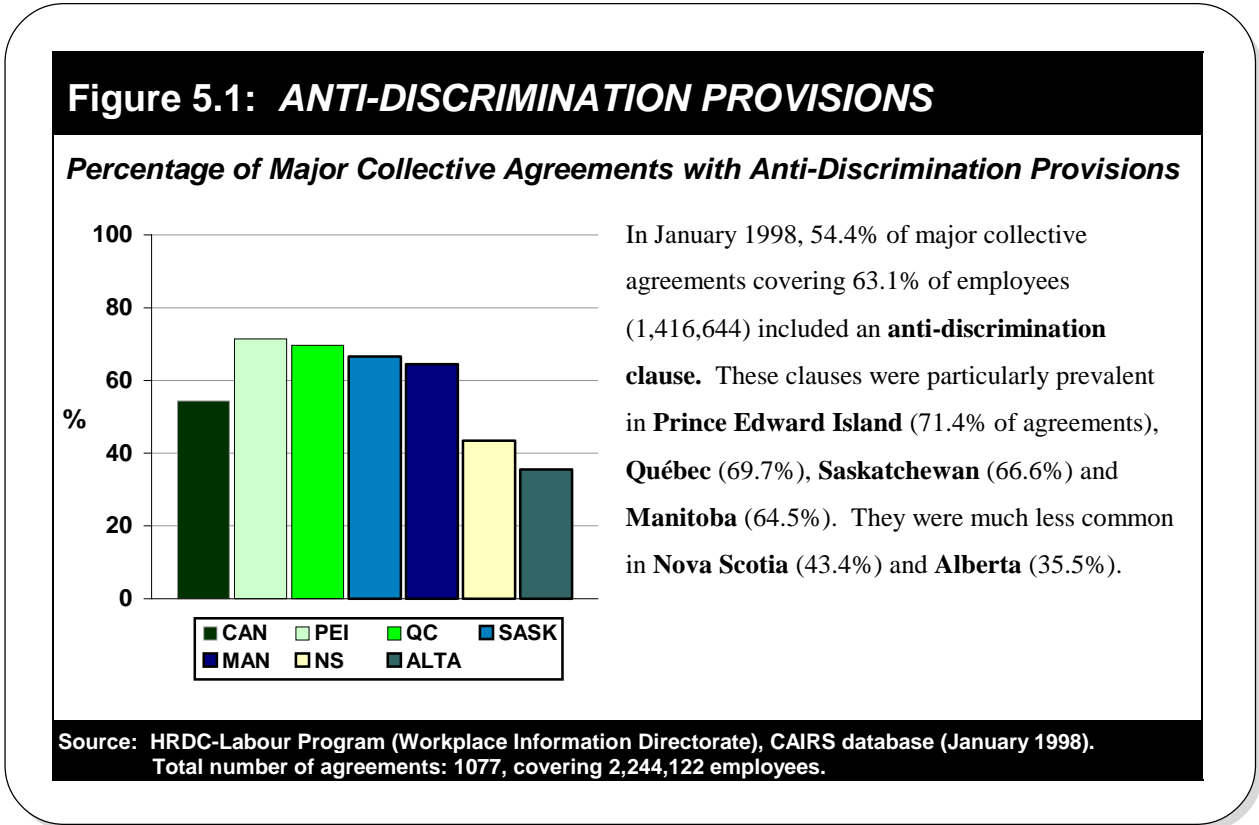
This chapter looks at provisions relating to the issue of age-based discrimination in the workplace and examines their impact on older workers. The chapter is subdivided into three sections:

- I Anti-Discrimination Provisions:** These provisions deal with age-specific anti-discrimination provisions and "no age limit" provisions.
- II Affirmative Action Measures:** This section examines affirmative action measures benefiting older workers including ratio clauses, reserved positions, and exemptions, as well as hiring halls.

III Other Related Clauses: The third section highlights various clauses that may implicitly contain age-based discriminatory elements including special wage rates, mandatory retirement, and medical certificates and examinations.

I Anti-Discrimination Provisions

Anti-discrimination provisions generally refer to age-specific anti-discrimination clauses and "no age limit" clauses. The first set of provisions



involves clauses that specifically prohibit any form of discrimination based solely on age. The second set of provisions states that age alone cannot be used to deny an employee access to a work-related program or activity. This section looks at these two types of provisions and comments on the relationship between anti-discrimination clauses and the grievance procedure.

A. Age-Specific Anti-Discrimination Provisions

Most agreements containing a clause specifying prohibited grounds for discrimination and/or harassment mention age explicitly.

Memorial University of Newfoundland and Canadian Union of Public Employees, Local 1615 (1999-2001):

"The parties agree that there shall be no discrimination, interference, restriction, or coercion exercised or practiced by either party with respect to any employee in the matter of assignment of work, classification, discipline, discharge, hiring, layoff, promotion, recall, training, transfer, upgrading, wage rates, or otherwise by reason of age, physical and/or mental disability, race, creed, colour, national origin, political or religious affiliation, sex, sexual orientation, marital status, place of residence, membership or activity in any Union, or any similar reason."

However, there may be some specific exemptions, such as allowances made for mandatory retirement at the normal retirement age (65) or when the employee is eligible for a full pension. (The issue of mandatory retirement will be addressed in section III of this chapter.)

Christie Brown and Company and Bakery, Confectionery and Tobacco Workers' International Union, Local 426 (1997-2001):

"The Management of the business of the Company and the direction of its working forces, including the right to hire, discharge, or discipline for just cause, to retire for age or health reasons, and to maintain discipline and efficiency among employees, is the responsibility of the Company, except that Union members shall not be discriminated against as such."

University of New Brunswick and Association of University of New Brunswick Teachers (1998-2001):

"There shall be no discrimination, interference, restriction or coercion exercised or practiced regarding any matter including, but not limited to, salary, rank, appointment, promotion, tenure, termination of employment, layoff, sabbatical leave, or other leaves, fringe benefits, or any other terms and conditions of employment by reason of age (except for retirement as provided for through this Collective Agreement)...". Retirement normally takes place "at the end of the academic year during which the Employee attains the age of 65."

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B. "No Age Limit" Provisions

Another form of age-based anti-discrimination clause is the "no age limit" provision. As previously discussed in Chapter 3 of this study ("Training, Retraining and Education"), such provisions have been put in place in some Canadian workplaces to ensure that older workers are not rejected for training or other apprenticeship programs due to their age. However, the overall effectiveness of age-based anti-discrimination clauses is difficult to assess. Their value may be, in many instances, largely symbolic: they express the commitment of the parties not to act in a discriminatory manner toward older workers. However, inasmuch as non-discrimination clauses give workers recourse to the grievance procedure, they may confer a measure of protection against harassment and arbitrary management decisions. Furthermore, from a worker's perspective, the grievance procedure is much more accessible and much less costly than a court challenge. As the following example demonstrates, such clauses have, on occasion, been invoked with some success.

Hospitality and Service Trades Union Local 261 v. Ottawa Hunt and Golf Club Ltd. (1997):

In this arbitration ruling, the employer's mandatory retirement policy was struck down, since the collective agreement prohibited discrimination "by reason of age." The arbitrator ruled that the definition of "age" in the agreement was broader than the definition contained in

Ontario's Human Rights Code, which offers protection only to those aged 65 and under. This demonstrates that contract clauses prohibiting age discrimination may offer better protection than some human rights codes, such as those in Ontario, British Columbia, Newfoundland and Labrador, and Saskatchewan, which do not cover individuals aged over 65.

Although the presence of clauses prohibiting discrimination on the basis of age may indicate union and management sensitivity to this issue, the absence of such clauses in some collective agreements may also reflect the fact that age discrimination in management practices has not been a significant problem in the past. Likewise, where it is believed that existing legislation offers adequate protection, unions and their members may be less preoccupied with bargaining age-specific non-discrimination provisions.

II Affirmative Action Measures

Affirmative action measures, as they relate to older workers, refer to policies and practices establishing special criteria and procedures designed to create a "level playing field" in employment, thereby offsetting institutionalized age discrimination. They include provisions pertaining to ratio clauses (minimum hiring quotas), reserved positions and exemptions (lesser requirements). Other contract clauses that may be beneficial to older workers are hiring

hall provisions (inasmuch as unions use their control over hiring in a favourable manner). The primary goal of these affirmative action measures is to achieve employment equity by facilitating the hiring and retention of older workers.

