PROTOCOL FOR APPLICATION AND OPERATION OF
SICK LEAVE AGGREGATION (Article 35.02(b))

Definition of “paid sick leave” for this Protocol

Although the collective agreement distinguishes between “casual illness” and
“sick leave”, for the purposes of this Protocol “paid sick leave” means casual
illness or sick leave

Employee paid sick leave entitlements and University rights

1. Each employee has a maximum paid sick leave entitlement in a rolling seven-
year period for each illness or injury.

2. Each employee who uses paid sick leave entitlement for an illness or injury
begins to regain the used paid sick leave entitlement for that illness or injury
seven years after the first paid sick leave for that illness or injury.

3. Each employee’s seniority determines the employee’s percentage of salary
paid for each illness or injury in the employee’s rolling seven-year period.

4. Each employee must complete the Claim for Casual Illness or Sick Leave
Benefit form for each absence from work for which the employee claims paid
sick leave entitlement.

5. The University aggregates on a rolling seven-year basis for each employee’s
absence due to paid sick leave for each illness or injury for a period no longer
than seven years.

6. The University may require an employee to provide a medical certificate
satisfactory to the University for paid sick leave absences in a manner
consistent with Article 35.

7. In addition, the University may require an employee to provide a medical
certificate satisfactory to the University for all absences for which paid sick
leave is claimed after an employee has used the full entitlement for an illness
or injury.
Agreements on application and operation of aggregation

1. “Casual illness” sick leave usage
   (a) Casual illness is a continuous absence of three (3) working days or less due to illness or injury.
   (b) A physician’s certificate for a casual illness is not required “except where there is excessive use or possible abuse.”
   (c) Paid sick leave usage for a casual illness is recorded in an employee’s sick leave record as “unknown” when:
      i. The illness or injury for which the employee claimed the paid sick leave is not disclosed to the University; and
      ii. The University does not require a physician’s certificate.
   (d) Starting October 1, 2017, an employee’s absences due to casual illness recorded as “unknown” shall not be aggregated with the employee’s paid sick leave usage for any illness or injury.
   (e) Starting October 1, 2017, an employee’s absences due to casual illness are “excessive use” when they exceed twice the most current available casual illness average for all University employees.
   (f) When an employee’s absence due to casual illness is “excessive use”, the University will require the employee to provide a physician’s certificate satisfactory to the University in a manner consistent with Article 35 for each and every subsequent absence due to casual illness until the employee’s usage of casual illness falls below double the most current available casual illness average.
   (g) Each calendar year, the University shall tell the Union the average casual illness for all University employees for the prior calendar year at the same time the supervisors are provided with this information.

2. “Colds” and flus
   (a) Paid sick leave usage for “cold” or “flu” shall be aggregated as a single illness.

3. Concurrent illnesses or injuries
   (a) When an employee with less than five (5) years seniority is on paid sick leave and suffers a second or subsequent illness or injury in addition to the illness or injury for which the employee commenced the paid sick leave, the employee’s paid sick leave will continue with any applicable reduction in percentage of salary pursuant to Article 35.02 until the initial illness or injury
has resolved or the employee has used the full paid sick leave entitlement for the initial illness or injury.

(b) If the initial illness or injury has not resolved before the employee has used the full paid sick leave entitlement for the initial injury or illness, the employee must apply for long term disability or go on unpaid sick leave.

(c) The initial illness or injury must have resolved or the employee’s initial or continuing entitlement to long term disability must have been denied or ceased before the employee commences paid sick leave for the second or subsequent illness or injury.

4. Sick leave for same illness or injury before and after five (5) years seniority

(a) An employee on paid sick leave who attains five (5) years seniority while on paid sick leave shall continue on paid sick leave at the applicable reduced percentage of salary until the employee has used the full paid sick leave entitlement for the illness or injury.

(b) An employee with five (5) or more years seniority who uses paid sick leave for an illness or injury for which the employee has used paid sick leave before attaining five (5) years seniority shall be paid sick leave at 100% salary.

