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**Article 39
Disability**

Section 1. Employees who become disabled by a non-occupational injury or illness are entitled to the benefits outlined in the New York State Disability Benefits Law (NYSDBL) and the terms of this Agreement.

Section 2. All employees, except for high school students, are eligible for disability benefits under the NYSDBL after working four (4) consecutive weeks.

Section 3. All employees will follow the procedure outlined below in filing a disability claim and in qualifying for benefits:

- a.) An employee must be under the care of a health care provider (as defined in the NYSDBL) who certifies that the employee is unable to work due to an injury or illness that did not arise out of, or in the course of employment.
- b.) The employee must notify his/her manager that he/she is disabled and unable to report to work. The employee must then call in the claim to the disability claims administrator within forty-eight (48) hours from when the disability is reported to the manager. The disability claims administrator will send to the employee a disability claim package.
- c.) If an employee is certified as medically disabled by his/her medical doctor and the employee is not eligible for NYSDBL because he/she has utilized the statutory limit of twenty-six (26) weeks in the previous fifty-two (52) week period, the employee will be allowed to utilize his/her ESB while absent from work. The Employer will contribute the Employer's share towards the employee's health insurance for fifty two (52) cumulative weeks, regardless of the number of claims within the previous seventy eight (78) weeks.
- d.) It is the responsibility of the disability claims administrator to keep the employee updated on the claim status and any need for further medical documentation.
- e.) The employee and the employee's health care provider must supply all requested information to the disability claims administrator in order for the employee to receive NYSDBL benefits.
- f.) During the period of disability, the employee's wages will come from two (2) sources:
 - 1.) under the NYSDBL benefits, the employee will receive payments equal to fifty percent (50%) of his/her average weekly wage, up to the maximum benefit provided for by law. The average weekly wage is based on the last eight (8) weeks of employment immediately before the disability occurs.

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Benefits will be paid for a maximum of twenty-six (26) weeks of disability in a fifty-two (52) week period; and

2.) from Kaleida Health as outlined in Section 4. below.

- g.) There is a seven (7) day waiting period including weekends, during which no benefits will be paid. Benefit rights begin on the eighth (8th) consecutive day of disability.
- h.) Disability benefit payments will be mailed to employees directly from the insurance company and will be subject to Social Security, Medicare and withholding taxes. The first payment will arrive within four (4) business days after the fourteenth (14th) day of disability or four (4) business days after the receipt of the claim, whichever is later.
- i.) Employees who receive NYS disability payments are responsible for reporting benefits paid as taxable income. The disability claims administrator will send a form W-2 stating the amount of taxable benefits paid to each employee who received disability payments during the year.
- j.) The Employer or the disability claims administrator may require employees who are claiming disability benefits to submit to a medical examination by a health care provider designated by the Employer. Such examinations will be paid for by the Employer. If an employee does not notify the disability administrator of his/her inability to attend the scheduled exam, he/she will be responsible for the actual cost of the missed appointment or twenty-five dollars (\$25.00), whichever is less.
- k.) If an employee's disability satisfies the requirements of both the Family and Medical Leave Act (FMLA) and the NYSDBL, the time spent on disability will count toward the employee's twelve (12) weeks of annual leave under the FMLA. Employees' contractual rights under the FMLA are outlined in Article 35, Leave of Absence/Family and Medical Leave.
- l.) An employee will not be eligible to receive NYSDBL benefits or supplemental PTO/ESB pay while working for another employer or working in a business owned by the employee or conducting any union business for which pay is received.

Section 4. An Extended Sick Bank (ESB) will be established and long term sick time accrued as per Article 26, entitled Paid Time Off. Time in the ESB is intended to provide income to employees during periods of disability, including the seven (7) day waiting period referred to in Section 1. above, who qualify for benefits under NYSDBL or who have an illness or injury certified by the employee's medical doctor.

