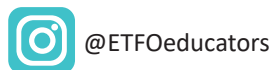


# A MEMBER'S GUIDE TO LONG TERM DISABILITY

May 2021

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)**  
**136 Isabella Street, Toronto, Ontario M4Y 0B5**  
**416-962-3836 • 1-888-838-3836**



## Long Term Disability

The ETFO provincial Long-Term Disability (LTD) plan came into effect on November 1, 2013. 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 became a common plan applicable to all members of the teaching affiliates in Ontario including ETFO, OECTA, OSSTF and AEFO. Participation in the plan is mandatory for all active full or part-time teacher local members, and most members on unpaid leaves of absence. The plan is administered by the Ontario Teachers' Insurance Plan (OTIP).

Participation in the ETFO LTD plan is mandatory and requires payment of LTD premiums from all covered members. ETFO members who have LTD coverage must continue to pay their LTD premiums while on most leaves of absence. Contact your local ETFO office for advice prior to your leave of absence to ensure your LTD coverage is not in jeopardy.

Entitlements to benefits are based on the language in the LTD policy. The LTD policy outlines the conditions you must meet in order to be approved for long-term disability benefits and to maintain your claim.

This Guide provides a generic overview of the provincial LTD plan features, the provisions of the LTD policy, 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.

Many ESP/PSP and 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 slightly 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. Further detailed information for ESP/PSP and DECE member plans may be obtained by contacting the LTD counsellor on duty at the ETFO provincial office.

## 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 counsellor in Professional Relations Services at 416-962-3836 or 1-888-838-3836.

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

## Mandatory Early Intervention

Early Intervention is a confidential service provided by OTIP designed to assist you in returning to work earlier, thereby shortening or preventing a long-term disability claim.

Your school board will provide your local ETFO office and OTIP with a *Notice of Prolonged Absence* once you have been off work due to illness for 15 consecutive working days or longer. An OTIP Early Intervention Rehabilitation Counsellor will contact you to offer Early Intervention assistance, dependent on the unique circumstances of your case.

## Filing an LTD Claim

The decision to apply for long-term disability benefits should be made in consultation with your health care practitioners, who have the best understanding of your medical condition, its implications, and whether or not you are disabled from performing the significant duties of your specific assignment.

To apply, you must complete an LTD claims kit. This may be obtained from your local ETFO office, your school board, and if necessary, directly from the LTD insurer.

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

### 1. Member's Statement

This statement provides general information about you, your specific assignment, your medical condition, the treatment you are currently undergoing and any future planned treatment. It also provides the opportunity for you to describe how the condition prevents you from being able to perform the significant duties of your specific assignment. A number of consents are also included for completion.

It is important that any information you provide is accurate, and should be consistent with the information your physician(s) will be report in the *Attending Physician's Statement(s) of Disability*.

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

There are two *Attending Physician's Statement 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 your disabling condition is a physical condition but there is also a mental condition disabling you from working, the physician must complete both *Attending Physician's 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.

### 3. Plan Administrator's Statement

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

## Timing of Application and Benefits

There is a time limit for completing an application for benefits. You must meet this deadline even if you are involved in other processes such as an approved WSIB claim, working in an accommodated partial assignment, seeking other medical accommodation or pursuing grievance arbitration. If you are having difficulty with this, contact your ETFO local.

The LTD policy has a waiting period or elimination period between the start of the disability and the start of benefit payments (see Plan Features). The waiting period begins from the date you stop working until the later of 110 working days or the expiration of your sick leave (S/L) and short-term disability leave (STD/L) days. **The 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.

During the waiting period, a member may access paid sick leave (at 100% of salary), short-term disability leave (at 90% of salary) or Employment Insurance sick benefits.

LTD benefits will not be approved unless the LTD carrier accepts that total disability persisted continuously from the date of disability, through the waiting 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.

## Plan Features

The chart below outlines the plan features as of January 1, 2020.

