

ADVISORY LETTER

BY E-MAIL

Aug 31, 2019

AL-09-19

TO: ALL FIR ACCREDITED MEMBERS AND “BENEFITS ONLY” MEMBER COMPANIES

Gentlemen and Mesdames:

Re: Cancellation of Benefits During a Legal Strike

At the time of the 2007 strike, an agreement existed at the Health and Welfare Trustee level for companies to finance employee benefits during the strike and to later recover benefit premiums from employees after the strike ended.

That agreement was effectively cancelled by the Trustees in 2009 and negotiating parties were advised to make other arrangements in the event of a future strike.(See attached 2009 letter). In addition to the letter sent to the USW, the Trustees also agreed to amend the Plan Administration Manual to delete reference to the old arrangement and modified the Health and Welfare Plan website message to read as follows:

How do benefits continue during a labour dispute?

In the event of a labour dispute, the negotiating committees may seek agreement on how benefit coverage continues.

In the absence of agreement by the parties, the provisions of the BC Labour Code will govern.

Earlier this month, the Co-Chairs of the Health and Welfare Plan(one from FIRLR and one from the USW) and the Plan Administrator, on the recommendation of the Plan Lawyer, agreed to send out the August 13,2019 Memorandum(attached) to provide direction to employers about cancellation of benefits during a legal strike.

The Union Co-Chair has now reversed himself and taken the position that the Memorandum should be rescinded. The USW argument is that the Health and Welfare

Trustees entered into an arrangement in the Plan Minutes of 25 years ago and Trustee actions in 2009 did not cancel that arrangement.

The Employer Trustees did not agree to rescind the Memorandum.

The Cancelled Trustee Agreement was Unenforceable Anyway!

The arrangement was effectively cancelled by the Trustee actions but, more importantly, the old arrangement was legally unenforceable. Employers in the past usually went along with the arrangement but there was no legal way the Plan could force an employer to provide and pay for benefits for employees on strike.

Here is what prominent arbitrators have to say about the employers right to cancel benefits during a strike:

It is not disputed that when an employee goes on strike and withdraws their labour, they surrender or relinquish their wages and benefits. This is because the collective agreement is terminated and all obligations of the employer to pay any compensation to employees ceases. Therefore, the employer is free to terminate all benefits and contributions when a strike occurs. (Stan Lanyon, QC, Western Forest Products v USW, 2008, BCCAAA No 159)

It can not be too surprising to trade unions or their members that an employer would discontinue benefit coverages upon the commencement of a strike. Absent unusual circumstances such a step should not be viewed as constituting a penalty or coercion or intimidation within the meaning of Sections 3 or 5 of the Labour Code. Certainly, such a step is coercive in the general sense that it is designed to bring about an alteration of position which might not otherwise have occurred. But the whole system of strikes and lockouts is coercive in that general sense. (Don Munroe, Crown Life Insurance and OTEU, local 15, 1981 BCLRB 52/81)

SUMMARY

1. The employer who wants to cancel benefits during a legal strike has a perfect right to do so. The collective agreement is not in force during a legal strike and the Plan Participation Agreement is not in effect when the collective agreement is not in force.
2. Employers should follow the instructions in the Memorandum of August 13, 2019 if they wish to cancel benefits.
3. Employers who wish to continue benefits and later recover from their employees after the strike should pursue a written alternate agreement with Local 1937.
4. For the Dental and EHC Plans, note that “*cancellation due to strike*” means that no claims will be paid during the period following your cancellation date until the benefits resume after the strike has ended and you will not be charged for this period of time when you resume coverage.

We will post any updates to the situation on our benefits website at firlrbenefits.com



Agenda

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Trustees of the USW-Forest Industry Health & Welfare Plan No. 1

c/o Pacific Blue Cross*

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January 2, 2009

To: The Negotiating Committees,
Forest Industrial Relations AND Steelworkers' IWA Council

Re: Continuation of Benefits During Strike

FIR has put the USW on notice that they are not prepared to fund continuation of coverage for striking employees during any future USW strikes.

The Trustees of the USW-Forest Industry Health and Welfare Plan #1 have also discussed this issue and recognize that the historical method of benefits continuation was not followed by some employing companies in the 2007 strike and the results of that action were not satisfactory. It is FIR's position that the negotiating parties need to devise an alternate method for 2010 negotiations and the Trustees' position is that this issue is beyond the scope of the Board of Trustees.

In accordance with the wishes of the Trustees, I, as Administrator of the Plan, am bringing this issue to your attention so that the negotiating parties can address the issue prior to commencing 2010 negotiations.

Sincerely yours,

Doug Hatfield
Plan Administrator
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DH:bh:iw11 neg
CUPE 1816

c: Trustees and advisors



**Trustees of the
USW-Coastal Forest Industry Health & Welfare Plan**

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M E M O R A N D U M

From: Trustees of the USW-Coastal Forest Industry Health & Welfare Plan
To: Participating Employers
Date: August 13, 2019

Subject: USW-Coastal Forest Industry Health & Welfare Plan Guidelines During Legal Strike

The following guidelines apply in relation to USW-Coastal Forest Industry Health & Welfare Plan (the Plan) benefits - Life, Accidental Death & Dismemberment, and Weekly Indemnity:

1. During a legal strike, the collective agreement between the parties is not in force. As such when a strike occurs, all obligations of the employer to pay any compensation (wages and benefits) to employees cease, and the employer is free to terminate all benefits and benefit plan contributions. (*Lanyon, WFP vs. USW, BCCCA 159, 2008*)
2. Section 62 of the BC Labour Code provides the Union an option to ensure continuation of benefits for its striking members by paying the required premiums, in advance, to the Plan carrier (Pacific Blue Cross). USW Local 1937 has, to date, declined this option.
3. Struck employers have two options:
 - a) Struck employers may suspend the above-noted benefit coverages by notifying the Plan Office (see above contact details) in writing. It is important to note that in this situation, the 31-day conversion provision for Life Insurance will not apply. If written notice is not given, the Plan will continue benefit coverage and normal billing to the employer.
 - b) Struck employers may continue to provide benefit coverage for their employees by continuing to pay required monthly premiums. (See reverse for special instructions.)
 - Under this option, struck employers may enter into alternate agreements with Local 1937 which may involve providing for employer recovery of premiums from covered employees after the strike ends. Any such arrangements are between the employer and Union and not within the scope of the Plan jurisdiction.
4. For injury or illness commencing during the strike period, Weekly Indemnity benefits are not payable during the strike period in any event. If and only if continuation of benefits has been provided as per option 3.b. above, members who remain disabled after the strike ends can apply for Weekly Indemnity benefits at that time. In such cases, the waiting period will begin on the day after the strike ends. (For disabilities beginning before the strike, Weekly Indemnity payments will continue as normal.)

It is our understanding that similar guidelines apply to Extended Health Care and Dental Plan benefits provided under Forest Industry Plans 8944 or 8945. However, details should be confirmed with each Plan, and any applicable notice must be provided separately to each Plan. (Please contact Joe Stryvok at 778-960-6751 or jstryvok@forestindrel.com regarding these Plans.)

*Pacific Blue Cross™, the registered trade name of PBC Health Benefits Society, is an independent licensee of the Canadian Association of Blue Cross Plans.