Reference No. 2005-04

February 14, 2005

To: All Contact Persons
at Member Organizations
of the NSAHO Pension Plan

Subject: Employer-Approved Unpaid Leaves of Absence

We have received several inquiries recently about "leaves of absence" and how they are treated by the Plan. The purpose of this communiqué is to inform/remind all facility contacts about the requirements of the Plan when an employer-approved unpaid leave of is granted by the employer. In addition to this memorandum, you may wish to review an earlier one that was issued on the same subject (Reference number 2003-03 dated March 31, 2003). If you do not have a copy of that memorandum, one is available on the Plan's website (www.nsahopensionplan.ca) under **"I'm an Employer/Memos".**

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<u>Background</u>
The Plan does not define the term "employer-approved unpaid leave of absence" or dictate the precise circumstances an employer should follow in granting such a leave--that is a matter that must be directed by the employer's human resources policies and procedures for unpaid leaves of absence, and any applicable statutory requirements.

The Plan establishes the rules that reflect how these leaves, once reported correctly, will affect the Members pension entitlements. The administration procedures flow from those rules.

<u>How does the Plan address an "Employer-approved unpaid leave of absence" situation?</u>
Here, at a glance, are important aspects of the Plan rules in respect of an "Employer-approved unpaid leave of absence":

1. Employer-approved unpaid leaves of absence do not interrupt *Continuous Service* (which counts for establishing dates for retirement eligibility), except for the following conditions:
   - the member does not return to work after the completion of the leave period for the minimum period required by the Plan, or,
   - the leave exceeds 2 years. (<u>For Plan purposes</u>, a Notice of Termination must be completed if the Member does not return to work on day 1 following the expiration of 2 years from the commencement of the leave.)
2. Such leave periods are eligible to become *Credited Service* (which counts in the pension calculation formula that determines the amount of the Members pension) in one of two ways:
   (a) The Member may elect (<u>before</u> the start of the employer-approved unpaid leave of absence period) the ***<u>option</u>*** to pay *both* her required contributions <u>and</u> the employers required contributions that are applicable during the leave period, (unless an applicable Collective Bargaining Agreement specifies an alternative payment arrangement). When the Member elects the option to pay contributions during the leave, the Employer must collect and remit the contributions. Also, if it is a statutory leave (e.g., maternity or parental) the employer is required to match the employee's contributions if the employee chooses to contribute during he leave period, unless an applicable Collective Bargaining Agreement specifies an alternative payment arrangement .
   (b) If the Member *does not elect* (<u>before</u> the start of the employer-approved unpaid leave of absence period) the ***<u>option</u>*** to pay the applicable required contributions during the leave period, that opportunity is lost. While she may purchase credited service for that period at a later date through the Past Service Purchase Program (provided she is an active Plan Member at the time of the purchase) she must then pay <u>100% of the actuarial cost of the purchase</u>, which

may be significantly more costly than if she had paid the contributions during the leave period. Note that the Income Tax Act places a 5-year limit on the total Credited Service purchased in respect of such leave periods during an employee's career.

3. **Note Well:** When a member is granted an Employer-approved unpaid leave of absence, the Plan expects that the member will not be employed by the employer (or by any other employer who is a member of the NSAHO Pension Plan) during the specified leave period--that is a fundamental expectation for an "unpaid leave of absence". However, we know that when staffing shortages happen, some employers will ask a person to take shifts during their leave period, or even return to work fully before the date the leave was scheduled to end. ***The Plan requires that a period of employer-approved unpaid leave of absence must end automatically when the person on leave returns to the employer's payroll, (or the payroll of another employer who is also a member of the NSAHO Pension Plan), in any capacity, irrespective of the number of hours worked, the amount of earnings paid, or employment status assigned***. However, the realities of staffing shortages often necessitate different circumstances.

What specific processes do Employers need to follow to ensure compliance with the terms of the Plan?

It is important to note that the act of granting an employee an "employer-approved unpaid leave of absence" places additional administration responsibilities on the employer, particularly as they relate to the reporting requirements of the Pension Plan.

It is always the employer's sole responsibility to establish whether a leave period qualifies as an "employer-approved unpaid leave of absence" in accordance with the employer's HR policies---it is not the employee's right or responsibility to proclaim that such an event has occurred.

Once an "employer-approved unpaid leave of absence" is established, the Employer must adhere to all of the following processes in order to be compliant with the Plan rules:

1. Ensure that leave is granted according to your organization's Human Resources policies and procedures and that the arrangement is formally documented and placed in the employee's file.

2. Before the leave starts, complete and forward the applicable NSAHO Pension Plan "leave form"

3. Monitor the leave to ensure that the period of leave and the hours worked during the leave (if any) are accounted for correctly on the annual Contribution Report.

4. After the leave period expires, complete the last section of the "Leave form" and note any hours worked during the leave, as applicable.

5. Ensure that the Plan is advised when a leave period reaches the 2-year maximum permitted by the Plan.

6. Contact the Plan if you have any questions about the applicability of any of these procedures.

<u>Additional Comments</u>

Again, it is not the Plan's responsibility to tell employer's what their policy should be for granting employer-approved unpaid leaves of absence—that is their human resources policy to consider, subject to any statutes that apply. When the employer makes that policy, and keeps the Plan informed by following the aforementioned processes, all should be fine. Nevertheless, we would be remiss if we did not comment on some of the situations that have come to our attention recently that reflect the misapplication of an "employer approved unpaid leave of absence", at least for Pension Plan reporting purposes

Consider the following examples:
<u>Example 1</u> -- *An employee works 50% of the hours of a regularly scheduled shift at 'Facility A". That employee asks for and receives an employer-approved unpaid leave of absence and then proceeds to go to work at "Facility B" without joining the plan there.*
<u>For Pension Plan purposes,</u> that member cannot be on an approved leave of absence and on the payroll of either Facility A or Facility B at the same time. The leave period must be suspended as soon as that event occurs.

<u>Example 2</u> – *An employee who had up until now worked 100% of the full- time equivalent hours for her position now wants to work 20% less than the full-time equivalent hours. She asks to be placed on "unpaid leave of absence" for those hours when she is now not working.*
<u>For Pension Plan purposes</u>, an employer-approved leave is not applicable in this circumstance. This is a person who now works "less than full-time hours"—of which there are many hundreds in our Plan. Using leaves for this purpose is contrary to the premise for which unpaid leaves are provided and it has potential adverse financial consequences for the Plan.

Unfortunately, such situations do not usually come to our attention until data is reported to us through the annual Year End Contribution Report process. Left until then, it causes extra administration work for everyone involved. Moreover, we end up with Plan Members who are dissatisfied. All of this is avoidable--that is why we ask that you adhere to the above procedures. If a specific situation arises for which the administration procedure is not clear to you, contact us for our advice and direction *before you act*. You will appreciate that it is virtually impossible to identify every scenario that could happen, so we are counting on you to bring these to our attention for assessment.

We thank you for your cooperation and assistance in this matter.

Sincerely,

Judy Paul

Judy Paul
Director, Pension Client Services