- a.) ESB payments will be processed and distributed for disabled employees on a bi-weekly basis. **Additional needs for supplementation will be ran on a weekly basis.**

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- b.) There is no limit in the amount of time that can be accumulated in the ESB during the employee's service with Kaleida Health.
- c.) The Employer will pay the difference between the employee's regular base rate of pay (including shift differential and premium rate due, e.g. weekend pay or multi-site float pool pay) and the actual amount paid to the employee under the NYSDBL up to the limit of the employee's ESB. **Disability supplementation is based on a Monday - Friday calculation using annual hours, not the employee's actual scheduled shifts. The employee's waiting week will be defined as the date of Disability through the date of benefit over seven (7) calendar days.**
- d.) When the actual period of disability exceeds the limits set by NYSBDL, the disabled employee has the option of utilizing his/her PTO once his/her ESB has been exhausted and as outlined in Article 26, Paid Time Off.
- e.) Long term sick leave accumulation is reduced from the ESB as follows:
 - 1.) one (1) day for each day paid for by the Employer where illness or injury is not covered by New York State Disability Insurance (as described in 4c above); or
 - 2.) after disability payments begin, employees may use ESB/PTO hours to supplement benefits up to the amount of their regular weekly pay. **ESB/PTO will be paid out according to balances at the time of supplement received from the carrier. Employees may opt out of receiving PTO by signing the PTO waiver form. The PTO waiver will take effect the pay period following its receipt.**
- f.) The exception to e.) above will be for Buffalo General Hospital RN, TCC and Service bargaining units where long-term sick leave accumulation is reduced from the ESB, as follows:
 - 1.) one (1) day for each day paid for by the Employer where illness or injury is not covered by New York State Disability Insurance; or
 - 2.) one-half (1/2) day for each day paid for jointly by the Employer and New York State Disability Insurance.

THIS EXCEPTION WILL ONLY APPLY TO EMPLOYEES WHO ARE MEMBERS OF THE BARGAINING UNITS IN QUESTION PRIOR TO JUNE 1, 2005.

If an employee depletes his/her ESB during an approved period of disability, the employee will be entitled to use any available hours in his/her paid time off bank, to supplement NYSDBL benefits up to the amount of his/her regular weekly pay.

Section 5. While an employee is disabled, the Employer will continue to contribute the Employer's share toward the employee's benefits outlined in the Agreement for a period of, fifty

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two (52) cumulative weeks as defined in section 3 c.) above. Employees are responsible for paying the employee portion of these benefits.

Section 6. If an employee is still disabled after the benefits provided under the NYSDBL expire, the employee will continue to be classified as disabled as long as the disability continues to be certified by the employee's medical provider for up to an additional twenty-six (26) cumulative weeks, as defined in section 3 c.) above. For purposes of this section, eligibility for the extended period of disability (i.e. the twenty-six (26) weeks provided beyond state law) shall be based on a look back period which will not exceed seventy-eight (78) weeks. If the disability will continue after the fifty-two (52) cumulative week limit as outlined above, the employee may apply for one (1) leave of absence for a period not to exceed six (6) months. During a personal leave of absence for the employee's disability, the employee may use ESB as stated in Section 4. of this article. The Employer will continue to contribute to the basic life insurance coverage only and employees must pay the full cost of any other benefits they wish to continue during the personal leave of absence.

Section 7. An employee who is preparing to return to work following a disability will follow the procedure outlined below:

- a.) The employee's health care provider must submit documentation to the Employer's disability claim administrator of the employee's ability to return to work **full duty without restrictions or return to work with clear restrictions that can be accommodated in accordance with Americans with Disabilities Act (ADA). Employees must make every effort to submit their return to work notes to Integrated Absence department at least three (3) days prior to the expected return to work date.**
- b.) The employee may be required to pass a fit-for-duty examination by the Employer's Employee Health Department prior to being authorized to return to work. Such fit for duty examination will be scheduled and completed within three (3) business days of the provided medical certification allowing the employee to return to work.
- c.) If the employee has any restrictions on regular duties, or with his/her hours of work, Integrated Absence will be notified and will work with the manager to view the employee's return to work in conjunction with Article 34, Transitional Return to Work Program, with the Americans with Disabilities Act (ADA), or with the Family and Medical Leave Act (FMLA).
- d.) If an employee does not return to active status or apply for an unpaid leave of absence by the date the employee's health care provider releases the employee to return to active work status, or by the end of the fifty-second (52nd) cumulative week of disability within the previous seventy eight (78) weeks, the employee will be considered to have resigned from active employment consistent with Article 50, Seniority, Section 3.

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- e.) When employees are certified as able to return to work, they will return to the position they held prior to their disability.

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Section 8. If an employee's claim for disability is rejected or not paid by the Employer's third party administrator, the employee may appeal that decision to the New York State Workers' Compensation Board's Division of Disability. A Notice of Rejection form (Form DB-451) will be sent to the employee. The employee must complete the reverse side of the Notice of Rejection and mail it within twenty-six (26) weeks to the Disability Benefits Bureau (address is included on the Notice of Rejection).

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