Benefit Level	50% of monthly gross earnings
Maximum Monthly Benefit	A benefit is based on a maximum annual salary of \$150,000
Benefit Tax Status	Non-taxable
Waiting (Elimination) Period	The later of 110 working days or expiration of sick leave and in no event more than 24 months
Initial Assessment Period	24 months
Cost of Living Adjustment (COLA)	On January 1 immediately following the Covered Member's Initial Assessment period 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
Termination of Benefits and Coverage	A member's benefits and coverage under the policy terminates on the <b>earliest</b> of the following: <ul style="list-style-type: none"> <li>the end of the month in which the Covered Member attains age 65;</li> <li>The date the Covered Member is first entitled to a 60% unreduced service pension from OTPP or OMERS</li> </ul>
Mandatory Early Intervention	Early Intervention services occur in the early stages of a medically related absence from work prior to the start of the benefit period.

**Please Note:** Members who were disabled prior to January 1, 2020 will continue coverage under the LTD policy in place on their date of disability.

## What Does “Total Disability” Mean?

Normally, you are only entitled to LTD benefits if you have sufficient proof that you are “totally disabled”.

There are two definitions of disability under the LTD policy pertaining to different periods of time in a claim, as follows:

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.
Gainful Employment/Gainfully Employed	Means work:
	<ol style="list-style-type: none"> <li>1. The Covered Member is medically able to perform;</li> <li>2. For which the Covered Member has at least the minimum qualifications;</li> <li>3. That provides income of at least 60% of the Covered Member’s inflation indexed pre-disability earnings; and</li> <li>4. That exists either in the province or territory where the Covered Member worked when the disability started or where the Covered Member currently lives.</li> </ol>

In the definition of disability pertaining to the Initial Assessment period, the phrase “the significant duties pertaining to 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 a day. The LTD insurer often determines that a member who can demonstrate ability to work half-time or a 50 per cent schedule should be able to work an additional 35-40 minutes per day, and therefore, be ineligible for payment of benefits under the LTD plan.

LTD benefits are payable during the initial assessment period (own occupation), if you are unable to perform the significant duties pertaining to your specific assignment. After this initial assessment period you may only continue to receive benefits if you are disabled from being gainfully employed at **any occupation, other than teaching**. It is more difficult to prove disability beyond the change of definition in the LTD plan.

In other words, at the two-year point in an LTD claim, if you and your physician(s) opine that you are not well enough to return to your specific assignment, you may no longer be entitled to LTD benefits because the insurer has determined that you are well enough to perform work in another occupation that may be less stressful and taxing than an education worker.

## Member Interview

The LTD insurer will conduct a member interview soon after all of the LTD application documents have been received. This is a standard procedure that occurs in every LTD application. The Disability Analyst will contact you to ask a number of questions to obtain more information about your illness, the treatment you are receiving, information about your daily activities, the functional restrictions and limitations you are experiencing, a description of your specific assignment and duties, and other pertinent information about you. This information is required in order to fully assess your claim for LTD benefits. The interview typically lasts from 60–90 minutes. You should be prepared for the member interview, and if you find that the 60–90 minute period is too overwhelming, you could request that it occurs in two parts rather than in one sitting.

## Medical Treatment and Medical Proof of Disability

For most LTD claims, medical evidence is the key to a successful claim and **you as the claimant**, not the insurer, are responsible for providing this information to the insurer.

Medical evidence from your family physician that you have a medical condition is not enough to qualify for LTD benefits. There must be evidence from both the family physician as well as the treating specialist that your medical condition renders you totally disabled. If your physicians disagree about the exact diagnosis of your condition, or if a diagnosis has been difficult to determine, this may have an impact on the assessment of your claim.

After a physician completes an *Attending Physician's Statement of Disability*, they are often asked to provide clinical chart records or to prepare a medical report. Clinical notes are extremely important in the assessment of your claim, especially those from registered psychologists and psychiatrist. It becomes quite problematic when physicians decline to submit their clinical notes to the insurer. Sometimes the LTD insurer will contact your physician(s) for clarification or input. You should understand that anything you discuss with your physician may be recorded in the clinical notes and form part of the LTD insurer's assessment.

The family physician's medical evidence is an important element in your claim but the insurer relies most heavily on the opinion of a specialist in assessing whether you are totally disabled. 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, your psychologist's perspective of your disabling physical condition will likely 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 to illustrate the severity of the disability. The insurer is often resistant to accepting claims based on “subjective” complaints (i.e., symptoms you report experiencing) where there is no objective evidence verifying a basis for disability.