5. Threshold for informing employee and Union about sick leave aggregation

(a) When the University has aggregated paid sick leave usage for an illness or injury at 500 hours for continuing fulltime employees with five (5) years or more seniority or a prorated number of hours for other employees who are eligible for sick leave, the University shall:

i. notify the employee of the aggregation by letter enclosing a copy of a record the University has compiled for the illness or injury; and

ii. send to the Union a copy of the letter but not any enclosed documents.

(b) Employees are entitled to have Union representation at any meeting with the University to review or discuss the aggregation and its consequences on the employee’s continued paid sick leave, return to work or any related matter.

6. Absences for occupational illness and injury

(a) Except as provided in (b), a period of leave of absence due to an occupational illness or injury with respect to which the Workers Compensation Board pays wage loss compensation is not a period of paid sick leave usage to be aggregated.
(b) When the University maintains an employee's salary in accordance with Article 51.06(b), the percentage of the period of leave equivalent to the percentage of salary topped-up by the University is the sick leave usage to be aggregated.

Signed June 22, 2017 at Vancouver, BC.

For the Union:

Fiona Brady Lenfestey
President, CUPE Local 3338

For the University:

Chris Hatty
Director, Labour and Employee Relations
GRIEVANCE SETTLEMENT AGREEMENT

Canadian Union of Public Employees, Local 3338

Simon Fraser University

Background:

1. Since the 1970s, the collective agreement has provided employees with entitlement to paid sick leave for "each illness or injury."
2. In 2000, the Union and University agreed in collective bargaining that aggregation of paid sick leaves for each illness or injury is to be limited to a rolling seven-year period.
3. Before and after 2000, the Union and University resolved grievances about employer aggregation of paid sick leave for individual employees.
4. Over the decades, the University adopted and revised practices for administering sick leave and methodologies for aggregating sick leave usage for each illness or injury.
5. On September 20, 2010, the Union filed a policy grievance that the University aggregates sick leave usage in contravention of the collective agreement.
6. In 2011, the policy grievance was held in abeyance pending the conclusion of collective bargaining.
7. In 2013, after collective bargaining, the Union and University discussed the policy grievance at a Labour Management meeting.
8. In February 2016, the Union and University agreed to appoint James E. Dorsey, QC to arbitrate the policy grievance.
9. By agreement, the Union and University engaged in mediation with Mr. Dorsey as mediator in September 2016 and June 2017.

Terms of Settlement:

1. The terms and conditions of the attached Protocol will have full force and effect on October 1, 2017.

2. On October 1, 2017, the University will revise its practices for administrating casual illness and sick leave and the methodologies it uses
for aggregating sick leave usage for each illness or injury under Article 35.02 to have them comply with the Protocol.

3. On or before July 31, 2017, the Union and University will begin to meet to discuss in good faith revisions to the University’s practices for administrating casual illness and sick leave and the methodologies it uses to aggregate sick leave usage that are necessary to comply with the Protocol and to discuss related, unresolved issues, including, but not limited to:

(a) Revisions to the following forms:
   i. Claim for Casual Illness or Sick Leave Benefit Form;
   ii. Attending Physician’s Statement Form Employee Authorization; and
   iii. University letter to attending physician;

(b) The date the revised forms and letter will be posted on the University’s website;

(c) A joint Union and University communication to employees on the Protocol and revised forms and University letter to attending physician at the earliest reasonable date; and

(d) The content of letters notifying employees of aggregation in accordance with the Protocol.

4. The Union and the University will meet to discuss in good faith the following:

(a) The date before which there will be no review of existing aggregation of sick leave usage, including any absences recorded as “unknown” that had been aggregated;

(b) What will happen with respect to aggregation of absences recorded as “unknown” before October 1, 2017; and

(c) Resolution of existing individual employee aggregation grievances.

5. Any difference over the interpretation, application or operation of this Grievance Settlement Agreement or the Protocol will be referred to James E. Dorsey, QC for resolution in an expedited, informal process to be determined by him. His decisions will be final and binding. The Union and University will share equally in his fees and expenses.

6. The September 20, 2010 policy grievance is fully and finally resolved.

Signed June 22, 2017 at Vancouver.

For the Union: For the University:
Fiona Brady Leufesty
President, CUPE Local 3338

Chris Hatty
Director, Labour and Employee Relations