



## Market Condition Lump Sum

The most recent Multi-Employer/UNA Collective Agreement (2007-10) includes a new provision that would provide a semi-annual payment to full and part-time employees. The provision calls for a payment after each six-month period of employment according to the following table:

April 1, 2007 –September 30, 2007:	\$750.00
October 1, 2007 –March 31, 2008:	\$750.00
April 1, 2008 – September 30, 2008:	\$812.50
October 1, 2008 –March 31, 2009:	\$812.50
April 1, 2009 – September 30, 2009:	\$875.00
October 1, 2009 –March 31, 2010:	\$875.00

The payment is intended to be a recognition of the contributions of Employees and to assist in retention efforts.

The first lump sum payment was made in the fall of 2007. Full-time Employees received the full amount of the lump sum, while part-time Employees received a pro-rated amount. A number of issues immediately became apparent.

One problem identified by members was that the lump sum payment would be clawed back by insurers if it were paid to Employees while on supplementary income. A second, more serious issue identified by the members was that time on vacation, STD/LTD, or maternity leave would count toward the payment for full-time Employees, but not for part-time Employees. The Employers also identified issue from their perspective that were problematic.

As a result of the concerns expressed by members, UNA filed grievances and UNA and HBA Services mutually agreed that grievance mediation should be utilized. After the mediation sessions, the mediator issued his recommendations (*see attached document*). UNA has agreed to these recommendations and the Employers' approval process is in progress.

The Mediator recommended that for the remaining lump sum payments, the payments be deferred for those on leave until they return to regular work. For all Employees, the lump sum would be calculated only on the basis of the Employee's FTE, plus additional shifts worked during that period, but excluding overtime shifts.

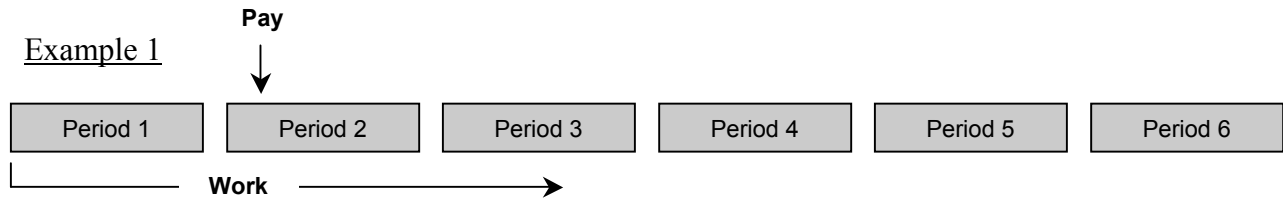
### How the payments would be implemented

Payment of the lump sum for each six-month period would typically be on the first pay cheque following the conclusion of the period. If you were on leave, you would receive any deferred payments when you returned to work, in lieu of the regular payment schedule.

The following examples illustrate the common scenarios that would be encountered. If you are full-time or part-time and at work, then you would receive the lump sum on the first pay cheque after the six-month period ends (Example 1). If you had been on a short leave, the lump sum would not be paid until you returned to work. I would not be on the first pay cheque after the six-month period (Example 2). If you were on leave and did not work at all during a single lump sum period (six months), then the Employer would agree to defer payment for the whole period until you returned to work (Example 3). If you were on leave for two or more consecutive periods (twelve months), then the Employer would only defer the most recent of the periods (largest payment) (Example 4).

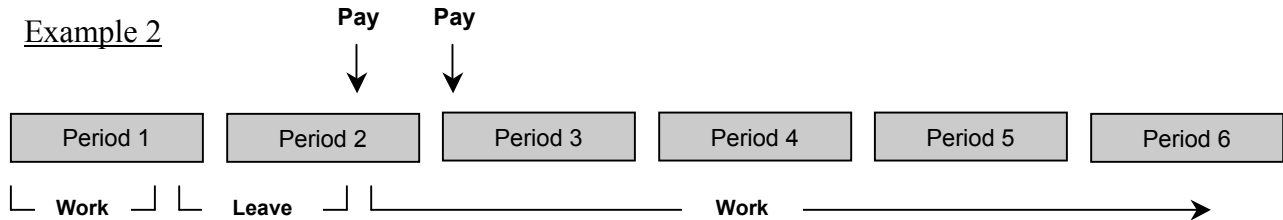
For additional details, please refer to the attached document.

