

The ~~UI~~ Road Map

How to Navigate
the Unemployment Insurance System



The ~~EI~~ Road Map

How to Navigate the Unemployment Insurance System

We continue use the term "UI" because it reflects what we think the program should be - a fund to assist workers during temporary periods of unemployment. Since the early 1990s, the federal Liberals have slashed benefits and eligibility, resulting in the accumulation of a huge surplus. Rather than improving the coverage and benefits for unemployed Canadians, the federal Liberals changed the name to EI, and used the surplus to meet their deficit reduction targets and cut taxes for rich Canadians. We call it UI as a reminder of who the plan is supposed to help.

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Introduction

How things have changed!

The changes enshrined under the new EI program follow more than a decade of cuts, which had already drastically reduced coverage. Over two thirds of jobless Canadians qualified for UI in October 1993, when the Chretien Government was first elected. By December 2001, the reverse was true with an estimated two-thirds of unemployed Canadians not being eligible for UI benefits. There has also been a substantial drop in the number of claims for regular UI benefits and subsequent payouts. Claims decreased by 8.5% from 1.5 million to 1.36 million during two consecutive years 1998 thru' 2000. And for the same time period the amount of money paid out in regular benefits declined by a significant 9.4% to \$7.0 billion.

All CUPE members are affected by these changes, especially part-time and part-year workers, many of whom are women. The way in which UI policy is being interpreted and applied by Human Resources Development Canada (HRDC) officials is having a negative impact on CUPE members, especially school board and post-secondary workers, and again, many of these workers are women.

Deep cuts to the UI program

Not too long ago you were virtually assured of getting UI if you lost your job, but not anymore. In less than a decade, income protection for jobless Canadians has been decimated. And changes to the new Employment Insurance (EI) legislation slash coverage even further. In 1990, the overwhelming majority of jobless workers (87%) were entitled to UI benefits. Successive cuts to the UI/EI system throughout the 1990s reduced coverage to 67% of jobless workers by 1993. By 1997 only 43% of the unemployed qualified for benefits. Today, approximately one in three jobless Canadians are eligible to receive UI benefits.

UI cuts: a windfall for the federal government

Gutting the UI program without reducing unemployment has been a money-maker for the federal government. With reduced benefits and fewer people eligible for UI, the amount paid out in benefits has declined drastically. The resulting surplus has grown dramatically in recent years. The federal government keeps this surplus as part of its general revenue. In 1994-95, the UI surplus was \$4 billion. It is anticipated that in 2003 the amount of UI surplus accumulated since 1995 will hit \$50 billion. The federal government has used these enormous surpluses to meet its deficit reduction targets, instead of restoring income protection for jobless Canadians. Worse yet, the federal Liberals have used these huge surpluses to cut taxes for well-off Canadians.

Keeping up with the changes

Keep in mind the federal government has the power to make significant changes to the UI system by introducing new regulations. This means you and your local must keep informed of any new changes affecting your claim for UI. By forming a committee to keep track of these changes for members facing layoff or who are unemployed, your local can provide concrete assistance to them during a period of great uncertainty. CUPE Research will also continue to monitor changes to the UI program. Watch the website (cupe.ca) for updates.

For details about changes to UI legislation, contact your local Human Resources Centre of Canada. See the "Resources" section of this guide for help contacting an HRCC. Speak to your CUPE National Representative or Research Representative regarding the implications of UI changes for CUPE members.

These changes make it all the more important to know your rights. Since this handbook is a practical guide to the UI system, it does not provide a detailed critique of recent changes. It does, however, highlight the impact of specific rules for CUPE members. For a more detailed analysis of the changes consult the following CUPE publications:

Submission to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities on Bill C-2, an Act to Amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulation (March 14, 2001)

Fact Sheet on the Impact of the 2001 Federal Budget on Unemployment Insurance (November 2001)

Submission to the Standing Committee on Human Resources on the Proposed Changes to Unemployment Insurance (March 28, 1996)

Also see the following CLC publications:

Submission by the Canadian Labour Congress to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities (February 19, 2002).

Brief to the House of Commons Standing Committee on Human Resources on Bill C-2 – An Act to Amend the Employment Insurance Act (March 1, 2001)

CLC FACT Book: An Analysis of Bill C-12 the new Employment Insurance Act (1996)

You may also want to consult a new handbook on unemployment insurance published by the Canada Employment and Immigration Union (CEIU, forthcoming). If you're interested in learning more about labour's vision of an unemployment insurance program that works for Canadians refer to **Appendix G** at the back of this guide.

If you want to obtain any of these briefs or additional information on unemployment insurance please contact:

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21 Florence Street
Ottawa, Ontario
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E-mail: research@cupe.ca

Understanding Unemployment Insurance

Changes to the EI Act under Bill C-2 (May 2001)

In 2001 the federal government made a number of important changes to the EI Act that you should know about. Those changes are outlined here for your convenience:

- Elimination of the intensity rule:

The Intensity Rule penalized repeat users of UI (e.g., part-time and seasonal workers) by reducing their benefit rate. Now, ALL claimants receive 55% of their maximum insurable earnings. The federal government has admitted that the intensity rule is both ineffective and punitive.

- Modification of the benefit repayment (clawback provision):

The intent of the clawback is to discourage high-income earners from repeatedly collecting regular UI benefits. The clawback now takes effect when net incomes are above \$48,750 (up from \$39,000). The maximum repayment is 30%. First-time claimants of regular or fishing benefits are now exempt from the benefit repayment.

- Changes to special benefits:

There have been several important changes to UI special benefits, which include maternity, parental and sickness benefits. For details consult Section B entitled “UI special benefits” which is found later in this guide.

How to apply for UI

It is important to apply for UI as soon as you become unemployed. Delaying your claim will delay your benefits. A very long delay could make you ineligible for UI. For example, if you are applying for regular UI benefits you are required to submit an application within 4 weeks of your last day worked. If you are applying for special benefits (maternity, parental or sickness benefits) you are advised to apply as soon as you are no longer working.

To apply, you must complete an application form available from your local Human Resources Centre of Canada (HRCC), formerly known as Canada Employment Centres.

Many HRCC's have computer terminals on which you can enter your application. You have the right,

however, to use a paper application form that can be taken home if you want more time to complete it or require assistance. And you can now apply for UI on the internet at the following HRDC website: www.hrdc-drhc.gc.ca/ae-ei/dem-app/2.1_e.shtml

Record of Employment (ROE)

Your employer must issue a **Record of Employment (ROE)** within five days of your last day worked. You should give this form to the HRCC as soon as you receive it. Check the ROE for any errors and keep a photocopy for yourself.

It is important to know that you can apply for UI before you receive your Record of Employment. Waiting for your ROE can cause unnecessary delay in your claim.

You should complain to the HRCC if your employer is late issuing your ROE. However, if you are late in receiving your ROE know that your claim for benefits can still be processed.

Waiting period

After you lose your job, there is a TWO-WEEK waiting period before benefits are paid out. You do not receive any benefits during this period.

The two-week waiting period applies to regular, maternity, parental and sickness benefits. The benefit is payable at the start of the third week of an unemployment claim. But money is actually paid in the fourth week.

There is NO waiting period when an existing claim is renewed if the waiting period was previously served. Benefits are then paid out from the first week of eligibility. For **parental benefits**, only one waiting period needs to be served if benefits are shared between both parents.

Earnings while on UI

All monies earned during the waiting period are deducted from the first three weeks of the claim. After the waiting period, all earnings over \$50.00 or 25% of the weekly benefit rate (whichever is higher) are deducted. All earnings must be listed on the reporting cards. See **Appendix A**, “What counts as earnings”.

How to qualify for regular (layoff) benefits

If you are applying for UI because you lost your job, you should apply for regular benefits (also known as layoff benefits). Regular UI benefits are available to those who have lost their job through no fault of their own, for example, due to a shortage of work, seasonal and mass layoff.

At one time you could collect UI benefits if you voluntarily quit your job, but not anymore. Now, if you voluntarily quit your job without “just cause” you will not be eligible to receive UI benefits. See **Appendix F**, “A definition of ‘just cause’”.

To qualify for regular benefits, you must have worked a minimum number of hours in **insurable employment** during the previous 52 weeks, or since the start of your last UI claim. In addition, you must have had an **interruption of earnings** during this period.

- **Insurable employment:** this includes almost all jobs in which there is an employer-employee relationship. If UI premiums were deducted from your pay cheque, you can be sure that you meet this condition. The only exceptions are self-employed workers, other than fishers, and people who work for an immediate family member.
- **Interruption of earnings:** this means you are without work and without pay for seven consecutive days. Earnings include not only wages, but also severance pay, pensions and other payments (see **Appendix A**).

Remember, you should apply immediately if you know that you will be without work for seven days or more.

Table 1: Entrance Requirements

Regional Rate of unemployment	Required number of hours of insurable employment in the last 52 weeks
6% and under	700 – 734 hours
6.1% - 7%	665 – 699 hours
7.1% - 8%	630 – 664 hours
8.1% - 9%	595 – 629 hours
9.1% - 10%	560 – 594 hours
10.1% - 11%	525 – 559 hours
11.1% - 12%	490 – 524 hours
12.1% - 13%	455 – 489 hours
more than 13%	420 – 454 hours

How many work-hours will I need to qualify?

The number of work-hours you will need to qualify for UI will vary depending on the unemployment rate in your area.

Most people will need between 420 and 734 hours of insurable employment during the last 52 weeks. (See **Table 1: Entrance Requirements**)

Qualifying is more difficult for new entrants and re-entrants to the workforce

Re-entrants are those individuals who are re-entering the workforce after an absence of two or more years. New entrants are those individuals who are entering the workforce for the first time. Re-entrants and new entrants require 910 hours of insurable employment during the previous 52 weeks to qualify for regular UI benefits.

This rule discriminates against women, youth and new immigrants, who are more likely to have been out of the workforce for extended periods of time. CUPE takes the position that all workers should be subject to the same rules.

How much will I receive?

Most claimants will receive the basic benefit rate of 55% of their average insured earnings. The maximum payment is \$413 per week before taxes. The benefit rate has been steadily reduced since 1971, when it was two-thirds of average earnings. Low-income earners (less than \$25,921 per year) with children may receive up to 80% of earnings.

Table 2: Average Weekly Employment Insurance Benefits (1997–2001)

	1997	1998	1999	2000	2001
All benefits	\$259.59	\$257.27	\$259.52	\$268.72	\$279.89
Regular	\$249.72	\$255.30	\$261.08	\$265.15	\$279.36
Maternity	\$272.42	\$274.35	\$279.79	\$285.30	\$290.05
Adoption	\$335.75	\$343.23	\$351.33	\$351.96	\$351.43
Sickness	\$232.73	\$236.40	\$241.65	\$247.53	\$253.49
Fishing	\$365.63	\$363.01	\$362.79	\$366.79	\$399.65
Work sharing	\$86.25	\$94.18	\$94.79	\$89.15	\$91.76

Source: Statistics Canada, CANSIM II, table 276-0016.

Source: Statistics Canada's Internet Site <http://www.statcan.ca/english/Pgdb/People/Labour/labor17.htm>
May 15 2002

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Family Supplement

The Family Supplement is available to low-income families who receive the Child Tax Benefit for a dependent child or children. Under the Family Supplement your benefit rate could be as high as 80% of earnings (the maximum allowed) if your family income is below \$25,921. The Family Supplement tops up regular benefits based on the number of children in the family.

To qualify for the full Family Supplement, you must have at least one dependent child and have a net family income of \$25,921 or less. Only one spouse in a family can receive the Family Supplement at a given time.

Families with net income below \$25,921 get the full Family Supplement, which is the weekly equivalent of the monthly Child Tax Benefit. For each \$100 above \$25,921, your Family Supplement is reduced by 2%.

You do not have to apply for the Family Supplement. It should be automatically added to your UI benefit based on your Child Tax Benefit amount. To receive the Child Tax Benefit, you have to file an income tax return. To apply for the Child Tax Benefit, contact the Canada Customs and Revenue Agency (CCRA) at 1-800-959-2221 or you can download an application form from the CCRA website at www.ccra.gc.ca/benefits

Calculating your UI benefit amount

The size of your UI payment is calculated by taking into account all earnings received from your last 26 weeks of work. Check your pay stubs, T4, or the Record of Employment (ROE) to find the information you need to calculate the amount of your UI benefit. Here is how:

1. Determine total earnings received during your last 26 weeks of work.
2. Determine number of weeks worked during your last 26 weeks of work.
3. Determine your average, weekly insured earnings. This is done by dividing total earnings during last 26 weeks of work by the greater of:

- Number of weeks worked in last 26 weeks, or
- Minimum divisor **(See Table 3: The Divisor)**.

