

# Contract Interpretations - Severance (PA Art.63, SV 60, EB 24)

## Summary of Issue

## Interpretation

## Notes (e.g. example of correspondence)

Severance cashout impact on LTD and DI claims. Also applies to SV and EB agreements.

Sun Life Financial and Industrial Alliance are advising claimants that receipt of payments in lieu of severance pay will have no impact on ongoing long-term disability insurance benefit entitlements. This has been confirmed by Treasury Board.

James Infantino email from July 7, 2011

Please note that the Treasury Board Secretariat has confirmed with my office that payment in lieu of severance pay will not be offset from disability benefits payment under the federal Disability Insurance Plan.

Confirmation of the foregoing has been posted by Public Works and Government Services Canada as Compensation Directive 2011-012:

<http://www.tpsgc-pwgsc.gc.ca/remuneration-compensation/dr-cd/dr-cd-2011-012-avis-notice-eng.html>

The point at which a severance payment constitutes a retirement allowance for tax purposes.

The interpretation bulletin is clear that the only time a retiring allowance can be considered a retiring allowance is when it is paid at the time employment is terminated due to retirement or resignation.

Letter from David Orfald to member:

If you take the severance payout when you actually retire it should still be eligible for \$2000 for every year of service before 1996 and an additional \$1500 for every year before 1989 (provided you have not used those before).

For this reason, any amount taken as early cash-out is not considered a "retiring allowance" for CRA purposes. Note that while this does make any early cash-out subject to CPP and EI deductions, for most employees who hit the maximum annual contribution rates, this does not mean any additional deduction.

If you take it immediately it is not considered a retiring allowance and is not eligible.

For employees who decide to delay the cash-out or a portion of the cash-out until they retire, the severance will count as a retiring allowance and may attract improved tax treatment for taxation years 1995 and earlier.

We have a Q+A on this issue that has been up on the PSAC web site from the commencement of the ratification process. See this link:  
[http://www.psac.com/bargaining/units/treasury\\_board/severance-e.shtml#tax](http://www.psac.com/bargaining/units/treasury_board/severance-e.shtml#tax)

Source:  
<http://www.cra-arc.gc.ca/E/pub/tp/it337r4-consolid/it337r4-consolid-e.html>

This was not an item for negotiation; it is based on the Income Tax Act and the CRA's interpretation of that, which is outside the realm of what we were able to negotiate. See the CRA interpretation bulletin:  
<http://www.cra-arc.gc.ca/E/pub/tp/it337r4-consolid/it337r4-consolid-e.html>

Part Time access to Severance in the case where an employee has multiple part time positions.

There is sufficient room for interpretation in XX.14 there that the two part-time employments would be combined together into a percentage of FTE.

I know of no TB collective agreement language which provides that severance pay is based on one part time job only.

The relevant clause of the collective agreement for part-time employees is PA 62.14. SV and EB have identical provision.

In my view there is sufficient room for interpretation in there that the two part-time employments would be combined together into a percentage of FTE.

No harm in them grieving that one.

David Orfald

Acting Director, Collective Bargaining Branch / Chef de la direction de la

>>> Garry Fraser 6/23/11 1:12 pm >>>

Hi Dale: I have inquiry from a USGE Local President in regards to the severance pay, specifically with part time employees. This is unique in the fact that they had two part time positions at the same time, with the same employer. The employer recently married the two positions together and created one full time position. The compensation analyst have indicated that the member will only be paid severance for one position, not two part time positions. Your guidance on this would be appreciated.

Ability to accrue interest if the Employer is slow to make payment

As with all other payment delays it is unlikely that we would be successful in receiving interest as part of a remedy in a successful grievance as it is not specifically contemplated in the collective agreement language.

Our Union has been in constant contact with Treasury Board to ensure that this process moves as expeditiously as possible and we have brought it to their attention whenever we come across instances of individual departments not following directives. Furthermore we will do everything within our rights to defend our contracts, should they be violated. That being said, it is premature to commit to a particular enforcement mechanism.

