

FAQs about Work Force Adjustment (Updated on May 11, 2012)

In June 2011, Treasury Board announced that it would be initiating a Strategic and Operating Review (“SOR”) which would require all federal government departments to submit proposals reducing their budgets from 5 to 10%. The SOR process has been deemed a cabinet confidence, and therefore the deliberations on recommendations and proposals are not made public. However, the results of the SOR will be made known in the 2012 Federal Budget, which will be delivered in February.

The employer has advised that the SOR could very well lead to cuts to services and departments may emerge smaller through natural attrition or workforce adjustment.

In the event an AJC member is declared surplus, we have included information below that you may access to address questions you may have in the area of Work Force Adjustment. Should you, after consulting the materials below, still have questions regarding your personal circumstances, we recommend that you contact your local GC representative directly or an AJC Labour Relations Officer by sending your inquiry to admin@ajc-ajj.com.

As a unionized member, you benefit from certain protections. If you have been declared surplus, you are protected by the terms and conditions set out in the newly revised NJC Work Force Adjustment Directive (“WFAD”) which is incorporated by reference in the LA collective agreement and which came into effect on December 1, 2010.

Here is a listing of Frequently Asked Questions. A listing of additional reference materials is also included at the end of this document. These materials are extensive and we strongly encourage all members who are affected by a WFA to read all of these documents carefully prior to exercising their options. The FAQs listed below serve as an introductory tool only that will help direct you to the relevant provisions of the WFAD or related reference materials.

For information about non-renewal or early termination of Term Employees, visit our FAQ on Term Employees.

What is a Work Force Adjustment (WFA) situation?

According to the [WFAD](#), a “work force adjustment” is defined as “a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function, a relocation in which the employee does not wish to relocate or an alternative delivery initiative.”

For a SNAPSHOT on the process, see [Appendix D](#) outlining a summary of the Key Elements of the WFAD.

Who may be affected by a WFA?

A Work Force Adjustment applies to indeterminate employees upon being informed in writing that his or her services may no longer be required beyond a specified date. See [Appendix D](#) outlining a summary of the Key Elements of the WFAD.

What happens if I am away on leave for more than one year and my position has been permanently backfilled? Am I subject to the WFAD?

In such a case, you are not subject to the WFAD but are entitled to priority administration in accordance with the return from leave provisions contained in the Public Service Commission's [Guide on Priority Administration](#).

What happens if I am away on leave for less than one year? Am I subject to the WFAD or is my position protected?

You may be the subject of WFAD. In other words, you may receive notice from your department regarding possible workforce adjustment while you are on official leave, provided that you have not been on leave for a period in excess of one year or where your position has not been permanently backfilled.

What criteria do deputy heads use when determining who is to be declared surplus? Does seniority apply when deputy heads decide who should be laid off?

Seniority may be a relevant consideration however it is up to the deputy heads to establish the criteria being used.

Section 34 of the collective agreement requires the employer to make every reasonable effort to ensure that any reduction in the work force is accomplished through attrition.

For information on the merit criteria used, please refer to the [Public Service Commission's Guidance Series: Selecting Employees for Retention or Layoff](#).

What can I do if I disagree with management's decision to lay me off? What happens if I disagree with the selection criteria for retention and lay-off?

Generally, disputes relating to the hiring and laying off of public servants fall under the exclusive jurisdiction of the [Public Service Staffing Tribunal](#) pursuant to the [Public Service Employment Act](#) (“PSEA”). As staffing policies are not subject to collective bargaining, your available remedies may be limited to the PSEA, which provides for limited recourse in the case of certain predefined types of complaints. More specifically, section 65(1) of the PSEA states:

“Where some but not all of the employees in a part of an organization are informed by the deputy head that they will be laid off, any employee selected for lay-off may make a complaint to the Tribunal, in the manner and within the time fixed by the Tribunal’s regulations, that his or her selection constituted an abuse of authority.” (Emphasis added.)

Section 65(2) of the PSEA prevents complaints against the actual decision to layoff employees, the determination of the part of the organization impacted or the number of employees to be laid off from that part.