A. Ratio Clauses, Reserved Positions and Exemptions

Provisions concerning minimum hiring quotas (ratio clauses) are designed to guarantee employment opportunities for older workers. They appear mainly in the construction industry (i.e., trades), where employers tend to prefer hiring younger workers due to the physically demanding nature of the work. The ratios set are not absolute, since they also depend on the availability and, in some cases, the suitability (i.e., competence) of older workers.

Construction Labour Relations Association of B.C. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 170 (1994-1998):

"It shall be the policy of the Employer to endeavour where there are five (5) or more journeymen employed by an Employer, that every fifth journeyman shall be fifty (50) years of age or over if available."

Electrical Contractors Trade Division CLRA of Manitoba and International Brotherhood of Electrical Workers, Local Union 2085 (1998-2001):

"On projects where there are ten (10) or more journeymen employed by the Employer, every tenth (10th) journeyman shall be fifty (50) years of age or over, if available, and physically qualified for the task."

Labourers' Employer Bargaining Agency and Labourers' International Union of North America, Local Union Schedule for Local 527 - Ottawa (1998-2001):

"The Employer agrees to hire at least one member fifty-five (55) years of age or over, for every ten (10) labourers in their employ, provided such member is medically fit and capable of performing the work."

Employment equity measures such as reserved positions for disabled employees may be useful for some older employees, particularly those in jobs that can cause premature ageing, physical impairment and other chronic health problems. Older workers who find themselves in such a predicament can potentially take advantage of clauses that are designed to accommodate workers' particular needs.

Bell Canada and Communications, Energy and Paperworkers Union of Canada (1999-2003):

"To give effect to the principle that equal opportunity in employment for women, aboriginal peoples, persons with disabilities

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and persons who are, because of their race or colour, in a visible minority in Canada, means more than treating persons in the same way but also requires special measures and the accommodation of differences, the parties agree that (...) the Company may, in each twelve (12) month period, starting January 1 of each year, fill up to two (2) job openings in each district of the Company, for the purpose of Employment Equity, (...)."

Some agreements also give preference to experienced older workers when filling certain positions.

Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and International Brotherhood of Electrical Workers (2001-2004):

"Where there is a full time Electrical Storekeeper required on a project, he shall be a Journeyman Electrician and preference shall be given to older members."

In some cases, older workers may be exempted from more stringent requirements imposed on other workers.

Wolf Creek School Division No. 72 and Alberta Teachers' Association (2000-2001):

"Teachers 55 years of age or older on the date of signing of this agreement shall not be subject to the requirements for completing university courses as set out in article 9.2,"

which reads: "Teachers receiving prorata under the previous agreement shall continue to be eligible for such allowance if they successfully complete one fully accredited university course prior to every two year period effective September 1, 1972."

B. Hiring Halls

Hiring halls³ have long been viewed as an effective mechanism to protect older workers from age-discriminatory hiring practices. Although clauses establishing hiring halls do not guarantee in and of themselves that older workers will be treated equitably in the hiring process, they at least give the union a measure of discretion in the selection of employees and can facilitate the establishment of hiring practices favourable — or at least not too disadvantageous — to their older members. The effectiveness of hiring halls in this respect often depends on whether or not the union has an exclusive control over the supply of labour.

However, hiring halls may also constitute a barrier for older individuals seeking to start a new occupation or wishing to relocate and enter another bargaining unit. Not surprisingly, unions give priority to their current membership and may pursue restrictive admission policies. This has been the case in some longshoremen hiring halls, when economic slowdown and the automation of port operations have greatly diminished labour needs.

³ Hiring halls are centralized and institutionalized "dispatching" systems operated by unions, which are responsible for the selection and referral of qualified union members to employers.

Hiring hall provisions appear in some construction and longshoring agreements, where employees can expect to frequently change employers and work on an intermittent basis, making the enforcement of seniority provisions very difficult. It should nevertheless be noted that, at least as regards longshoring, computerized dispatching systems and labour-saving technological innovations have gradually reduced the need for hiring halls. Negotiating clauses that guarantee minimum hours of work per year for union members has often compensated for this. Also, government pressure in certain provinces has led to the elimination of hiring halls, as was the case recently in British Columbia.

Construction Labour Relations Association of B.C. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 170 (1994-1998):

"The Party of the First Part [employer] agrees that only members of the United Association in good standing will be employed on work being installed by such parties under the jurisdiction of this Local Union, this is to include all helpers and apprentices. If, after forty-eight (48) hours, the Local Union is unable to supply qualified journeymen, then the employer has the privilege of employing journeymen as required who must qualify and become members of Local Union 170 within fifteen (15) days. (...) All Employees including

apprentices must have a clearance or dispatch slip from Local 170 before being hired."

Terazzo, Tile and Marble Guild of Ontario, Inc. and Brick and Allied Craft Union of Canada (2001-2004):

"This provincial agreement for Ontario has a hiring hall clause giving employers the right to reject union-referred employees. However, "Consideration for hiring of Union designated Older Members is to be done on an equitable basis. The Union agrees that any member hired in this category shall be a fully qualified Mechanic."

The **United Brotherhood of Carpenters and Joiners of America** also operates a hiring hall in Alberta. A provision has been included in the **Alberta Construction Labour Relations Association** agreement (2001-2003) whereby

"No member covered by the terms of the Agreement shall be refused work or membership in the Union on account of age, sex, colour, race or religious belief."

III Other Related Clauses

It is possible to identify clauses that may, at least potentially, lead to age discrimination. In this section, we look at three types of such clauses: special wage rates, mandatory retirement, and medical certificates and examinations.

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A. Special Wage Rates

Some agreements give employers some flexibility in setting special (i.e., lower) wages for older and/or partially disabled workers. Although the intent is to make the hiring of older workers more attractive, and therefore increase their chances of finding and maintaining employment, such a provision may also lead to institutionalized wage discrimination on the basis of age.

Cement Masons Employer Bargaining Agency and Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Appendix "E" Timmins (1998-2001):

"When ten (10) employees are employed on one project, there shall be an older Union member employed when available and suitable. One older Union member for every ten (10) employees. The rate of wages shall be a minimum of seventy percent (70%) of the journeyman's rate."

Alcan Smelters and Chemicals Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 2301 (CAW-Canada) (1999-2002):

"Special basic hourly wage rates may be established by the Company for employees with permanent physical limitation. (...) Such

special basic hourly wage rates shall not be less than Job Class 9."

However, employees given a special wage rate have the right to submit a grievance.

Construction Management Bureau Limited and United Association of Journeymen and Apprentices of the Plumbing, Steamfitting and Pipefitting Industry of the United States and Canada, various locals (1999-2002):

"The wage rates considered herein are for competent skill in the work. Special rates may be established by joint action of the Bureau and the Union for employees who are handicapped by reason of age or physical disability."

B. Mandatory Retirement

Mandatory retirement may be considered a discriminatory practice, since it inhibits the continued participation of older workers in the labour market. In its 1988 report *Human Rights and Ageing in Canada*, the Parliamentary Standing Committee on Human Rights described mandatory retirement as a form of "institutionalized age discrimination." It has also been argued that ending mandatory retirement would have minimal negative effects, since only a small proportion of the workforce would actually seek to prolong their employment past the current mandatory limit.⁴

⁴ Joseph Tindale, *Older Workers in an Aging Work Force* (Ottawa: Supply and Services Canada, 1991), p. 18.

However, most unions support — or at least accept — mandatory retirement as a means of giving job opportunities (i.e., promotions) and job security (i.e., fewer layoffs) to their younger members. This is especially true during periods of economic downturn. On the other hand, in sectors where there is a lack of available qualified workers, employers may want to retain older workers with sufficient pensionable service for retirement who have yet to reach the age of 65.

Some older workers, who were forced to retire but would have enjoyed continuing to work, or who could not financially afford retirement (i.e., with insufficient pensionable service),⁵ have nonetheless challenged mandatory retirement policies, through either the

grievance procedure (see the example cited earlier of Hospitality and Service Trades Union Local 261 v. Ottawa Hunt and Golf Club Ltd.) or the courts.

In a recent court decision, B.C.'s Court of Appeal held that mandatory retirement policies of public bodies must be justified on a case-by-case basis. British Columbia's highest court also urged the Supreme Court of Canada to revisit the issue of mandatory retirement at age 65.⁶

Private sector employment is not affected by this ruling because, as previously stated, its rules are subject to the provincial human rights codes, which, for the purpose of age-based discrimination, cover people aged 19 to 65 only.