Just to clarify, The June 22nd date is the point at which your entitlement is calculated but is not the point at which the you receive your funds should you opt for full or partial cash out. It is expected that there will be some time built in to the process for the Employer to process your request and then provide you with your entitlement. As you pointed out, it is our understanding is that the requests will be processed as they come in and paid out in that sequence. If it appears that the Employer is violating that process in your department, please let us know, so that we can act on that information.

Letter from member:

We are being told by compensation advisors in Ontario for the PA group - that they do not know when the Lieu of Severance payments will be made?  
(Possibly sometime between August and December?)

Question:

Is the Union doing anything about this to ensure that PWGSC and the ER for PA group has begun to process these payments?

Question:

Can we pursue a class-action grievance for interest on these payments for withholding this entitlement(Especially if were legally entitled as of June 22/11) and the ER is deliberately sitting on these payments??

Eligible employees to cash-out of severance

All employees on strength on the second day of the new PA, SV and EB agreements are entitled to the new severance provisions.

- Indeterminate employees (including part-time employees)
- Term employees with more than a year of employment (including part-time employees)
- Seasonal employees

The above employees that are on strength on the second day of the new agreements are entitled to the cash out and/or deferral option. I.e. ,

PA – June 22, 2011

EB – July 2, 2011

SV – August 6, 2011.

Employees not entitled:

Casual employees

Term employees of less than one year

Retired employees

Notification to employees of severance entitlement	<p>The Employer had 3 months from the date of signing to notify the employees of their years of continuous employment (see article xx.06 a)</p> <p>Deadline for Employer Notification  PA: June 1, 2011  EB: June 1, 2011  SV : July 6, 2011</p>	<p>XX.06 Selection of Option</p> <p>A) The Employer will advise the employee of his or her years of continuous employment no later than three (3) months following the official date of signing of the collective agreement.</p> <p>B) The employee shall advise the Employer of the term of payment option selected within six (6) months from the official date of signing of the collective agreement.</p> <p>C) The employee who opts for the option described in 63.05(c) must specify the number of complete weeks to be paid out pursuant to 63.05(a) and the remainder to be paid out pursuant to 63.05(b).</p> <p>D) An employee who does not make a selection under 63.06 (b) will be deemed to have chosen option 63.05 (b).</p>
Deadline for employees choice of options	<p>The deadline for making a choice is 6 months following the date of signing (see article xx.06 b)):</p> <p>PA: August 31, 2011  EB: August 31, 2011  SV : October 5, 2011</p> <p>Employees who do not make their choice by the deadline will be deemed to have chosen option 2 (payout when you retire or resign) (see article xx.06 d))</p>	<p>XX.06 Selection of Option</p> <p>A) The Employer will advise the employee of his or her years of continuous employment no later than three (3) months following the official date of signing of the collective agreement.</p> <p>B) The employee shall advise the Employer of the term of payment option selected within six (6) months from the official date of signing of the collective agreement.</p> <p>C) The employee who opts for the option described in 63.05(c) must specify the number of complete weeks to be paid out pursuant to 63.05(a) and the remainder to be paid out pursuant to 63.05(b).</p> <p>D) An employee who does not make a selection under 63.06 (b) will be deemed to have chosen option 63.05 (b).</p>
Options of payment	<p>All indeterminate employees or term employees with one year of service will have three options for the cash out of accumulated voluntary severance calculated at the rate of one week of pay for each year of employment:</p> <ol style="list-style-type: none"> <li>1.Immediately cash out their severance at their substantive position rate of pay.</li> <li>2. Retain the accumulated weeks of severance with a payout on termination or retirement at their substantive exit rate of pay.</li> <li>3.Cash out some of their severance (a “round” number of weeks) at their substantive position rate of pay, with the remainder to be paid upon termination or retirement at their exit rate of pay.</li> </ol>	<p>Terms of Payment</p> <p>XX.05 Options</p> <p>The amount to which an employee is entitled shall be paid, at the employee's discretion, either:</p> <p>(a) as a single payment at the rate of pay of the employee's substantive position as of June 22, 2011, or</p> <p>(b) as a single payment at the time of the employee's termination of employment from the core public administration, based on the rate of pay of the employee's substantive position at the date of termination of employment from the core public administration, or</p> <p>(c) as a combination of (a) and (b), pursuant to XX.06 c).</p>

