

Appendix C

OPSEU Explanatory Note

Displacement

Article 20.43

Updated: September 2017

Explanatory Notes on the application of the OPSEU Collective Agreement were developed by the Employer in consultation with OPSEU. They have been written to provide information to OPS managers and employees represented by OPSEU. Explanatory Notes are not intended as a substitute for the language of the Collective Agreement. Reliance should only be placed on the actual text of the OPSEU Collective Agreement.

This updated Explanatory Note and the amended provisions of Article 20 under the 2018-2021 OPSEU Collective Agreement apply as of June 22, 2017.

Managers who have questions about the information in this Explanatory Note should contact their Human Resource Advisor.

Employees who have questions about the information in this Explanatory Note should contact their manager, the Human Resource Advisor or an OPSEU representative. Employees who have received a notice of lay-off should contact the designated Human Resource contact that is identified in their notice of lay-off letter.

What is displacement?

Displacement refers to the situation where a surplus employee is entitled to a position occupied by an employee of lesser seniority, based on the criteria set out below. The least senior employee is displaced out of the position.

Who has displacement rights?

A surplus employee has displacement rights only if they:

- have received notice of lay-off;
- have completed his or her probationary period;
- opted-in by submitting a completed Displacement Election Form within ten (10) working days of receiving his or her notice of lay-off letter;
- have not been assigned (through a Targeted Direct Assignment (TDA)) to another position;

- are qualified to perform the work of the identified employee's position.

There is a limit to the number of displacements that can follow a notice of lay-off. Only the first employee who is displaced and the employee who is displaced by the first displaced employee have displacement rights. The employee who is displaced by the second displaced employee does not have displacement rights, but has other Article 20 rights. There shall be no subsequent displacements based on the same notice of lay-off but surplus employees may have other rights and entitlements under Article 20. (Example: Employee A receives notice his or her position is abolished. He or she may displace B, who may then displace C. Employee C may displace Employee D. D has no displacement rights, but has other Article 20 rights.)

What does "qualified to perform the work" mean?

The surplus employee must be qualified to perform the work of the identified employee's position. This means that the surplus employee must have the necessary skills and knowledge to perform the core components of the displaced employee's position at a working level and will not require training in these areas of the position.

For the purposes of Article 20.4, training does not refer to the orientation and integration any employee would normally receive when entering a new position nor does it prohibit training to raise skills above a working level.

Each surplus employee is asked to complete or update an existing Employee Portfolio (EP) where the employee can set out his or her skills and experience. The information collected in the EP is used to consider surplus employees to TDA opportunities. The EP and information about the EP can be found on the [Employment Transition](#) page of MyOPS. The Displacement Election Form must be submitted within ten (10) working days of receiving his or her notice of lay-off letter. The EP must be submitted by the end of the fourth month of their notice of lay-off period. The Displacement Election Form and EP must be submitted via email to the employee's designated Human Resource contact identified in their notice of lay-off letter. If an EP has not been completed, the surplus employee's job specification will be used to represent his or her skills and experience.

At any point during the notice of lay-off period, an employee may update their EP and the changes will be implemented within 3 working days.

How does displacement take place?

Displacement rights begin on the 5th month after receiving notice of lay-off. This allows time for an employee to carry out a comprehensive search for a TDA opportunity. There is only one opportunity to identify a displacement.

If, after 5 months, no targeted direct assignment has been identified, and the employee has opted into the displacement process, the Employer is obligated to notify the employee about the existence of any displacement opportunity. This notification will

occur on the 151st day of the notice of lay-off period (approximately at the end of the 5th month plus a 1 day). The Employer must advise the surplus employee:

- if a displacement opportunity exists; and if so,
- the details of the position (for example: the position title, the classification, the work location, etc.).

The employee must advise their designated Human Resource contact of his or her decision about the identified displaced position no later than one (1) week (that is, seven (7) calendar days) after the employee receives the displacement information from their designated Human Resource contact.

The surplus employee may say “yes” or “no” to the identified displacement.