Box 5.1

Legislation on Mandatory Retirement in Canada⁷

In Canada, labour laws do not specify a retirement age for employees. However, some laws or government policies governing specific occupations (e.g., commercial airline pilots) set an age limit for persons employed in those occupations.

Forcing an employee to retire by reason of age is considered to be a human rights issue and is regulated by human rights legislation. However, in Québec, in addition to this type of legislation, provisions contained in labour standards legislation specifically prohibit mandatory retirement.

⁵ This is an issue of particular importance to women who have left the labour market for an extended period of time to care for their children.

⁶ Greater Vancouver Regional District Employees' Union v. Greater Vancouver Regional District, *British Columbia Court of Appeal, Judges Jo-Ann Prowse, Mary Newbury and Kenneth Mackenzie, October 5, 2001.*

⁷ Prepared by Labour Law Analysis, *Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.*

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(cont'd)

In Québec, forcing an employee to retire because of age is considered to be discriminatory under the *Charter of Human Rights and Freedoms* and the employee concerned may file a complaint with the Human and Youth Rights Commission (Commission des droits de la personne et des droits de la jeunesse). In addition, since the enactment of *An Act Respecting the Abolition of Compulsory Retirement*, which took effect on April 1, 1982, it is a prohibited practice under the *Act Respecting Labour Standards* for an employer to dismiss, suspend or retire an employee because he or she has reached or passed retirement age. However, an exception to this prohibition against compulsory retirement is provided so as not to preclude an employer from dismissing, suspending or transferring an employee for good and sufficient reason.

In Alberta, Manitoba, Prince Edward Island and the three territories, the practice of mandatory retirement in enterprises under provincial/territorial jurisdiction is discriminatory under the human rights legislation. However, it is considered that there is no discrimination when there are bona fide and reasonable requirements for an employment or occupation.

At the federal level, it is not a discriminatory practice under the *Canadian Human Rights Act* to terminate an individual's employment because that individual has reached the normal age of retirement for employees working in similar positions. Therefore, in those circumstances, as stated in the Act, mandatory retirement is permitted.

Under the British Columbia, Ontario and Saskatchewan human rights legislation, older employees are protected against discrimination based on age until they reach age 65. This means that employees who are 65 or over cannot file a complaint for age discrimination if they are forced to retire. Similarly, in Nova Scotia, mandatory retirement at age 65 is not considered to be discriminatory under the human rights legislation if this is a standard practice in the workplace. However, the Nova Scotia Human Rights Commission will investigate if employees who are 65 or over are not treated in the same way as others in the same age category with respect to retirement.

In New Brunswick and in Newfoundland and Labrador, termination of employment because of the terms or conditions of a bona fide retirement or pension plan is not considered to be discriminatory under the human rights legislation. If there is no such plan, employees who are forced to retire can file a complaint for age discrimination under the human rights legislation; in Newfoundland and Labrador, they can do so until they reach age 65.

(cont'd)

Case law indicates that, in some circumstances, laws or government policies permitting mandatory retirement are justified under section 1 of the *Canadian Charter of Rights and Freedoms* (i.e., reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society). The cases to date focus on mandatory retirement in certain portions of the public sector. The case law is continuing to evolve.

The following examples of mandatory retirement clauses were taken from both the public and private sectors.

Upper Canada District School Board and Canadian Union of Public Employees, Local 5678 (1999-2002):

"The mandatory retirement age for an employee is 65 years of age. The employment of an employee shall cease on the last day of the month in which such employee attains the age of 65 years or with the option to finish the school year in which the employee turned the age of 65 years."

Saskatchewan Association of Health Organizations and Canadian Union of Public Employees (1998-2001):

"The mandatory retirement date for all Employees shall be the first day of the month coincident with, or immediately following their attainment of age sixty-five (65)."

Alsco Uniform and Linen Services and Retail Wholesale Union, Local 580 (1999-2003):

"Effective March 1, 2001 the employer shall implement a policy of mandatory retirement at age 65 without severance."

Northumberland Ferries Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (2000-2002):

"Effective July 15, 1993, employees who have reached or those employees who attain their 65th birthday thereafter, will be required to accept mandatory retirement."

At least one major collective agreement contains a provision that prohibits compulsory retirement on the basis of age.

Cavendish Farms (New Annan Plant) and United Food and Commercial Workers' International Union, Local 864 (1999-2002):

"No employee shall be required to retire solely on account of age."

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Some collective agreements offer post-retirement-age work options to their retirement-age workers (e.g., deferred retirement and work after retirement). These issues will be addressed in the next chapter.

C. Medical Certificates and Examinations

Medical certificates and examinations may be required on hiring or on return to work following illness to determine whether an employee is able to perform certain job functions. They may also be required to support a claim for sick pay or sick leave. Although mandatory medical examinations may in most cases be warranted to protect employees, their co-workers and the public at large, they are sometimes criticized by unions because they may disguise age discrimination in human resource management practices and may have demoralizing effects on employees. Guaranteeing confidentiality of medical information, giving employees access to their medical records and ensuring that employees transferred for medical reasons maintain their wages can, however, mitigate potentially negative impacts.

A medical certificate or examination may be required upon hiring, and/or on a periodical basis, depending on the nature of the work.

Chinook's Edge School Division No. 73 and Alberta Teachers' Association (2000-2001):

"Newly appointed teachers may be required to present a medical certificate of good health and evidence of teaching experience."

Abitibi-Consolidated Inc. and Syndicat canadien des communications, de l'énergie et du papier, Local 139 (1998-2004):

"Every employee must undergo a periodic medical examination by the plant doctor and have any X-rays, electrocardiograms or other analyses or tests done that the plant doctor considers necessary." [translation]

In almost all cases, the employer pays the cost of the medical certificate and examination, as well as all related costs. In addition, some agreements guarantee that workers will not suffer any loss in wages for time spent at a medical examination as well as in cases where employees are transferred following a medical recommendation.

Bridgestone / Firestone Canada Inc. and Syndicat des travailleurs(euses) de Bridgestone / Firestone de Joliette (CSN) (1999-2005):

"An employee does not lose any pay for the time spent on such examination. (...) If an employee is temporarily moved to a classification other than his or her regular

classification as the result of a medical recommendation, the employee's pay is protected." [translation]

In order to protect the privacy of employees, provision may be made for the safeguarding of employee health information by requiring separate storage of health information and restricting access to health personnel and the employee concerned.

Air Canada and Canadian Union of Public Employees (1998-2001):

"The confidentiality of health and medical information of employees is recognized by the Company and the Union. Company and Union representatives who have access to this information will ensure its confidentiality. Medical information of an employee will not be divulged to a third party without his consent or as otherwise required by law."

Bristol Aerospace Limited and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 3005 (CAW-Canada) (1999-2002):

"The parties recognize the importance of confidentiality of employee health information; (a) All employee health information shall be stored separately from other employee information; (b) An employee has the right to access their health information on Company file including a right to request that corrections be made if necessary or a notation of the objection to be included on the employee file."

Conclusion

Discrimination in the workplace is a serious issue. Many laws have been enacted and many regulations have been adopted in order to minimize, if not completely eliminate, all types of discrimination. For obvious reasons, the specific issue of age-based discrimination is of concern to all older workers. Provisions designed to counter this type of discrimination, as well as affirmative action measures designed to ensure employment equity for older workers, appear in major Canadian collective agreements. These provisions aim to guarantee that older workers are given the same consideration and employment opportunities as other workers. However, employers and unions must remain mindful of the way in which certain potentially discriminatory clauses are used.

Older workers play a key role in today's labour market and will continue to do so. Due to the projected shortfall in the availability of skilled labour in the near future, issues of job satisfaction and retention of older workers have come to the fore. How we deal with these issues as well as other issues related to the later stages of a worker's career will undoubtedly play a determining role in the economic well-being of our country. In this context, the next chapter looks at provisions dealing with the passage from full-time employment to complete retirement.

Transition to Retirement

The transition from full-time employment to complete retirement is an important step in a worker's life. A large number of collective agreements contain clauses pertaining to older workers nearing retirement. In general, their primary purpose has been to encourage early retirement by offering various financial incentives. However, in the current employment context, characterized by a shortage of skilled workers and a rapidly ageing workforce, many agreements now focus on ways and means of retaining older workers or facilitating their transition to retirement.

