



Canadian Union of Public Employees

257 Adelaide Street West
Third Floor
Toronto, Ontario
M5H 1X9
Tel: (416) 977-1629
Fax: (416) 977-9546
www.cupelocal79.org

Executive Committee

President:

Ann Dembinski

1st Vice-President:

Russ Armstrong

Vice-President/Chief

Steward:

Tim Maguire

Vice-President - Equity:

Livingstone (Livy) Holder

Recording Secretary:

Nancy Murphy

Treasurer:

Lily Chang

Membership Secretary:

David Kidd

Assigned CUPE

Representatives:

Derek Lue

Helen Manning

Don Styles

Bridget Pridham

Charlotte Monardo

Bargaining Units:

City of Toronto

Full-Time

City of Toronto

Unit B

Part-Time

City of Toronto

Recreation Workers

Part-Time

City of Toronto

Homes for the Aged

Part-Time

Bridgepoint Hospital

Service Unit

Bridgepoint Hospital

Nurses and Paramedical

Unit

SERVING OUR
MEMBERS
SINCE
1942

CUPE 79

MEMORANDUM

TO: CUPE Local 79 Members, City of Toronto

FROM: CUPE Local 79

DATE: June 12, 2006

RE: **SIX PRACTICAL WAYS OF PROTECTING YOURSELF
AGAINST THE CITY'S
"ATTENDANCE MANAGEMENT PROGRAM"**

In July 2001, City Council adopted an "Attendance Management Program" aimed at City employees.

Under the Program, the City monitors, questions and generally gives employees a "hard time" over absences from work legitimately due to illness or to an injury which occurred away from work.

Local 79's position is that the Program is unfair and contrary to your collective agreement. Our position is that the City has no right to hassle employees who are legitimately absent for reason of illness or an injury which occurred away from work. We consider the Program, in concept and in practice, to be improper, demeaning and intimidating.

Local 79 accordingly has opposed the Program since its inception, as you know from the updates that we have sent you in the past. Our opposition has included the filing of a policy grievance against the City under your collective agreement. An arbitration board is now sitting in order to hear the case.

Meanwhile, attached to this memo are six practical tools to help you protect yourself against the Program. The tools expand upon the ones we have sent you in the past. We trust that you will find the details both interesting and useful.

Yours in solidarity,

Ann Dembinski
President

on behalf of the Local 79 Executive Committee

(Russ Armstrong, Tim Maguire, Nancy Murphy, Livy Holder, Lily Chang, David Kidd and Ann Dembinski)



SIX PRACTICAL WAYS OF PROTECTING YOURSELF AGAINST THE CITY'S "ATTENDANCE-MANAGEMENT PROGRAM"

There are five important matters which we would like to mention before getting into the 'Six practical ways of protecting yourself'.

First, the information and advice which we give you in this document pertain only to legitimate absences for medical reasons. That's what the City's Program deals with. Employees who are absent from work *without* legitimate reason may be subject to discipline by the City. Moreover, even if there were no Program, whenever an employee is legitimately absent from work for medical reasons, there is an obligation on the employee to notify the supervisor in a timely way that the employee will be absent. Failure to do so could lead to discipline. And finally, remember that the City can require medical notes in the particular circumstances referred to in Article 11.11 of the full-time collective agreement ("Sick Pay").

Second, absences for which employees receive benefits under the *Workplace Safety and Insurance Act* are excluded from the Program. The WSIB recognizes claims for any work-related injuries or illnesses that are caused by physical, chemical or biological hazards in the workplace. If you believe that your work, or an accident at work, is the cause of or a significant contributing factor to any illness, injury or disability that causes you to be absent from work, then you should promptly report the situation to your supervisor and ensure that the proper Report of Accident forms are completed. You should, of course, also seek medical attention promptly.

Third, just to remind you, here is a brief summary of the City's "Attendance Management Program".

For each department/division, the City has calculated an annual average number of days of legitimate absence taken by the employees, due to illness and to injury which occurred away from work. (As already noted, absences for which employees receive benefits under the Workplace Safety and Insurance Act are not counted.)