The more objective and professional the physicians appear in their correspondence, the more credible and reliable the insurer or an adjudicator is likely to perceive their medical opinions. For this reason, your physician should not act as an advocate for you in the claim but rather provide objective medical evidence and documented continuity of medical complaint supporting any reported subjective symptoms. When a physician’s advocacy is blatantly apparent without supportive medical evidence this becomes problematic to a successful claim.

## Reasonable and Customary Treatment

In order to be eligible for LTD benefits, you must be receiving reasonable and customary treatment for the disabling condition on a regular basis. Reasonable and customary treatment is systematic treatment that is:

- performed or prescribed by a legally-licensed doctor of medicine, and
- is of the nature and frequency usually required for the condition involved.

The insurer will expect you to be receiving care and treatment with a recognized specialist who has expertise in your 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 psychiatrist or registered psychologist if there is a mental nervous condition such as depression, anxiety, Post Traumatic Stress Disorder and any other mental nervous condition, or a neurologist/physiatrist/Acquired Brain Injury program for Concussion/Post-Concussion Syndrome.

Although therapy with a psychotherapist or social worker may be helpful to you, it is not enough to qualify for payment of LTD benefits under the LTD policy. In addition to medications and therapy with a psychotherapist, the LTD policy requires treatment such as Cognitive Behavioural Therapy (CBT) with either a psychiatrist or a registered psychologist.

You are expected to be engaged in treatment that is regular, ongoing and continuous from the date you stop working, through the waiting period and into the LTD benefit period. You must be compliant with all recommended treatment recommendations made by each of your treating healthcare providers, including medications, surgery, physiotherapy, occupational therapy and other recommended treatments. When recommendations are not followed, such as declining the use of medications, this often results in claim denial by the insurer.

You should be reporting the same consistent information to all of your health practitioners, and your physicians should be providing objective medical documentation to the insurer to enable a fair assessment of your claim.

## Surveillance

As part of its assessment of a claim for LTD benefits, the insurer may conduct surveillance on you, without your knowledge. The insurer sometimes uses this as a means of assessing your functional abilities and the veracity of your reporting to them and to your physicians.

## Duration of Benefits

As long as you can prove that you are “totally disabled” and comply with your obligations under the LTD policy, LTD 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 or not the member will meet the change of definition of disability at the two-year point. If the insurer determines the member could be gainfully employed at another occupation, benefits may be terminated.

For claims that are approved beyond the change of definition, the policy 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.

## Common Myths and Misunderstandings about LTD

- *“I’ve paid into LTD for years, now I’m sick.....they owe me!”*

This statement is not necessarily correct. The payment of LTD premiums is not a “savings plan” that members can 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.

- *“I can’t work at this school because of that person – they’ve made me sick and now I can’t return to that school because of that person.”*

This is a problematic statement to make to the LTD insurer, as it confirms that you would still be able to perform the significant duties of your specific assignment at another location. The LTD policy 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 always better to advise the LTD insurer that the illness has made you unable to work, and minimize any professional difficulties that may have resulted as a consequence of the illness.

- *“I don’t want my psychologist to provide their clinical notes to the LTD insurer – it’s very personal and sensitive information.”*

The LTD 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 of and the severity of symptoms of the mental/nervous condition that is disabling you from being able to perform the significant duties of your specific assignment. Not providing the clinical notes to the insurer provides a reason to deny a claim for benefits.

- *“I’m approved for LTD for two years!”*

This statement is not exactly correct. There is **no guarantee** that LTD benefits will be paid for the entire initial assessment period. Benefits are payable as long as the 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.

## Tips for a Successful Claim

- Regular attendance with family physician – every three to four weeks is optimal
- Seeking assessment with appropriate specialist for disabling condition
- Following all recommended or prescribed treatments and therapies, including medications
- Proving that the medical condition is causing the inability to work, rather than difficulty in the workplace due to performance issues, interpersonal conflicts with colleagues or administrator
- Reporting consistent information to all health practitioners
- Recognize that conditions which are difficult to prove objectively and rely on subjective reporting can be challenging claims, and the consistent reporting of symptoms to all health practitioners is especially relevant
- Recognize that the LTD insurer does not recognize medical evidence from alternative health practitioners, e.g., osteopaths, naturopathic doctors, vision therapy with optometrists for concussion
- Health practitioners should be Ontario-based, and lab tests must be from Canadian labs
- Do not undertake any type of work 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 all activity on social media – Facebook, Twitter, Instagram and all others

## Appealing a Negative Decision

If your claim is denied, you will receive a letter explaining the reasons for the denial and your appeal rights.