The need to prepare for retirement has been recognized by employees and employers as well as by union representatives. In order to do so, older workers may require more time off work to make necessary arrangements and, more importantly, to adjust progressively to a new life stage where work will play a much smaller role. Some may also find counselling services and retirement preparation workshops or seminars to be useful.

Given a choice, many older workers, for a number of reasons, would like to gradually reduce their workload rather than end their career in an abrupt fashion. Other older workers would like to put off retirement and continue working full-time beyond the normal retirement age or reduce their hours to part-time. Phased retirement programs can provide older workers with the opportunity to do so.

However, older workers who opt to reduce their working hours, as well as those who opt to work beyond the normal retirement age, need to carefully consider the impact of such decisions on their benefits coverage.

Although many measures to prepare for retirement may be established informally or through an employer policy outside the purview of collective bargaining, a number of collective agreements include specific measures designed to facilitate the transition to retirement. This chapter focuses primarily on these measures.

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To this end, the chapter is subdivided into three sections:

- I Pre-retirement Leave and Vacations:** This section looks at a variety of pre-retirement leave and vacation provisions intended for older workers.
- II Retirement Preparation Programs:** This section focuses primarily on pre-retirement counselling and financial programs offered by employers.
- III Phased Retirement:** This section deals with gradual retirement as well as post-retirement-age work options including deferred retirement and work after retirement. It also looks at the impact of these options on benefits coverage.

I Pre-retirement Leave and Vacations¹

Pre-retirement leave or vacations can help ageing employees prepare for retirement and facilitate the work-to-retirement transition, by providing them with a "retirement rehearsal" before leaving their jobs.² In January 1998, roughly 6.5% of major Canadian collective agreements covering 9.2% of employees

(206,797) provided pre-retirement vacations. These clauses vary greatly, ranging from granting regular vacation entitlements for the final calendar year of service when service is interrupted to granting a one-year paid leave of absence. Some include various schemes involving such benefits as vacation entitlements, sick leave credits, sick pay gratuities as well as superannuation allowances. The duration and requirements of pre-retirement leaves also vary from one agreement to the next. However, eligibility usually depends on the employee's age, years of service or a combination of both.

In the absence of clear language in the agreement to the contrary, employees who leave their employment before the completion of the vacation year are entitled only to a pro-rated portion of vacation pay benefits. If a departing employee is to receive his or her full year's vacation pay benefits, this must be expressly stated in the agreement,³ as is the case with the following examples.

Simon Fraser University and Canadian Union of Public Employees (1999-2002):

"On normal or early retirement taken in accordance with the terms of the Pension Plan for Members of the Administrative Staff each employee shall be entitled to the same

¹ Other leaves and vacations are dealt with in Chapter 2: "Leaves of Absence."

² Malcolm H. Morrison, *The Transition to Retirement* (Washington: Bureau of Social Science Research, 1985).

³ Jeffrey Sack and Ethan Poskanzer, *Contract Clauses: Collective Agreements Language in Canada, 3rd Edition* (Toronto: Lancaster House, 1996-2001).

vacation which she/he would have had if she/he had continued working to the end of the calendar year."

Government of British Columbia and B.C. Government and Service Employees' Union (2001-2004):

"An employee scheduled to retire and to receive a superannuation allowance under the Pension (Public Service) Act or who has reached the mandatory retiring age, shall be granted full vacation entitlement for the final calendar year of service."

Some agreements simply grant retiring and soon to retire employees an additional week's vacation as a pre-retirement leave.

Ontario Housing Corporation and Canadian Union of Public Employees, Local 767 (2000-2002):

"An employee who has completed twenty or more years of continuous service is entitled to receive, in the year ending with the end of the month in which s/he attains the age of sixty-five (65) years, five (5) days vacation leave-of-absence in addition to his/her normal vacation entitlement (...), such time to be considered as pre-retirement leave."

York University and York University Staff Association (2000-2002):

"An employee will be entitled to an extra week's vacation, once, to be taken prior to retirement where the employee has either a)

attained the age of sixty (60) and where age plus service equals eighty (80); or b) attained the age of fifty-five (55) and where age and service equals eighty (80) and that employee has officially notified the University of their intention to retire prior to age sixty (60)."

Some agreements allow senior employees to bank vacation time during the years leading up to retirement and use it as pre-retirement vacation.

Lake Erie Steel Company Limited and United Steelworkers of America, Local Union 8782 (2000-2004):

"An employee with twenty-two (22) or more years of service will be entitled to defer up to two (2) weeks of his/her annual vacation entitlement per year — up to a maximum of eight (8) weeks — to be taken as pre-retirement vacation immediately prior to his/her retirement date."

Champion Road Machinery Limited and International Association of Machinists and Aerospace Workers (1998-2002):

"Employees with a minimum of four (4) weeks vacation and at least 50 years of age may bank weeks in excess of three (3) weeks vacation entitlement for use prior to retirement."

At least one agreement allows employees to use all or part of their banked overtime hours as a pre-retirement leave.

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Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279 (1999-2002):

"Any banked hours (...) may, at the discretion of the employee, be used [as]: (...) A pre-retirement leave bank, in which the employee may place all or part of the banked overtime hours. When transferred, each hour will be credited into the retirement leave bank as an hour and a half. All remaining hours in the overtime bank will be paid out to the employee in a lump sum prior to the end of the calendar year, at the rate of one and a half times the employee's job classification rate. Hours in an employee's pre-retirement leave bank may, at the discretion of the employee, be used to advance the employee's departure from active employment prior to his or her official retirement date or be paid out in cash at the actual time of retirement."

Other agreements grant a certain amount of days off for each completed year of service. Employees are usually given the choice of taking the time off or requesting a lump sum payment.

Halifax Regional Municipality and Nova Scotia Union of Public Employees, Local 13 (1997-2001):

"All employees, after ten (10) years of continuous, permanent service with the employer, shall, upon retirement under any of the provisions of the pension plans of Halifax Regional Municipality, be entitled

to receive a pre-retirement leave with pay computed on the basis of three (3) calendar days for each completed year of service with the employer, up to a maximum of ninety (90) days at the rate of the current salary. An employee entitled to receive pre-retirement leave may choose to work all or a portion of the pre-retirement leave period and, where such a choice is made, shall receive a lump sum payment for any entitlement not taken as leave."

Deer Lodge Centre Inc. and Public Service Alliance of Canada (1998-2002):

"Full-time employees retiring in accordance with the provisions of the Centre's group pension plan whether or not enrolled in the pension plan, shall be granted paid pre-retirement leave on the pro-rated basis of four (4) days per year of continuous employment. (...) Payment shall, at the option of the employee, be made in a lump sum or as a continuation of salary until the scheduled retirement date."

Regional Health Authorities of Manitoba and Manitoba Association of Health Care Professionals (1999-2003):

"Employees retiring due to normal retirement age, or in accordance with provisions of the Employer's group pension plan, shall be granted paid pre-retirement leave on the basis of four (4) days per year of employment."

At least one agreement grants a pre-retirement leave of one week in the fiscal year in which the employee meets the age and service requirements for such leave, and in up to five fiscal years thereafter.

Canada Post Corporation and Canadian Union of Postal Workers (2000-2003):

"In addition to vacation leave provided for under this agreement, a regular employee who attains fifty (50) years of age and completes twenty (20) years of continuous employment or, attains sixty (60) years of age and completes five (5) years of continuous employment, shall be entitled to be paid a pre-retirement leave of one (1) week in the fiscal year in which he or she becomes eligible for such leave and in every fiscal year thereafter until the employee's retirement up to a maximum of six (6) weeks pre-retirement leave from the time of eligibility until the time of retirement. An employee may elect to take her or his fifth (5th) and sixth (6th) weeks of pre-retirement leave during the same year."

Many agreements contain contract clauses detailing potentially longer pre-retirement leaves. However, these are not always paid and they may or may not include benefits.

Vancouver Community College and Vancouver Community College Faculty Association (1998-2001):

"In order to allow an instructor nearing retirement age to prepare for retirement, (...),

an instructor shall be granted a leave of absence of between three (3) and twelve (12) consecutive months. (...). Retirement preparation leave shall be unpaid, but shall carry with it the following benefits: medical, extended health, group life, and dental insurance benefits; Provided the instructor elects to continue to pay the instructor's portion of pension contributions and is given permission to do so by the Superannuation Commission, the College shall continue to make its payments for the entire duration of the leave; A stipend of \$1,000 per month for full-time instructors and pro-rata for part-time instructors and instructors on part-time leave; Instructors taking Retirement Preparation Leave may opt for the continuance of short and long term salary indemnity by payment of the necessary premiums."

