



A MEMBER'S GUIDE TO

# LONG-TERM DISABILITY

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Elementary Teachers' Federation of Ontario

The Elementary Teachers' Federation of Ontario (ETFO) is the union representing 83,000 elementary public school teachers, occasional teachers, and education professionals across the province of Ontario.

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Elementary Teachers' Federation of Ontario (ETFO)

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## Elementary Teachers' Federation of Ontario Equity Statement

It is the goal of the Elementary Teachers' Federation of Ontario to work with others to create schools, communities, and a society free from all forms of individual and systemic discrimination. To further this goal, ETFO defines equity as fairness achieved through proactive measures, which results in equality, promotes diversity, and fosters respect and dignity for all.

## ETFO's Equity Initiatives

ETFO is a union committed to social justice, equity, and inclusion. The Federation's commitment to these principles is reflected in the initiatives it has established as organizational priorities, such as: ETFO's multi-year strategy on anti-Black racism; two-spirit, lesbian, gay, bisexual, transgender, queer, and questioning education; and addressing First Nations, Métis, and Inuit issues. ETFO establishes its understanding of these issues within an anti-oppressive framework. The Federation ensures its work incorporates the voices and experiences of marginalized communities, addresses individual and systemic inequities, and supports ETFO members as they strive for equity and social justice in their professional and personal lives.

## Definition of an Anti-Oppressive Framework

An anti-oppressive framework is the method and process in which we understand how systems of oppression such as colonialism, racism, sexism, homophobia, transphobia, classism, and ableism can result in individual discriminatory actions and structural/systemic inequalities for certain groups in society. Anti-oppressive practices and goals seek to recognize and dismantle such discriminatory actions and power imbalances. Anti-oppressive practices and this framework should seek to guide the Federation's work with an aim to identify strategies and solutions to deconstruct power and privilege in order to mitigate and address the systemic inequalities that often operate simultaneously and unconsciously at the individual, group, and institutional or union level.

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## Introduction to Long-Term Disability

This guide provides a general overview of the provincial Long-Term Disability (LTD) plan features, the provisions of the LTD plan, early intervention assistance, the claim application process, appeal process for denied or terminated claims, sources of financial assistance, return to work, and the assistance that ETFO can provide to members when their LTD appeal is denied.

### Teacher Members

The ETFO provincial LTD plan came into effect on November 1, 2013, and is administered by the Ontario Teachers' Insurance Plan (OTIP). Each year the plan is reviewed by ETFO and the insurer to determine plan efficacy and any required rate changes. As of March 1, 2018, the plan is common to all members of the teaching affiliates in Ontario including ETFO, the Ontario Elementary Catholic Teachers' Association (OECTA), the Ontario Secondary School Teachers' Federation (OSSTF), and the Association des enseignantes et des enseignants franco-ontariens (AEFO).

Participation in the plan is mandatory for all active full- or part-time teacher local members and requires payment of LTD premiums by all covered members. ETFO members who have LTD coverage must continue to pay their LTD premiums while on most leaves of absence. Members should contact their local ETFO office for advice prior to taking a leave of absence to ensure that LTD coverage is not in jeopardy.

Entitlements to benefits are based on the language in the LTD plan. The LTD plan outlines the conditions you must meet to be approved for long-term disability benefits and/or maintain an LTD claim.

### ESP/PSP and DECE Members

Some education support personnel (ESP)/professional support personnel (PSP) and designated early childhood educator (DECE) members have LTD coverage under school board-owned LTD plans, separate from the provincial ETFO LTD plan. While the specific terms of those plans may differ from the provincial LTD plan, the information provided in this guide will also be helpful to ESP/PSP and DECE members navigating through their LTD application and claim process. ESP/PSP and DECE members can contact their local office for more detailed information about their board-owned plans.

## OTIP LTD Plan Features

The chart below outlines the plan features as of March 1, 2022.

<b>Benefit Level</b>	50% of monthly gross earnings
<b>Benefit Tax Status</b>	Non-taxable
<b>Employment Waiting Period</b>	Nil
<b>Enrolment Requirements</b>	Mandatory plan; 100% of eligible members must participate in this plan
<b>Reduction to Member Benefit</b>	The member benefit, together with other integrated income sources, cannot exceed 100% of the covered member's indexed pre-disability take-home pay. The member benefit will be further reduced if it exceeds a benefit based on a maximum annual salary of \$150,000.
<b>Qualifying Period</b>	<ol style="list-style-type: none"> <li>1. Benefits are payable for each period of disability after a qualifying period of the later of 110 working days or expiration of sick leave and in no event more than 24 months.</li> <li>2. Where a covered member is released from duties for a period equal to half-time or greater in order to perform services for the local association or federation, the covered member will have the option of reducing the qualifying period to 20 working days. OTIP must be provided with confirmation of such covered member's release from duties at the time of claim.</li> </ol>
<b>Initial Assessment Period</b>	The qualifying period plus the next 24 months of disability
<b>Cost of Living Adjustment (COLA)</b>	On January 1 immediately following the covered member's initial assessment period (IAP) and on each January 1 thereafter, the member benefit, including any prior cost-of-living adjustments, will be increased by the lesser of 2% or the actual increase in the All Canada Consumer Price Index for the period from October 1 to September 30 of the prior year as determined by Statistics Canada.