Term employees entitlement

The cash out will only apply to those employees who have completed one full year of employment as of the second day of each contract and payment in lieu of severance is for only complete years of continuous employment.

Relevant collective agreement language:

XX.04 Severance Termination

(a) Subject to XX.02 above, term employees on (PA group, June 22, 2011, EB group, July 2, 2011, SV group, August 6, 2011) shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks.

Indeterminate employees entitlement

The cash out applies to all indeterminate employees even with less than 1 year of continuous employment and the partial year(s) of continuous employment are pro-rated.

Email from David Orfald, July 15, 2011:

I am pleased to inform you that Treasury Board has granted our policy grievance with respect to the eligibility of indeterminate employees with less than one year of continuous employment to receive the severance payment.

TB had taken the position that employees with less than one year continuous employment were not eligible to receive the payments in lieu of severance. They thought the clause required a minimum of one year continuous employment to earn a week severance, and that the pro-rating only took affect for partial years above the first year.

Our view of the language was that employees with less than one year continuous employment were entitled to a pro-rated week per year of service.

We filed the policy grievance on May 11; it was argued by Amarkai and myself on June 24; we got the positive decision today.

Note that this only applies to indeterminate employees with less than one year of service. The language regarding term employees is clear; there is no pro-rating for partial years of service.

We have asked Treasury Board for details on how and when they will communicate the decision to affected employees. In the meantime we'll get something up on the web site announcing the win. In the meantime feel free to pass this on to those who you think will want to know.

- David

Relevant collective agreement language:

XX0.4 Severance Termination

(a) Subject to xx.02 above, indeterminate employees on (PA group, June 22, 2011, EB group, July 2, 2011 and SV group, August 6, 2011) shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty five (365), to a maximum of thirty (30) weeks.

Website Q&A:

Newly-hired indeterminate employees (less than one year)

Treasury Board's interpretation of the newly negotiated language is that employees with less than one year of service are not entitled to payments in lieu of severance.

This is not our interpretation. Our understanding and reading of the negotiated clause of the severance pay article (PA:63, SV:61, EB:24) is that indeterminate employee with less than one year of service are entitled to a partial year of service.

The employer has refused to agree to this interpretation. PSAC has filed a policy grievance to resolve the issue.

Application of severance cash out for members that are acting outside the bargaining unit

Someone who is acting in a bargaining unit (or in the case of the OM group — a non-represented group) on the day that the severance accumulation terminates, that they will at that time be eligible for making their choice.

Our understanding is that someone who is acting in a bargaining unit (or in the case of the OM group — a non-represented group) on the day that the severance accumulation terminates, that they will at that time be eligible for making their choice.

- David

Email 3

Hi David,

Are you aware of this? What recourse would there be for some one who is acting when the decision regarding severance must be made?

Email 2

Friend of mine is acting in the OM (Excluded) group and the OM group have been told they can apply in October for their severance; however, she has been told that she cannot apply until she has returned to substantive group (PA) - her home position.

Problem this poses is that someone can be acting for years, and then what if they actually win a permanent OM position a year from now. They will be in a situation where they have missed the deadline under both categories.

Do you know anything about how this works?

Email 1

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> 15 > -> What if I am acting outside of the PA/EB/SV group?

> If you are acting outside of the PA/EB/SV group, the collective agreement of the acting position will apply. Therefore, you are not subject to receive the payment in lieu of severance pay under the PA/EB/SV group during that time.