Table 3: The Divisor

Regional Rate of unemployment	Divisor
0% to 6%	22
6.1% to 7%	21
7.1% to 8%	20
8.1% to 9%	19
9.1% to 10%	18
10.1% to 11%	17
11.1% to 12%	16
12.1% to 13%	15

4. The resulting number is then multiplied by 55% to obtain the amount of your weekly benefit. As mentioned earlier, the maximum payment is \$413 per week, before taxes. Table 4: Benefit Formula illustrates how to calculate your benefit amount.

Table 4: Benefit Formula

Average insured earnings	$= \frac{\text{Total earnings in past 26 weeks}}{\text{Number of weeks worked in past 26 weeks, or the divisor (see table) for your area (the greater of the two)}}$
Weekly benefit	$= \text{Average insured earnings} \times \text{benefit rate (usually 55\%)}$

The divisor

The divisor rule was first introduced when massive changes to the UI program were implemented in 1997. It is used to calculate your weekly benefit amount. Under EI, only earnings in the last 26 weeks of work are considered in the calculation of benefits. Earnings during the first 26 weeks of the 52-week qualifying period are not counted in determining your benefit.

The weekly benefit amount is determined by dividing your earnings during the last 26 weeks by a minimum divisor or the actual weeks worked if more than the divisor (**refer to Table 3**). This practice penalizes people who did not work continuously during the past 26 weeks. If your work was interrupted, your weekly benefit will be less than someone who worked continuously.

The ‘small weeks’ problem

The divisor rule hurts people who earn small amounts of money during some of the weeks used to calculate their benefit. This rule is especially punitive for part-time and seasonal workers, many of whom are women. The amount of your UI benefit is determined, in part, by the total amount of earnings in the 26 weeks prior to your UI claim. Even weeks in which you earned less than \$150 dollars could be counted.

Counting these “small weeks” results in decreased UI benefits. Instead of changing the divisor rule, the federal government allows claimants to exclude these so-called “small weeks” from the benefit calculation. These “small weeks” are identified through a questionnaire that you can fill out at the time you file for regular or special UI benefits. Be sure to ask your UI Agent if you qualify for the exclusion of small weeks from your benefit calculation.

How long do benefits last?

You can receive regular UI benefits from **14 weeks to a maximum of 45 weeks**. Under the former system the maximum entitlement was 50 weeks. The number of weeks you are entitled to benefits depends on two things:

- the unemployment rate in your region and,
- the length of time you have worked in the last 52 weeks or since your last claim, whichever is shorter.

Table 5 shows the number of weeks of benefit entitlement based upon various unemployment rates. The longer you worked and the higher the unemployment rate, the longer you can receive UI benefits.

Table 5: Unemployment Rate in Claimant's Region

Hours of Work	6% and under	Over 6% to 7%	Over 7% to 8%	Over 8% to 9%	Over 9% to 10%	Over 10% to 11%	Over 11% to 12%	Over 12% to 13%	Over 13% to 14%	Over 14% to 15%	Over 15% to 16%	Over 16%
420-454								26	28	30	32	
455-489								24	26	28	30	32
490-524							23	25	27	29	31	33
525-559						21	23	25	27	29	31	33
560-594					20	22	24	26	28	30	32	34
595-629				18	20	22	24	26	28	30	32	34
630-664			17	19	21	23	25	27	29	31	33	35
665-699		15	17	19	21	23	25	27	29	31	33	35
700-734	14	16	18	20	22	24	26	28	30	32	34	36
735-769	14	16	18	20	22	24	26	28	30	32	34	36
770-804	15	17	19	21	23	25	27	29	31	33	35	37
805-839	15	17	19	21	23	25	27	29	31	33	35	37
840-874	16	18	20	22	24	26	28	30	32	34	36	38
735-769	14	16	18	20	22	24	26	28	30	32	34	36
770-804	15	17	19	21	23	25	27	29	31	33	35	37
805-839	15	17	19	21	23	25	27	29	31	33	35	37
840-874	16	18	20	22	24	26	28	30	32	34	36	38
875-909	16	18	20	22	24	26	28	30	32	34	36	38
910-944	17	19	21	23	25	27	29	31	33	35	37	39
945-979	17	19	21	23	25	27	29	31	33	35	37	39
980-1014	18	20	22	24	26	28	30	32	34	36	38	40
1015-1049	18	20	22	24	26	28	30	32	34	36	38	40
1050-1084	19	21	23	25	27	29	31	33	35	37	39	41
1085-1119	19	21	23	25	27	29	31	33	35	37	39	41
1120-1154	20	22	24	26	28	30	32	34	36	38	40	42
1155-1189	20	22	24	26	28	30	32	34	36	38	40	42
1190-1224	21	23	25	27	29	31	33	35	37	39	41	43
1225-1259	21	23	25	27	29	31	33	35	37	39	41	43
1260-1294	22	24	26	28	30	32	34	36	38	40	42	44
1295-1329	22	24	26	28	30	32	34	36	38	40	42	44
1330-1364	23	25	27	29	31	33	35	37	39	41	43	45
1365-1399	23	25	27	29	31	33	35	37	39	41	43	45
1400-1434	24	26	28	30	32	34	36	38	40	42	44	46
1435-1469	25	27	29	31	33	35	37	39	41	43	45	45
1470-1504	26	28	30	32	34	36	38	40	42	44	45	45
1505-1539	27	29	31	33	35	37	39	41	43	45	45	45
1540-1574	28	30	32	34	36	38	40	42	44	45	45	45
1575-1609	29	31	33	35	37	39	41	43	45	45	45	45
1610-1644	30	32	34	36	38	40	42	44	45	45	45	45
1645-1679	31	33	35	37	39	41	43	45	45	45	45	45
1680-1714	32	34	36	38	40	42	44	45	45	45	45	45
1715-1749	33	35	37	39	41	43	45	45	45	45	45	45
1750-1784	34	36	38	40	42	44	45	45	45	45	45	45
1785-1819	35	37	39	41	43	45	45	45	45	45	45	45
1820+	36	38	40	42	44	45	45	45	45	45	45	45

UI special benefits

Maternity, parental, adoption, sickness and compassionate benefits

UI special benefits include maternity, parental, adoption, sickness and compassionate benefits:

- Biological and surrogate mothers are entitled to claim **UI maternity benefits** for the period between eight weeks before the due date and 17 weeks after the birth a woman must provide proof she is pregnant or has given birth.
- Biological and adoptive parents are entitled to claim **UI parental benefits**.
- People whose illness, injury or quarantine prevents them from working are entitled to claim **UI sickness benefits**.
- Beginning January 4, 2004, workers will be entitled to six weeks leave to care for critically ill family members.

New! Compassionate Leave

The 2003 Federal Budget introduced a new program to be available through Employment Insurance. Beginning January 4, 2004, workers will be eligible for six weeks Compassionate Leave in order to look after a member of their family who is very ill, including ill family members who live outside of Canada.

To qualify you will need:

- to work 600 hours in the last 52 weeks,
- a medical certificate that the ill family member has a “significant risk of death within 6 months” and that she or he needs one or more family members to provide emotional support, arrange health care, or directly provide health care.

Two or more family members who meet the requirements can share the Compassionate Leave. However, the total leave remains at 6 weeks (plus the two-week waiting period).

Workers will be able to receive a top-up from the employer for this leave, similar to other special leaves (i.e. Maternity leave). For more information, go to www.hrdc-drhc.gc.ca/ae-ei/menu/faq/compassionate_care.shtml, and see the fall issue of Table Talk (CUPE's bargaining newsletter), and check our website – cupe.ca

A major flaw of UI special benefits is the requirement for 600 hours of insurable earnings to qualify. With the increase in part-time and temporary work (approximately 30% of CUPE members are part-timers), the majority of women do not qualify for maternity and parental benefits. In fact, more fathers qualify for parental benefits than do birth mothers.

Proposed changes

The federal government is proposing two more changes to UI special benefits. The first of these proposed changes would allow for **more flexibility for parents of hospitalized children**. At present parental benefits must be claimed within one year (52 weeks) of the birth or adoption of a child, a problem for parents whose child (biological or adopted) is in hospital. These parents are not able to access all of their parental benefits if they choose to file for benefits after their child is released. To address this particular dilemma, the federal government proposes to allow parents of hospitalized children up to 104 weeks in which to file for parental benefits.

The second of the proposed changes would allow for full access to special benefits for mothers who claim sickness benefits before or after their maternity claim. Currently, a combination of maternity, parental and sickness benefits can be received up to a maximum of 50 weeks. Claimants are entitled to receive maternity benefits for 15 weeks, parental benefits for 35 weeks and sickness benefits for 15 weeks for a total of 65 weeks, but the combined maximum is capped at 50 weeks. The federal government proposes to extend the total number of weeks for women from 50 to a maximum of 65 weeks for women in receipt of maternity/parental benefits who access UI sickness benefits.

The federal government has made a number of important changes to UI special benefits that you should know about. The most significant change provides for up to 35 weeks parental leave benefits. These and other important changes are outlined below:

- Thirty-five weeks of parental benefits for birth and adoptive parents (instead of previous 10 weeks). The 35 weeks can be claimed by one parent or shared between both. When the parents share the parental benefit there is no waiting period for the second parent (previously both parents each had a two-week waiting period).

Possible collective agreement language

- In the case of a Compassionate Leave, the Employer will provide payment equal to 97% of base pay during the two (2) week EI waiting period and the difference between the payments received from EI and 97% of the employee's normal, straight-time pay for six (6) weeks. During the leave the employee will continue to accrue seniority and there will be no loss of benefits.
- Birth mothers are entitled to take a leave from work of up to 52 weeks or one year in total (includes two-week waiting period, 15 weeks maternity and 35 weeks parental leave).
- Workers are required to work 600 hours in the last 52 weeks to qualify for maternity, parental and sickness benefits (previous requirement was 700 hours). Benefits are not paid during the two-week waiting period.
- Benefits are based on 55% of previous earnings to a maximum of \$413 weekly. You may also be eligible to receive the family supplement if your annual family income is less than \$25,921.
- Parents can now work while receiving **parental benefits**. They can earn \$50 or up to 25% of their weekly benefits (whichever is greater). However, if you work while receiving **maternity benefits** all of your earnings will be deducted from your benefits.
- No matter what your income level is, you will no longer have to repay maternity, parental and sickness benefits at income tax time.
- Under the old rules, parents who were out of the workforce raising a family for a year or more needed 910 hours of work to qualify for benefits. Now parents re-entering the workforce are required to work the minimum number of hours based on the regional rate of unemployment where they live. This means that parents re-entering the workforce are now treated as regular claimants' and need between 420 and 700 hours of work in the last 52 weeks to qualify for UI.

Same-sex partners and UI special benefits

Under federal legislation and in most provincial jurisdictions, same-sex partners have the same rights as other workers to access UI special benefits including maternity, parental, adoption and sickness benefits. Check your province's Human Rights Code and Labour Standards Code for further information.

Sickness benefits

To qualify for UI Sickness Benefits you must:

1. be incapable of doing any work, and
2. have a medical certificate that specifies the length of time you will be incapacitated due to illness.

You now need 600 hours of work to qualify for UI sickness benefits (the previous requirement was 700 hours). However, if you are already in receipt of UI for reasons other than illness and you become ill while on claim, you may qualify with fewer than 600 hours. You can receive sickness benefits up to a maximum of 15 weeks but they can be combined with other special benefits to extend your benefit period.

Income and UI special benefits

A number of income sources may reduce your claim for UI special benefits. Income from any of the following sources will be deducted 100% from your benefits:

- income from wages and commissions,
- workers' compensation payments,
- group insurance sickness benefits,
- accident compensation for lost wages,
- retirement income (i.e., employment pension, military or police pension, Canada or Quebec pension plan, provincial pension plan).

Exception: For *parental benefits only* you are allowed to earn \$50 or 25% of your weekly benefits, whichever is greater.

Income received from the following sources **will not** affect your UI special benefits:

- disability pensions,
- workers' compensation payments from a **permanent settlement**,
- private, supplemental insurance for sickness benefits approved by HRDC,
- employer-provided supplemental payments to maternity or parental benefits,
- private sickness or disability wage-loss insurance, and
- retroactive raises in wages or salaries.