<b>Termination / Maximum Benefit Period</b>	<p>LTD coverage and/or benefits will not continue beyond the earliest of the following dates:</p> <ol style="list-style-type: none"> <li>1. the end of the month in which the covered member attains age 65;</li> <li>2. the date the covered member is first entitled to at least a 60% unreduced service pension from OTPP or OMERS;</li> <li>3. the date the covered member would have first been entitled to at least a 60% unreduced service pension from OTPP or OMERS, had they not taken a present or commuted value pension from OTPP or OMERS; or</li> <li>4. the date the covered member would have first been entitled to at least a 60% unreduced service pension from OTPP or OMERS, had they not taken early retirement or an OTPP or OMERS disability pension.</li> </ol>
<b>Mandatory Early Intervention</b>	The OTIP early intervention program provides confidential support and services to covered members to help facilitate recovery in the early stages of a medically related absence from work prior to the benefit period. The appropriateness of services will be assessed by OTIP and if medically supported, may be funded. OTIP must be notified of any prolonged absence by the participating sponsor and upon the approval of the covered member, an OTIP representative will contact the covered member. A prolonged absence is any absence of 15 or more consecutive working days.

**Please Note:** Members who were disabled prior to March 1, 2022, will continue coverage under the LTD plan in place on their date of disability.

## Prolonged Absence Due to Illness

During the qualifying period, a member may access paid sick leave (at 100 per cent of salary), the short-term leave and disability plan (at 90 per cent of salary), and/or Employment Insurance sickness benefits.

LTD benefits will not be approved unless the LTD carrier accepts that total disability persisted continuously from the date of disability through the qualifying period and beyond.

Pursuing reasonable and customary treatment on a regular basis from the date of disability through the waiting period and beyond is critical for a successful claim.

## Mandatory Early Intervention

Early intervention is a confidential service provided by OTIP and is designed to assist members in returning to work earlier, thereby shortening or preventing a long-term disability claim. It is a service offered to members who have been absent from work due to illness for 15 consecutive working days or longer. An OTIP early intervention rehabilitation counsellor (EIRC) will contact these members to offer early intervention assistance according to each member's specific circumstances. Please note that local leaders will reach out to members in advance of the OTIP EIRC offer of assistance.

## Medical Accommodation Prior to LTD

The LTD insurer will expect that members have explored all options for medical accommodation in the workplace prior to applying for LTD.

Members wishing to discuss a possible medical accommodation should first contact their ETFO local or call the provincial office and ask to speak to the on-call Professional Relations Services staff at 416-962-3836 or 1-888-838-3836.

If, after a medical accommodation has been implemented in the workplace, a member is unable to perform the significant duties of their specific assignment, the next step would be to apply for LTD.

Bear in mind that LTD approval is dependent upon the inability to perform a 60 per cent schedule. Therefore, if a member is working a reduced timetable of 0.6 FTE or more as part of a medical accommodation, they will not meet the OTIP definition of disability and the waiting period most likely will not apply.

## Timing of Application and Benefits

There is a time limit for completing an application for benefits\*. Members must meet this deadline even if they are involved in other processes such as an approved WSIB claim, working in an accommodated partial assignment, seeking other medical accommodations, or pursuing grievance arbitration.

LTD plans have a waiting period, or qualifying period, between the start of the disability and the start of benefit payments (see Plan Features). The waiting period begins on the date a member stops working and continues until the later of 110 working days or the expiration of sick leave (11 days) and the short-term leave and disability plan (120 days). The OTIP LTD plan requires members to submit a claim within six months of the date of disability, or no later than six months after the end of the waiting period. In specific claim circumstances where a WSIB claim has been established, the absolute deadline for submitting a claim is 24 months after the date of the workplace accident. OTIP is not liable for a claim that is not initiated within this time frame.

**\* Time limits and waiting periods may differ for ESP/PSP and DECE members. Contact the applicable ETFO local office for specific plan information.**

## The LTD Claim Process

### Filing an LTD Claim

The decision to apply for long-term disability benefits should be made in consultation with health care practitioners, who have the best understanding of the medical condition, its implications, and whether it is a disabling condition.

There are three parts to the package that must be completed and returned to the insurer:

#### 1. Member Statement

This is usually available through ETFO local offices. This statement provides general information to the insurer (for example, specific assignment, diagnosis, and treatment plans). It also provides the opportunity to describe how the condition prevents the member from being able to perform the significant duties of a specific assignment. A number of consents are also included for completion.

It is important that the information provided is accurate and consistent with the information on the Attending Physician's Statement(s) of Disability.