For more information on the evaluation criteria used in determining who should be laid off, you may consult the Public Service Commission’s Guidance Series: [Selecting Employees for Retention or Layoff](#), [Guide on Implementing an Assessment Policy](#), and [Assessment Policy](#).

For union advice on whether or not you may other avenues available to you on account of your particular fact situation which may bring other collective agreement provisions into play, you may contact one of our AJC’s Labour Relations Officers by completing an incident report outlining your details and forwarding it to admin@ajc-ajj.com.

What are the Department or Agency’s notice obligations?

For official notification obligations relating to employees being declared surplus, consult [section 1.1.6. of the WFAD](#).

For all other notification obligations, see [Part II of the WFAD](#).

What are my options if I am declared surplus and I have not received a guarantee of a reasonable job offer (“opting employee”)?

See [Appendix D Chart](#) outlining the Key Elements of the WFAD, including options. Please note that the Education Leave provisions provided for in Appendix D should be amended to reflect an amount of up to \$11,000 for receipted expenses as a result of the revised WFAD, dated December 1, 2010.

For more details regarding your options if you declared a surplus and have not

received a guarantee of a reasonable job offer, consult [Part VI, section 6.3](#) of the WFAD.

What happens if I have received a guarantee of a reasonable job offer and I am declared a “surplus employee”?

In such instances, you will be placed on surplus priority status when a guaranteed reasonable job offer is made (GRJO) until you receive/accept a reasonable job offer (RJO), are laid off or resign. If a reasonable job offer is extended to you, you may choose to accept or reject the offer. Consequences relating to the acceptance or rejection of job offers are covered under [Appendix D](#) outlining the Key Elements of the WFAD, and more specifically covered under [Part I of the WFAD](#).

If for some reason, you refuse a reasonable job offer, you will be placed on lay-off but no sooner than 6 months from the beginning of the surplus period (i.e. the date you were offered a GRJO). You would remain on lay-off priority status (unpaid) for 1 year.

For more information on priority lists, see the Public Service Commission’s [Guide on Priority Administration: Questions and Answers, Part 1: General Information for All Priority Types, Part 2, chapter 2: Laid-off Employees, and Part 2 chapter 3: Surplus Employees](#).

What happens if I refuse a reasonable job offer if I am given a guarantee of a reasonable job offer?

If you refuse a reasonable job offer, you will be laid off, in which case you will be paid until you are laid off.

If you are an opting employee, you will continue to be paid until you are laid off or choose to resign from the Public Service.

Will I still get paid even though I am in a surplus situation?

If you have been given a guarantee of a reasonable job offer, you will continue to be paid until you are offered and accept a reasonable job offer.

If I choose to be an opting surplus employee for the 12 months without a guaranteed reasonable job offer and am appointed to a lower level position, is my salary protected?

If an opting employee were to choose opting “surplus” priority for the 12 months without a guaranteed reasonable job offer and were appointed to a lower level, the AJC is of the view that salary protection should be available because the employee remains “surplus” as per the definition set out in the WFAD.

For more information, please refer to sections 5.1, 5.1.2, 6.3 and the definitions of « surplus employee » and “surplus priority” of the [WFAD](#).

Once my position has been declared surplus, might I be assigned different work?

Yes, you may be asked to perform duties that are different from the ones you have usually performed.

Once my position is declared surplus, what kind of support should I expect from my department in relation to my search for alternate employment?

You and your manager are encouraged to discuss this to determine what is appropriate. Generally, the departments do provide a certain level of assistance in support of your search for alternate employment. Feel free to also visit the AJC’s website for links to prospective employers or placement agencies in search of your specialised service qualifications.

Are severance monies or amounts paid on account of Transition Support Measure or Education Allowance taxable?

All of these amounts are considered income. For tax advice, the AJC recommends that you consult a tax professional or the Canada Revenue Agency.

What are my rights and obligations as an employee?

See [section 1.4 of the WFAD](#).

What are my severance pay and other entitlements in the event I am laid off?