The City then uses that annual average as a benchmark. Each employee's personal annual total number of days of legitimate absence is calculated periodically and compared to the benchmark annual average. For each employee whose total is greater than the benchmark average, the employee's supervisor is supposed to hold an 'informal meeting' with the employee to discuss management's concerns about the absences. The employee now is "in the Program".

During the next six-month period (or less), if the employee's total number of days of legitimate absence is greater than the benchmark annual average divided by two - now that the employee is "in the Program", the City starts looking at the employee's six-month figures, no longer at the employee's annual figures - the supervisor holds a 'first formal meeting' with the employee to discuss management's concerns again. This time, a letter is sent to the employee. The letter is kept on file by the City, but we don't yet know if such letters are placed in employees' personnel files or are kept in some other place.

During the next six-month period (or less), if the employee's total number of days of legitimate absence again is greater than the benchmark annual average divided by two, a 'second formal meeting' is held and another letter is sent to the employee. At this meeting the supervisor warns the employee of the possible consequences of continuing to be above the benchmark annual average divided by two - according to the Program as written, the employee could be 'transferred', 'demoted' or 'denied promotion'.

There are similar steps to be taken in the succeeding six-month periods (or less), leading to the 'third formal meeting' (plus another letter) and 'fourth formal meeting' (plus another letter). At the stage of the 'third' and the 'fourth formal meeting', employees are informed that the possible consequences of a continuing record of legitimate absences above the benchmark average include 'termination'.

Fourth, again just to remind you, Local 79 rejects the premise of the Program that an employee who is legitimately absent due to illness or injury more than a statistical average, automatically has an 'attendance problem' justifying management intervention and eventual management sanctions.

Even the Program itself implicitly acknowledges that an employee who is legitimately absent due to illness or injury more than the statistical average, is absent due to circumstances beyond the employee's control. If that were not the case, the absence would not be legitimate, and so would not fall under the Program, but rather would be handled by the City as a "disciplinary matter".

Furthermore, Local 79 opposes supervisors meeting with employees to discuss the details of employees' legitimate absences, and we oppose the sending of letters. We also oppose the blanket characterization of legitimate absences as "unacceptable" - this is how the employee's absences are referred to at the 'second formal meeting' - and we oppose the Program's threats of sanctions. We also oppose the sacrifice of privacy that the Program entails for employees in practice. Local 79 considers the entire process to be improper, demeaning and intimidating.

Finally, Local 79 does not accept the general premise of the Program that legitimate absences caused by illness or injury can be reduced by meetings and letters. (Unless, of course, you are intimidated into coming to work when you are ill or injured, or into returning to work before you have sufficiently recovered. Your statistics will 'improve', but your health will be harmed.) A Program that drives down absences in such a fashion is absolutely unacceptable to Local 79, and, in our view, it violates your collective agreement.

Fifth, Local 79 encourages you to be as healthy as you can be. This means remembering that prevention and self-care help can assist to keep you well. Get your sleep, exercise, eat properly, and don't smoke. Get regular checkups, consult your family doctor or other professional health advisor when you have concerns involving your health, try to get yourself a family doctor if you don't already have one, and follow prescribed treatments. Also, you can apparently reduce your chances of getting a cold or a flu by keeping your fingers out of your eyes and washing your hands regularly (including at the workplace. Recent research has drawn attention to the fact that

workplace telephones, desks and keyboards tend to be highly germ-laden.) There's lots of good information about prevention and self-care out there. Have a look around.

Turning now to the **'Six practical ways of protecting yourself'**:

1. ARE YOU ILL, OR DID YOU GET INJURED AWAY FROM WORK?

Local 79's position is as follows:

The purpose of your sick bank is to assist you when you cannot carry out your job duties because of illness or because of an injury which occurred away from work. When that happens, *you should not come to work and should use whatever number of sick day(s) you really need.*

You should *not* return to work until you have *sufficiently recovered*. By "sufficiently recovered", we mean:

- (a) *do not* return to work until you have recovered to a point where you can carry out your job duties to the standard expected of you;
- (b) *do not* return to work until you reasonably judge, or your doctor tells you, that our recovery will not be prolonged or your health jeopardized by returning to work at this time, as opposed to taking more sick day(s); and
- (c) in the case of contagious illnesses like colds and the flu, *do not* return to work until you reasonably judge, or your doctor tells you, that you no longer risk infecting your fellow workers or members of the public.