Supplementary Unemployment Benefit (SUB) Plans

What is a SUB plan?

SUB plans are negotiated between unions and employers to provide top-up benefits for workers on maternity and/or parental leave. The UI Act provides for payment of maternity (35 weeks) and parental benefits (15 weeks) at a maximum rate of 55% of one's employment earnings to a maximum of \$413 per week. There is a two-week waiting period and during that time no benefits are paid.

You should know that your service and benefits are protected over the course of maternity/parental leave. And upon return to work your employer is legally required to reinstate you in your former job or comparable position.

SUB plans, also known as top-ups, are negotiated to supplement maternity/parental benefits and oftentimes provide benefits during the two-week waiting period. SUB plans may provide a certain percentage of salary during the two-week waiting period followed by a supplement to UI benefits for the duration of maternity/parental leave. Benefits typically range from 93% or 97% of employment earnings over the course of one's two-week waiting period and maternity/parental leave. However, one CUPE local (1302, Queen's University in Kingston) has successfully negotiated 100% top-ups for maternity, adoption and parental leave.

EI premiums are **not** deducted from the amount of top-up negotiated with your employer. **However, the amount of your top-up can be deducted from your UI benefit** unless the following two conditions are met:

1. When your combined top-up and UI weekly benefit is less than your normal weekly gross wages, and
2. When your top-up is not used to reduce banked sick leave, vacation leave credits or severance pay.

CUPE locals, and other unions, have successfully negotiated SUB plans that provide top-ups beyond the 55% benefit rate provided under UI. Examples of SUB contract language are provided in **Appendix B**.

UI Premium Reduction Program

Did you know that you might be eligible for a rebate from the amount you pay in UI premiums? You could be if you belong to a short-term disability plan that provides coverage for illness or injury such as a Weekly Indemnity Plan or Cumulative Paid Sick Leave Plan. But it is up to your employer to apply for the rebate through the UI Premium Reduction Program.

The UI system provides sickness benefits to individuals who cannot work due to illness, injury or quarantine. Some employers also offer similar protections to workers, for example, in the form of short-term disability plans. Because short-term disability programs reduce the reliance on UI, employers and employees may be eligible for a UI premium rebate.

Currently, employers pay 7/12 hrs and workers pay 5/12 hrs of UI premiums. Employers who participate in the UI Premium Reduction Program **are required** to reimburse workers 5/12 hrs of the savings. However, CUPE is aware of situations where employers participating in the program failed to give workers their rebates and instead used the money for other things, for example, staff Christmas parties. In response, several CUPE locals have successfully negotiated contract language that limits employers' discretionary use of workers' rebate money. See **Appendix C**.

In order to be eligible for the UI Rebate, your workplace short-term disability plan must provide the following:

- a minimum of 15 weeks in benefits,
- be equivalent to or surpass the level of benefits that would be paid under UI,
- pay benefits within 14 days of sickness or injury,
- be available to workers after three months of hire,
- provide workers with 24 hours a day coverage.

Remember that it is up to your employer to apply for the premium rebate. For more information on the UI Premium Reduction Program visit the HRDC (Human Resources Development Canada) website at: www.hrdc-drhc.gc.ca/prp-prtc/010_e.shtml

You have the right to appeal

Decisions about who is and who is not entitled to UI benefits rest with HRDC. Unfortunately, you may find yourself denied UI benefits. Or, HRDC may inform you that you must pay back an overpayment and pay a penalty. In either event, you will be informed of HRDC's decision in writing. You are entitled to appeal HRDC's decision. Should HRDC decide that you are not entitled to UI benefits, contact your Employment Insurance Agent and CUPE Staff Representative as soon as possible.

You should know that you are entitled to request a **review** of HRDC's decision prior to filing a formal appeal. UI staff conducts the review otherwise known as an **informal appeal**. If you request a review/informal appeal you should put in writing why you disagree with HRDC's decision. Should the review prove unsatisfactory you still have the right to appeal that decision to a Board of Referees, which is the first step in the **formal appeals process**.

The formal appeals process

There are four levels in the appeals process (see Figure 1):

- Board of Referees and/or Tax Court of Canada
- Umpire,
- Federal Court of Appeal,
- Supreme Court of Canada.

Board of Referees

The first level of appeal is to a Board of Referees. The Board of Referees are people who are not in the employ of HRDC. It is comprised of labour and employer representatives (**see Appendix D**). The EI Commissioner for Workers appoints labour representatives to the board following consultation with labour organizations. (The Commissioner for Workers represents workers' interests on the Canada Employment Insurance Commission - CEIC). Employer members on the board are appointed by the Commissioner for Employers, following consultation with employer groups. The Governor in Council is responsible for appointing the board chairperson. All board appointments are for three years.

The Board of Referees will usually hear your case approximately three to six weeks after your appeal has been filed. How far you go in the appeals process will depend upon your particular circumstances and whether or not you want to pursue the case further.

In appeals to the board involving harassment, the claimant may request that details of the hearing not be published. The decision on publication is up to the chairperson, who can ask people to leave the hearing while sensitive testimony is being given.

Should you decide to appeal an unfavourable decision regarding your claim to a Board of Referees the following steps will guide you. First, write a letter to your local HRDC office stating why you disagree with its decision. It is important that your letter include the following information:

- your name,
- Social Insurance Number (SIN),
- indicate if you want to attend an informal hearing, and whether you want your hearing in English or French,
- indicate if you will be represented at the hearing (e.g. CUPE Staff Representative) and provide that person's name and address,
- sign and date your letter.

Your letter must be mailed within 30 days of receiving written notice from HRDC regarding your claim. If you choose to have an informal hearing you should make every effort to attend. If you cannot attend the hearing, request an adjournment until such time as you can make yourself available.

Your former employer is permitted to attend the informal hearing and receive a copy of your appeal. Once the hearing is over, the decision of the board will be mailed to you.

Tax Court of Canada

In some cases, you can appeal to the Tax Court of Canada (TCC). The TCC is the first level of appeal for taxpayers. The Tax Court holds hearings in approximately 65 locations across the country.

HRDC sometimes seeks advice from the Canada Customs and Revenue Agency (CCRA). The CCRA has jurisdiction under the Employment Insurance Act to make decisions that can affect your ability to qualify for UI benefits. Specifically, the CCRA has the jurisdiction to decide whether or not you are employed on an annual or year-round basis.

In arriving at its decision the CCRA will refer to your collective agreement language. In doing so it usually analyzes a number of provisions including benefits coverage such as dental, health and group life insurance plans and start dates for the new school year in the case of CUPE 10-month school board workers (as an example see the section G, Case #2 CUPE 3550 and 3484, Alberta: CUPE appeals denial of UI benefits).

If the CCRA's ruling is not in your favour and you are denied UI benefits you can appeal to the Tax Court of Canada. Your appeal to the Tax Court must be filed within 90 days of the date of CCRA's ruling. If for some reason you do not file an appeal within 90 days, you can apply for an extension to appeal.

You can appeal to the Tax Court of Canada and the Board of Referees simultaneously. The advantage of filing two appeals is that if you lose your appeal to the Board of Referees you could still win in the Tax Court, and vice versa.

If you are unsuccessful in your appeal to the Tax Court of Canada and/ or the Board of Referees, you can file an additional appeal to the Appeals Division of the Federal Court of Canada.

Umpire

If you lose your appeal, within 60 days you can appeal further to an Umpire, which is the second step in the appeals process. The Umpire is a Federal Court of Canada judge. It is reasonable to appeal to an Umpire under the following circumstances:

- you feel you received an unfair hearing before the Board of Referees,
- you were not given reasonable opportunity to present your case before the Board,
- the Board did not operate within its jurisdiction, or
- the Board misinterpreted the law and/or the facts of your case.

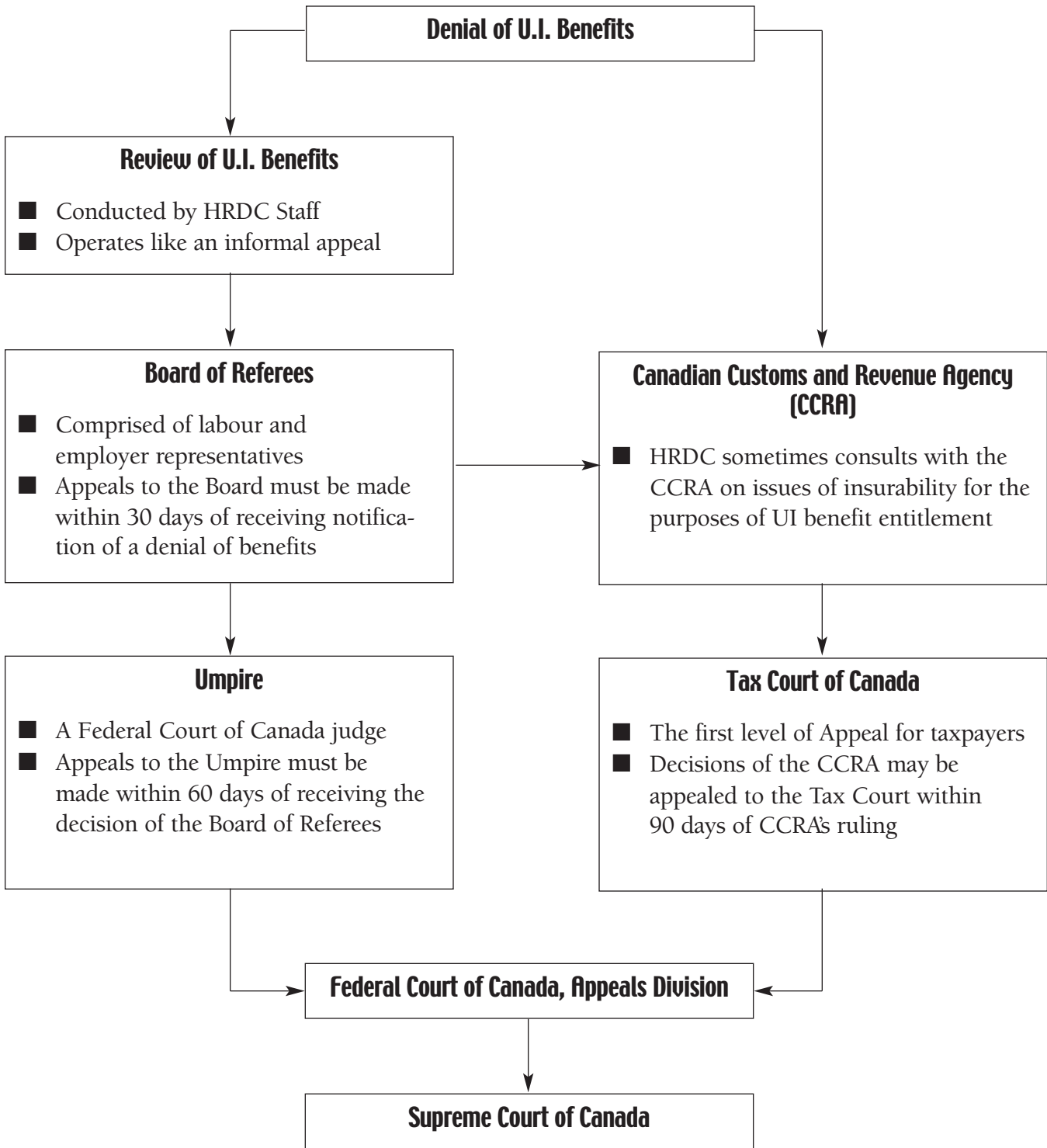
It is advisable that you have legal representation at this stage of the appeals process. Appeal letters are to be sent to your local HRDC office.

Federal and Supreme Courts of Canada

If your appeal to the Umpire is unsuccessful you have the right to appeal further to the Federal Court of Canada and, if necessary, to the Supreme Court of Canada. The Federal Court of Canada has jurisdiction to review decisions of federal boards, commissions (such as the UI Commission), or other tribunals. Judges of the Federal Court may also act as Umpires under the Unemployment Insurance Act. The Supreme Court, Canada's highest court, is the highest level of appeal. It hears appeals from the provincial or territorial courts of appeal and the Federal Court of Appeal.

You should be aware that the costs of appealing can be expensive. You will likely need to hire a lawyer to prepare the legal documents required. Also, if you lose the appeal, the judge can award 'costs', which means you are required to pay the legal fees for opposing side.

Figure 1: The Appeals Process



CUPE victories on the UI front

Most of the UI problems experienced by CUPE members relate to unusual hours of work.