Example 1



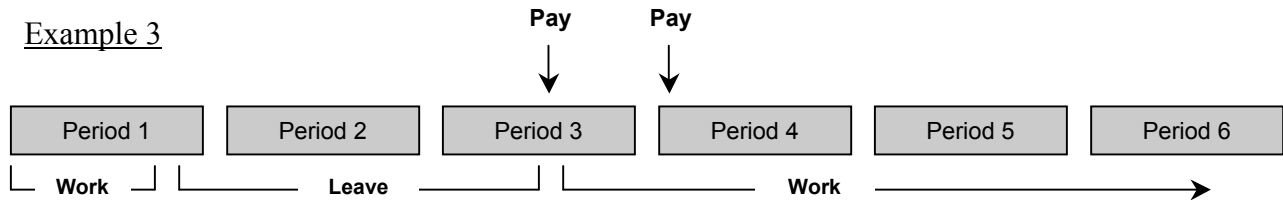
- **Work:** All of Period 1 and continue on in regular employment.
- **Paid:** The lump sum for period 1 paid at the beginning of period 2.

Example 2



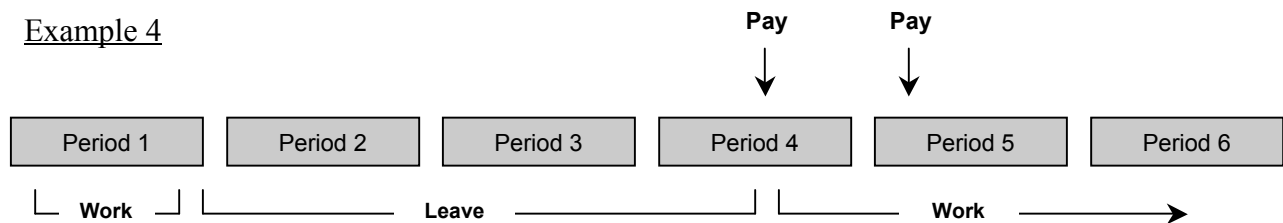
- **Work:** Part of Period 1.
- **Leave:** For the rest of Period 1 and part of Period 2, and then return to regular work in Period 2 and continue to work.
- **Paid:** The lump sum for Period 1 would be paid upon return to work in Period 2. Lump sum for Period 2 would be paid at the beginning of Period 3.

Example 3



- **Work:** Part of Period 1.
- **Leave:** For the rest of Period 1, all of Period 2 and return to regular work in Period 3.
- **Paid:** Lump sums for Periods 1 and 2 would be paid upon return to work in Period 3. Lump sum for Period 3 would be paid at the beginning of Period 4.

Example 4



- **Work:** Part of Period 1
- **Leave:** Rest of Period 1, all of Periods 2 and 3, return to regular work in Period 4.
- **Paid:** Lump sums for Periods 1 and 3 paid upon return to work in Period 4. Period 2 lump sum not paid because only one complete period can be deferred, and that is the most recent period (Period 3). Lump sum for Period 4 paid at the beginning of Period 5.