#### 2. Attending Physician's Statement of Disability

There are two statements of disability included in the claims kit: the Attending Physician's Statement of Disability – Physical Health Condition and the Attending Physician's Statement of Disability – Mental Health Condition. If the disabling condition is physical in nature but there is also a disabling mental condition involved, the physician must complete both statements of disability. The LTD insurer will assess the member's medical condition as a whole, so it is important that all disabling conditions are reported by the physician.

It is very helpful if copies of the Attending Physician's Statement of Disability are completed by medical specialists as well as the medical general practitioner. The more detailed medical information is, the easier it will be for the insurance carrier to adjudicate in a timely, well-informed manner.

#### 3. Plan Administrator's Statement

This statement is to be completed by the LTD plan administrator. In most cases, this is either the district school board or the ETFO local.

### What Does "Total Disability" Mean?

Normally, a member is only entitled to LTD benefits if they have sufficient proof that they are experiencing "total disability." However, there are two definitions of disability under the LTD plan.

According to the LTD plan, disability/disabled/disabling means that:

- (a) during the initial assessment period, the covered member is disabled if, because of illness or injury, the covered member is unable to perform the significant duties pertaining to their specific assignment; and

- (b) after the initial assessment period, the covered member is disabled if, because of illness or injury, the covered member is unable to be gainfully employed.

During disability in the initial assessment period, the significant duties of their specific assignment is interpreted to mean the inability to perform a 60 per cent schedule. When members reduce their working hours to a half-time or 50 per cent schedule, it is important to recognize that there is a very small margin of difference between a 50 per cent and a 60 per cent schedule; this is typically only 35-40 minutes per day. The LTD insurer often questions why a member who can demonstrate the ability to work a 50 per cent schedule cannot medically be able to work an additional 35-40 minutes per day to increase to a 60 per cent schedule.

LTD benefits are payable during the initial assessment period if a member is unable to perform the significant duties pertaining to their specific assignment (i.e., their "own occupation"). After this initial assessment period they may only continue to receive benefits if they are prevented from being gainfully employed in **any occupation** due to disability. It is more difficult to prove disability beyond the change of definition (COD) in the LTD plan.

In other words, at the two-year point in an LTD claim, if a member and their physician(s) state that the member is not well enough to return to their specific assignment, they may be declined further LTD benefits because the insurer has determined that they are well enough to perform work in another occupation (i.e., be "gainfully employed").

Gainful Employment/Gainfully Employed means work:

- the covered member is medically able to perform
- for which the covered member has at least the minimum qualifications
- that provides income of at least 60% of the covered member's inflation indexed pre-disability earnings
- that exists either in the province or territory where the covered member worked when the disability started or where the covered member currently lives

## Member Interview

The insurer will conduct a member interview shortly after the LTD application documents have been received. This is a standard procedure that occurs in every LTD application. The OTIP disability analyst (DA) will contact members to ask a number of questions to obtain more information about the illness, the treatment plan(s), information about daily activities, functional restrictions and limitations, a description of specific assignment and duties, and other pertinent information. This information is required to fully assess the claim for LTD benefits. The interview typically lasts from 60 to 90 minutes. If a 60-90-minute interview is overwhelming, it can usually be divided into two sessions.

## Medical Treatment and Medical Proof of Disability

For most LTD applications, medical evidence is the key to a successful claim and the member is responsible for providing this information to the insurer.

Medical evidence from a family physician is usually not enough to qualify for LTD benefits. There must be evidence from both the family physician and the treating specialist that the medical condition is totally disabling. It can also be problematic if treating physicians disagree about the diagnosis or if a diagnosis is undetermined.

After a physician completes the Attending Physician's Statement of Disability, they are often asked to provide clinical chart records or to prepare a medical report. It becomes quite problematic when treating practitioners decline to submit their clinical notes to the insurer. Clinical notes are extremely important in the assessment of a claim, especially those from registered psychologists and/or psychiatrists. Members need to be aware that anything discussed with a doctor may be recorded in the clinical notes and will form part of the LTD insurer's assessment.

The family physician's medical evidence is an important element in the claim, but the insurer relies most heavily on the opinion of a specialist in assessing total disability. It is crucial that a specialist assessment be obtained as soon as possible. Specialist opinions are only persuasive where they relate to a health condition within the physician's field of expertise. For example, a psychologist's opinion on a torn meniscus in a knee joint will be of limited use.

The LTD insurer looks for objective medical evidence in assessing the merits of a claim. Objective evidence includes, but is not limited to: test results, medications, X-rays, CT scans, MRIs, etc., which may help illustrate the severity of the disability. The insurer often resists accepting claims based on subjective complaints (i.e., self-reporting symptoms) when there is no objective evidence verifying a basis for disability.