Comité patronal de négociation pour les commissions scolaires francophones and Syndicat des employés et employées professionnels-les et de bureau (FTQ), Local 57 (2000-2002):⁴

"In order to reduce the number of employees on layoff, the commission shall, with the agreement or at the request of the employee, grant pre-retirement leave, under the following terms and conditions: 1) the pre-retirement leave is a leave with pay for a maximum duration of one (1) year (...) 3) only employees who would have been entitled to retire at the end of the leave and who would not have been entitled to full

⁴ This pre-retirement leave provision was negotiated as a means of reducing the number of surplus employees.

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retirement during the leave are eligible; 4) at the end of the leave with pay, the employee is deemed to have resigned and is retired; 5) the leave allows a reduction in the number of permanent employees on layoff." [translation]

Many agreements with pre-retirement leave provisions have mechanisms that allow employees to use their accumulated sick leave credits or sick pay gratuities as a retirement preparation leave.

Government of Québec and Syndicat de la fonction publique du Québec (2000-2002):

"An employee who opts for permanent, full retirement may, (...) choose (...) full pre-retirement leave, the duration of which is equal to a portion of his accumulated sick leave and, at the same time, offsetting benefits corresponding to half of his unused sick leave credits; the offsetting benefits shall in no case exceed sixty-six (66) days' gross salary (...)" [translation]

Government of Yukon and Yukon Teachers' Association (2000-2003):

"An employee who retires from the Public Service and who is eligible for an immediate annuity or an immediate allowance as defined under the Public Service Superannuation Act may convert up to a maximum of thirty-three and one-third percent (33 1/3%) of the total

earned but unused sick leave credits, to a maximum of three-hundred (300) hours, to be paid pre-retirement leave. Such pre-retirement leave shall be taken during the period immediately prior to the employee's effective date of retirement. An employee may elect to receive an equivalent cash payout in lieu of pre-retirement leave."

Toronto Police Services Board and Toronto Police Association (1999-2001):

"A member may use up to six months of his/her sick pay gratuities in time rather than in pay, immediately prior to retirement. (...) The member may also decide to take a portion of his/her sick pay gratuity in time and the remainder in lump sum payment."

Finally, at least one agreement allows employees to take their retirement pay or allowance as a pre-retirement leave of absence.⁵

Government of British Columbia and B.C. Government and Service Employees' Union (2001-2004):

"Upon retirement from service, an employee who has completed 20 years of service with the Employer, and who under the provisions of the Pension (Public Service) Act is entitled to receive a superannuation allowance on retirement, is entitled to an amount equal to their salary for one month, and for each full year of service exceeding 20 years but not exceeding 30 years, is entitled to an additional amount equal to one-fifth of their

⁵ See Chapter 4 ("Economic Security") for more information pertaining to retirement pay or allowance.

monthly salary. The employee may opt to take the allowance as equivalent paid leave of absence to be taken immediately prior to retirement."

II Retirement Preparation Programs

In January 1998, clauses pertaining to counselling services appeared in 13.4% of major Canadian collective agreements covering 19.2% of employees (431,601). It should be noted that not all counselling services necessarily provide help specifically linked to retirement. There are nevertheless programs offering help to workers nearing retirement in areas such as health care, financial planning, housing arrangements, life adjustments, legal matters, organization of leisure time and job finding skills for a second career. These may help older workers prepare for new challenges while alleviating possible anxiety.

Contract clauses offering a pre-retirement counselling program or seminar are relatively short and provide few details. In almost all cases, however, these provisions stipulate that this service will be financed and, whenever possible, provided by the employer.

Irving Paper and Communications, Energy and Paperworkers Union of Canada, Local 601 (1999-2005):

"The company agrees to provide, at no cost to the employee, a pre-retirement counselling program."

Canadian Forest Products Limited and Pulp, Paper and Woodworkers of Canada (1997-2003):

"The Company will provide a pre-retirement counselling program. The Company will involve the Union in the design of the program."

General Electric Canada Inc. and Communications, Energy and Paperworkers Union of Canada (2001-2004):

"The Company undertakes to provide within a six (6) month period a pre-retirement information program for employees aged 55 or older. In the event that the program is not delivered as part of a group program, the Company shall then, with prior approval, reimburse the employee and/or his/her spouse for the registration fees charged for such a program offered by a public body (...)"
[translation]

Some agreements specifically state the nature of the counselling service to be offered (e.g., financial).

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Concordia University and Concordia University Faculty Association (1998-2002):

"Members who retire in accordance with the retirement plans in Article 42 [Retirement] shall be provided with financial counselling."

Government of Nova Scotia and Nova Scotia Government Employees' Union (1997-2000):

"The Employer will arrange financial counselling for employees who express interest in accepting an Early Departure Incentive Plan (EDIP) severance payment. This counselling will be arranged as soon as reasonably possible. The cost of the financial counselling shall be borne by the Employer, payable to an approved service provider."

III Phased Retirement

Phased retirement is broadly defined as any program allowing for gradual decreases in working time and workload instead of an abrupt move from full-time employment to retirement.

Phased retirement may take one of two forms: a pre-retirement gradual reduction in hours (or days) of work or post-retirement part-time work for pensioners who wish to remain employed.

From the employers' point of view, phased retirement programs can be useful to retain skilled older employees who would otherwise retire (especially in sectors where there is a shortage of entry-level job applicants), to reduce labour costs, or to arrange the training of replacement employees by older workers. They also allow employers to plan attrition and, to a certain extent, to maintain employee morale when a company restructures its operations.

Phased retirement can also be beneficial for older workers. It helps them to gradually ease into retirement while maintaining a higher income than they would receive if they relied on their pension alone.

A. Gradual Retirement (Pre-retirement)

Increasingly, collective agreements contain pre-retirement or gradual retirement programs. These programs allow older workers to gradually decrease their workload, normally through a reduction in their hours of work over a period of time, before retiring and collecting their pensions. The purpose of these programs is twofold: (1) to facilitate the transition from full-time employment to retirement; and (2) to provide younger workers with the opportunity to secure full-time employment.

The requirements and conditions of these programs, as well as their impact on benefits, vary from one agreement to the next. The period

of time preceding retirement within which an employee can reduce his or her workload also varies. This period may range from one to five years.

The following contract clauses highlight these variations.

Government of Québec and Syndicat de la fonction publique du Québec (2000-2002):

"This retirement is characterized by the fact that the employee, for a minimum of one (1) year and a maximum of five (5) years immediately preceding his permanent, full retirement, may work part-time according to a predetermined schedule and subject to the conditions of work applicable to part-time employees. The phased retirement may involve a decreasing number of hours worked per week, to a minimum of fourteen (14) hours. During this period, the number of hours in the employee's new work week becomes his guaranteed week. For retirement planning purposes, full recognition is given to service during the phased retirement. The cost of this measure is shared equally between the employer and the employee participating in the program." [translation]

IPL Inc. and Union des employés et employées de service, Local 800 (2001-2004):

"The Employer shall grant a reduction in the employee's work week with respect to a position that he holds for the purpose of

phased retirement, on condition that he: (a) is a regular employee; (b) has accrued ten (10) years' seniority; (c) is at least sixty (60) years old; (d) applies in writing at least ninety (90) days before the phased retirement is to take effect, indicating the desired reduction of hours, the desired schedule and the effective date. An employee may cancel his phased retirement at any time but must advise the Employer at least thirty (30) days in advance. An employee who takes a phased retirement continues to accrue seniority based on his status before the phased retirement took effect. During the phased retirement, the employee is entitled to all the benefits under the collective agreement pro-rated according to his hours of work." [translation]

Northern Telecom Canada Limited and Canadian Union of Communication Workers (2000-2004):

"An employee who (...) will be eligible within the next twenty-four (24) months may request to participate on a voluntary basis in the pre-retirement program. After a period of twenty-four (24) months maximum, he shall proceed on pension. (...). The employee will be requested to work three (3) or more regular work days per week (...). For the duration of the program, continuous service will be accumulated as if the employee was working regular hours. (...). The employee will maintain the rate of pay in effect at the time of his participation. (...). Vacation pay will be calculated as if the employee was normally at work."