## MEDIATOR'S RECOMMENDATION

### For Resolution of Issues Related to the Multi-Employer/UNA Collective Agreement Letter of Understanding Re: Market Condition Lump Sum Payment December 14, 2007

The Parties have agreed that the main purpose of the Market Condition Lump Sum (MCLS) payment is to recognize the contributions of and to retain Employees. The Parties also agree that the inequities between full-time and part-time Employees arising from the implementation of the terms of the MCLS payment were unintended. Therefore, I recommend that the issues related to the implementation of the MCLS Letter of Understanding be resolved on a without prejudice and precedent basis as follows:

1. The semi-annual MCLS payments to part-time Employees will be pro-rated based on the Employees' full-time equivalency (FTE) plus any additional hours worked exclusive of overtime.
2. In order to receive the MCLS payment for the applicable semi-annual period referred to in Paragraphs 1, 2 or 3 of the MCLS Letter of Understanding, an Employee must be receiving payment from the Employer in the pay period for which the applicable semi-annual MCLS payment is to be paid.
3. Employees who perform work during a semi-annual eligibility period, but who are not receiving payment from the Employer in the pay period for which the applicable semi-annual MCLS payment referred to in Paragraphs 1, 2 or 3 of the MCLS Letter of Understanding is to be paid, shall have the lump sum payment for that period deferred and held by the Employer pending their return to active employment. (*see attached examples*)
4. Employees who do not perform any work during a semi-annual eligibility period, and who are not receiving payment from the Employer in the pay period for which the applicable semi-annual MCLS payment referred to in Paragraphs 1, 2 or 3 of the MCLS Letter of Understanding is to be paid, shall have the lump sum payment for that period deferred and held by the Employer pending their return to active employment. (*see attached examples*)
5. An Employee who does not perform any work during more than one complete semi-annual eligibility period shall only be entitled to defer the latest MCLS payment. An Employee shall not be eligible, and the Employer shall not be required, to hold more than one MCLS payment for semi-annual eligibility periods during which no work was performed by the Employee. (*see attached examples*)
6. An Employee who returns to active employment on or before September 30, 2010 shall be entitled to payout of any MCLS payment or payments deferred and held by the Employer in accordance with paragraphs 3 and 4 above. (*see attached examples*)
7. In the event that a disabled Employee is participating in a temporary return to work program, "active employment" shall be considered to occur either when the employee returns to their pre-disability position at the conclusion of the return to work program or when the Employee is placed in an accommodation which is permanent.
8. In addition to the pro-rated payment for the period up to and including the date of termination set out in Paragraph 6 of the MCLS Letter of Understanding, Employees terminating employment without returning to active employment shall only be entitled to the payout of any MCLS payment deferred in accordance with paragraph 3 of these Recommendations, but shall not be entitled to the payout of any MCLS payment deferred in accordance with paragraph 4 of these Recommendations.

These Recommendations are not binding and are subject to approval by the Parties. In the event that both Parties accept these Recommendations, the grievances related to the issues addressed through these Recommendations shall be deemed to be resolved. It is understood that the parties will pursue other avenues to determine if the MCLS payment is to be considered part of pensionable earnings for purposes of the Local Authorities Pension Plan and to determine if the MCLS payment is considered “regular earnings” for purposes of Article 29.05 of the Collective Agreement.

## **Examples to demonstrate the application of the Mediator's Recommendations for the Market Condition Lump Sum (MCLS) payment:**

1. Part-time Employee works regular shifts and additional shifts paid at the basic rate of pay for the period between October 1, 2007 and February 10, 2008. Part time employee then begins maternity leave, with the health-related portion ending April 25, 2008.
  - (a) Employee returns to work February 11, 2009.

### **MCLS Payments:**

**April 2008 MCLS payment** – amount would be pro-rated based on FTE plus any additional hours worked and paid at the basic rate of pay between October 1, 2007 and March 31, 2008. Because the Employee is receiving pay for the health related portion of maternity leave during the pay period in which the MCLS payment is paid, she is entitled to be paid on the first pay day following the pay period including March 31, 2008.

**October 2008 MCLS payment** – amount would be pro-rated based on FTE. Because the Employee is on unpaid maternity leave and not receiving any pay from the Employer in the pay period including September 30, 2008, the payment would be deferred and held by the Employer pending her return to work in February, 2009. Employee receives the deferred MCLS payment on the first possible pay period following her return to work in February, 2009.

**April 2009 MCLS payment** - Employee has returned to active employment. She would be eligible for the payment, and the amount would be prorated based on her FTE plus any additional hours worked and paid at the basic rate of pay from October 1, 2008 to March 31, 2009.