The more objective and professional a physician appears in their correspondence, the more credible and reliable the insurer or an adjudicator is likely to perceive their medical opinions to be. For this reason, a physician should not act as an advocate in the claim but simply provide clear, objective medical restrictions and limitations and documented continuity of reported subjective medical symptoms. It is not helpful when a physician's advocacy is blatantly apparent without supportive medical evidence.

## Reasonable and Customary Treatment

To be eligible for LTD benefits, you must be receiving reasonable and customary treatment on a regular basis for the disabling condition. Reasonable and customary treatment is systematic treatment that is performed or prescribed by a licensed doctor of medicine and is of the nature and frequency usually required for the condition involved.

The insurer will expect care and treatment with a recognized specialist who has expertise in the area of illness. For example, they will expect medical evidence from:

- an oncologist if the condition is cancer-related
- an orthopedic surgeon if there are broken bones or spinal problems
- a neurologist/physiatrist/enrolment in an acquired brain injury program if the diagnosis is concussion/post-concussion syndrome
- a psychiatrist or registered psychologist if there is a mental health condition

When treating a mental health condition, therapy with a psychotherapist, social worker, therapist, or spiritual counsellor may be helpful but it is not enough to qualify for payment of benefits under the LTD plan. In addition to medications and therapy with a psychotherapist, the insurer would expect a diagnostic assessment from a psychiatrist or a registered psychologist.

It is also expected that all treatment be regular, ongoing, and continuous from the last day of work through the waiting period and into the LTD benefit period. Compliance with the treatment recommendations made by each of the treating health care providers – including medications, surgery, physiotherapy, and occupational therapy – is required. **When treatment recommendations are not followed (such as declining the use of medications) it often results in claim denial by the insurer.**

Members who are applying for LTD benefits should be reporting the same consistent information to all of their health practitioners and their physicians should be providing objective medical documentation to the insurer to enable a fair assessment of the claim.

## Surveillance

As part of its assessment of a claim for LTD benefits, the insurer may conduct surveillance. The insurer sometimes uses this as a means of assessing functional abilities and the veracity of the symptoms that have been reported to physicians.

## Duration of Benefits

If total disability continues to be proved and members are complicit with their obligations under the LTD plan, benefits should continue to be paid. At the 16-month date, OTIP conducts a review of the medical evidence in a claim to determine whether the member will meet the change of definition of disability (COD) at the two-year point. If the insurer determines the member could be gainfully employed at another occupation, benefits might be terminated.

For claims that are approved beyond the change of definition, the plan sets out when payments will cease. Frequently, termination of benefit payments will occur on the earliest of the end of the month in which the member reaches age 65 or the date they reach a 60 per cent unreduced service pension with OTPP or OMERS.

## Return to Work (RTW)

### The Role of the OTIP Rehabilitation Consultant

An OTIP rehabilitation consultant may become involved in the claim when there is medical evidence demonstrating that the condition has improved with treatment. The rehabilitation consultant will be assigned to work with the physician to create a suitable return-to-work (RTW) plan. In the past, this has often influenced school boards to agree to gradual RTW plans and implementing required medical accommodations for the member.

When members are engaged in an OTIP RTW plan, LTD rehabilitation benefits often continue to be paid for a period of time during the return-to-work plan, in conjunction with paid salary from the school board. If a member declines OTIP's offer of rehabilitation assistance (for example, if they feel they are not ready to return to work), they should understand that there is no guarantee OTIP will offer rehab support at a later date.

Although the OTIP rehab consultant may be very helpful, their role is not one of advocacy. The consultant may not fully know or appreciate the local collective agreement provisions or the school board's protocols and human rights obligations.

### The Role of ETFO

**The member advocate in the return-to-work process is the ETFO local representative.**

Return to work and medical accommodation issues associated with an LTD claim are supported by ETFO locals and, when necessary, in consultation with ETFO's Professional Relations Services (PRS) staff. Members have a right to union representation throughout the entire RTW process and ETFO local representatives should be participating in all RTW plans or medical accommodation discussions. Always contact the local ETFO office before discussing anything related to medical matters with the district school board.

### Possible Return to Work Outcomes\*

Every LTD return-to-work plan is different and each case is based on the member's medical documentation. Members might return to:

- their prior assignment
- their prior assignment with modifications in duties or hours (accommodation)
- the same school with a different but comparable assignment on a temporary or long-term basis
- a different school with a different assignment

A physician or specialist does not have the ability to dictate a specific assignment. The workplace parties, which include the district school board, ETFO, and the member, provide input and are responsible for the RTW process. Members have the right to return to work at any time following an LTD leave if they are medically fit to work. This could include an accommodated gradual return to work or to a partial return with reduced hours.

\***May not be applicable to all ETFO members**

## The Duty to Accommodate

When members are returning to work, with or without OTIP rehabilitation assistance, it is important they work with their local office to negotiate a suitable return-to-work plan with the school board. The local ETFO office will be able to advise what the school board will need for a medical accommodation to be established; in most cases this will be objective medical restrictions and limitations documented in writing. The *Ontario Human Rights Code* requires that employees with medical restrictions and limitations be accommodated in the workplace up to the point of “undue hardship” for the employer – even when transitioning from LTD benefits to salary. Undue hardship means that the employee must be accommodated unless doing so would significantly jeopardize the employer’s operations. The employer’s legal obligation is known as the “duty to accommodate.”