When an LTD claim is denied, this is often because the insurer does not feel that the medical evidence proves you are disabled. 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. It is imperative that all your treating physicians provide this information when it is requested of them.

You should share the denial letter with your family physician and specialist in order to decide what additional information is needed to support an appeal.

You should contact the OTIP Disability Service Representative (DSR) noted in the claim denial letter to request a meeting with them to provide guidance on your appeal. The DSR will provide guidelines for drafting your appeal letter, and what new medical reports should be submitted by your treating physicians. It is important to remember that although the DSR's role is to assist members in appealing claim denials or terminations, they will take notes during the meeting which will become a part of the LTD claim documentation.

There are time limits for both pursuing an appeal and initiating legal action against the insurer, which will be stated in the denial letter. There is a deadline to appeal the decision to the OTIP Appeals Committee within one year of the claim denial/termination. There is also a second deadline to begin legal action in your claim against the insurer once an appeal has been denied. This deadline to begin legal action is always two years after the initial date of claim denial or termination. You must make yourself aware of these timelines and be prepared to act quickly in appealing a denial or termination of claim. If you miss a time limit for pursuing legal action, you will **not** be able to pursue your claim any 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 expiry of the time limit.

## Tips for a Successful Appeal

- Appeal letter should be no longer than two pages
- Rather than pointing out errors that you feel the insurer has made in their denial or termination letter, focus instead on your illness, describe the severity of symptoms and reasons why they prevent you from performing the significant duties of your specific assignment
- Provide **new** medical reports from your physician, 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, despite the travel being “approved” by your treating physician
- Minimize or refrain from all activity on social media – Facebook, Twitter, Instagram and all others

## Denied Appeals

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

## Provincial Assistance with LTD Claims

### LTD 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 meet ETFO's LTD Case Selection Criteria. Legal assistance will not be provided automatically.

However, you may ask ETFO to conduct a review of your LTD claim to determine if your claim meets ETFO's LTD Case Selection Criteria and is strong enough to win at a trial against the LTD insurer. This review of your claim takes a period of time ranging from six to nine months (or more). During this review period, ETFO works to obtain a copy of the claim file from the LTD insurer, writes to the member's physicians and health care practitioners to obtain copies of the member's clinical charts, reviews the claim file and the requested additional clinical charts, and clarifies what support would be needed in order to successfully challenge the insurer's decision to deny or terminate a member's claim. Although ETFO attempts to complete these steps in the least possible time, it has been found that receiving medical documentation from health practitioners and health records from hospitals takes a significant period of time 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 extent of the legal services ETFO is supporting. Included in the JRA or LSA will be a clause where the member agrees that in the event of ETFO and our legal counsel negotiating 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 LTD Case Selection Criteria

ETFO **will not** provide representation to a member 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 limit for initiating a legal action against the 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 you are without any income because benefits have not yet commenced or your LTD claim is denied, you may seek financial aid through one or more of the following agencies or government programs.

### • Employment Insurance (EI) Sick Benefits

These benefits are available from the federal government. They may be paid for a maximum of 15 weeks after a one-week waiting period. You must have accumulated 600 hours of insurable employment in the 52 weeks preceding the claim. \*\* Note – in response to the COVID-19 pandemic, the federal government has recently reduced the number of insurable hours required to be eligible for EI Sick Benefits to 420 hours.

There is an application process that requires your 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 the exhaustion of any sick leave. For more information please see ETFO's "A Member's Guide to EI". <https://etfo.ca/supportingmembers/employees/pages/ei.aspx>

### • 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 further information: [mcss.gov.on.ca/EN/MCSS/PROGRAMS/SOCIAL/odsp/index.aspx](https://mcss.gov.on.ca/EN/MCSS/PROGRAMS/SOCIAL/odsp/index.aspx)

### • Canada Pension Plan (CPP) Disability Benefits

This benefit is provided by the federal government for individuals who are unable to work due to a severe and prolonged illness, and to those who have made sufficient contributions to the Canada Pension Plan. It often takes three to six months for a decision from Service Canada on an application. For further information, please contact Service Canada at 1-800-277-9914, or [canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html](https://canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html)

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

As a member of the Ontario Teachers' Pension Plan, you may apply for a full or partial disability pension if you are unable to work due to a disability or illness. Accessing the OTPP Disability Pension is considered to be an **absolute last resort** since doing so has serious implications for your long-term pension status and your employment status with the school board. For more information about this pension, please contact the Ontario Teachers' Pension Plan Board. <http://www.otpp.com/>

In addition, there may be other resources for financial aid within individual communities and these should be investigated as well.