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Rolls-Royce Canada Limited and International Association of Machinists and Aerospace Workers (1999-2002):

"To be eligible for progressive retirement, an employee must be 55 years old and have ten (10) years of service. The number of employees who will be allowed to take progressive retirement will be limited to 3% of the total number of employees (...). During the period of the progressive retirement, employees must work at least three (3) days per week. The days not worked (the progressive retirement days) must be Mondays in a four (4) day workweek context and Mondays and Tuesdays, in a three (3) day workweek context. Working hours not worked by employees on progressive retirement must be filled in a way not to create prejudice to the work schedule and no additional costs. (...) The calculation of the pension will be established according to the earned reputed salary."

The world of academia is an ideal setting for the implementation of gradual retirement programs due to its particular work-time organization. It is therefore not surprising that many universities allow their professors to gradually reduce their teaching workload.

Concordia University and Concordia University Faculty Association (1998-2002):

"A member who is at least fifty-five (55) years of age may choose to retire gradually over a period not to exceed three (3) years, such that full retirement will occur no later than

the June 1st following age sixty-five (65). (...) At the start of gradual retirement, the Employer shall reduce the member's workload normally on the basis of seventy-five percent (75%) of a full workload in the first year, to fifty percent (50%) of a full workload in the second year, and to twenty-five percent (25%) of a full workload in the third and final year, without reduction in salary. In the third year only, the member may request to have no workload assigned for a fifty percent (50%) reduction in nominal salary. In this latter case, a member who is a participant in the university benefit plans shall continue to participate in the plans. The Employer's contributions shall be based on full nominal salary and coverage in the university pension plan, the life insurance plan and the long term disability plan shall be based on the full nominal salary of the member. Should the member be a contributing member, the member's contributions shall be based on full nominal salary."

The Concordia agreement also includes a "Special Reduced-time Arrangement Leading to Retirement" clause. Although this arrangement is not as monetarily advantageous as the gradual retirement program described above, it does provide older workers with another flexible work alternative as they near retirement.

Concordia University and Concordia University Faculty Association (1998-2002):

"Any member aged fifty-five (55) years or over with ten (10) or more years of service

shall be eligible for a special reduced-time arrangement whereby the member's duties and responsibilities are reduced up to fifty percent 50% each year for a maximum of five (5) years leading to retirement. The annual workload reduction agreed to at the time the arrangement is approved shall be a percentage reduction from the annual workload assignment. (...) Should the reduction in duties be fifty percent (50%) the member shall be paid an additional one and one-half percent (1.5%) of the said nominal salary for each year of full-time service at the university in excess of ten (10) years up to twenty (20) years of full-time service, to produce an annual salary not exceeding sixty-five percent (65%) of the nominal salary."

Board of Governors of Ryerson Polytechnic University and Ryerson Faculty Association (1998-2001):

"(...) the University shall make every reasonable effort to accommodate such Faculty members who request a fifty per cent teaching workload reduction with all of the required teaching done in one specified semester. (...) During the period(s) of reduced workload/reduced salary, a Faculty member shall receive benefits coverage as if he/she were employed on a full workload/full salary basis, and he/she shall make contributions

accordingly, except that, as regards the Long-Term Disability Protection Plan, this provision shall be operative only for a maximum of two years and that thereafter for any remainder of the reduced workload/reduced salary period, the coverage under that plan shall be provided on the basis of the reduced salary. Subject to applicable pension plan provisions, the Faculty member and the University will continue to contribute to the pension plan on the basis of the Faculty member's full normal salary level, with the objective of not affecting adversely either the Faculty member's future pension or the funding basis of the pension plan."

In some agreements, reduced work-time arrangements leading up to retirement are considered a leave of absence without pay and are treated as such (subject to the usual requirements).

University of Alberta and Association of Academic Staff: University of Alberta (2000-2002):

"A staff member shall be entitled to a reduced workload (i.e., leave without pay from a portion of duties) if the staff member agrees in advance to retire immediately upon the completion of the leave period.

Reduced workload shall be one of the following:

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Options	Reduced Workload Basis	Maximum Period of Reduced Workload	Basis of Salary	Maximum Age at Beginning of Reduced Workload
1	Leave without pay from 50% of duties	2 years	Half pay	63
2	Leave without pay from 66 2/3% of duties	3 years	One third pay	62
3	Leave without pay from 75% of duties	4 years	One quarter pay	61

During the period of reduced workload, the staff member shall be eligible to participate in full in the benefit programs (...) with the Board paying the full premium cost of such participation. Subject to the provisions of the Universities Academic Pension Plan, the staff member may choose to establish the leave period as pensionable service under that plan and, if so, the Board and the staff member shall make the appropriate contributions calculated on the basis of unreduced salary rate."

Instead of progressively reducing the number of hours worked over a certain period of time, as is often the case with pre-retirement programs, at least one agreement allows employees approaching retirement to change their status from full-time to part-time.

Canada Safeway Limited and United Food and Commercial Workers Union, Local 2000 (1997-2003):

"The Union and the Employer agree to establish a pre-retirement phase-out program whereby, (...), full-time employees may change positions with part-time employees (...) The full-time employee shall retain his/her seniority date and shall be scheduled the restricted number of hours. If hours up to the stated restriction are not available, the employee shall have the option of returning to full-time status, commencing with the next posted work schedule."

B. Post-Retirement-Age Work Options

A few organizations have established programs to give older workers, particularly those whose skills and experience are in high demand, the option of continuing to work past the normal retirement age. This can be done through offering deferred retirement and/or part-time or temporary employment to retirees.

Although these programs appear mainly in the largely non-unionized service industries, some collective agreements, albeit very few in number, do contain provisions pertaining to post-retirement work.

1. Deferred retirement:

A number of agreements give employees the possibility of extending their employment past the normal retirement age, usually subject to employer approval and/or proof of fitness. Conditions of employment remain essentially the same as those of other regular employees.

As discussed in the previous chapter, mandatory retirement age is set at 65 in the majority of jurisdictions. However, some contract clauses leave room for a wider interpretation. For example, the use of the term "normally" in the following clause may give some flexibility and allow, in exceptional cases, deferred retirement.

Board of Governors of Ryerson Polytechnic University and Ryerson Faculty Association (1998-2001):

"Normally, a Faculty member shall retire on August 31 following his/her 65th birthday."

Some agreements specifically allow workers to work beyond normal retirement age. The length of time varies from one agreement to the next.

Canada Fishing Company (British Columbia Coast) and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (2001-2005):

"Normal retirement age is 65 for all employees and an employee will retire by December 31 of the year in which their 65th birthday occurs. In certain circumstances, where, in the opinion of their supervisor and manager, an employee can satisfactorily carry out their duties and if the employee is physically and mentally able to carry out their duties mandatory retirement will be extended for up to two years."

2. Work after retirement:

Other agreements allow some employees to continue their employment, typically on a part-time basis, after they have retired. Among other things, this provides older workers with an opportunity to supplement their pension income and maintain a number of benefits.

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Université du Québec à Montréal and Syndicat des chargés de cours de l'UQAM (2000-2002):

"A departmental meeting may exclude from the postings a number of course loads which shall not exceed, per annum and for the University overall, eight per cent (8%) of the total of course loads not assigned to professors and language teachers when the departmental meeting, prior to the posting, decides to recommend to the University: (...) the hiring of professors of the University who are retired, within the meaning of the various plans applicable, up to a maximum of ten (10) course loads/session for the fall and winter sessions, for the University overall." [translation]

University of Manitoba and University of Manitoba Faculty Association (1998-2001):

"A Member who has achieved his/her 69th birthday, (...) shall retire or continue in his/her position on a half-time appointment (...)."

Toronto French School and Alliance des enseignants de la Toronto French School (1999-2002):

"Nothing herein shall preclude the Employer from hiring a retired employee pursuant to a contract having a term of one year or less, and so on from time to time, provided

such hiring does not create a surplus staff situation or reduce the teaching load of other employees."

Although all of the preceding examples were in the education sector, related clauses were also negotiated in the airline industry.

Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 2213 (CAW-Canada) (1999-2002):

"It is agreed and understood that the provisions of the Collective Agreement shall apply to those employees who elect to participate in this retirement phase-in program, except as modified by the following: 1. Employees who are eligible to retire with pension (...) and who wish to participate in the program will request a change of status (...), and shall notify the Company of their intent to retire with pension at the same time. (...)"