However, this does not mean that members have the right to determine precisely what that accommodation will look like. It is up to the employer to design an appropriate accommodation and there may be more than one solution for doing so. Accommodations do not need to be perfect, but they must meet the test of being reasonable. Entitlements to accommodations are based on medical need, **not** worker preference. RTW plans should be discussed with physician(s) and with the ETFO local office prior to communicating with the school board.

## Common Myths and Misunderstandings About LTD

**Myth** *“I can’t apply for LTD until my sick leave runs out.”*

This is untrue. It is important to apply for LTD as soon as it becomes apparent that an absence due to illness or injury will be prolonged (for example, greater than 12 weeks). LTD applications can be unpredictable and/or protracted so it is prudent to begin the process as soon as possible. It is true that LTD benefits cannot begin until the end of sick leave, but the application process should most definitely be undertaken while still on sick leave.

**Myth** *“I don’t need to apply for LTD; I am already on an approved WSIB claim.”*

It is possible to be on WSIB and LTD concurrently. As a first payer, WSIB will provide the financial benefit but there are additional benefits to LTD approval that may be in a member’s best financial interest (for example, waived LTD plan contributions). Therefore, it is advisable to submit an LTD application whenever a workplace injury or illness causes a prolonged absence. Please be aware that there are deadlines associated with LTD applications. Contact your local ETFO office for support and additional information.

**Myth** *“My family doctor said I will qualify for LTD.”*

Doctors are not decision-makers and comments like this can create a false sense of security. The role of the doctor is to be responsive to requests from the insurer and provide accurate, up-to-date, objective clinical charts/notes/reports. Timely, objective, detailed medical evidence is the best support your doctor can offer. In fact, subjective statements from doctors could undermine the legitimacy of their medical opinion in the eyes of the insurer.

**Myth** *“I’ve paid into LTD for years. Now that I am out of sick leave, OTIP must pay me.”*

This statement is not correct. The payment of LTD premiums is not a ‘savings plan’ that members draw upon if they become ill. The LTD plan is designed to provide income replacement to a member who, because of illness or injury, is unable to perform the significant duties of their specific assignment. Claims are approved only when a member has provided strong medical evidence from a treating specialist and meets the disability definition.

**Myth** *“This person made me sick and now I can’t return to work at that school.”*

This is a problematic statement as it implies that a member would still be able to perform the significant duties of their specific assignment if they were at another location. The LTD plan definition of disability relates to the specific assignment – but it is an assignment that could be performed at any location in the school board. It is necessary that absence is directly related to personal illness to be considered for LTD benefits.

**Myth** *“I don’t want my psychologist to provide their clinical notes to the LTD insurer – it’s very personal and I am a private person!”*

The insurer will request the clinical chart including clinical notes for the purpose of assessing an LTD application. If the clinical notes are not provided, the LTD insurer is unable to verify the extent and severity of symptoms of the mental health condition. Not providing the clinical notes to the insurer provides a reason to deny a claim for benefits.

**Myth** *“I’m approved for LTD for two years.”*

There is no guarantee that LTD benefits will be paid for the entire initial assessment period. Benefits are payable if a member continues to meet the definition of disability. If there is a documented improvement in the disabling condition at any point in a claim, this could mean a referral for rehabilitation assistance so that a gradual return-to-work plan can be established and implemented. If rehabilitation assistance is declined, it is possible it might not be offered again in the future.



## Tips for a Successful Claim

- ➔ Regular attendance with family physician – every 3-4 weeks is optimal.
- ➔ Seek assessment with appropriate specialist(s) for disabling condition.
- ➔ Follow all recommended or prescribed treatments and therapies, including medications.
- ➔ Prove that the medical condition is causing the inability to work, rather than difficulty in the workplace due to performance issues or interpersonal conflicts with colleagues/administrator.
- ➔ Report consistent information to all health practitioners.
- ➔ Understand that the LTD insurer does not recognize medical evidence from alternative health practitioners (e.g., osteopaths, naturopathic doctors, or vision therapy with optometrists for concussion).
- ➔ Health practitioners should be Ontario-based, and lab tests must be from Canadian labs.
- ➔ Do not undertake alternative employment while absent from specific assignment, including any type of home business.
- ➔ Do not travel while absent from work due to illness – this demonstrates “capacity” to the LTD insurer – despite approval from treating physician.
- ➔ Minimize or refrain from activity on social media – Facebook, Twitter, Instagram and others.

## The Appeals Process

### Appealing a Negative Decision

When a claim is denied, OTIP will send a letter explaining the reasons for the denial and outlining the appeal process.