## Return to Work

You have the right to return to work at any time following an LTD leave if you are medically fit to work. You may also be entitled to an accommodated gradual return to work or to a partial return if you are fit to work reduced hours only.

Return to work and medical accommodation issues associated with an LTD claim are supported by ETFO locals, and where necessary, in consultation with ETFO's Professional Relations Services (PRS) staff. An OTIP Rehabilitation Consultant may also be involved in return to work from LTD.

The LTD insurer will offer rehabilitation assistance for members whose disabling conditions have improved enough to allow a return to work. An OTIP Rehabilitation Consultant may be assigned to a member's claim to provide assistance with the return to work. This rehabilitation assistance has proven to be influential in having school boards agree to gradual return to work plans and implementing required medical accommodations for the member. When members are engaged in an OTIP return to work 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.

When members are returning to work without OTIP rehabilitation assistance (for example, in the case of claim and/or appeal denial), it is important to work with your local office to negotiate a suitable return to work plan with the school board. You will need to provide the school board with a medical certificate stating you are cleared to return to work, and you must provide the employer notice prior to the date of your return.

If you are not fully recovered but are well enough to return to work in some capacity, medical accommodation may be requested. Work with your local office on what the school board will need for a medical accommodation to be established. School boards have legal obligations to accommodate workers with disabilities to the point of undue hardship. Contact your local for assistance with return to work and medical accommodations.

If you require a medical accommodation, you will need to produce a list of medical restrictions and limitations from your treating physician. Entitlements to accommodations are based on medical need, not worker preference. You should discuss any return to work plan with your physician(s) and with your ETFO local office prior to communicating with the school board.

Some employers will request your permission to write to your physician for additional information or to speak directly with your physician for reasons related to your absence under the collective agreement. There are limits to what information an employer may require. There may also be limits on how the employer is entitled to obtain such information. Although every circumstance needs to be carefully considered, in general, you should never sign away your right to privacy by giving your employer full and open-ended access to your medical history. You should review the request with your local ETFO office before signing. If the school board wants information, it can put its request/concerns in writing to you and you can return to your physician for a further report. This also applies to any medical information needed if you request a medical accommodation as part of a return to work plan.

## ETFO's Role in Return to Work

ETFO will participate in return to work plans or medical accommodation discussions. Members have a right to union representation throughout the entire process. Local representatives regularly advocate on behalf of members returning from medical leaves, including LTD leaves.

## OTIP Rehabilitation Consultant

When you are on an approved LTD claim, a rehabilitation consultant may become involved in your claim when there is medical evidence demonstrating that your condition has improved with treatment. The rehabilitation consultant will be assigned to work with your physician to create a suitable return to work plan.

Although the consultant may be helpful to you, please understand that they are not your advocate. The consultant is hired by the LTD insurer to work with you and the school board to return you to work. The consultant may not fully know or appreciate the local collective agreement provisions or the school board's protocols and human rights obligations. Remember that your advocate in the return to work process is your ETFO local representative, so please ensure you contact your ETFO local representative for assistance. ETFO local representatives seek to ensure fairness and reasonableness throughout the return to work process.

## Possible Return to Work Outcomes

Every return to work plan is different and each case is based on the member's medical documentation. In general, you might return to:

- 1) your prior assignment;
- 2) your prior assignment with modifications in duties or hours (accommodation);
- 3) your same school with a different but comparable assignment on a temporary or long-term basis; and
- 4) a different school with a different assignment.

Your physician or specialist does **not** decide what type of assignment you should have. The workplace parties, which include the school board, ETFO and the member, must have input and are responsible for the return to work process.