Depending on the option you choose from those listed in [Appendix D of the WFAD](#), i.e. surplus priority status, transition support measure or education leave, you may be entitled to layoff priority for 1 year, severance pay at layoff rate in accordance with the terms set out in the collective agreement in addition to a lump-sum amount in accordance with the schedule set Transition Support Measure Table at [Appendix C](#) of the WFAD. Please read [Appendix D](#) and the remainder of the [WFAD](#) carefully for details on other entitlements you may have.

Pursuant to section 22.01(a) of the collective agreement, a lawyer shall receive

severance benefits calculated on the basis of his weekly rate of pay:

(i) On the first lay off after November 28, 1969, two (2) weeks' pay for the first complete year of continuous employment and one week's pay for each additional complete year of continuous employment and, in the case of a partial year of continuous employment, one week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five.

(ii) On second or subsequent layoff after November 28, 1969, one week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty five, less any period in respect of which he was granted severance pay under subparagraph 22.01(a)(i) above.

What is the impact on my pension if I am laid off?

The [Public Service Superannuation Act](#) governs pension benefits. Effective your date of layoff, your service ceases to accrue. You may contact your [Pension Benefits Administrator](#) regarding your pension-related questions.

What happens to my benefits under the Public Service Health Care Plan ("PSHCP") while on layoff?

Your benefits continue while a surplus employee and extend for up to one year or until you are entitled to an ongoing pension benefit, whichever is shorter. For more details, refer to the PSHCP, [Section D entitled When Continuing Coverage and Note 1](#).

For more questions and answers regarding the WFAD, you may also consult the NJC [Questions and Answers on Work Force Adjustment Agreements](#).

Is the Transition Support Measure based on years of cumulative or continuous years of employment?

The language under the WFAD remains unclear. Following online research, it would appear that in practice, the eligibility has been based on years of continuous employment. That said, this practice may be attributable to more specific language contained in other bargaining units' collective agreements. Currently, under the WFAD, Transition Support Measure simply states that eligibility is based on the "employee's years of service in the core public administration."

Can employees who have not been identified as affected or surplus step forward and volunteer to depart?

Yes, if the department in question makes this option available. Departments are considering various ways to reduce the impact of the required reductions on its current employees, which may include inviting employees to express their interest in volunteering to be laid-off. It is at the discretion of management to accept an expression of interest to “volunteer”. Accepted volunteers could then be entitled to the appropriate Workforce Adjustment (WFA) provisions whether they have received an affected status letter or not.

Employees who would like to obtain more information can consult the workforce management guide entitled “Tools for employees and managers”.

Will DOJ be offering the option of voluntary departures?

At this point, we don’t know. DOJ has not informed the AJC of any decision on this to date. However, DOJ is sharing the workforce management guide referred to above with employees.

If I initially decide to volunteer, may I withdraw?

It is our understanding that it will be possible to withdraw an initial offer to “volunteer”.

The voluntary departure process in no way abridges any rights of employees to participate in the alternation process provided for by their collective agreements.

Are the transition support measure and the education allowance pensionable earnings?

No, they are not pursuant to the provisions of the Public Service Superannuation Act and Regulations (PSSA).

For more detailed information regarding the WFAD, you are encouraged to refer to the following reference materials:

- the [AJC Representations Policy](#)
- the [LA Collective Agreement](#)
- [The National Joint Council Public Service Health Care Plan Directive](#)
- [the National Joint Council Work Force Adjustment Directive](#)
- [the National Joint Council WFAD Flowchart of Key Elements of the Work Force Adjustment Directive](#)

- [the Public Service Commission's Assessment Policy](#)
- [the Public Service Commission's Guidance Series](#)
- [the Public Service Commission's Guidance Series: Selecting Employees for Retention or Layoff](#)
- [the Public Service Commission's Guide on Implementing an Assessment Policy](#)
- [the Public Service Commission's Guide on Priority Administration](#)
- [Public Service Staffing Tribunal website on making a complaint](#)

Legislative References:

- [Public Service Employment Act](#) and its regulations
- [Public Service Labour Relations Act, section 208](#)
- [Public Service Superannuation Act](#)