Claims are often denied because the insurer does not feel that the medical evidence proves disability. It may be that there is no report on file from a specialist or there are no objective tests outlining the nature and severity of the illness.

### Next Steps

#### 1. Share the denial letter

Share the denial letter with your family physician and medical specialists to decide what additional information is needed to support an appeal. Note that OTIP may also reach out directly to some medical practitioners. It is imperative that all treating medical practitioners provide additional information when it is requested of them.

#### 2. Contact the OTIP disability service representative

As stated in the claim denial letter, a disability service representative (DSR) will be assigned to the file. Be sure to request a meeting with them to obtain their expertise when preparing the appeal. The DSR will provide guidelines for drafting the appeal letter and make suggestions about additional medical evidence. It is important to remember that, although the DSR’s role is to assist members in appealing claim denials or terminations, **any notes they take during the meeting will become part of the LTD claim documentation.**

#### 3. Be aware of all time limits

There are time limits for pursuing an appeal and initiating legal action against the insurer, which will be stated in the denial letter. An appeal to the OTIP appeals committee must be submitted within six months of the claim denial/termination and is a mandatory prerequisite before any legal proceeding is commenced against the insurer. The deadline to begin legal action is always two years after the initial date of claim denial or termination. Be prepared to act quickly in appealing a denial or termination of claim. Missed deadlines limit the ability to pursue your claim further. If you choose to retain your own independent legal counsel to initiate litigation after your appeal has been denied, it is important to do this well in advance of the time limit deadline.

## Tips for a Successful Appeal

- ➔ Appeal letter should be no longer than two pages.
- ➔ Focus on the illness, describing the severity of symptoms and reasons why they prevent you from performing the significant duties of your specific assignment and daily life.
- ➔ Provide new medical reports – especially the specialist – addressing the reasons that the insurer has noted in the claim denial or termination letter.
- ➔ Surveillance occurs most often during the appeal process, so be mindful of the activities you are demonstrating and ensure they are consistent with what you have reported in your appeal letter.
- ➔ LTD insurer may conduct surveillance on holiday weekends and breaks, and during the summer period.
- ➔ Do not travel while absent from work due to illness – this demonstrates “capacity” to the LTD insurer – even if it is encouraged or approved by your treating physician.
- ➔ Minimize or refrain from all activity on social media – Facebook, Twitter, Instagram, and others.

## Provincial Assistance with LTD Appeal Denials

### Denied Appeals

If an appeal is denied, suing the LTD carrier may be the only recourse. ETFO provides some assistance in pursuing claims (through litigation or arbitration) after an appeal is denied. It is imperative that ETFO is contacted for this assistance long before any time limit is set to expire.

### ETFO's LTD Case Selection Review Procedures

The ETFO Executive has established guidelines for assisting members in LTD disputes. The provincial office may only become involved with a member's claim once all appeal avenues have been exhausted. To qualify for legal support, all cases must also meet ETFO's LTD case selection criteria. Legal assistance is not provided automatically.

Members can ask ETFO to conduct a review of their LTD claim to determine if the claim meets ETFO's LTD case selection criteria and is strong enough to win at a trial against the insurer. This claim review takes a period of time ranging from six to nine months, but it may take longer if there are extenuating circumstances. During this review period, ETFO will obtain a copy of the claim file from the insurer, may write to the member's physicians and health care practitioners to obtain copies of the member's clinical charts, review the claim file and the requested additional clinical charts, and identify if additional support is needed to attempt to successfully challenge the insurer's decision to deny or terminate a member's claim.

Although ETFO strives to complete these steps as quickly as possible, receiving medical documentation from health practitioners and health records from hospitals often takes many months, which is beyond ETFO's control.

If ETFO agrees to extend legal support, a member will be asked to execute a Joint Retainer Agreement (JRA) for litigation or a Legal Services Agreement (LSA) for arbitration, which will set out the terms of the legal services. Included in the JRA or LSA will be a clause stating the member agrees that in the event ETFO and our legal counsel negotiate a lump-sum settlement to resolve the litigation or arbitration, the member will contribute to ETFO the lesser of five per cent (5%) of the negotiated lump-sum settlement amount or \$5,000.

### ETFO's Long-Term Disability Procedures

1. To qualify for support, all cases must meet the case selection criteria for LTD assistance. Legal assistance will not be provided automatically.
2. Upon receipt of the LTD claim file, it will be reviewed to determine the issues in dispute and whether additional information is needed to support the claim.
3. If additional medical information is needed to support the file, ETFO staff will attempt to obtain this information. The medical documentation must objectively support the definition of disability in the LTD plan.
4. The member will be contacted to review the issues in dispute and discuss possible next steps.
5. In their discretion, ETFO staff may seek a legal opinion as to the merits of the file for proceeding to arbitration or litigation with the insurance carrier.
6. Medical evidence in a LTD file must be sufficiently strong to consider proceeding to arbitration or litigation.
7. ETFO staff will determine whether to advance a claim to arbitration or litigation with the insurance carrier or whether to extend legal support in some other limited way.
8. If ETFO staff agrees to extend legal support, the member will be asked to execute a Joint Retainer Agreement (JRA), which will set out the extent of the legal services ETFO is supporting. Included in the retainer will be a clause stating the member agrees that in the event of a lump-sum settlement, the member will contribute to ETFO the lesser of five per cent (5%) of the negotiated lump-sum settlement amount or \$5,000.
9. Return to work and medical accommodation issues will be dealt with by ETFO locals and, where necessary, in consultation with ETFO Professional Relations Services (PRS) staff.

