

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART VIII: Stoppage of Pay and Allowances (SPA) Due to Loss of a Basic Requirement (LBR) or Unauthorized Absence from Duty

The mission of the National Police Federation is to provide strong, fair and progressive representation to promote and enhance the rights of RCMP members.

The National Police Federation
encourages all members to be aware of their
rights and responsibilities, particularly when their pay is at stake.

The information in this handbook does not constitute legal advice. Members who are or may become subject to an order for the stoppage of their pay and allowances are advised to immediately consult a lawyer or representative.

While every effort has been made to ensure accuracy, in the event of any discrepancies or errors, the relevant provisions of the *RCMP Act*, applicable federal statutes, the *RCMP Regulations, 2014*, *Commissioner's Standing Orders*, and RCMP policies govern.

THE AUTHORITY TO STOP A MEMBER'S PAY AND ALLOWANCES

(RCMP Act, s. 22(2)(a) and (3); Employment CSOs, s. 2 to 4; AM 27.2)

The Commissioner or the Commissioner's delegate ***may*** direct the stoppage of a member's pay and allowances ***if they are of the opinion that the member:***

1. **is unable to perform their duties as the result of the loss of a basic requirement (LBR)** because the member (*Employment CSOs, s. 2*):
 - is not legally authorized to possess a firearm;
 - does not hold a licence issued in Canada to operate a motor vehicle;
 - does not have the required reliability status or security clearance; **or**
 - is subject to an order issued by a court or a justice of the peace that prohibits or restricts the member's entry into any place within the policing jurisdiction for which the member is responsible;
2. **is absent from duty without authorization** (which includes being detained in custody or serving a period of imprisonment (*RCMP Act, s. 22(3)*); **or**
3. **has left any assigned duty without authorization.**

NOTE: A member ***may be deemed*** to be absent from or to have left duty without authorization ***if*** (AM 27.2, s. 3):

- the member has not been authorized to take leave; or
- a request for sick leave has been denied.

MEMBERS' PROCEDURAL RIGHTS

Right to Notice of Intent to Stop Pay and Allowances (*Employment CSOs*, s. 4(3) and (4))

The member **must** be served with a Notice of Intent to Stop Pay and Allowances which must:

- set out the grounds for stopping the member's pay and allowances; and
- state that the member may, **within 14 days after being served** with the Notice, either
 - provide written submissions in response, or
 - request, in writing and with reasons, an extension of time to provide a written response.

Right to Make Written Submissions and Have Them Considered Before a SPA Decision is Made

If the member exercises their right to provide written submissions, the decision maker **must** consider the submissions before deciding whether to direct that the member's pay and allowances be stopped (*Employment CSOs*, s. 4(5)).

Right to Be Served with a Written SPA Order and Reasons

An Order Directing the Stoppage of Pay and Allowances (SPA Order) **must** (*Employment CSOs*, s. 4(6); AM 27.2, s 4.3.7):

- be in writing;
- include reasons;
- include a notice to the member that the member is relieved from duty for as long as the Order remains in effect; and
- be served on the member.

EFFECTIVE DATE AND DURATION OF A STOPPAGE

A SPA Order **takes effect immediately on the day the decision is made**, whether or not the member has been served (*Employment CSOs*, s. 4(7); AM 27.2, s. 4.3.9).

A SPA Order **remains in effect until** the member (*Employment CSOs*, s. 4(7); AM 27.2, s. 4.3.9):

- regains the basic requirement(s);
- is no longer absent from duty without authorization; **or**
- has returned to the assigned duty.

RIGHTS OF APPEAL

1. The member may appeal the SPA Order (*Employment CSOs*, s. 20(1)(e)).
2. The member may also appeal any decision, act or omission that led to the SPA decision (*Employment CSOs*, s. 20(3)).

NOTE: Appealing does not stay the execution of the SPA Order or of any related process (*Employment CSOs*, s. 20(4); AM 27.2, s. 4.4.3).

Procedures for Appealing: *Grievances and Appeals CSOs*, s. 37-50.

RIGHT TO ENGAGE IN SECONDARY EMPLOYMENT ONLY IF SPA ORDER DUE TO LBR

Only members whose pay and allowances have been stopped due to the loss of a basic requirement (LBR) have the right to engage in legitimate secondary employment outside the RCMP, subject to the relevant policy and approval (AM 27.2, s. 4.4.4).

