



CASUAL GUIDELINES

BACKGROUND

AHS began to issue Casual Guidelines on a site-by-site case in 2015. The Union grieved and has a number of unresolved grievances. AHS and UNA discussed the issue at Joint Committee and agreed to explore a Joint Statement on Casual Employees. The parties eventually chose to enlist a Mediator to assist the discussion. UNA staff and UNA Members selected from Joint Committee met for mediation on February 6th, 2018. The parties were unable to resolve. UNA identified items to assist Local Representatives and LROs to deal with issues that arise from Casual Guidelines with any Employer. The intent of this document is to clarify issues and provide guidance to achieve a more consistent approach by UNA across all Employers with respect to Casual Guidelines.

ISSUES

DIFFERENCE 1

Employers may require a minimum, defined expectation for availability and/or shifts worked within a defined period of time. Occasionally, this requirement is applied to multiple units at the same time. The requirement is often accompanied by an expectation to work any and all shifts including days, evenings, nights, weekends and named holidays.

A Casual Guideline that requires a minimum defined expectation for availability and/or shifts worked, is not a permitted exercise of Management Rights because it contravenes Article 30.03(a)(i) of the Collective Agreement: "No Casual Employee shall be scheduled except with their consent." Even if an arbitrator concludes this is a permitted exercise of Management Rights, the Union may take issue with the specified number of shifts outlined in the Casual Guidelines.

A Casual Employee has a right to decline work but they also need to be available for work with sufficient frequency to justify the continuation of an employment relationship. The Employer must undertake an individual analysis of the circumstances to determine whether an Employee is competent and may not substitute “shifts worked” as a proxy for competence.

Prior to taking any disciplinary action, the Employer must investigate, warn and provide an opportunity to correct. From UNA’s perspective, discipline may include steps to restrict the Employee’s right to be offered shifts, cancellation of casual shifts, removal from a casual list, or termination of employment. Article 23.09 states, “...there shall be no suspension, dismissal or discipline except for just cause.”

GUIDANCE: Locals and LROs will need to address three potential, simultaneous arguments. First, do the Casual Guidelines result in Employees scheduled without their consent? If so, UNA takes the position the Employer is not permitted to do so and files a grievance. Second, if the Employer is permitted to create a Casual Guideline, then whether the specific thresholds imposed for that unit or site, are reasonable? The Local and LRO will investigate the Employer’s rationale for the specified requirements. Finally, whether the Employer has applied their Casual Guidelines appropriately.

When assessing the Employer’s application of their policy, the Employer must investigate the particular circumstances, must notify the Employee of their specific concerns, and must warn the Employee of the potential consequences of their behaviour. The Local and LRO should consider the following factors:

- i. Frequency with which the Employee was offered shifts,*
- ii. Frequency with which the Employee refused shift assignments,*
- iii. The time period within which the Employee refused shift assignments,*
- iv. The reasons provided for refusing shift assignments,*
- v. The potential for the Employee to develop an “active status.”*
- vi. Opportunities provided by the Employer for Employees to change their behaviour (ie. opportunity for the Employee to accept shift assignments*

DIFFERENCE 2

Employers place restrictions on a Casual Employee’s ability to cancel shifts.

Both the Employee and the Employer have a right to cancel a shift.

GUIDANCE: UNA and AHS agreed to a Joint Statement in 2007 that provides guidance to all parties. Fundamentally, everyone should exercise their rights fairly and reasonably and communication is the key.

DIFFERENCE 3

Employers mandate Employees to attend in-services.

On its face, this contravenes the Casual Employee's right to only be scheduled with their consent. The Employer cannot mandate the Casual Employee to attend on any particular day but they do retain Management Rights to impose minimum requirements for a position. The Employer must clearly articulate these minimum training requirements to the Employees and outline when that training will be available. Once the Employee is aware of the requirement and aware of opportunities for training, the Employee is responsible to meet those requirements. The Employee decides when to attend the training, not the Employer. If the Employee chooses not to complete required training, the Employer will be justified to refuse to offer shifts to the Casual Employee.

GUIDANCE: Locals and LROs should work with the Employee and Employer to: explain the Employee's rights and obligations, identify training requirements, and locate mutually agreeable dates/times when they may complete required training.

DIFFERENCE 4

Employers restrict a Casual Employee's ability to exchange shifts.

The Collective Agreement provides the opportunity for Employees to exchange shifts, subject to the limits outlined in Article 7.05. Article 7.05 applies to Casual Employees (it is not excluded in Article 30.03). The Employer must exercise their discretion to determine whether they will approve the shift exchange, as they do with Regular and Temporary Employees.

GUIDANCE: Locals and LROs should work with the Employees seeking a shift exchange and the manager to ensure that the manager does not deny based solely on the Casual Employee's status. For example, the Employer should not conclude that a Casual Employee with no history of shift cancellations is more likely to cancel a shift simply because they have a right to do so as a casual.

DIFFERENCE 5

Employers seek agreement from Employees (individually or as a group) to implement Casual Guidelines on units/sites.

No Employee shall be required or permitted to make any written or verbal agreement which may be in conflict with the terms of the Collective Agreement. Casual Guidelines that include any items referred to in this document are considered by UNA to be in conflict with the terms of the Agreement.

GUIDANCE: Employees should be advised not to negotiate directly with the Employer and also not to sign Casual Guidelines. Locals and LROs should contact the Management and HR personnel and instruct them to cease and desist from negotiating directly with UNA's members. Locals and LROs shall not negotiate Casual Guidelines on their unit or sites that conflict with the Collective Agreement.