### Long-Term Disability Case Selection Criteria

ETFO **will not** provide representation to members in the following LTD circumstances:

1. If the member has retired or resigned from employment with the school board, and the provincial office was not involved in the member's claim prior to the retirement/resignation date.
2. If the time for initiating legal action against an insurer has expired or there is insufficient time to review a claim prior to the expiration of a time limit.
3. If the member has retained their own legal counsel.
4. If, in ETFO's opinion, the claim is not sufficiently strong to succeed in litigation against the insurer (i.e., case insufficiently supported by medical documentation and/or no ability to obtain any additional supportive medical evidence).

## Financial Assistance

If a member is without any income because benefits have not yet commenced or their LTD claim is denied, they may seek financial aid through one or more of the following agencies or government programs. Please note that there may be other resources for financial aid within individual communities, which should be investigated as well.

### Employment Insurance (EI) Sickness Benefits

These benefits are available to some ETFO members from the federal government. They may be paid for a maximum of 26 weeks after a one-week waiting period to those who qualify. Please note, if a member qualifies for LTD retroactively, they will need to make the appropriate arrangements to pay back EI sickness benefits.

There is an application process that requires the record of employment (ROE) from the school board along with a medical certificate signed by your physician confirming you are medically unable to work. The ROE is completed by the employer after your last day of paid work and after the exhaustion of any sick leave. For more information please see ETFO's *A Member's Guide to EI* which is available on the [ETFO website](#).

### Ontario Disability Support Program (ODSP)

This form of social assistance from the Ontario government includes financial assistance for persons with a disability, accommodation resources, basic living expenses, prescription drugs, and basic dental care. There are eligibility criteria for this assistance. For more information about the Ontario Disability Support Program, visit the website here: [ODSP](#).

### Canada Pension Plan (CPP) Disability Benefits

This benefit is provided by the federal government for individuals who have made sufficient contributions to the Canada Pension Plan and are unable to work due to a severe and prolonged illness. It often takes three to six months for a decision from Service Canada on an application.

If an LTD claim is approved, OTIP may require a member to apply for Canada Pension Plan Disability (CPP-D) benefits. Members are obligated to comply with this request. If the CPP-D application is approved, LTD benefits will often be reduced by the amount of CPP-D benefit that is received. CPP-D benefits are taxable and must be reported on your income tax return.

Be aware that when you are unable to work due to disability and are receiving LTD benefits, you are considered a non-contributor for CPP for the duration of your period of disability. When CPP calculates your pension at age 65, the amount of pension available to you will be lower, as you were not contributing during the LTD claim period. However, if CPP-D benefits are approved, this will not be the case.

For more information about Canada Pension Plan Disability benefits visit the website here: [CPP-D](#).

If you are approved for CPP Disability, you should also apply for the Canada Revenue Agency (CRA) Disability Tax Credit. This may help reduce any tax payable. For more information about the federal Disability Tax Credit visit the website here: [Disability Tax Credit](#).

### Ontario Teachers' Pension Plan (OTPP) Disability Pension

Members of the Ontario Teachers' Pension Plan may apply for a full or partial disability pension if they are unable to work due to a disability or illness. Accessing the OTPP Disability Pension should be considered an **absolute last resort** since doing so has serious implications for long-term pension status and employment status with the school board. More information about this is available via the Ontario Teachers' Pension Plan Board at [otpp.com](#).

## Additional Considerations

### WSIB and Long-Term Disability (LTD)

In the event of a workplace accident a member may file a WSIB claim. If it is anticipated that a member is going to be away from work for a prolonged period because of the work-related injury, an application for LTD should also be made as soon as the need for a prolonged absence is medically determined. WSIB and LTD claims can run concurrently, with WSIB as the first payer. If the WSIB claim is terminated and the LTD claim remains approved, LTD benefits may apply (if the definition of disability is still met) so a member is not without income. Contact the ETFO LTD staff at the provincial office for more information.

### LTD Contributions While on Leave

When a member is on an approved LTD claim, they are not required to pay any LTD contributions.

However, LTD coverage is mandatory for members on most other types of leaves of absence. In other words, **you cannot opt out of the plan while you are on a leave of absence and you must continue to pay LTD contributions to maintain your coverage.**

The LTD contract limits continued participation during a leave of absence to a maximum of 24 consecutive months of leave or the leave period defined in the local collective agreement.