## The Right to Return to Work When Ready

Your school board may try to persuade you to return to work at a different time other than what you are seeking. For example, the board may prefer that you return at the beginning of a school year (even if LTD benefits stopped in May) or at the start of the next term (often January). A principal may claim it is not possible to insert you into the school when you are actually ready to work due to staffing issues. They may point to the fact that a long-term occasional (LTO) teacher was in place during your absence and the principal may want the LTO to remain for the sake of continuity and so as not to disrupt the students.

Despite the above, you still have the right to return to work from LTD when you are medically cleared as fit to return to work with or without modifications. If you are medically cleared to return to work, your LTD benefits will likely end and you will often need to return to work to have any income.

ETFO understands this may sometimes provide challenges for a school board but your right to return when medically able still prevails. It is imperative that there be local or provincial Federation involvement such as a Professional Relations Services (PRS) counsellor from the ETFO provincial office. The PRS counsellor will be able to assess whether there are actually collective bargaining barriers for returning to work or whether a grievance needs to be filed because the employer appears to be thwarting the process.

## While on LTD Claim: Applying for Canada Pension Plan Disability Benefits

If your LTD claim is approved, OTIP may ask you to apply for Canada Pension Plan (CPP) Disability Benefits (CPP). You are obligated to apply under the LTD plan. If your application is approved, the amount of CPP benefits you receive will normally be offset against your LTD benefit. In other words, your LTD benefits will be reduced by the amount of CPP benefit you will receive.

CPP disability benefits are taxable, and must be reported on your income tax return. CPP disability benefits may be paid on an individual basis and also on behalf of any dependents. The off-set applied to your LTD benefits is based on the portion of CPP benefit payable to you only, not your dependents.

When you are disabled and receiving LTD benefits, you are viewed as a non-contributor for CPP for 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. If CPP disability benefits are approved for you, you are then deemed a disabled contributor and your pension will be higher at age 65.

For further information about CPP disability benefits go to Service Canada.

<https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html>

If you are approved for CPP disability, you should also apply for the Canada Revenue Agency (CRA) Disability Tax Credit. This may help you reduce any tax payable. For further information about the Federal Disability Tax Credit, go to Canada Revenue Agency.

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit.html>

## LTD Contributions While On Leave

When you are on an approved LTD claim, you 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.

## Pregnancy and LTD

If you are in receipt of LTD benefits and you become pregnant, your LTD benefits should not be affected by your pregnancy. However, it is always best to keep your Disability Analyst informed of any new pregnancy so they are made aware of the new condition and of any complications to your disabling condition resulting from the pregnancy.

## Pregnancy/Parental Leave and LTD

If you are on a pregnancy or parental leave when you develop a disabling illness, you should file a claim immediately in order to commence your waiting period. The waiting period will be 110 working days, as you will not be in receipt of sick leave and short-term disability leave days from the school board.

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

## ETF0 Fee

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

## 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**. Once the 24-month period elapses, and the member has not returned to active work, the member is responsible for paying the monthly ELHT premium same level of coverage 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 LTD 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 interests will depend on the member's own personal circumstances including financial needs and opportunities as a whole. The member may wish to obtain legal and/or financial advice before accepting such an offer.

While such an offer may appear attractive in order to cease contact with the insurer, there are some issues specific to teachers that should be considered before making any decision. For example, pension plan rules may affect how the lump sum settlement will be treated in terms of future pension contributions.

If a member has been offered a buy-out, they may call and request to speak to the LTD counselor-on-duty at the provincial office for more information on issues to consider.

## 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 policy.
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 which will set out the extent of the legal services ETFO is supporting. Included in the retainer will be a clause where the member agrees that in the event of a lump sum settlement, the member will contribute 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).

## 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 exhaust?
  
- 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 two to four 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?

## Checklist for LTD Claim Application Process (continued)

- 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 have exhausted, have you applied for Employment Insurance (EI) Sick Benefits?  
[canada.ca/en/services/benefits/ei/ei-sickness.html](https://canada.ca/en/services/benefits/ei/ei-sickness.html)
- 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?  
[canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html](https://canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html)
- 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?





**Elementary Teachers' Federation of Ontario (ETFO)**  
**136 Isabella Street, Toronto, Ontario M4Y 0B5**  
**416-962-3836 • 1-888-838-3836**