Airline employees

CUPE has been working to ensure flight attendants at Air Canada, Air Transat and other airlines continue to qualify for Employment Insurance. Coverage was put in jeopardy by an April 1 ruling that only a flight attendant's hours in the air would be considered in calculating eligibility. But 'air time' represents only half the time the job requires.

CUPE appealed the ruling and now all the hours worked by a flight attendant, including the time in airports awaiting flights, will be used to calculate eligible hours.

Ten-month school board workers

In many school boards, workers who work directly with children are employed only during the months that the students attend school and tend to be ten-month employees. Unlike teachers, who often work for ten months but are paid for twelve, school board workers are only paid for ten months and are laid off for the traditional two-month summer closure. Ten-month school board workers only work and are paid for the days when school is in session (normally 197-200 days). They have interruptions in earnings during the Christmas and March/Easter school breaks and for two months over the summer. These breaks in employment are considered layoffs. Many school board employees have traditionally applied for and received UI benefits during these interruptions in earnings.

In recent years, HRDC has been denying benefits to CUPE ten-month school board workers in Saskatchewan (CUPE 3681, Potashville School Division), in Alberta (CUPE 3550 and 3484, Edmonton Public School Board and Ontario (CUPE 4400, Toronto District School Board). HRDC officials have argued that CUPE ten-month school board workers are not actually laid off over the two-month summer break. In fact, HRDC has ruled that the workers are permanent, year-round employees and are not entitled to UI benefits because they do not have an interruption in earnings. CUPE has learned that in Saskatchewan, the Canada Customs and Revenue Agency (CCRA) has in some cases instructed employers not to issue records of employment (ROEs) to school board workers. CUPE has also learned that conflicts have erupted between officials of the CCRA and HRDC because HRDC, and not the CCRA, has sole jurisdiction with respect to records of employment.

In one case, and there may be others, one school board notified its ten-month workers that it could not issue records of employment because it might trigger an investigation by the CCRA for fraud. In the absence of a record of employment, school board workers are unable to prove that they are indeed laid off and, as a result, are ineligible to receive UI benefits.

CASE #1 – CUPE 3681, Saskatchewan: The Porter decision

In 1998, three support staff workers at the Potashville School Division in Saskatchewan decided to fight back. The workers, members of CUPE 3681, had applied for UI during the summer break but were informed by the CCRA that they did not qualify for benefits because they were “employed under a contract of service, **which continued from year to year**” (Revenue Canada, September 14 1998, emphasis added).

The CCRA ruling on the workers’ insurability was made at the request of HRDC. The CCRA considered the workers as having a year-round attachment to their employer instead of a ten-month one. Hence, it could be argued that the workers were not actually laid off over the summer months and suffered no interruption in earnings.¹ The CCRA based its ruling on the following seven reasons (Revenue Canada, September 14, 1998):

1. According to the union contract, the workers receive an annual salary, which is paid on a ten-month basis. This indicates that the workers earn income throughout the year (annually) but are only paid ten times.
2. According to the union contract, an employee must be laid off in writing. The workers did not receive a written layoff notice, only ROEs.
3. According to the union contract, the workers participate in numerous benefit plans. Some of these plans are funded solely by the payor. These plans continue through the summer.
4. According to the union contract, vacation pay is paid on each pay cheque. The workers’ last day of work was June 27.
5. According to the union contract, recalls shall be automatic following the school vacation period unless the board has served a termination or indefinite lay off notice pursuant to Section 43 of The Labour Standards Act.
6. The workers were guaranteed a job when they returned in the fall.

CCRA informed the workers that they had 90 days in which to appeal their disqualifications for UI to the Chief of Appeals, Regina Tax Services Office.

¹ The CCRA and HRDC have different jurisdictions with respect to the UI Act. In particular, sections 90-94 of the EI Act gives the CCRA the authority to make rulings on matters of **insurability and premium collections**. Alternatively, the EI Act gives the HRDC jurisdiction to determine if there has been an interruption in earnings. If there has been an **interruption in earnings** then the employer is obligated to issue a ROE. The HRDC also has sole jurisdiction with respect to ROE. An interruption of earnings occurs when an insured worker has seven days of no work and no earnings (excluding statutory holidays).

Appeal in the Tax Court – Judge Porter’s decision

The workers decided to file the appeal and the Tax Court of Canada agreed to hear the case. In addition, the workers’ employer, the Potashville School Division, presented a written submission to the Court in which it intervened on the workers’ behalf. The case was heard in Regina before the Honourable Deputy Judge Michael H. Porter. In his written decision, Judge Porter stated the following:

“The simple question to be answered is whether the appellants were employed and paid over a 12-month period, “annually”, or whether they were employed and paid for 10 months at a time, “the school year”, and “laid off” or “separated” from their employment for the summer vacation period” (Porter, March 16 2001: 3).

Judge Porter also raised an important distinction with respect to the payment of the workers’ salaries:

“The question, thus, is whether it was a 12-month salary payable over 10 months, or whether it was a ten-month salary payable over 10 months in respect of those 10 months” (Porter, March 16 2001: 9).

Like the CCRA, Judge Porter also reviewed the workers’ collective agreement but came to a much different conclusion. He found that the workers were in fact ten-month employees and subject to layoff over the two-month summer break. In particular, Judge Porter referred to Article 5.1 “Automatic Layoff” in the agreement between CUPE 3681 and the Potashville School Division:

Employees who work on the basis of the school year shall be deemed to be laid off for the summer vacation period. Recall following the school vacation periods shall be automatic unless the Board has served a termination or indefinite lay off notice pursuant to Section 43 of The Labour Standards Act. **This Article will serve as notice of lay-off and recall** for the school vacation periods during the term of this agreement (emphases added).

The CCRA also argued that the workers were not laid off over the two-month summer break because they were on summer vacation. Judge Porter dismissed this argument and ruled that the two-month summer break is students’ vacation time but is not vacation time for the workers:

“Vacation periods for students, under the Education Act, are not the same as legal vacation time for employees under the Labour Standards Act, or under the Collective Agreement” (Porter, March 16 2001: 33).

Article 5.3c “Recall” makes clear that during layoff the workers’ benefits are maintained but such benefits do not accumulate:

Pursuant to Article 4.2 entitled “Seniority Lost” during a layoff, employee shall maintain, **but not accrue**, all previously earned benefits and rates of pay (emphasis added).

Finally, Article 6.1a provides for the payment of vacation and statutory holiday pay over ten months and not on an annual basis:

It is understood and agreed that the wages of school year employees are inclusive of all monies owing with respect to vacation pay and statutory holiday pay in accordance with The Labour Standards Act.

Not only did Judge Porter rule that the workers were not annual employees, he also found that the workers’ benefits did not accumulate over the summer break:

“I am satisfied on the evidence that their salaries and benefits were attributable only to the period up to June 30th. **Benefits were maintained but did not accrue during the period in question** and thus, cannot be said to be payable or allocated with respect to the summer period” (Porter, March 16 2001: 33, emphasis added).

According to Judge Porter’s decision three factors were instrumental in the workers winning their appeal:

- There is no reference in the collective agreement to annual salary.
- The collective agreement clearly states that the workers are laid off for the summer breaks, and
- The collective agreement clearly states that benefits are maintained but do not accrue during the summer months.

The downside of the Porter decision

Unfortunately, Judge Porter's decision in favour of school board workers is not the final word. Porter ruled that the workers had an interruption of earnings during the summer months and were therefore entitled to UI benefits, but he had no jurisdiction to make that decision. The CCRA has jurisdiction over specific aspects of the EI Act and Regulations.² For example, under the EI Act, the CCRA has jurisdiction to determine the amount of insurable earnings and whether or not UI premiums are payable. *However, neither the CCRA nor the Tax Court of Canada have jurisdiction to decide whether or not an interruption of earnings has occurred. That jurisdiction rests solely with HRDC.*

Secondly, Judge Porter's decision is not universal; that is, his decision will not automatically apply to other school board workers. The Judge's decision was based on various provisions as set out in one particular collective agreement. But since school board locals tend to be governed by different collective agreements, the eligibility of claimants would have to be decided on their own merit. It is very important that we negotiate contract language that ensures our members qualify for benefits.

Finally, there is another reason locals should strive to negotiate sound contract language: HRDC conducts periodic reviews of collective agreements that cover CUPE ten-month school board workers. The purpose of these reviews is to ascertain whether or not workers are employed on a ten-month or annual basis. And as experience in Saskatchewan has shown, that determination will hinge on the specific wording of collective agreement language.

² Subsection 90 EI Act states: (1) An employer, an employee, a person claiming to be an employer or an employee of the Commission may request an officer of the Canada Customs and Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- (a) whether an employment is insurable,
- (b) how long an insurable employment lasts, including the dates on which it begins and ends,
- (c) what is the amount of any insurable earnings,
- (d) how many hours an insured person has had in insurable employment,
- (e) whether a premium is payable,
- (f) what is the amount of a premium payable,
- (g) who is the employer of an insured person,
- (h) whether employers are associated employers, and
- (i) what amount shall be refunded under subsections 96(4) to (10).

Judge Porter based his decision on the following clauses in the CUPE 3681 – Potashville School Division collective agreement:

Article 4 – Seniority

4.1 Definition

- a) seniority shall be determined on the basis of continuous service that an employee has accumulated, calculated on the basis of actual time worked, commencing from the first day of uninterrupted service with the Board.
- b) the normal interruptions during the scheduled school vacation period shall not constitute a break in service.**

Article 5 – Layoff, Recall, Vacancies and Probation

5.1 Automatic Layoff

Employees who work on the basis of the school year shall be deemed to be laid off for the summer vacation period. Recall following the school vacation periods shall be automatic unless the Board has served a termination or indefinite lay off notice pursuant to Section 43 of The Labour Standards Act. This Article will serve as notice of layoff and recall for the school vacation periods during the term of this Agreement.

5.3 Recall

- c) Pursuant to Article 4.2 entitled “Seniority Lost” during a layoff, employee shall maintain, but not accrue, all previously earned benefits and rates of pay (emphasis added).

Article 6 – Annual Vacation and Statutory Holidays

6.1 Entitlement

a) Payment

It is understood and agreed that the wages of school year employees are inclusive of all monies owing with respect to vacation pay and statutory holiday pay in accordance with The Labour Standards Act.

Article 7 – Leaves of Absence

7.1 General Leave

Subject to operational feasibility and where the employee has provided good and sufficient reasons for a leave, the Board shall grant a leave of absence without pay and without loss or accrual of seniority to a maximum of one (1) school year or such other period of time as maybe mutually agreed to between the employee and the Board. The request will be in writing at least fifteen (15) working days in advance of the date of the requested leave.

Article 9 – Term of Agreement

9.1 Duration

This Agreement shall be effective January 1, 1995 and shall remain in force until December 31, 1997 and thereafter from year to year unless written notice is given as provided in Article 9.2 entitled “Written Notice”.

Hours of Work by Classification

<u>Classification</u>	<u>Hours of Work per Day</u>	<u>Year*</u>
Library Assistant	7.5	School
Teacher Assistant	7.5	School
School Secretary	7.5	School

includes paid leave during four (4) teacher in-service days

Case #2 – CUPE 3550 and 3484 Alberta: CUPE appeals denial of UI benefits

Approximately 2,000 ten-month school board workers in Edmonton were denied UI benefits in the summer of 2002. The workers, members of CUPE 3550 and 3484, are employed as teaching assistants, secretaries and food preparers. The denial of benefits hit workers hard. One woman feared that without UI she'd lose her farm. Another expected difficulty was in making her mortgage payments. Even workers on sick leave were denied UI benefits. Because of the undue financial hardship placed on members over the summer, CUPE filed appeals with the Board of Referees and the Tax Court of Canada.

The workers' problems started when HRDC, asked the CCRA to analyze the locals' collective agreements. Based upon the particular language contained in the collective agreements, the CCRA concluded that the workers were employed under a continuing contract of service over the summer months. The CCRA said the workers were not laid off during the two-month summer break for the following reasons:

- Workers were eligible for coverage, or able to participate in, dental, health and group life insurance plans over the summer months, and,
- Workers had a start date for the new school year.

In the words of HRDC Manager Keith Shackelford, "They are not laid off. They know they have a job to go back to" (*Edmonton Journal*, "Teaching assistants lose EI benefits." Monday August 5, 2002, page B3).