With respect to the previous example, in the purview of the retirement phase-in program (with part-time employment), former employees receiving their pensions have the opportunity of maintaining their employment on a part-time basis,⁶ until they reach normal retirement age (65) or terminate their service with the company. To qualify for this program, employees must be eligible to retire with pension. This is also subject to vacancies being available. Under this program, employees cease to contribute to the pension

⁶ Under this program, it is impossible to revert to full-time status, whatever the circumstances.

plan or to accrue additional allowable service under the plan; and although they remain on the seniority list, no additional seniority or company service can be accumulated. Benefits available are the same as those offered to retirees and part-time workers.

3. Impact on benefits coverage:

Older workers must take into account many different factors before deciding to work beyond the normal age of retirement or changing their status from full-time to part-time. For example, in some agreements, a number of employment benefits are no longer available to older workers once they reach normal retirement age or become eligible for a pension. This is almost always the case for long-term disability insurance (since a pension is presumed to offer an adequate replacement income to disabled employees).

Harmac Pacific Incorporated and Pulp, Paper and Woodworkers of Canada, Local 8 (1997-2003):

"The Welfare Plan will include a Long Term Disability Plan which will provide benefits of 50% of regular weekly earnings calculated at 40 times the disabled employee's hourly straight time job rate at date of onset of disability, plus any negotiated increases to that hourly straight time job rate (...). In any event, benefit payment will not be paid beyond age 65 and in all cases, will cease on recovery."

However, other important benefits may also be withdrawn from older employees who decide to pursue their careers past the age of 65 or the age of retirement, if lower.

Air Canada and Air Canada Pilots Association (2000-2004):

"All benefits will cease for all employees upon attainment of age 60."

Government of Ontario and Ontario Public Service Employees' Union (1999-2001):

"Supplementary Life Insurance will terminate at the earlier of either the end of the calendar month in which the employee ceases to be a civil servant or, if the employee continues to be employed after age sixty-five (65), on the first day of October following the employee's sixty-fifth (65th) birthday, (...)."

Dependants' life insurance is also terminated correspondingly.

Provincial Health Authorities of Alberta and United Nurses of Alberta (2001-2003):

"Dental Plan (...) coverage ceases on the date of termination from employment or the date the Employee attains age sixty-five (65), whichever occurs first."

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Bombardier Inc./Canadair and International Association of Machinists and Aerospace Workers, Montreal Aircraft Lodge 712 (1997-2001):

"Notwithstanding the provisions of this clause 30 [Group Insurance], benefits therein described will be modified as follows for employees who would elect to continue working after age 65: Life Insurance: \$7,500 [compared with \$25,000 for younger employees]; Accidental Death and Dismemberment Insurance: Ineligible; Long Term Disability Coverage: Ineligible."

Finally, the potential loss of benefits when changing status from full-time to part-time employment may constitute a serious disincentive for older workers who wish to reduce their working time. However, clauses that specifically grant part-time employees access to various benefits, even if pro-rated, can offer ageing workers more flexibility, and possibly improve and prolong their working lives.

Zehrs Markets and United Food and Commercial Workers Union, Local 1977 (2000-2006)

have agreed to give part-time employees who have a minimum of two years of continuous service and who have worked at least 600 hours

the previous year benefits that are very similar to those working full-time. They have the right to a pension, a dental plan as well as vision care and prescription drug care, although in the last two cases, these benefits do not generally apply to dependants.

Purolator Courier Limited and International Brotherhood of Teamsters (2001-2004):

"All part-time employees who have eighteen (18) months or more of service and who are regularly scheduled for more than twenty (20) hours per week, shall be eligible for the benefits program."

Emergency Medical Care Incorporated (EMC) and Nova Scotia Government Employees Union (1999-2002):

"'Regular Part-time employee' is an employee who is hired for and regularly scheduled to work less than the full-time hours of work as provided in this Agreement on an indefinite basis. Regular part-time employees shall be entitled to benefits pro-rated on the basis of regularly scheduled hours of work, except as otherwise agreed to by the parties."

Box 6.1**Provisions Regarding Benefits and Wages for Part-time Employees in Employment Standards Legislation (Saskatchewan and Québec)⁷**

Two provinces, Saskatchewan and Québec, have provisions in their labour legislation that specifically pertain to part-time workers' benefits or wages.

Reforms to Saskatchewan's *Labour Standards Act* and *Regulations* in 1994-1995 brought changes designed to improve conditions for part-time employees. Amendments enacted at the time require employers who have at least 10 full-time-equivalent employees to extend to eligible part-time employees certain benefits that are provided to full-time employees. These benefits consist of dental, group life and accidental death and dismemberment plans providing individual coverage, as well as prescription drug plans covering employees, their spouses and their dependants. Eligible employees who work, on average, 15 to 30 hours per week are normally entitled to 50% of the level of benefits provided to full-time employees; those who work on average 30 or more hours per week are entitled to the full level of benefits. Except where a benefit formula is based on the employee's earnings — in the case of group life or accidental death and dismemberment plans — the level of benefits is to be calculated on the same basis as for full-time employees.

To be eligible, employees must have been continuously employed and have worked at least 390 hours during a 26-week qualifying period. (A plan's own qualifying period, where there is one, also has to be completed.) To maintain eligibility, employees who have been employed for at least one year must have worked a minimum of 780 hours in the previous year (15 hours per week on average). However, time that would have been worked had the employee not taken a leave pursuant to the *Act* (e.g., public holidays, annual vacation, parental leave) is counted in determining whether the 780-hour threshold is attained. Finally, Saskatchewan's *Labour Standards Regulations* specify that an employer is not obligated to provide benefits to a full-time student. Employees exempted from the application of the *Labour Standards Act* (e.g., sitters, certain agricultural workers) are not entitled to benefits.

⁷ Prepared by Labour Law Analysis, Strategic Policy and International Labour Affairs, Labour Program (HRDC). This information is based on legislation in force on February 1, 2002.

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(cont'd)

With respect to wages, Québec's *Act Respecting Labour Standards* stipulates that no employer may remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works fewer hours each week. However, this provision does not cover some employees excluded from its scope (e.g., certain care providers, construction workers and students in job induction programs). Neither does it apply to an employee whose rate of pay is more than twice the minimum wage. Moreover, an employer may not reduce a part-time employee's annual leave, or vacation pay, in comparison to what is provided to other employees performing the same tasks, for the sole reason that the employee usually works fewer hours each week.

It should be noted that many jurisdictions in Canada, including Saskatchewan and Québec, provide for the pro-rating of statutory holiday pay for employees with irregular or part-time schedules.

Conclusion

It is apparent that older workers need to adequately prepare for life after work. Major Canadian collective agreements reflect this need and contain provisions that specifically deal with the work-to-retirement transition. Contract clauses dealing with pre-retirement leave or vacations and retirement counselling programs are two such examples.

Furthermore, collective agreements increasingly contain programs that allow employees to ease into retirement by gradually reducing the number of hours worked. Some employees prefer to defer retirement and continue to work beyond the normal age of retirement. These workers can benefit from provisions allowing for deferral and part-time work opportunities after retirement. Opting for one of these measures may, however, affect a worker's benefits while still employed, in terms of contributions and access, as well as in terms of the amount of pensionable income to be received once retired.

Conclusion

In this study, we examined to what degree older workers and ageing in the workforce have been considered in the context of collective bargaining. The study identified and analyzed provisions contained in major Canadian collective agreements that may have an impact on the working conditions of older workers. It covered the six following areas: work-time organization; leaves of absence; training, retraining and education; economic security; (anti)-discrimination clauses and practices; and transition to retirement.

General Observations

As mentioned in the Introduction, older workers do not form a homogeneous group. Although they may have common interests and preoccupations, older workers have varying needs. Depending on their gender, their occupation and their particular health concerns, older workers will be faced with different issues and problems. Nevertheless, a number of general observations can be made from the many contract clauses identified and analyzed in this study.

- Although relatively few clauses refer to older workers specifically, many provisions that have a potential impact on their working conditions were nevertheless identified. Such provisions deal primarily with the following issues: work-time organization (e.g., shift and overtime scheduling, voluntary work reduction schemes), leaves of absence (including extended annual vacation), training and education opportunities, as well as issues related to economic security (e.g., job and income protection) and retirement (including pre-retirement leave and vacations, retirement preparation, gradual retirement and post-retirement-age work options). Provisions specifically aimed at older workers include transfers to lighter or less demanding jobs, return to work after illness or injury, limits to relocations, wage maintenance, longevity pay, and early retirement packages.