REINSTATEMENT OF PAY AND ALLOWANCES

Reinstatement By the Decision-Maker

The decision-maker will direct that the member's pay and allowances be reinstated when (AM 27.2, s. 4.3.10):

- the decision-maker is satisfied that the reasons for the stoppage are no longer in effect; or
- as the decision-maker may otherwise direct.

Reinstatement Upon Successful Appeal

An appeal adjudicator may direct that a member's pay and allowances be reinstated (*Grievances and Appeals CSOs*, s. 47(1)(b)).

Right to Notice of Reinstatement

Immediately upon a direction or decision to reinstate a member's pay and allowances, the member, as well as National Pay Operations, **must be served** with a written Notice of Reinstatement of Pay and Allowances (AM 27.2, s. 4.3.11).

Effective Date of Reinstatement

Reinstatement will take effect on the date that (AM 27.2, s. 4.3.13):

- the decision-maker determines that the reasons for the stoppage are no longer in effect;
- the decision-maker has otherwise directed; or
- the appeal adjudicator directs reinstatement.

Possibility of Retroactive Reinstatement

A member's pay and allowances **may** be reinstated back to the date of the stoppage **if** (*Employment CSOs*, s. 4(8)):

- the grounds for the stoppage no longer apply; **and**
- the circumstances leading to the stoppage were exceptional and beyond the member's control.

REINSTATEMENT DELAYS: POSSIBLE AVENUES OF RECOURSE

If, following a direction to reinstate a member's pay and allowances, there is an inordinate delay in implementing that direction, the member should seek advice as to the best course of action in their particular circumstances, which may involve seeking an emergency pay advance, presenting an internal grievance, or filing a harassment complaint.

Emergency Pay Advance Following Reinstatement

A member may be eligible for an emergency pay advance following the reinstatement of their pay and allowances (AM 27.2, s. 4.4.7).

Presenting an Internal Grievance – s. 31(1) of the RCMP Act

If the individual responsible for implementing the direction to reinstate the member's pay and allowances has taken either insufficient action or no action at all to implement the direction, the member could present an internal grievance.

The internal grievance procedure is available to any member who is aggrieved by a decision, act or omission made in the administration of the affairs of the Force, and in respect of which there is no other process for redress provided by the *RCMP Act*, the *Regs*, or the *CSOs*.

**For more information on presenting a grievance, please refer to,
NPF's Members' Rights and Responsibilities Handbook,
PART III – Internal Grievances.**

Filing a Harassment Complaint for Abuse of Authority – Harassment CSOs

If a member believes that a failure to implement a direction to reinstate their pay and allowances constitutes an abuse of authority, the member could file a harassment complaint. Abuse of authority occurs when an individual misuses the power and authority inherent in their position to endanger a

member's job, undermine the member's performance of that job, threaten the member's economic livelihood, or influence the member's career (Treasury Board's *Investigation Guide for the Policy on Harassment Prevention and Resolution*, p. 26).

**For more information on filing a harassment complaint, please refer to
NPF's Members' Rights and Responsibilities Handbook,
PART IV – Harassment Complaints.**

ABBREVIATIONS AND REFERENCES

AM 27.2	Administrative Manual, Chapter 27.2, Stoppage of Pay and Allowances (November 28, 2014) (available on the RCMP Infoweb)
CSOs	<i>Commissioner's Standing Orders</i>
<i>Employment CSOs</i>	<i>Commissioner's Standing Orders (Employment Requirements)</i> , SOR/2014-292. (online: https://laws.justice.gc.ca/eng/regulations/SOR-2014-292/FullText.html)
<i>Grievances and Appeals CSOs</i>	<i>Commissioner's Standing Orders (Grievances and Appeals)</i> , SOR/2014-289. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-289/index.html)
<i>Harassment CSOs</i>	<i>Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)</i> , SOR/2014-290. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-290/index.html)
LBR	Loss of Basic Requirement
National Guidebook	National Guidebook – Employment Requirements (November 11, 2014) (available on the RCMP Infoweb)
NPF	National Police Federation
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)
<i>RCMP Regs</i>	<i>Royal Canadian Mounted Police Regulations, 2014</i> , SOR/2014-281. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/index.html)
SPA	Stoppage of Pay and Allowances

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