- (b) Employee does not return from maternity leave and terminates employment February 11, 2009.

### **MCLS Payments:**

**April 2008 MCLS payment** – paid in April 2008, as per above.

**October 2008 MCLS payment** - deferred pending return to work as above. However, this payment is not paid because no work was performed for the Employer between April 1 and September 30, 2008 and the Employee does not return to work.

**April 2009 MCLS payment** - On termination, the Employee would receive the pro-rated portion of the payment for April 2009, in accordance with paragraph 6 of the Letter of Understanding, as she has terminated employment within the eligibility period between October 1, 2008 and March 31, 2009. The pro-rating would be based on her FTE.

2. Full-time Employee works regular shifts during April and May, 2008 but becomes ill and is off work on sick leave effective June 2008. On the first pay period which includes September 30, 2008, the Employee is receiving Short-Term Disability benefits. In December, 2008 the Employee goes on Long-Term Disability benefits which continue until June 2009.

**MCLS Payments:**

***October 2008 MCLS payment*** – Employee not being paid by the Employer and the payment is deferred and held. Because work was performed for the Employer between April 1 and September 30, 2008, this payment is retained and is payable to the Employee on either return to work or termination.

***April 2009 MCLS payment*** – Employee is not being paid by the Employer and performed no work during the period between October 1, 2008 and March 31, 2009. Payment is deferred and held by the Employer pending return to work.

If the Employee returns to work in June 2009, she is eligible to be paid both the October 2008 MCLS and the April 2009 MCLS payments.

If the Employee does not return to work but terminates employment in June 2009, she is eligible to be paid only the October 2008 MCLS, plus a pro-rated portion of the payment for October 2009, in accordance with paragraph 6 of the Letter of Understanding, as she has terminated employment within the eligibility period between April 1 and September 30, 2009.

3. Full-time Employee works regular shifts during all of 2007, but becomes ill and is off work effective January 2008. On the first pay period which includes March 31, 2008, she is receiving Short-Term disability benefits. The Employee is off work through 2008 and receiving disability benefits until April 2009.

**MCLS Payment:** In this scenario, because she was not being paid by the Employer, the Employee was not eligible for payment during the applicable periods of April or October 2008, nor April 2009.

***April 2008 MCLS payment*** – deferred pending return to work or termination because work was performed by the Employee during the period from October 1, 2007 to March 31, 2008.

***October 2008 MCLS payment*** – deferred pending return to work or next MCLS payment in April 2009 becomes payable. This is so because no work was performed by the Employee during the period from April 1 to September 30, 2008.

***April 2009 MCLS payment*** – deferred pending return to work or next MCLS payment in October 2009 becomes payable. April 2009 payment replaces deferred October 2008 payment.

If the Employee returns to work in April 2009, she is eligible to receive the payment deferred for April 2008 (because she performed work during the eligibility period), and the payment for April 2009 that was deferred pending her return to work. She does not receive the October 2008 payment, which was replaced by the April 2009 payment.

If the Employee does not return to work but terminates employment, she is eligible to receive the pro-rated amount from April 1, 2009 to the date of her termination, in accordance with paragraph 6 of the LOU. In addition, she is eligible to receive the payment held in April 2008, because she performed work during that eligibility period. She does not receive any payment for April 2009, however, since no work was provided during the eligibility period for that payment.

4. Employee (full-time or part-time) works regular shifts up to March 15, 2008 but becomes ill and is receiving sick leave on the first pay period which includes March 31, 2008. Sick leave continues until May 10, 2008.

### **MCLS Payment**

In this scenario, the Employee is entitled to receive the MCLS payment due in April 2008 because she is still being paid sick leave by the Employer for the pay period in which the March 31, 2008 MCLS payment is paid. Her payment is not deferred or held by the Employer. The payment to the part-time employee would be pro-rated based on FTE plus any additional hours worked and paid at the basic rate of pay.