By the same token, *do* return to work as soon as you have "sufficiently recovered" as defined by (a), (b) and (c) above.

Needless to say, if your doctor has given you any advice respecting the foregoing matters, follow your doctor's advice.

It probably has occurred to you that by taking Local 79's position to heart, i.e., by taking whatever sick time you really need in order to recover sufficiently, you may be increasing the chances that your absences will go over the benchmark average. Thus, by taking whatever sick time you really need, you may be increasing the chances of becoming ensnared in (or staying ensnared in) the Program. (Indeed, we have heard from many members that they deliberately do not take sick days at all, or return to work even though they are still sick or have not sufficiently healed, in order to stay out of the clutches of the Program, i.e., in order to avoid hassles from supervisors and threats of transfer, demotion, denial of promotion and eventual dismissal.)

Local 79's answer is that, yes, by taking whatever sick time you really need, you may indeed be increasing the chances that your absences will go over the benchmark average. But in our considered judgement, *the Program's coercive language is an exaggeration.*

In our view, the real goal of the Program is to cause you and your fellow employees to 'choose' to take fewer legitimate sick days. The Program tries to bring this about by subjecting employees to hassles and warnings of sanctions. But the management will *not* be able to make those sanctions actually stick, in an arbitration, simply because an employee's numbers were over the benchmark average.

An employee's numbers would generally have to be *well beyond the norm* before the management would be allowed by arbitrators to impose a transfer, promotion or denial of promotion, *no matter what the Program implies*.

And an employee's numbers would have to be *way beyond the norm* — the word often used for this is that the employee's numbers would have to be "egregiously" bad — before the management would be allowed by arbitrators to impose a termination, *no matter what the Program implies*.

Yes, our experience to date is that the management may well hassle you (we have some more advice for you about this in Tip #6, below). *But no matter what the Program implies, the management will not be able to get away with sanctioning you with a transfer, demotion, denial of promotion or termination simply because your personal numbers went over the benchmark average.*

Local 79 believes that the management knows this perfectly well. But if a rogue supervisor ever does try to sanction you simply because your personal numbers went over the benchmark average, a grievance should be filed right away. Call your Local 79 steward and we'll do the job.

So our advice to you is: Do not live in fear of the Program. *Take your sick days when you really need them, and do not return to work until you have sufficiently recovered.* And if you're told to attend a meeting with your supervisor, take the whole thing in stride by following the advice in Tip #6, below.

2. DO YOU HAVE A "DISABILITY"?

Your collective agreement states that no employee is to be discriminated against by reason of handicap. Handicap is to have the same meaning as under the *Ontario Human Rights Code*. In fact, the word handicap has been replaced by the word "disability" under the *Code*. "Disability" is broadly defined under the *Code* and includes "any degree of physical disability that is caused by bodily injury or illness". "Disability" also includes "a mental disorder".

Local 79's position is as follows:

Obviously, not every illness or injury is a "disability". A cold or flu of a temporary nature has been held not to constitute a "disability". To fall under "disability", the illness or injury *must be*

of a chronic nature and have the capability to keep an employee from going to work, such as the medical conditions listed below.

As well, not every occasion of illness or injury which falls under "disability" will keep the employee with the "disability" from going to work. Only those occasions of sufficient seriousness will keep the employee from going to work. So, if the existence of the Program prompts you to consider disclosing a "disability" to the employer (see below), there would clearly be no point in doing so if the "disability" is not causing you to be absent from work.

Now, if some or all of your absences from work are indeed caused by a "disability", and provided you are willing to do two things - first, disclose the nature of the "disability" to the City, and second, authorize your doctor to confirm the nature of the "disability" to the City — Local 79's position is that the City *must remove those absences from the scope of the Program, and if those absences caused your personal number to go over the average, you must not be subject to the Program.*

Following is a list of some medical conditions which Local 79 considers to be "disabilities" that have the capability to keep an employee from going to work:

Diabetes; arthritis; muscular dystrophy; cancer; cerebral palsy; chronic migraine headache; having a deformed limb, back, hand or foot; chronic deep vein thrombosis; epilepsy/seizures; polio; head or brain injury; a degree of paralysis, amputation, blindness or visual impairment; deafness or hearing impairment; muteness or speech impairment; physical reliance on a wheelchair or other remedial appliance or device; chronic gynecological condition; drug or alcohol dependency; chronic condition of the hand or wrist, including chronic carpal tunnel syndrome; fibromyalgia; chronic pain syndrome; heart disease or condition; hypertension (high blood pressure); Crohn's disease; ulcerative colitis; chronic enlargement of the prostate; chronic gastroenteritis; other chronic condition of the stomach, bowel, kidney or bladder; HIV/AIDS; allergies, including chronic sinusitis; back, spine, knee, elbow, neck, shoulder, groin, hip, foot or ankle condition or injury leading to a chronic medical problem; multiple sclerosis, ALS (Lou Gehrig's disease), or other chronic neurological condition; Epstein-Barre syndrome; narcolepsy; stroke; chronic condition of the eye; obesity resulting from an injury, illness or other cause that is beyond the control of the individual; mental disorder including personality disorder, obsessive-compulsive disorder, schizophrenia, bipolar disorder, or depression; chronic repetitive strain injury; Parkinson's disease; asthma, emphysema, or other chronic lung disease; and hepatitis. Included by definition in a "disability" are the side effects of prescribed medication being used to treat the "disability".

The foregoing list is not exhaustive. For Local 79's position on a medical condition not covered above, feel free to contact Leah Deffett at the Local 79 Office (416-977-1629, ext. 227). She'll give you good, confidential advice.

Local 79 invites you to think about this matter, but also cautions you that the decision whether to claim that any or all of your absences are caused by a "disability" is a very important decision with potentially significant consequences. Remember, if you claim that a "disability" caused some or all of your absences, you will be expected to disclose the nature of the "disability" and you almost certainly will be required by management to supply a doctor's note to confirm the "disability".

If you wish to go ahead, in our view the best way to disclose a "disability" to management is to contact the City's EAP office or the City's Employee Health Service and set up a meeting with them. This avoids having to disclose the details of your medical condition directly to your supervisor. But we strongly encourage you not to disclose a "disability" without speaking to your Local 79 steward first. Moreover, you can always contact Leah Deffett at the Local 79 Office (416-977-1629, ext. 227) to get good, confidential advice about any of these matters.

Finally, we just want to emphasize that management is forbidden by the collective agreement to discriminate against an employee due to a "disability". So if you disclose a "disability" and later believe that management is discriminating against you due to the "disability", call your Local 79 steward right away. We'll fully assist you in filing a grievance.

3. DO "SPECIAL CIRCUMSTANCES" APPLY?

Under the wording of the Program, at the stage of the "informal meeting" the supervisor has the authority to keep you out of the Program if "special circumstances" exist.

Local 79's position is as follows:

First, Local 79 expects that authority to be exercised reasonably.

Second, what kinds of situations qualify as "special circumstances"? Following is a list of some situations which qualify, in our view:

Pregnancy; side effects of prescribed medication being used to treat a medical condition that is not a "disability"; a one-time bad bout of the flu (or the like); menopause; personal or family trauma or crisis, including (but not limited to) domestic violence; an epidemic, or any cause of a public-health emergency; and an operation or medical procedure not related to a "disability".

In our view, one-time accidental injuries that are not "disabilities" also qualify. Be aware, however, that if such accidents become repetitive, due to the employee's participation in risk-taking sports or the like, the City could be within its rights to insist that the employee change his/her behaviour.

If your absences from work are caused by any of the above situations, and provided you are willing to do two things - first, disclose the existence and nature of the situation to the supervisor, and second, authorize a medical or other appropriate professional to provide confirmation, if requested by management — *the supervisor should reasonably keep you out of*

the Program. If the supervisor refuses to do so, a grievance should be considered right away. Call your Local 79 steward to discuss the circumstances.

Local 79 invites you to think about this matter, but also cautions you that the decision whether to claim that your absences are caused by one of the foregoing situations is an important decision with potentially significant consequences. Remember, if you claim that the situation caused your absences, you will be expected to disclose the existence and nature of the situation and you probably will be required by management to supply written confirmation from a doctor or other appropriate professional.