HRDC officials viewed the workers as simply taking vacation over the traditional two-month summer layoff period. This argument has been attempted elsewhere and overturned. In CUPE 3681 (Potashville School Division, Saskatchewan) vs. the Minister of National Revenue, the CCRA argued that the workers were not laid off because they were on summer vacation. However, the Judge in this case dismissed this argument outright. He ruled that the summer break is students' vacation time but is not vacation time for the workers (see Case #1- CUPE 3681, Saskatchewan: The Porter decision).

In face-to-face discussions with CUPE representatives, HRDC officials also argued that the workers were not laid off because the employer/employee relationship was not permanently severed or terminated. In the view of HRDC, layoff is not temporary but is a permanent separation from employment. Courts, however, have allowed that the term "layoff" can have multiple meanings (e.g., permanent, temporary, etc.). In the absence of an explicit definition of layoff in collective agreement language, the Courts have attributed meaning to the term within the context of the entire collective agreement. Locals should negotiate language that broadens the definitional boundaries of the term layoff to include permanent, temporary, prolonged and/or indefinite periods.

Do's and Don'ts of Contract Language

The importance of sound contract language cannot be overstated. The following is a list of do's and don'ts for contract language arising out of Judge Porter's decision in favour of CUPE 3681 school board workers:

Do's

- Use hourly rates in the Salary Schedule.
- Use “ten month hourly wage paid over ten months” - Do NOT use “annual employee” when referring to employees working ten months.
- Include language to ensure that Employer must issue Records of Employment (ROE) for summer, spring and Christmas breaks.

The employer will issue a Record of Employment within five (5) working days of the last day of work in accordance with the appropriate legislation. (CUPE 4400 – Toronto District School Board)

- *Include automatic layoff and recall language.*

Example: Employees who work on the basis of the school year shall be deemed to be laid off for the duration of the school's summer closure period. Recall following the school vacation periods shall be automatic unless the Board has served a termination or indefinite lay off notice pursuant to Section 43 of The Labour Standards Act. This Article will serve as notice of layoff and recall for the school vacations period during the term of this Agreement. (Based on Language contained in the CUPE 3681 collective agreement – Potashville School Division, Sask).

- *Definition of layoff.*

Example: A layoff shall be defined as a reduction in the workforce or a reduction in the regular hours of work as defined in this Agreement. A layoff can be permanent, temporary, prolonged and/or indefinite.

- *Use language that states that benefits are maintained, but do not accumulate or accrue during summer, spring and Christmas breaks.*
- *Use language that states that service is to be interrupted during breaks and re-credited upon recall.*

Example: For unpaid school breaks, employees shall have their service interrupted, however, the Service for the unpaid leave period shall be re-credited once the employee is recalled.

Don'ts:

- Don't refer to annual salary.
- Don't refer to workers taking their vacations over the course of the two-month summer layoff period.

Case #3, CUPE 4400 Ontario: school board instructors win UI benefits

Instructors employed with the Toronto District School Board, Canada's largest school district, have been facing numerous hurdles in meeting eligibility requirements. The 3,000 workers are members of CUPE 4400. The local has a combined membership of approximately 14,000 and is one of the largest CUPE locals in the country.

The workers provide non-credit, classroom instruction in literacy training, language skills, music, parenting and seniors programs. A majority of these instructors are women who work part-time hours. Many already have difficulty meeting eligibility requirements for UI because they are unable to accumulate enough hours of work to qualify. Now HRDC is making it even more difficult for these workers to gain access to UI benefits by attempting to deny them over the summer layoff period.

HRDC officials have been arguing that CUPE Instructors are in fact teachers. The distinction is an important one, as teachers tend not to qualify for UI benefits. The reason teachers do not qualify for UI is that they are usually considered year-round employees. Teachers are not technically laid off over the summer months because they are paid on an annual basis.

Such is not the case with CUPE instructors. These workers are ten-month employees. They are laid off over the summer, Christmas and Easter/March breaks and receive no wages from their employers during periods of layoff. The workers do in fact perform certain instructional duties but they do not fall within the definition of "teacher" as outlined in the EI Regulations.³

³ EI Regulations: Additional Conditions and Terms in Relation to Teachers

33.1 The definitions in this subsection apply in this section.

"non-teaching period" means the period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching. (*période de congé*)

"teaching" means the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school. (*enseignement*)

(2) A claimant who was employed in teaching for any part of the claimant's qualifying period is not entitled to receive benefits, other than those payable under sections 22 and 23 of the Act, for any week of unemployment that falls in any non-teaching period of the claimant unless

(a) the claimant's contract of employment for teaching has terminated,

(b) the claimant's employment in teaching was on a casual or substitute basis, or

(c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

(3) Where a claimant who was employed in teaching for any part of the claimant's qualifying period qualifies to receive benefits in respect of employment in an occupation other than teaching, the amount of benefits payable for a week of unemployment that falls within any non-teaching period of the claimant shall be limited to the amount that is payable in respect of the employment in that other occupation. SOR/97-31, s.17.

The following examples show that the work performed by CUPE instructors differs from that of teachers in very significant ways:

- All teachers, whether regular, short or long term occasional teachers, must be members of the Ontario Teachers Federation under the *Teaching Profession Act*, and must also be members of the Ontario College of Teachers under the *Ontario College of Teachers Act, 1996*. This condition does not apply to members of CUPE 4400.
- Legislation as well as regulation in Ontario prescribes the duties of teachers, whereas the duties of our members are outside to those prescribed by the Education Act (e.g., literacy training, language skills, parenting, etc.).
- All teachers are placed in statutorily defined bargaining units under *The Education Act*. Our members are in bargaining units under provisions of the *Labour Relations Act, 1995*.
- Teachers are responsible for teaching credit courses in the primary, junior, intermediate and senior divisions as defined by legislation.
- Teacher positions are funded by the provincial government under the *Education Act*. While the Toronto District School Board obviously receives its funding in this way, many of the programs in which the members in question work are externally funded and subject to yearly grant applications. Furthermore, many programs are delivered at the discretion of the trustees of the Toronto District School Board and not pursuant to the *Education Act*.
- Teacher placements are usually determined pursuant to negotiated staffing arrangements in the collective agreement or as prescribed by legislation. There are no similar staffing provisions in the CUPE agreements.
- Teacher placements are generally determined in the spring of the year and are based on projected student enrolment. Those numbers may be reviewed when the final figures are known, generally by September 30th and class sizes and assignments adjusted accordingly. By contrast, CUPE members do not know what will be available for them until the fall of the school year, based on enrollment, funding and availability of space. While they have an expectation that they will be working they do not have any guarantee.
- Teachers are paid for the entire year. Members of CUPE 4400 are paid by the hour over a ten-month period (the school year).

In an effort to determine who does and does not qualify for UI benefits, HRDC has instructed the members of CUPE 4400 to complete and submit with their UI application the *Teaching Occupations Questionnaire* (see Appendix E). The questionnaire is being used by HRDC officials as an investigation tool to disqualify members. HRDC officials have informed the workers that if they do not complete and submit the questionnaire they may not receive UI benefits. In the meantime, CUPE 4400 has been successfully fighting back attempts by HRDC to designate CUPE instructors as teachers – the local has won several appeals to the Boards of Referees. These victories are based upon the differences between teachers and CUPE instructors as previously outlined.

Gender-based discrimination and UI: the Lesiuk Charter challenge

A Winnipeg nurse who claimed the current Employment Insurance legislation discriminates against women tried to take her fight all the way to Canada's highest court. Kelly Lesiuk argues that UI eligibility requirements are discriminatory because as primary caregivers many women are forced to work part-time hours and are unable to accumulate enough hours of work to qualify for benefits.

Lesiuk's fight began in 1998. At that time, Lesiuk who was pregnant with her second child, was denied UI benefits because she was 33 hours short of the minimum 700 hours needed to qualify. Lesiuk applied for both regular and maternity benefits but was informed by HRDC that she did not qualify for either. However, under the former UI Act, replaced by the reforms of 1996, she would have had sufficient number of hours to qualify for benefits. Lesiuk appealed to a Board of Referees but her appeal was denied. She then appealed to an Umpire, retired judge Roger Salhany.

In 2001 Justice Salhany sided with Lesiuk. He ruled that the current UI Act violates the Charter of Rights and Freedoms because it discriminates against women:

[64] "In my view, the eligibility requirements demean the essential human dignity of women who predominate in the part-time labour force."

And,

[59] "When a mother works part-time because of her unpaid parental responsibilities, she should not receive inferior employment insurance coverage on that account."

Instead of simply changing the legislation, the federal government decided to appeal Judge Salhany's ruling to the Federal Court of Appeal. Given the widespread importance of this case for all Canadian women, in July 2002, CUPE National and CUPE 4400 applied for intervener status. However, one month later, the Federal Court of Appeal denied the intervener status application. No reasons for the denial were given, which is common practice.

Lesiuk's case proceeded and her lawyers argued that UI eligibility requirements for women are a breach of the Charter Equality Rights but the Federal court disagreed. In a 3-0 decision, the Federal Court of Appeal ruled that the new required hours were "an administratively necessary tool" needed to run Canada's unemployment insurance system. Lesiuk appealed that decision to the Supreme Court. On July 17, 2003, the Supreme Court declined to hear her case arguing that it was not an issue of national importance, and ordered Lesiuk to pay her appeal costs. It was a disappointing outcome, especially for women, and other part time workers struggling to meet UI eligibility requirements while juggling home and family responsibilities.

Approximately 30% of all CUPE members work part-time hours. And more than half of our members are women. The gendered wage gap in earnings means that many women earn substantially less than men in the paid labour force. Many women rely on UI benefits to supplement their often meager incomes. Access to regular benefits in times of layoff is just as important. Many women who work part-time hours, experience layoffs on a regular basis.

The new qualifying rules for UI have made it much more difficult for women to gain access to benefits. At its worst, being denied access to UI benefits can mean poverty for many working women. It is critical that we continue to fight to ensure that working women have access to UI benefits while they are pregnant, ill, and caring for their children.

Training and other help getting a job

Re-employment benefits

The Canadian government no longer funds employment training programs. In 1995, the federal government began withdrawing from training programs claiming that training is a provincial responsibility through education. This means workers rely primarily on provincial programs for training and other help finding a new job. These programs vary considerably across the country since they are designed and delivered by provincial governments.

Part Two of the EI Act, also referred to as Employment Benefits and Support Measures (EBSMs), downloads the responsibility for training to the provincial and territorial governments. In fact, under the terms of the EI Act federal support for skills development now requires provincial or territorial agreement.

EBSMs are provided through partnerships between the federal and provincial/territorial governments. These partnerships are known as Labour Market Development Agreements (LMDAs). To date, the federal government has entered into LMDAs with all of the provincial and territorial governments with the exception of Ontario. LMDAs allow provinces and territories to design and deliver employment programs that are supported by EI funds. Employment Benefits and Support Measures provide the following five re-employment benefits:

- **Targeted Wage Subsidies:** employers are provided with wage subsidies to hire participants.
- **Targeted Earnings Supplement:** low-wage jobs are provided with temporary top-ups (the federal government has decided not to implement this support measure).
- **Self-Employment:** participants who want to start their own business are provided with financial assistance and advice.
- **Job Creation Partnerships:** participants are provided with work experience to gain long-term employment.
- **Skills Development:** participants are provided with financial assistance to select, arrange for and pay for their own skills training.

To be eligible for re-employment benefits you must be out of work, currently in receipt of UI or been in receipt of UI within the previous three years. You may also be eligible for re-employment benefits if you've received maternity and/or parental benefits within the previous five years.

Contact your CUPE local or area HRCC (Human Resources Centre of Canada) office to find out where you should go to apply for training and other programs.

UI penalties

You risk a stiff penalty if you knowingly make false or fraudulent statements on your UI claim. Repeat violations could result in increased penalties. Depending on your individual circumstances, you could be penalized up to three times your weekly benefit rate or three times the amount of your overpayment.

In addition to these financial penalties, you could face higher entrance requirements for a period of five years or for your next two claims, whichever occurs first. The following table outlines the higher entrance requirements based upon the value of the UI fraud.

UI fraud penalties

Fraud overpayment	Higher Entrance Requirements Due to Fraud
less than \$1000	+105 hours of additional work
\$1000 - \$4,999	+ 210 hours of additional work
more than \$5000	+ 315 hours of additional work

Source: Adapted from HRDC online data.