> Once you return to your substantive position (PA/EB/SV group), you will have 3 months from that date to exercise your option and return your option notification form to your Compensation Advisor.

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Employees in receipt of EI benefits: maternity/parental leave, illness, relocation of spouse and compassionate care.

At the request of the PSAC, a special arrangement has been put in place for employees who are on leave without pay where they may be in receipt of EI Benefits. This includes maternity and parental leave, illness, relocation of spouse and compassionate care. This arrangement was put in place because the payments in lieu of severance pay could impact Employment Insurance benefits.

If you are on one of these types of leave, you will be able to defer your choice of payout option you wish to receive. If you defer, you will have to make your choice within three months after the end of your leave without pay period, or three months after your Employment Insurance benefits cease, whichever comes first.

Update:

Email from David Orfald, July 14, 2011

ER has indicated that a bulletin was to go out to compensation advisors this week but they were also to have sent us a draft MOU.

Received the Employer bulletin -21 July 2011

Deductions of Public Service Superannuation Plan, Canada Pension Plan and Quebec Pension Plan

Canada Pension Plan/Quebec Pension Plan (CPP/QPP)  
CPP/QPP will be deducted on the severance payout with certain exception (see notes).

Severance pay has never been considered as pensionable earnings and this hasn't changed. No Public Service Superannuation Plan deductions will be done on the payout.

Canada Pension Plan/Quebec Pension Plan (CPP/QPP)  
CPP/QPP will be deducted unless the employee:  
-has reached its maximum payable for the year (up to 2,217.60 for 2011 tax year);  
- is less than 18 years old (prorated for the period after 18 years old);  
- is more than 70 years old (prorated for the period before 70 years old);  
- is receiving a retirement pension under CPP/QPP (maximum prorated for the months before the month the pension is payable);  
- is considered to be disabled under CPP/QPP;

Link:

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/cpp-rpc/menu-eng.html>

See also, Amounts and benefits subject to CPP:

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/cpp-rpc/sbjct-eng.html>

See also, Benefits and payment not subject to CPP/QPP

deductions: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/cpp-rpc/ntsbjct-eng.html>

See also, PWGSC Compensation Directive 2011/2012:

<http://www.tpsgc-pwgsc.gc.ca/remuneration-compensation/dr-cd/dr-cd-2011-012-avis-notice-eng.html>

Employment Insurance and Quebec Parental Insurance Plan deductions

Employment Insurance will be deducted unless the employee has reached its maximum payable for the year (up to \$786.76 for 2011 tax year, except for Québec, \$623.22 for 2011 tax year).

Quebec Parental Insurance Plan will be deducted for employees working in Quebec unless the employee has reached its maximum payable for the year (up to \$343.68 for 2011 tax year).

Sources:

Canada Revenue Agency

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/ei/hstrc-eng.html>

Revenu Québec

[http://www.revenuquebec.ca/en/entreprise/retenues/methode\\_calcul/donnees\\_relatives.aspx](http://www.revenuquebec.ca/en/entreprise/retenues/methode_calcul/donnees_relatives.aspx)

Summary of Issue	Interpretation	Notes (e.g. example of correspondence)
Bilingual Bonus	The bilingual bonus does not count as part of salary for severance payment. See the directive: <a href="http://www.njc-cnm.gc.ca/directive/index.php?vid=1&amp;lang=eng">http://www.njc-cnm.gc.ca/directive/index.php?vid=1&amp;lang=eng</a>	Information published in Q&A on website
Definition of continuous employment	<p>In our collective agreements, continuous employment is defined by reference to the Public Service Terms and Conditions of Employment Policy.</p> <p>For most employees, the most relevant part of the definition is:</p> <p>20.1 For the purpose of this Appendix, the following periods count as continuous employment:</p> <p>a) in respect of a person appointed to the core public administration on an indeterminate basis or on a term basis for three months or more:</p> <p>i. immediately prior service in the core public administration or the public service on an indeterminate basis or on a term basis for three months or more;</p> <p>ii. a combination of prior service in the core public administration and the public service on an indeterminate basis or on a term basis for three months or more;</p> <p>iii. Immediately prior service in the Canadian Forces or the Royal Canadian Mounted Police provided that the person was honourably released and has made or makes a valid election to contribute for that service under the Public Service Superannuation Act (the effective date will be the date the election is completed) provided that these periods of service are not separated by more than three months;</p>	