So we encourage you not to disclose without speaking to your Local 79 steward first. As well, you can always contact Leah Deffett at the Local 79 Office (416-977-1629, ext. 227) to get good, confidential advice about any of these matters.

Finally, the foregoing list is not exhaustive. For Local 79's position on a situation not covered above, call your Local 79 steward to discuss the circumstances. Your steward then will obtain Local 79's position and will get back to you.

4. WHAT'S THE STORY ON ILL-DEPENDENT DAYS?

Local 79's position is as follows:

Although an employee's ill-dependent days come out of his/her sick bank, Local 79's interpretation of the Program is that absences due to ill-dependent days are *not* covered by the Program, and our belief is that they are not counted under the Program.

5. A COUPLE OF SCENARIOS THAT ARE IMPORTANT TO NOTE IF YOU'RE "IN THE PROGRAM"

1. The reason you're "in the Program" is that your personal number of days of legitimate absence was above the benchmark average for a defined period of time. Note, however:

If your personal number subsequently falls below the benchmark average and stays there for a six-month period, but then again goes above the average during the next six-month period or less, Local 79's position is that, under the wording of the Program, the City should *repeat the step in the process that you were already at, rather than escalate you to the next step in the process*.

2. To repeat, the reason you're "in the Program" is that your personal number of days of legitimate absence was above the benchmark average for a defined period of time. Note, however:

If your personal number subsequently falls below the benchmark average and stays there for a two-year period, you will no longer be "in the Program". At the end of the *next* one-year period, if your personal number again goes above the average, Local 79's position is that, under the wording of the Program, the City should *begin the process afresh with an "informal meeting", i.e., at the beginning of the process.*

6. HAVE YOU BEEN TOLD TO ATTEND A MEETING WITH YOUR SUPERVISOR REGARDING YOUR TOTAL NUMBER OF DAYS OF LEGITIMATE ABSENCE DUE TO ILLNESS OR TO INJURY WHILE AWAY FROM WORK?

Local 79's position is as follows:

First, as discussed under Tip #1, take the meeting in stride by following the advice which is given below.

Second, an employee is under *no obligation* to reveal the medical cause of his/her absence(s) to the City. This applies across the board — orally or in writing, in meetings with supervisors under the Program, in meetings that the supervisor might set up for you with the City's EAP office or the City's Employee Health Service, or otherwise. Indeed, the City can take no action against an employee for safeguarding his/her privacy rights in this regard. Moreover, if the supervisor sets up meetings for an employee with the City's EAP office or the City's Employee Health Service, the employee does not have to attend and the City can take no disciplinary action against the employee for not attending.

Third, the City cannot require you to provide a doctor's note *under the Program*, particularly one which specifies the condition that has been causing your absence(s). Local 79's position is that the City can generally only require medical notes in the particular circumstances referred to in Article 11.11 of the full-time collective agreement ("Sick Pay"). The details of your condition are not the City's business, and supervisors would not know how to assess most information, in any case.

However, as already discussed, an employee might wish to disclose the cause of his/her absence(s) to the City if the cause is a "*disability*" (see Tip #2, above), or if the cause falls within the list of situations that Local 79 considers to be "*special circumstances*" (see Tip #3, above).

Fourth, turning now to any actual meetings that might be called between you and the supervisor under the Program, Local 79's position is that you need a Local 79 steward to be present, in order to advise you about your rights. After all, the Program proclaims that your legitimate absences could jeopardize your employment rights. Your privacy rights are also potentially in play. You therefore are encouraged to insist upon the presence of a Local 79 steward at the meeting.

If the supervisor denies you the opportunity to bring a Local 79 steward, then you should inform the supervisor that you will be attending the meeting under protest. Also, you should record the denial in the form letter that we refer to below.

Fifth, here are some other recommendations:

At the meeting, take notes. Keep them in a safe place.

At the meeting, request a printout or summary of your personal attendance record. If the supervisor refuses, you should record this fact in the form letter that we refer to below.

At the meeting, ask the supervisor for the divisional/departmental benchmark average and write it down. If the supervisor refuses, you should record this fact in the form letter that we refer to below.