For example, you require 420 hours of work to qualify for UI benefits but you *knowingly* make a false statement that results in an overpayment of less than \$1000. You will need an additional 105 hours of work to qualify for benefits for a total of 525 hours ($420 + 105 = 525$). This is equivalent to having to work 25% more qualifying hours. Repeat violators are required to work double the number of insured hours to qualify for benefits. For example, if you normally need 420 work hours to qualify for UI, you would now need to work 840 hours.

There are now additional penalties for claimants who knowingly make false or fraudulent statements. These new penalties result in claimants being charged interest on monetary penalties and overpayments. For example, if a claimant knowingly submits false information that results in an EI overpayment, then the claimant would be charged interest on the overpayment in addition to having to repay the principal amount.

What happens if I'm prosecuted?

Prosecution occurs only in the most serious EI fraud cases. These would include not reporting earnings over a long period.

The EI investigator is required to read you the formal caution that you are not required to make incriminating statements but that any statement you do make may be used in court.

Most EI recipients being prosecuted will want a lawyer to represent them in court. If you are found guilty, your sentence may be reduced by factors such as severe financial hardship, illness, stress, alcohol, and substance abuse.

You should remember that the EI investigator's job is to gather all the facts concerning the case. You are presumed innocent until all the facts have been reviewed.

Investigation and Control Branch

The Investigation and Control Branch protects the EI fund from fraud and abuse by employers and EI recipients.

The protection of the EI fund includes educating EI recipients about their rights and obligations. The EI investigator will try to ensure you understand that:

- You must be available for work and actively seeking it,
- You must declare all periods when you are sick or on holiday, and
- You must declare all gross earnings (earnings before deductions).

The EI investigator also deals with employers. If your employer doesn't give you your Record of Employment within the five days allowed, an EI investigator may pay a visit to get the information necessary to establish your EI claim. EI investigators are most often involved when an employer goes out of business, making it difficult to get information. Employers who do not comply with the EI Act can be prosecuted or required to pay monetary penalties.

Potential EI fraud cases are identified through a federal program that compares Records of Employment with your pay history to determine if you collected EI benefits during any of the weeks you worked. If you did, you will be hearing from an EI investigator even if you are no longer receiving EI benefits.

You've been contacted by 'Investigation and Control'. Now what?

A contact by the Investigation and Control Branch may feel intimidating, but it is important to respond. If you have been contacted for an interview and are unable to attend, arrange another interview by immediately calling the EI investigator.

The interview may be requested because there is something wrong with your EI claim. Many cases involve simple errors. The interview is your chance to see all information on your file such as cancelled cheques, EI report forms, and payroll data. If you feel there are errors in the information supplied by the employer, you should provide evidence such as pay stubs to support your claim.

If you do not understand a request for information, ask that it be made clear to you. If you don't respond, you may face penalties or prosecution without further contact.

What happens if there has been an overpayment?

The usual procedure is for EI recipients to repay the money through deductions from their EI cheques. The amount can be discussed at your HRCC.

EI recipients who do not bother to discuss the deduction amounts will have 100% of their EI benefits applied to the overpayment.

If you are no longer receiving EI benefits, you can arrange to make monthly payments from your current income.

Frequently asked questions about UI

Can I be refused benefits even if I've worked the required length of time?

Yes! If you quit your job without 'just cause', or if you are fired for misconduct, you will not be able to use your insured weeks from that job to collect benefits. This is called disqualification. See **Appendix F** for a definition of 'just cause'.

How do I claim 'just cause'?

Establishing just cause isn't easy. The Employment Insurance Commission says that to show 'just cause' workers must demonstrate they had no reasonable alternative to leaving. This means you must exhaust all possible means available to improve the situation before leaving. You must show you attempted to remedy the situation and quit only because you were unable to do so.

Each case is reviewed on an individual basis. HRCC staff is supposed to be trained to gather all facts affecting a claim and be responsible to the needs of UI claimants. The benefit of the doubt is supposed to go to the employee when the evidence is balanced.

If an UI agent disqualifies a claimant, the decision may be appealed to the Board of Referees. An appeal must be filed within 30 days. To file an appeal, you must write to your local HRCC and state which decision you object to and the reasons for your objection. Refer to section E for information on filing an appeal. Your local HRCC provides information brochures on the appeals process. Talk to your CUPE Representative about getting help.

Can I receive benefits if I work-share?

Yes. Section 24.1 of the EI Act makes clear that you may be eligible for benefits if you work-share. However, in order to receive benefits, the UI Commission must first approve any work-sharing arrangements with your employer. Under the EI Act, a worksharing plan at your place of employment must have regulations that:

- Define and determine the nature of work-sharing employment,
- Prescribe the maximum number of weeks for which benefits may be paid,
- Prescribe the method of paying benefits,
- Prescribe the rate of weekly benefits, and
- Provide a method of setting weekly insurable earnings.

For more information on the rules governing the payment of worksharing benefits, contact your local HRCC office.

Can I receive benefits if I am involved in a labour dispute?

No. The EI Act prohibits the payment of benefits to anyone who participates in a strike or work stoppage. You may be entitled to benefits once the strike is over or once you start a new job, whichever is earlier.

What if I'm suspended?

If you are suspended from a job for misconduct, you cannot receive benefits while you are under suspension. You may be eligible for benefits if you are laid off after the suspension. If you quit a job or are fired within three weeks of receiving a layoff notice, you may be eligible for UI.

What if I take leave of absence?

If you take a leave of absence, you may be eligible for benefits without penalty if you are laid off during your leave or laid off after you return to work, but your qualifying period will not be extended. This means you may be at risk of losing your UI claim if you take a leave and then lose your job when you don't have enough weeks of insurable employment in the previous 52 weeks.

Can I be penalized once I start to get benefits?

Yes. You may be penalized for the following reasons:

- Refusing employment or failing to apply for employment without just cause.
- Failure to comply with a written direction from UI that is intended to assist in finding suitable employment.
- Quitting a course of instruction without just cause.

Can I be cut off UI benefits?

Yes. You can be cut off UI benefits - this is called being "disentitled". You can be disentitled for a number of reasons, including the following:

- Quitting your job without just cause,
- Being unavailable for work,
- Imprisonment,
- In the case of sickness benefits, an inability to prove that you are unable to work due to illness,
- Making a delayed claim for renewed or continued benefits,
- Suspension due to misconduct,
- Working a full week,
- Failure to provide HRDC with requested information,
- Being out of the country.

However, you may be entitled to **special benefits** (maternity, parental, adoption and sickness benefits) if you are out of the country. To be certain, check with your UI officer.

Some things you aren't told about UI

Your EI claim normally starts on the Sunday of the week in which you file your application. In other words, if you file on a Monday, your claim starts on the previous day. If you are delayed in applying for EI, and you have a good reason for the delay, it may start earlier. Ask in writing if your claim could start earlier.

There are sometimes big delays in sending your EI cheques. However, your HRCC can make up special cheques within 24 hours. Ask for one if your claim is delayed.

You have the right to see the information on your EI file.

If you have two EI claims in one year, your second claim is renewed at the same benefit rate. Sometimes you can get a higher rate by cancelling the first claim in favour of the second. Ask your EI officer.

If you have problems with your EI claim and can't get a satisfactory response from your HRCC, contact your Member of Parliament. They ask about EI claims regularly and often get faster replies than the general public.

Some advice on visiting Human Resource Centres

You should register at the your local HRCC. You may be contacted if a suitable job is available. In addition, the number of registrations is used to help calculate the official unemployment rate.

- You will get much faster service if you arrive at the HRCC by 8:45 a.m.
- Be persistent. There may be a long line-up and a long wait, but don't give up.
- You should keep a list of the people you contact at the HRCC. You should also record when you talked to them and what you talked about.
- You should talk to an employment counsellor if you are unsure about what you want to do or what options are open to you. An employment counsellor is the person with authority to help you access HRCC services. Be persistent.
- You should not be afraid to ask questions if you don't understand something. After all, it's your future.
- If service is denied, you should request to see the manager or contact your Member of Parliament for further assistance. If you don't know who your MP is, phone your local library.

Resources

In all provinces, the federal government, through your local HRCC, remains responsible for providing assistance with your EI claim and any problems you have receiving your benefit.

You may also get assistance from your CUPE local or from other community resources.

Information your CUPE local may provide

Your local's Unemployment Committee can assist unemployed members by:

- Explaining EI entitlement criteria,
- Making members aware of Supplemental Unemployment Benefit plans, if they exist,
- Informing members of any EI changes,
- Informing members of monitoring and policing programs being conducted by the government,
- Helping members complete their EI applications,
- Helping members complete their report cards once their applications are accepted, and
- Helping members maintain a job search record.

In addition to assistance with the EI application and reporting procedures, unemployed members may need help with various aspects of a job search including:

- Résumé preparation,
- Identification of job opportunities,
- Completing job applications,
- Preparation for a job interview,
- Skills assessment, and
- Counselling – including vocational/career, financial, credit and personal counselling.

Unemployment Help Centres

Dozens of Help Centres have been set up across the country that provide assistance to unemployed workers. Centres offer information on the Employment Insurance system and provide counselling services. Some even advocate on behalf of the unemployed. A list of Unemployment Help Centres in Canada appears in Appendix H. You may also want to contact your local United Way for information on a centre for your area.

Other community resources

Other agencies and organizations have information or services that can be of assistance to unemployed workers, especially those who are facing long-term or chronic unemployment. Your local can help unemployed members by informing them of the kinds of services that are available and referring them to the most appropriate ones. These resource groups and agencies include community agencies, women's groups, anti-poverty groups, and labour councils, just to name a few. They provide information or services which include:

- Personal and family counselling,
- Health services,
- Advocacy services,
- Financial counselling,
- Housing information,
- Legal aid,
- Child care services,
- Crisis intervention programs,
- Literacy and education services,
- Other training,
- Recreation/volunteering,
- Retraining,
- Services for women,
- Help for disabled persons, and
- Help for refugees and immigrants, visible and ethnic minority persons, youth, elderly and Aboriginal persons.

Conclusion

The UI program is designed for workers. Yet, it is complicated, sometimes confusing, and constantly changing. It is part of the social safety net that Canadians support as part of a caring compassionate society. Yet, the liberal government used the surplus to pay down the deficit rather than investing the surplus to improve coverage and benefits.

We need to keep the pressure to keep the UI program working for workers. How? CUPE will continue to work with the Canadian Labour Congress (CLC) to pressure the federal government for improvements to the program, and locals can negotiate language in their collective agreements to ensure members are eligible for UI benefits when they need them.

Knowing our rights are important steps in real and positive reform. We hope this handbook will help.

Appendix A

What counts as earnings?

Most payments received when you leave a job are considered earnings and will postpone or reduce UI benefits such as,

Pensions, including:

- Service in the Canadian Military or a police force
- Canada and Quebec Pension Plan payments
- provincial pension plans

Pension income that will NOT affect your benefit income include,

- (a) disability pensions
- (b) survivor's or dependant's pensions
- (c) pension payments from private RRSP's
- (d) the pension is not considered earnings if the weeks of insured employment used to establish the benefit claim were accumulated after the pension became payable and while the pension continued being paid

Other money considered as earnings:

- Severance pay
- Retirement benefits, retirement leave and accumulated sick leave credits or pay in lieu of these
- Wages in lieu of notice
- Bonuses and gratuities
- Labour arbitration award, court judgement or out-of-court settlement
- Vacation pay
- Workers' Compensation pay
- Group sickness or disability wage loss payments or paid sick, maternity or adoption leave payments
- Motor vehicle accident insurance payments if paid out as benefit for loss of income - including payments under no-fault insurance plans

The claim will not begin until all these funds have been paid and allocated to your normal weekly earnings.

In addition, retirement pensions are earnings but will NOT prevent the claim from being paid. They are applied to your claim and will reduce the UI benefits.

NOT considered earnings, these will not affect a claim:

- Disability pension and permanent settlement under a Workers' Compensation plan
- Private wage loss indemnity payments
- Relief grants
- Approved Supplementary Unemployment Benefits (SUB)
- Retroactive wage increases.