Leave without pay deductions from continuous employment

Our collective agreements state that leaves without pay of greater than three months for reasons other than illness are to be deducted from continuous employment. This is found in the "Leave General" article of the collective agreement.

For example, in the PA collective agreement, the wording is at Article 33.02: 33.02 Except as otherwise specified in this Agreement:

(a) where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other than illness, the total period of leave granted shall be deducted from "continuous employment" for the purpose of calculating severance pay and from "service" for the purpose of calculating vacation leave;

(b) time spent on such leave which is for a period of more than three (3) months shall not be counted for pay increment purposes.

#### Maternity and Parental Leave Without Pay

Under the maternity and parental leave language negotiated in our collective agreements by the PSAC, periods of maternity and parental leave are not deducted from the period of continuous employment.

See for example the wording in clause 38.01 (g) of the PA collective agreement (g) Leave granted under this clause shall be counted for the calculation of "continuous employment" for the purpose of calculating severance pay and "service" for the purpose of calculating vacation leave. Time spent on such leave shall be counted for pay increment purposes.

Other leave without pay deducted if more than 3 months:

Leave without pay for the care of family  
 Leave without pay for personal needs  
 Leave without pay for relocation of spouse

Method of calculation of severance pay for employees with more than 30 years of continuous employment

There is nothing in clause 63 of the collective agreement that refers to a cap of 30 years. Rather, the cap refers to 30 weeks of severance pay and not to 30 years of service. The method of calculation of severance pay for employees with more than 30 years of continuous employment shall be based on a maximum of 30 weeks. When the employer imposes a limit of 30 years of service as a starting point for the calculation of severance pay, it deprives an employee of his or her rights and it violates the collective agreement.

For example:

A member worked 10.82 years in the Forces for which 10.82 weeks of severance were paid on leaving the Forces.

He then worked for 27.57 years in the public service.

On retirement, that member is entitled to  $(27.57+10.82) 38.39 - 10.82 = 27.57$  weeks.

The wrong interpretation is  $30-10.82 = 19.18$  weeks.

However, in no case can payment exceed 30 weeks.

Burzynski v. Treasury Board:  
[http://pslrb-crtfp.gc.ca/decisions/fulltext/2008-60\\_e.asp](http://pslrb-crtfp.gc.ca/decisions/fulltext/2008-60_e.asp)

Martin v. Treasury Board:  
[http://pslrb-crtfp.gc.ca/decisions/summaries/28191\\_e.asp](http://pslrb-crtfp.gc.ca/decisions/summaries/28191_e.asp)

Retroactive reclassifications to another group

Our position is that an employee who has taken an early payout and is reclassified to a group that does not have the early payout should NOT be subject to repayment/recovery. The employer has agreed to this and proposed to sign an MOU but the MOU is outstanding.

Retroactive reclassifications to a higher pay level

Our position is that an employee who has taken an early payout and is reclassified retroactively to a pay level that is higher than what their substantive position was as of the second day of the contract, that their severance pay should be retroactively increased. The employer has not confirmed this.