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- Many people hold stereotypical views of older workers as being slower to pick up new skills, unable or unwilling to adjust to technological changes, less productive and more likely to be sick than younger workers. These perceptions may lead to discriminatory practices that harm older workers in terms of hiring, promotions, job security, access to training and other benefits, and remuneration. Provisions designed to counter this type of age-based discrimination, as well as affirmative action measures designed to ensure employment equity for older workers, appear in major Canadian collective agreements. These provisions aim to guarantee that older workers are given the same consideration and employment opportunities as other workers.
- Although contract clauses specifically designed for older female workers are even less prevalent in major Canadian collective agreements, this study nevertheless identified some provisions that are of interest to this particular group. For the most part, these clauses address the issue of work stoppage or interruption. Women are more likely to withdraw from the labour market for extended periods of time, usually to care for a child, an elderly parent or an aged spouse. Therefore, family care provisions may be of particular interest to older female workers. Flexible work arrangements may be useful in helping older female workers reconcile their work and family responsibilities. Moreover, late entry into the labour market or frequent withdrawals can have an impact on employability, seniority rights, income and pensionable service. Provisions dealing with the calculation of seniority, such as bridging of service and portability, can therefore be important to older female workers in ensuring that previous work experience is recognized.
- Accommodating the particular needs of older workers does not necessarily conflict with the interests of younger workers. In fact, in many instances older workers share the same objectives as other groups of workers, such as improved working conditions (e.g., flexible schedules and leave for personal reasons) and employment and wage protection, to name a few. Moreover, some clauses specifically designed for older workers are just as beneficial to other workers. Mentoring programs are a case in point. Mentoring programs can be of great benefit to older and younger workers alike, not to mention the obvious benefits to employers. It should be noted that seniority clauses tend to be somewhat unfavourable to younger workers, as younger workers generally have fewer accumulated years of service. However, these clauses remain of interest to the younger worker who is planning for the future.
- Different provisions serve different purposes, and, at times, some may even seem to pursue diametrically opposed goals. For example, some provisions are designed to encourage older workers to retire, while others are aimed at prolonging their participation in the labour force. However, such provisions can also be viewed as attempts to accommodate the varying needs of older workers.

- Several of the provisions examined in this study may achieve multiple goals, benefiting both older workers and employers, and often reflecting a compromise between the union's and the employer's respective interests and objectives, as mediated through the collective bargaining process. For example, flexible working hours (including compressed work weeks) may be designed to help workers achieve a better work-life balance while simultaneously increasing production efficiency.
- Some types of provisions may have unintended consequences for workers or for their employers. For example, special wage rates may make the hiring of older workers more attractive, and therefore increase their chances of finding and maintaining employment. However, such provisions may also lead to institutionalized wage discrimination on the basis of age. And although some agreements provide for flexible work options to benefit employees who are nearing retirement, arrangements such as gradual retirement may have a negative impact on benefits coverage in terms of contributions and access, as well as in terms of the eventual pension amount.
- Although language in collective agreements often mimics labour standards, there is still substantial room for employers and unions to innovate by providing for arrangements and benefits that are not covered by legislation. There often appears to be recognition among negotiating parties that there is a need to go further than legislative requirements. This demonstrates that the collective bargaining

process still has an important role to play in accommodating the particular needs of older workers.

Possibilities for Future Research

As evidenced by our general observations as well as by the unresolved issues they raise, there remain many rich areas of inquiry with respect to older workers.

The issue of ensuring that older workers can continue to work for as long as they wish and are able to do so has been raised throughout this study. Of the many potential research topics related to this complex issue, three deserve special attention: (1) the type of flexible workplace policies and practices needed to extend the employability of older workers; (2) the changes required to pension, insurance and other benefit plans to make prolonged participation more desirable and to better ensure the financial stability of older workers; and (3) the type of health, safety and environmental issues that need to be addressed to ensure the overall quality of life of older employees in the workplace.

This study highlighted some training, retraining and educational provisions, but the issue of skills development needs to be looked at more closely. Three research avenues deserving of special interest are: (1) *Technological change*: More research is required to clearly demonstrate the impact on older workers of the introduction of new technologies in the workplace and how to best minimize their

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adverse affects. (2) *Productivity*: More research is needed to determine the actual take-up rate of training programs and to examine the effects of workplace practices related to training, retraining and educational leaves on the differences in productivity growth among firms. (3) *Mentoring programs*: Studies highlighting current best practices and outlining the overall benefits of mentoring programs to both employers and employees would be invaluable in developing tools to facilitate the integration of younger workers by more experienced older workers.

It is important to take into account the very real differences between male and female older workers. The problems faced by older women in the labour force are in many ways distinct from those of older men and thus deserve special attention. Some research is required to identify the particular needs of older female workers and to determine how they can be addressed through collective bargaining and through the development of workplace policies in general.

Another question raised in this study is the impact of current provisions in collective agreements on employees and on the workplace. It would be of interest to determine to what extent the negotiated arrangements and benefits have been implemented or used and the actual impact of these provisions on quality of life issues as they relate to older workers.

Current social and demographic indicators (the rapidly ageing workforce, the trend toward early retirement, and the decline in the number of young people entering the labour market) point to a future labour shortage, especially among skilled workers. This represents a challenge for employers, union representatives, labour practitioners and researchers. Complex issues are facing Canada's labour force. Identifying current practices and learning from successful workplace initiatives constitute a helpful first step in achieving a better understanding of older workers' needs. In the long term, this understanding can be used to improve older workers' quality of life and their economic security in the workplace.

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- Fletcher Challenge Canada Limited **and** Communications, Energy and Paperworkers Union, Local 1123 (1997-2003)
- Fletcher Challenge Canada Limited **and** Pulp, Paper and Woodworkers of Canada, Local 2 (1997-2003)
- Ford Motor Company of Canada **and** National Automobile, Aerospace, Transportation and General Workers Union of Canada, Locals 200, 584, 707 and 1520 (CAW-Canada) (1999-2002)
- Fording Coal Limited **and** United Steelworkers of America, Local 7884 (1996-2001)
- Forest Industrial Relations Limited **and** Industrial Wood and Allied Workers of Canada (2000-2003)
- Forest Products Industries **and** Industrial Wood and Allied Workers of Canada (2000-2003)
- General Electric Canada Inc. **and** Communications, Energy and Paperworkers Union of Canada (2001-2004)
- General Motors of Canada Limited **and** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (1999-2002)
- Go Transit **and** Amalgamated Transit Union, Local 1587 (2000-2003)
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Government of Nova Scotia **and** Nova Scotia Government Employees' Union (1997-2000)

Government of Ontario **and** Ontario Public Service Employees' Union (1999-2001)

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Government of Québec **and** Syndicat de la fonction publique du Québec (2000-2002)

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Government of Saskatchewan **and** Canadian Union of Public Employees, Local 600-3 (2000-2003)

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- Labourers' Employer Bargaining Agency **and** Labourers' International Union of North America, Local Union Schedule for Local 527 — Ottawa (1998-2001)
- Lake Erie Steel Company Limited **and** United Steelworkers of America, Local 8782 (2000-2004)
- Laurentian Bank of Canada and Laurentian Trust of Canada Inc. **and** Office and Professional Employees' International Union, Local 434 (2000-2001)
- Legacy Hotels Corporation **and** Hotel Employees and Restaurant Employees Union, Local 75 (1999-2002)
- LOF Glass of Canada Ltd. **and** Aluminum, Brick and Glass Workers International Union, Local 252G (1994-1997)
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- Manitoba Hydro-Electric Board **and** International Brotherhood of Electrical Workers, Local 2034 (2000-2003)
- Manitoba Public Insurance Corporation **and** Manitoba Government Employees' Union (2000-2002)
- Manitoba Telecom Services Inc., MTS Communications Inc. **and** Communications, Energy and Paperworkers Union of Canada (1998-2001)
- Marine Atlantic Inc. **and** United Steelworkers of America, Local 1976 and International Longshoremen's Association, Council of Trade Unions (2001-2005)
- Maritime Employers Association **and** Longshoremen's Union, Canadian Union of Public Employees, Local 375 (1998-2003)
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- Provincial Health Authorities of Alberta **and** Canadian Union of Public Employees (2001-2004)
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- Queen's University **and** Queen's University Faculty Association (2000-2002)
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- Red Deer Catholic Regional Division No 39 **and** Alberta Teachers' Association (1999-2001)
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- Rodmen Employer Bargaining Agency **and** Rodmen Employee Bargaining Agency (2001-2004)
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Workers' Compensation Board of British Columbia **and** Compensation Employees' Union (1998-2002)

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