At the meeting, advise your supervisor that you will be providing him/her with a letter. (See the form letter below).

Provide your Local 79 steward with a copy of any letters you receive from the City concerning your attendance.

At the meeting, feel free to state (or, if a Local 79 steward is present, the steward can say on your behalf):

- that your absences from work have all been for legitimate medical reasons and that your time off due to illness, and/or injury which occurred away from work, has not been excessive. (*As explained earlier, if you are considering whether to disclose that a "disability" has caused some or all of your absences, or, at the "informal meeting" stage, that "special circumstances" apply, you should first consult with a Local 79 steward.*)
- that you agree with Local 79's position that if employees are ill or injured, they should take whatever sick days they need and should not return to work until they have sufficiently recovered.
- that you reject the general premise of the Program that legitimate absences caused by illness or injury can be reduced by meetings and letters. (Unless, of course, employees are intimidated into coming to work when they are ill or injured, or into returning to work before they have sufficiently recovered. The statistics on sick leave will 'improve', but employees' health will be harmed.)

- that if the City in future relies upon your legitimate time off due to illness, or to injury which occurred away from work, to take any action against you or to deny or prejudice any rights or benefits that you are entitled to under the collective agreement, you reserve the right to file a grievance.
- that you agree with Local 79's opposition to the City's "Attendance Management Program".
- that you agree with Local 79's position that the Program improperly hassles and intimidates employees who are legitimately absent.
- that you agree with Local 79's position that the Program is improper and contrary to the collective agreement.
- that you reject the premise of the Program that an employee who is legitimately absent due to illness or injury more than a statistical average, automatically has an 'attendance problem' justifying management intervention and eventual management sanctions.
- that you agree with the fact that Local 79 has filed a policy grievance against the Program under the collective agreement.

Sixth, attached is a blank form letter. If the supervisor holds an 'informal meeting' with you, or if you receive a letter from the supervisor following 'formal meetings' 1, 2, 3, or 4 — you are not supposed to be sent a letter by the supervisor after an 'informal meeting', only after a 'formal meeting' — we recommend that you respond by photocopying the attached blank form letter, filling it in, and giving it to the supervisor. (Keep the attached blank form letter for possible future use, keep a photocopy of what you give to the supervisor, and give a photocopy of it to your Local 79 steward.) Local 79 is requesting that its stewards send copies of all attendance letters — yours and the City's — to the Local 79 Office.

If you need advice on any matter, contact your Local 79 steward. Also, you can always phone and leave a message on Local 79's "Attendance Management" hotline (416-977-1629, ext. 355, and someone will call you back as soon as possible.

Please see the attached form letter for use by Local 79 members.

FORM LETTER FOR USE BY LOCAL 79 MEMBERS

PLEASE PRINT

TO: _____
(Supervisor/Manager)

FROM: _____
(Employee Name)

WORK LOCATION: _____

DEPARTMENT: _____

DIVISION: _____

CLASSIFICATION: _____

Date: _____

RE: ATTENDANCE MANAGEMENT PROGRAM _____

Note: Please tick off all boxes which are applicable to your situation, and leave blank all the boxes which are not applicable to your situation.

- I have been spoken to concerning my absences due to illness and/or injuries which have occurred away from work.
- I have received what I consider to be an unjustified letter concerning my absences due to illness and/or injuries which occurred away from work.

My absences from work have all been for legitimate medical reasons and my time off due to illness and/or injury is not excessive.

.... over

I would also like to note, for the record:

- You refused my request to have a Union steward present at our meeting.
- You refused to provide me with a printout or summary of my attendance record.
- You refused to tell me the divisional/departmental average for absences covered by the Program.

I understand that Local 79 has filed a policy grievance challenging the City's "Attendance Management Program" and the Policy document. I further understand that the policy grievance incorporates my individual objection to the Program and Policy and if successful, will resolve my objection and will remedy my personal situation in this regard.

In any event, if the City in future relies upon my time off due to illness, or to injury which occurred away from work, to take any action against me or to deny or prejudice any rights or benefits I am entitled to under the collective agreement, I reserve the right to file a grievance.

If any document concerning my attendance is placed in a file, I hereby request that this letter, too, be placed in the file for future reference.

Employee Signature

cc Local 79