Appendix B

Supplemental Unemployment Benefit contract language examples:

CUPE 1 and Toronto Hydro

Article 24 Health, Welfare and Insurance Benefits

Wage top-up for Pregnancy leave

24.03 *In the case of Pregnancy Leave, the Employer will provide payment equal to 95% of base pay during the two (2) week E.I waiting period and the difference between the payments received from E.I and 95% of the employee's normal, straight-time pay for **fifty-two (52)** weeks, subject to continued government legislation and approval.*

Maintenance of Wages for Adoption Leave

24.04 *In the case of an Adoption Leave for the primary caregiver, who has adopted a child under six (6) years of age, who is not the natural child of either adoptive parent, the Employer will provide payment equal to 95% of base pay for two (2) weeks and 95% of his/her normal, straight-time pay for up to thirty-five (35) weeks.*

**Public Service Alliance of Canada and Treasury Board
Group: Program and Administrative Services**

Maternity Allowance

Maternity allowance payments made in accordance with the SUB Plan will consist of the following:

- i) where an employee is subject to a waiting period of two (2) weeks before receiving Employment Insurance pregnancy benefits, ninety-three percent (93%) of her weekly rate of pay for each week of the waiting period, less any other monies earned during this period, and
- ii) for each week that the employee receives a pregnancy benefit pursuant to Section 22 of the Employment Insurance Act, the difference between the gross weekly amount of the Employment Insurance pregnancy benefit she is eligible to receive and ninety-three percent (93%) of her weekly rate of pay less any other monies earned during this period which may result in a decrease in Employment Insurance benefits to which she would have been eligible if no extra monies had been earned during this period.

Parental Allowance

- (c) Parental Allowance payments made in accordance with the SUB Plan will consist of the following:
 - i) where an employee is subject to a waiting period of two (2) weeks before receiving Employment Insurance parental benefits, ninety-three percent (93%) of his/her weekly rate of pay for each week of the waiting period, less any other monies earned during this period.
 - ii) other than as provided in subparagraph (iii) below, for each week in respect of which the employee receives parental benefits pursuant to Section 23 of the Employment Insurance Act, the difference between the gross weekly amount of the Employment Insurance parental benefits he or she is eligible to receive and ninety-three percent (93%) of his or her weekly rate of pay less any other monies earned during this period which may result in a decrease in Employment Insurance benefits to which he or she would have been eligible if no extra monies had been earned during this period.
 - iii) Where the employee becomes entitled to an extension of parental benefits pursuant to Subsection 12(7) of the Employment Insurance Act, the parental allowance payable under the SUB Plan described in subparagraph (ii) will be extended by the number of weeks of extended benefits, which the employee receives under Subsection 12(7) of the Employment Insurance Act.

Appendix C

UI Premium Reduction Program contract language example:

CUPE 1866 and the Workplace Health, Safety and Compensation Commission of New Brunswick (January 1 1999 - December 31 2001)

Article 39 – EI Rebate

39.01 The Employer agrees that five-twelfths (5/12ths) of any benefit derived shall be returned to the Union in trust to be used for education of the members of the bargaining unit.

CUPE 401 and the City of Nanaimo BC (2001 – 2003)

(b) Medical Insurance

(iii) Effective January 1, 1999, the Extended Health Benefit Plan shall be amended to include Vision Care coverage. The premium cost for this coverage shall be paid one hundred percent (100%) by the Employer, provided the Employee's share of the EI rebate has first been applied to the cost of providing medical insurance under this Section (b). Should the EI rebate cease, the premium for vision care shall be split 50/50 between the Employer and employees by payroll deduction.

CUPE and the Saskatchewan Association of Health Organizations (April 1 2001 – March 31 2004)

Article 23 – Employment Strategy

23.01 Purpose

Through the Provincial Employment Strategy Committee (hereinafter referred to as “the Committee”), the parties agree to develop and implement long term strategies for training, retraining and re-employment of Employees to meet current and future human resource needs in order to provide employment security. The Employer agrees to deduct the Employees’ share of the Employment Insurance rebate and match that deduction and forward to the Employment Strategy Committee those monies on a monthly basis.

CUPE 1594 and the Regina Public Library (1998 – 2000)

Schedule “E” – Letter of Understanding

Re: Employment Insurance Premium Reduction Program

- 1. The parties agree that the employees’ five-twelfths (5/12ths) portion of the premium reduction resulting from the Employment Insurance Premium Reduction Program from and after January 1, 1997 will be paid to the benevolent fund established by the Union for the benefit of employees of Regina Public Library.*
- 2. Either party may request a review of this agreement at any time to address revisions to the Employment Insurance Premium Reduction Program.*

CUPE Saskatchewan Hospital Master Agreement (April 1 2001 – March 31 2004)

- 3.13 The Employer agrees to apply for a rebate of Unemployment Insurance premiums under the “Unemployment Insurance Rebate Program”. The Employees’ share of the rebate will be administered by the Local of the Union for the benefit of its members consistent with the terms of the Unemployment Insurance Act, 1971 (or as the Act may be amended from time to time). Remittance of the Employees’ share of the Unemployment Insurance Rebate shall be turned over to the Local of the Union on a monthly basis.*

Appendix D

CUPE members serving on the Board of Referees

These appointees can change from time to time. At the time of printing the following CUPE members were serving:

Board Centre	Insured Persons Representative	Board Centre	Insured Persons Representative
Calgary	Fernando Longhi	Peterborough	Shirley Cave
Charlottetown	Leo Cheverie	Red Deer	Connie Barnaby
Corner Brook	Donna Ryan	Red Deer	Diane Wyntjes
Edmonton	Roxanne Wells	Regina	Wanda Edwards
Edmonton	Dave Werlin	Rimouski	Gilles Dumais
Edmundston	Hermel Grandmaison	Riviere-du-Loup	Christiane Carrier
Fredericton	Charles Burns	Saint John	Wendy McGee
Fredericton	Maureen Michaud	Saint John	John Richardson
Kamloops	William Ferguson	Sault Ste. Marie	Louise Primeau
Kentville	Gary Bonn	St. John's	Samuel Kelly
Kingston	Arlie Redmond	Sydney	Agnes Boudreau
Lethbridge	Thomas Osborn	Sydney	Cathy Dauphney
London	Vera Greer	Timmins	Joseph Godin
Lower Mainland	Patricia Michael	Toronto	Joe Chiasson
Moncton	Claire Doiron	Toronto	Terri Preston
Moncton	Suzanne Hooper	Toronto	Dorothy Sauras
Montreal	Michel Taylor	Vancouver	Patricia Michael
Nelson	Lee-Anne Barrett	Victoria	Colin Graham
Nelson	Della McLeod	Yarmouth	Catherine d'Entremont
New Glasgow	Gwen Savage	Yarmouth	Joanna Mutton
Oshawa	Abby Kiberd		

Appendix E

HRDC's teaching occupations questionnaire

Name: _____ Social Insurance Number: _____

It has been determined from your application for benefits that you were employed in a teaching occupation. In order to determine your entitlement to Employment Insurance Benefits, we require the following information. (Please use additional paper if required).

1. How many years have you been employed for the same employer (prior school boards joined by amalgamation are considered the same employer)?

2. Was your employment in teaching on a "casual" or a "substitute" basis? (Please note, "casual" means teaching for a short period of time for a limited, intermittent and temporary purpose. It means irregular, occasional or incidental teaching. "Substitute" means the replacement of a teacher who is away.)
 Yes No
3. Are you employed from September to June consecutively (except for Christmas and March breaks)? If no, please explain.

4. (a) What subject(s) do you teach?

(b) Is this part of the Ministry of Education Ontario Curriculum?

Yes No

5. Will you be returning to your teaching occupation for the same employer in September?

Yes No

(a) If no, please explain why you are not returning.

(b) If yes, how are you notified that you will be returning?
Is it understood that you will automatically be returning unless otherwise notified? Please provide details.

6. Will the terms and conditions of your employment be the same effective September?

Yes No

If not, please explain and detail all of the differences.

7. Is your salary based on your years of service with this employer?

Yes No

8. (a) What employee benefits did you receive until now
(for example: medical/dental benefits)?

(b) Do these benefits continue during the non-teaching periods
(i.e. Christmas, March and summer breaks)?

Yes No

(c) Will there be any changes to these benefits effective September?
If yes, please explain in detail.

Yes No

9. (a) Is your position protected based on seniority? Yes No

(b) Do you retain seniority rights from one school year to the next? Yes No

10. Do you carry forward your pension contributions (excluding Canada Pension Plan contributions) from one school year to the next? Yes No

11. Do you accumulate sick leave credits? Yes No
If yes, do they carry forward from one school year to the next? Yes No

12. Does your employer pay group insurance premiums on your behalf? Yes No
If yes, what are they?

Are they continued during the non-teaching periods? Yes No

13. Does your regular pay include a percentage for vacation and statutory holidays? Yes No
If not, please explain how vacation time and statutory holidays are treated.

Please provide a copy of your contract of employment and/or collective agreement. If you are unable to supply a copy, please explain why not.

DECLARATION AND SIGNATURE:

I declare that the information and answers given by me to the questions on this form are true to the best of my knowledge. I understand that this information will be used to determine my eligibility for Employment Insurance benefits. I am aware that the information that I provide may be subject to verification and that there are penalties for knowingly making false or misleading statements.

_____/_____/_____
Day Month Year Signature (in writing)

(Source: Adaptation of HRDC's Teaching Occupations Questionnaire.)

Appendix F

Definition of ‘just cause’

(Source: Human Resources Development Canada (HRDC)).

The term ‘just cause’ exempts workers from disqualification if they have left their job for these reasons:

- Sexual or other harassment,
- Obligation to follow a spouse, common-law partner or dependent child to another residence,
- Discrimination,
- Dangerous working conditions,
- Obligation to care for child or member of immediate family,
- Reasonable assurance of a job in the immediate future,
- Significant lowering of wages or salary,
- Excessive overtime work or refusal to pay for overtime,
- Significant changes in work duties,
- Antagonistic relations between an employee and a supervisor for which the employee is not primarily responsible,
- Employer’s practices that are against the law,
- Discrimination against an employee because of membership in a union, association or organization,
- Undue pressure by an employer on an employee to leave the job, and
- Any other reasonable circumstances that is prescribed under legislation.

Appendix G

Labour's vision for Unemployment Insurance

(Source: Adapted from the Canadian Labour Congress (CLC) 2002 Convention Resolutions).

CUPE and the wider labour movement have a vision for an Unemployment Insurance system that is fair, accessible and responsive to the needs of working and unemployed Canadians and their families. The objectives of such a program would be:

1. to protect workers in all types of employment (e.g., full-time, part-time, temporary, seasonal, etc.),
2. to ensure earnings protection in the event of unemployment, pregnancy, parental leave, temporary illness, and income support while training,
3. to end UI discrimination against women, youth, older workers, and workers in seasonal industries,
4. to simplify the UI program, and
5. to provide a benefit structure and financing of UI that reflects regional unemployment differences.

The qualifying criteria for UI should:

1. be 360 hours throughout Canada (not tied to local unemployment rates) for all categories of benefits (i.e., regular, maternity, parental, sickness, training, and work sharing benefits),
2. include a worker's years in the workforce where hours fail to fairly measure the worker's real and actual labour force attachment, and
3. eliminate the higher qualifying rule of 910 hours for new entrants and re-entrants to the labour force.

Weeks of benefit protection and entitlement should be changed to:

1. eliminate the two-week waiting period for all benefits,
2. one week of benefits for every 30 hours of work,
3. two weeks of extended benefits for every percentage that the unemployment rate is above four percent in the UI region,
4. five additional weeks for every claimant in areas where the economy is underperforming (i.e., areas where the unemployment rate is above ten percent),
5. include extended weeks of benefits for older workers (over age 45 and ten years in the labour force), the maximum extension is 26 weeks,
6. a maximum of 52 weeks of benefits, except for the older worker extended benefit to which the maximum should not apply,

7. eliminate any limitation on the benefit period for maternity and parental benefits based on the use of regular or sickness benefits, and
8. increase the maximum weeks of sickness benefits from 15 to 52 weeks.

The benefit rate and method of calculating weekly pay should be revised to:

1. make weekly benefits equivalent to two-thirds (66 2/3%) of a claimant's weekly pay,
2. make weekly earnings the best 12 weeks in the previous 52 weeks,
3. base maximum benefits on maximum weekly earnings 950 dollars a week in 2000), adjusted yearly to increase in average earnings, and
4. repeal the divisor and benefit clawbacks.

Self-employer contract workers should:

1. in most situations, be defined as employees (changes are required to ensure coverage for these workers).

