

December 7, 2017  
D/BU #065/2017-2018



## Statutory Leaves and Employment Insurance Claw Back of 0.5% Lump Sum

To: Presidents and All Members  
From: Pierre Côté, General Secretary

### For Information

School boards have now made the 0.5% lump sum payment to OSSTF/FEESO members in accordance with the 2017-19 Extension Agreement. Many OSSTF/FEESO members who are or were on statutory leaves are now receiving notification from Service Canada that the amount received will be considered earnings, and will be clawed back as a result.

Under the Extension Agreement, the 0.5% lump sum is "In recognition of potential expenses for professional development, supplies or equipment or for other professional expenses", and it is our position that it should not be considered earnings for EI purposes.

After consultation with legal counsel, our advice to members who are informed or become aware that their lump sum payment will be subject to claw-back is that they should submit a formal request for reconsideration to Service Canada. Members have 30 days from the day they learned of the decision to claw back the lump sum to make the request. Information regarding how to request reconsideration can be found at <https://www.canada.ca/en/services/benefits/ei/ei-reconsideration.html>. That website also includes a link to the [Request for Reconsideration](#) form.

The attached document includes information that should be used by members when completing their *Request for Reconsideration* form. Bargaining Unit Presidents are asked to maintain a list of members who have received notification letters from Service Canada and/or who have submitted requests for reconsideration so that we can monitor the extent of the issue and follow up as appropriate.

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Attachment



### **Information for Members to Include in Section 3 of the Request for Reconsideration:**

- You are an employee of the XYZ District School Board.
- You are a member of OSSTF/FEESO.
- On February 23, 2017 OSSTF/FEESO and the employer reached an agreement to extend the collective agreement that contained a number of terms.
- The following was contained in that agreement: “In recognition of potential expenses for professional development, supplies or equipment or for other professional expenses, all teachers and occasional teachers (or for support staff, “all employees”) covered by this Agreement will be paid a lump sum of 0.5% of wages earned in the 2016-2017 school year.”
- In the course of your employment you have incurred expenses related to professional development, supplies, equipment, and other professional expenses for which you have not been reimbursed.
- It is your intention to spend the lump sum on those same types of expenses.
- You will be required to respond to OSSTF/FEESO on the usage of the reimbursement.
- You are seeking reconsideration of their decision because:
  - The lump sum is not earnings under the Act and Regulations
  - The lump sum should be attributed to the time when you are at work and incurring the expenses and not to a time when you are on leave (if you were on leave at the time that you received the lump sum)
  - To the extent that the Act, the Regulations and/or their application has had an adverse effect on your Employment Insurance entitlement during the period of your pregnancy leave, such effect discriminates against you on the basis of your sex, contrary to Section 15 of the *Canadian Charter of Rights and Freedoms*