<p>Process to roll-in into RRSP</p>	<p>With the full encouragement of PSAC, Treasury Board has arranged a blanket tax waiver with the Canada Revenue Agency, for those rolling over \$10,000 or less into their RRSP. Revenu Québec also informed Treasury Board that they will accept the same waiver form up to \$10,000 as approved by CRA (regardless of their province of residence).</p> <p>The employer will provide all employees with a copy of this form to complete and return to the employer if they wish to go ahead with this roll-over.</p> <p>For employees wanting to roll over more than \$10,000 into an RRSP, they will need to contact the Canada Revenue Agency (and Revenu Québec if applicable) and request a tax waiver as quickly as possible.</p> <p>The following are the federal and provincial income tax forms you need to complete to request a reduction in tax deductions:  T-1213-Federal: request to reduce tax deductions at source  TP-1016-Provincial (Québec): application for a reduction in source deductions of income tax</p>	<p>Link to the forms:</p> <p>T-1213 - Canada Revenue Agency website:  <a href="http://www.cra-arc.gc.ca/E/pbg/tf/t1213/">http://www.cra-arc.gc.ca/E/pbg/tf/t1213/</a></p> <p>TP-1016 - Revenu Québec  <a href="http://www.revenuquebec.ca/en/sepff/formulaires/tp/tp-1016.aspx">http://www.revenuquebec.ca/en/sepff/formulaires/tp/tp-1016.aspx</a></p> <p>Other info:  Email from David Orfald, May 25, 2011:</p> <p>Yes. You can rollover all or some of what you are taking now. Tax will not be withheld on the portion that is to be rolled over, but it will be withheld on the remainder.</p> <p>David Orfald  Director CBB</p> <p>-----Original Message-----  From: Jeannie Baldwin  To: David Orfald &lt;OrfaldD@psac-afpc.com&gt;</p> <p>Sir or Madam:</p> <p>Regarding subject payout, would it be possible for a member is receiving more than 10,000 to roll the first 10,000 into a RSP and take the rest after it is taxed? I did not see that option listed and wanted to be sure that I could do that. I have unused RSP space to roll in the 10K. Thank you.</p>
<p>Pension buy-back</p>	<p>Employees wishing to purchase prior service are to contact the Public Service Pension Centre who will advise employees on the required forms.</p> <p>More information is available for pension buy-back:  <a href="http://www.tpsgc-pwgsc.gc.ca/pension/act/rachat-buyback/index-eng.html">http://www.tpsgc-pwgsc.gc.ca/pension/act/rachat-buyback/index-eng.html</a></p> <p>Link to the contact information for the Public Service Pension Centre:  <a href="http://www.tpsgc-pwgsc.gc.ca/pension/cn-cu-eng.html">http://www.tpsgc-pwgsc.gc.ca/pension/cn-cu-eng.html</a></p>	<p>Extract for the Compensation Directive 2011-012:</p> <p>"Employees can apply all or a portion of their payment towards the buyback of elective service pursuant to the Public Service Superannuation Act (PSSA) (including arrears).</p> <p>It is important to note that the compensation advisors will not be able to transfer the payment to the Public Service Pension Center (PSPC) on your behalf. Once the severance liquidation payment is received, you will be responsible to submit a request for the required amount, along with a personal cheque, to PSPC directly."</p>
<p>Employees acting in the PA, SV and EB bargaining units</p>	<p>The employer interpretation is that employees acting in the PA, SV and EB bargaining are not entitled to the early cash-out of severance. It's our position that they are entitled to the early cash-out since they are covered by the collective agreement of their new group. The payment though will be paid at their substantive position.</p>	

Rate of pay applicable for the early cash-out of severance

The rate of pay for the payment of severance will be the rate of pay of the employee's substantive position as of the second day of the new collective agreement as stated in xx.05 of the severance pay articles:

PA - June 22, 2011  
 SV- August 6, 2011  
 EB - July 2, 2011

xx.05 Options

The amount to which an employee is entitled shall be paid, at the employee's discretion, either:

(a) as a single payment at the rate of pay of the employee's substantive position as of (PA group, June 22, 2011 EB group, July 2, 2011 and SV group, August 6, 2011), or

(b) as a single payment at the time of the employee's termination of employment from the core public administration, based on the rate of pay of the employee's substantive position at the date of termination of employment from the core public administration, or

(c) as a combination of (a) and (b), pursuant to XX.06 c).