Training entitlement should be:

1. expanded beyond apprenticeship so that regular EI benefits are available for all forms of workplace training,
2. accompanied by a requirement for: the development of a workplace human resource and training plan, Canada-wide training and occupational standards, recognition of prior learning and worker experience, a primary role for public education to ensure access, high standards and accountability, and union participation in approving the training plan and establishing standards with employers, education and government,
3. coupled with an EI premium reduction for employers who provide paid education leave or workplace training equivalent to what is provided by EI training insurance (similar to the premium reduction for employers and their employees with private insurance plans that top-up maternity, parental, and sickness coverage),
4. accompanied by the same protection of worker employment rights in federal and provincial labour standards that are provided for EI maternity and parental benefits,
5. framed so that training in the event of job loss is the equivalent to job search, and
6. framed so that hours of work prior to training count as qualifying time for benefit entitlement during and following leave.

The government's financial liability for UI should include:

1. the government paying for the cost of UI that is attributable to government policy failure (i.e., the cost of UI attributable to unemployment in excess of four percent), and
2. the repayment of the cumulative surplus 50 billion by 2003 borrowed from the UI account.

UI claimant services need to be revised to provide for:

1. independent claimants' advocates for filing claims, advising on rights, and assisting with appeals, and
2. one-stop comprehensive publicly administered employment service, including a registry of job vacancies that meets the varied needs of both unemployed and employed workers.

A UI trust fund should be established to:

1. operate at arms-length from the government of the day within a legislative framework,
2. restrict the use of worker and employer UI premiums to earnings insurance uses, and
3. outlaw use of UI money for federal debt reduction, tax cuts and spending on government programs.

UI premiums should:

1. be based on an annual maximum insurable earnings of \$49,400 (up from \$39,000) and be indexed to average yearly earnings,
2. not be based on experience rating at the level of the firm or sector,
3. be increased on overtime pay, and
4. not include premium holidays.

Provisions relating to voluntary leave and firings should:

1. expand the definition and categories of just cause for voluntarily leaving a job,
2. provide for more flexibility in interpreting what constitutes just cause, and
3. reverse the onus of proof from the claimant to the UI Commission.

Severance and vacation pay:

1. should not be treated as current earnings.

Provisions dealing with enforcement, penalties and fines should be revised so that:

1. penalties and fines must not be applied to a future entitlement that is unrelated to the event that gave rise to the penalty,
2. methods of enforcement must conform to protection of privacy and charter rights, and
3. the matching of a claimant's UI computer files with government and private databases unrelated to a person's claim (i.e., matching custom declaration with a person's UI claim) is not permitted.

Appendix H

Unemployment Help Centres

BRITISH COLUMBIA:

Prince Rupert Unemployed Centre Society
869 Fraser Street
Prince Rupert, B.C. V8J 1R1
Phone: (250) 627-8776

Sunshine Coast Unemployment Action Centre
Box 706
Gibson's, British Columbia
V0N 1V0
Phone: (604) 886-2425

SASKATCHEWAN:

Regina Unemployed Workers help and
Counselling Centre
1888 Angus Street
Regina, Saskatchewan S4T 1Z4
Phone: (306) 525-5138

Saskatoon Unemployed Workers help and
Counselling Centre
206-3311 Fairlight Drive
Saskatoon, Saskatchewan S7M 3Y5

MANITOBA:

Community Unemployed Help Centre
501-275 Broadway
Winnipeg, Manitoba R3C 4M6
Phone: (204) 942-6556
Email: cuhc@cuhc.mb.ca
Website: www.cuhc.mb.ca

ONTARIO:

Brantford Community Resource and
Employment Service
Suite 102-110 Icomm Drive
Brantford, Ontario N3S 7N8
Phone: (519) 751-4357

Cambridge Community Opportunities
Development Association
35 Dixon Street
Cambridge, Ontario N1R 7A6
Phone: (519) 623-9380

Cobourg Help Centre
1005 Elgin Street West, Suite 301
Cobourg, Ontario K9A 5J4
Phone: (905) 372-2646

Concord – Costi Employment Services
7800 Jane Street, Unit 1
Concord, Ontario L4K 4R6
Phone: (905) 669-5627

Cornwall Employment and Education Resource
Centre
144 Pitt Street
Cornwall, Ontario K6J 3P4
Phone: (613) 933-9675

Hamilton Help Centre
77 Victoria Avenue South
Hamilton, Ontario L8N 2S8
Phone: (905) 521-9125

The Working Centre - Kitchener
58 Queen Street South
Kitchener, Ontario N2G 1V6
Phone: (519) 743-1151

London Unemployment Help Centre
114 Dundas Street, 2nd Floor
London, Ontario N6A 1G1
Phone: (519) 439-0501
Niagara Falls Occupational Help and
Development Centre
Unit 7 – 6100 Thorold Stone Road
Niagara Falls, Ontario L2J 1A3
Phone: (905) 358-0203

Oshawa Durham Region Unemployed
Help Centre
15 Colburn Street East
Oshawa, Ontario L1G 1M1
Phone: (905) 579-1821

Owen Sound YMCA Community Employment
Services
648-2nd Avenue East
Owen Sound, Ontario N4K 2G8
Phone: (519) 371-9222

Pickering Career Assistance and Resources for
Employment
Unit 12, 1400 Bayly Street
Pickering, Ontario L1W 3R2
Phone: (905) 420-4010

St. Catharines Unemployed Help Centre
122-B Queenston Street
St. Catharines, Ontario L2R 2Z3
Phone: (905) 685-1353

St. Thomas Community Outreach Programs
of Elgin
550-A Talbot Street
St. Thomas, Ontario N5P 1C4
Phone: (519) 633-7777

Sault Community Career Centre
421 Bay Street, 4th Floor
Sault Ste. Marie, Ontario P6A 1X3
Phone: (705) 945-1600

Scarborough Access
Suite 250, 2100 Ellesmere Road
Scarborough, Ontario M1H 3B7
Phone: (416) 431-5326
Sudbury Vocational Resource Centre
124 Cedar Street, 3rd Floor
Sudbury, Ontario P3E 1B4
Phone: (705) 671-2544

Toronto – City of York Help Centre
700 Caledonia Road
Toronto, Ontario M6B 3X7
Phone: (416) 789-7925

Toronto – Labour Education Centre
15 Gervais Drive, Suite 100
Toronto, Ontario M3C 1Y8
Phone: (416) 537-6532
Email: info@mlec.org
Website: <http://www.mlec.org/>

Windsor-Essex Unemployed Help Centre
6955 Cantelon Drive
Windsor, Ontario N8T 3J9
Phone: (519) 944-4900

QUÉBEC:

Action Chômage Québec
435, rue Roi
Québec, Québec G1L 2X1
Téléphone : (418) 523-7117

Action Chômage St-Hyacinthe
900, rue St-Antoine
St-Hyacinthe, Québec J2S 3K1
Téléphone : (450) 778-6023

Comité Chômage de L'Est de Montréal
C.P. 5, Succursale « M »
Montréal, Québec H1V 3L6
Téléphone : (514) 521-3283

Comité Chômage du Haut-Richelieu
130, Jacques-Cartier nord
St-Jean, Québec J3B 6S6
Téléphone : (450) 357-1162

Comité Chômage de Montréal
819, du Couvent
Montréal, Québec H4C 2R5
Téléphone : (514) 933-5915

Corporation de Défense des Droits Sociaux
au Travail (Lotbinière)
372, St. Joseph, Local 1
Laurier-Station, Québec G0S 1N0
Téléphone : (418) 728-4054

Groupe Action-chômage de centre Mauricie
2183, avenue St-Marc
Centre Roland Bertrand
Shawinigan, Québec G9N 2J4
Téléphone : (819) 537-8851

Mouvement action chômage (MAC) :
MAC des Cheneaux
33, rue Duval, C.P. 69
Ste-Geneviève de Batiscan, Québec G0X 2R0
Téléphone : (418) 362-2134

MAC de Kamouraska
C.P. 1199, St-Pascal
Kamouraska, Québec G0L 3Y0
Téléphone : (418) 492-7494

MAC de la Malbaie
367, rue St-Etienne
La Malbaie, Québec G5A 1M3
Téléphone : (418) 665-3623

MAC de Longueuil
1194, rue Marquette
Longueuil, Québec J4K 4H8
Téléphone : (514) 670-7615
MAC de l'Outaouais
4, rue Taschereau, Unité 530
Hull, Québec J8Y 2V5
Téléphone : (819) 771-7453

MAC de Montréal
6839A, rue Drolet
3e étage
Montréal, Québec H2S 2T1
Téléphone : (514) 271-4099

MAC de (Pabok) Chandler
410, rue Commerciale Ouest
Chandler, Québec G0C 2R0
Téléphone : (418) 689-2030

MAC de Trois-Rivières
874, rue Ste-Julie
Trois-Rivières, Québec G9A 1Y2
Téléphone : (819) 373-1723

Mouvement des Chômeurs et Chômeuses
de L'Estrie (Sherbrooke)
187, Laurier, local 215
Sherbrooke, Québec J1H 4Z4
Téléphone : (819) 566-5811

Mouvement des sans Emploi de Lotbinière
157, rue Principale
St-Flavien, Québec G0S 2M0
Téléphone : (418) 728-4054

Regroupement des Chômeurs et Chômeuses
de Sorel
330, boul. Fiset
Sorel Tracy, Québec J3P 3R2
Téléphone : (450) 743-7822

Regroupement pour les Assistés Sociaux
#1-13, rue Centre
Granby, Québec J2G 5B4
Téléphone : (450) 777-4433

Regroupement des Sans-Emploi de la MRC
de L'Érable (Plessisville)
1657, St-Louis
Plessisville, Québec G6L 2N1
Téléphone : (819) 362-0066

Regroupement des Sans-Emploi (Val D'Or)
188, Perreault C.P. 206
Val D'Or, Québec J9P 4P5
Téléphone : (819) 874-6649

Regroupement des Sans-emploi de Victoriaville
59, rue Monfette, Bureau 211
Victoriaville, Québec G6P 1J8
Téléphone : (819) 758-6134

Regroupement des Chômeurs et Chômeuses
de Rouyn-Noranda
218, rue Portage
Rouyn-Noranda, Québec J9X 4M8
Téléphone : (819) 764-9888

Glossary

Average Insured Earnings

This is used in the calculation of your benefit amount. Your average, weekly insured earnings are determined by dividing total earnings during last 26 weeks of work by the greater of:

1. the number of weeks worked in last 26 weeks or,
2. the minimum divisor.

The resulting number is then multiplied by 55% to obtain the amount of your weekly benefit. The maximum payment is \$413 per week before taxes.

Benefit rate

A percentage of your average insured earnings for calculating the amount of your weekly EI benefit. If you have family income of \$26,000 or more, your rate will be 55%. If your family income is below \$26,000, and you receive the Child Tax Benefit, your EI benefit rate will be higher. It could be as high as 80%, depending on the number of dependents.

Divisor

A number HRDC sometimes uses in calculating your benefit. It is linked to the unemployment rate in your area. Your total earnings during the 26 weeks before your claim may (or may not) be divided by this amount (see Average insured earnings for more information). This reduces your benefit amount if the divisor is greater than the number of weeks you actually worked.

Family supplement

An additional benefit for modest income families with children. Families with net income below \$25,921 get a family supplement based on their Child Tax Credit, added to their regular EI benefit.

HRCC

Human Resource Centre of Canada. These are the local offices of the federal government, which administer Employment Insurance. They were previously known as Canada Employment Centres.

HRDC

Human Resource Development Canada. The department of the federal government responsible for managing Employment Insurance. The Canada Employment Insurance Commission comes under the HRDC umbrella and its main role is to assist HRDC.

Interruption of earnings

One of the conditions for qualifying for Employment Insurance. You must be without employment and without pay for seven consecutive days.

Maximum insurable earnings

The highest amount of income on which EI premiums are payable. It has been set at \$39,000 for 2002. The government collects premiums on every dollar earned up to this amount, which significantly increases revenues. However, over time, the maximum weekly benefit has been lowered.

New entrant/Re-entrant

Someone who is entering the workforce for the first time, or is re-entering the workforce after an absence of at least two years. New entrants/re-entrants must have 910 hours of insurable work to qualify for EI, a much higher requirement than other workers.

Premiums

The tax on your earnings that pays for Employment Insurance. The federal government currently (2002) collects \$2.20 for every \$100 in earnings from workers. It also collects \$3.08 for every \$100 of payroll from employers. Employer contributions are 1.4 times the employee rate.

Qualifying period

The 52-week period prior to your claim during which you must have worked a minimum number of hours in order to qualify for Employment Insurance. If you were on EI within the past year, your qualifying period starts at the beginning of your previous claim.

Waiting period

The two-week period you must wait before receiving benefits. You must be available for work and meet all other EI requirements during this period, but you receive no income. Similar to the deductible on an insurance policy.