More information about leaves of absence and how they relate to participation in the LTD plan is available on the [ETFO website](#).

## Pregnancy and LTD

If a member becomes pregnant while receiving LTD benefits, the benefits should not be affected. However, it is always best to keep OTIP informed of a change in circumstances and any complications to the disabling condition resulting from the pregnancy.

## Pregnancy/Parental Leave and LTD

If a member is on a pregnancy or parental leave when they develop a disabling illness, they should file a claim immediately to start the waiting period. The waiting period will be 110 working days, as sick leave and short-term disability leave days are not available.

Paying LTD contributions while on pregnancy/parental leave will ensure that members are eligible to make a claim for a disabling condition that develops during a pregnancy/parental leave. Please be aware that members are not eligible for payment of LTD benefits until the scheduled end date of the leave of absence.

## ETFO Fee

Membership fees for a member on an approved LTD leave are waived.

## Ontario College of Teachers and College of Early Childhood Educator Fees

A member on LTD is not required to pay the annual Ontario College of Teachers' (OCT) fee or the College of Early Childhood Educators (CECE) fee, however, non-payment of the annual fee results in suspension of membership. When the member is medically able to return to work, they will be required to pay a reinstatement fee **plus** the annual fee before being able to return to work.

## ETFO Employee Life and Health Trust Extended Health Care Benefits

ETFO members who are in the ETFO Employee Life and Health Trust (ELHT) benefits plan on the date that the LTD benefit commences continue to have benefits at the same level of coverage. Members cannot make any changes to their coverage during an LTD claim. The member's ELHT premium is covered by the ELHT plan for the **first 24 months of an LTD claim**. If the 24-month period elapses and the member has not returned to active work, the member is responsible for paying the monthly ELHT premium for the same level of coverage on the same basis as when the member was actively at work. Once a member returns to their full-time equivalent (FTE) position, the health, dental, and basic life coverage are premium-free. A monthly premium is paid for additional life coverage. If a member is only able to return to a part-time schedule, the monthly ELHT premium is pro-rated based upon the member's work schedule.

## Ontario Teachers' Pension Plan

ETFO members who are in receipt of LTD benefits continue to earn credit in the Ontario Teachers' Pension Plan without making pension contributions.

## LTD Buyouts

In rare circumstances, a member on LTD will be approached by the insurer about the possibility of receiving a one-time, lump-sum settlement of the member's ongoing LTD claim for monthly benefits. Whether a lump-sum figure is in a member's best interest will depend on the member's personal circumstances, including financial needs and opportunities as a whole. The member may wish to consult the pension board and obtain legal/financial advice before accepting such an offer.

## Checklist for LTD Claim Application Process

- Have you fully explored all opportunities for a medical accommodation with the employer to assist you in continuing to work?
- Have you discussed your disabling condition with your physician? Are they recommending an extended absence from your specific assignment that is longer than 12 weeks?
- Have you been contacted by the LTD insurer's early intervention program? They can be very helpful in providing rehabilitation assistance and other services to assist in the treatment of your illness, so please engage with them.
- Obtain an LTD claims kit from the school board or ETFO local office. Complete the claims kit including the Member's Statement and sign all required consents and authorizations.
- Have your physician(s) completed and submitted the Attending Physician's Statement of Disability for Physical Health Condition and/or Mental Health Condition?
- Have you submitted your LTD claims kit **no later than 16-18 weeks** before your paid sick leave and short-term disability leave days will be exhausted?
- Are you having reasonable and customary treatment with a specialist (e.g., oncologist, psychiatrist or registered psychologist, physiatrist/neurologist/acquired brain injury program for concussion/post-concussion syndrome)?

- Are you having regular treatment every 2-4 weeks with your physicians (e.g., family physician and specialist(s))?
- Are you complying with all recommended treatments and therapies, including recommended or prescribed medications?
- Have you been consistent in reporting the same information to all health practitioners?
- Have you participated in the member interview with the LTD insurer?
- Are you reporting your functional restrictions and limitations to the LTD insurer? Have you reported any improvement or deterioration in your functional restrictions and limitations?
- If your claim has been denied, have you made arrangements with OTIP and the ELHT plan to pay your monthly premium to keep your extended health care benefits intact?
- If your claim has been denied and your paid sick leave and short-term disability leave are exhausted, have you applied for Employment Insurance (EI) sickness benefits?
- If your claim has been denied, have you scheduled a meeting with your disability service representative, as noted in the claim denial letter?
- Have you contacted ETFO to discuss your claim denial or termination?
- Have you submitted your appeal letter and new medical reports within three months of the claim denial or termination?
- If your LTD appeal has been denied, have you contacted ETFO to discuss the options available to you and next steps?
- If your LTD appeal has been denied, have you applied for Canada Pension Plan Disability benefits?
- Has your condition improved enough to enable you to return to work? If so, have you contacted your local office for advice and assistance about returning to work?



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