- If “yes”, the Employer will confirm when the employee will take over the position. The employee will no longer be eligible for TDA.
- If “no”, the employee has given up the right to displace. The employee will retain the remaining employment stability entitlements including eligibility for a TDA. The employee may also elect to take an exit or retirement option.

The result of refusing a displacement is the same regardless of the location of the identified displacement opportunity (i.e. within or outside 40 kilometres of the employee’s headquarters). Note that the Employer is obligated to identify the availability of a displacement opportunity within 40 kilometres of the employee’s headquarters, but looks outside 40 kilometres of the employee’s headquarters if the employee identifies the additional geographical search in their Displacement Election Form.

If the surplus employee does not respond, in writing, within the required time period, the employee is deemed to have given up the right to displace. The surplus employee is deemed to have opted to continue to search for a TDA opportunity.

What happens to the employee who is displaced?

The displaced employee will be issued notice of lay-off under Article 20. The Employer can:

- give displaced employees work to perform during the notice of lay-off period; or
- pay displaced employees salary continuance, in which case they will not report for work but will continue to receive wages and benefits as if they were at work.

In both cases, displaced employees have full rights under Article 20, including displacement, with two exceptions:

1. employees on probation; and

2. employees who are the third displacement in a chain of displacements flowing from the same initial notice of lay-off (see section above on who has displacement rights).

What happens to an employee who does not opt-in to the displacement process?

If an employee does not submit the Displacement Election Form within ten (10) working days of receiving a notice of lay-off letter, they shall be deemed to have given up their right to displace. They continue to be eligible to search for a TDA opportunity during the remainder of their six (6) month notice of lay-off period.

How does the search for displacement differ from a search for a TDA (Article 20.3)?

The search for displacement remains an Employer driven process. If a surplus employee opts for displacement, the Employer is obligated to search for, and notify the surplus employee about the existence of any displacement opportunity.

The search process for a TDA under Article 20.3 is an employee driven process. An OPSEU-represented employee who has received a notice of lay-off and elected to remain available for TDA will use the OPS Careers website to search for and apply to competitions that he or she believes he or she has entitlements to.

Do the criteria for displacement differ from the criteria for a TDA (Article 20.3)?

Surplus employees must be qualified to perform the work of the displaced employee at a working level. This differs from TDA wherein the employee must meet the entry level qualifications for the position.

Eligibility to displace under Article 62.2, 62.3 and Appendix 32 (Flexible Part Time)

- Flexible part time is eligible to displace flexible part time
- Regular part time is eligible to displace regular part time
- Regular full time is eligible to displace regular full time

“Red Circle” Salary Protection

If an employee displaces into a lower-paying position, he or she will continue to be paid the salary of his or her former position only for the balance of his or her notice period — that is, only up to the original lay-off date. After that, the employee will be paid at a rate within the salary range of the classification into which he or she displaces.

What are the geographic considerations for displacement?

The search for a displacement occurs first within the home ministry and then, where applicable, a search is held for displacement into a position in a former ministry. Details of the complete process are set out below.

A surplus employee is assigned a displacement first within 40 kilometres of the employee's headquarters, and then, if so identified by the surplus employee in their Displacement Election Form, to a position outside 40 kilometres of the employee's headquarters.

Can surplus employees claim relocation expenses?

No, surplus employees are not eligible for relocation expenses. If a surplus employee displaces someone whose headquarters is beyond a 40 kilometre radius of his or her own headquarters, no relocation expenses will be paid.

What is the process for identifying the employee to be displaced?

The Employer determines which employee, if any, will be displaced. There are six steps in the process. The steps are sequential. Each step must be fully exhausted before proceeding to the next step. The first employee identified in the sequence is the one and only person the surplus employee can displace.

See the chart at the end of this document for a high-level summary of the displacement process.

Using the example of a surplus employee in a home position in the Financial Officer 3 (FO-3) classification at the Ministry of Transportation (MTO), this is how the steps work:

A. Home Ministry, Within a 40 Kilometre Radius

Step 1: Same Classification, Least Senior Employee

Find the least senior employee in the same classification (for example: FO-3) within MTO. If he or she is not the least senior than the surplus employee, proceed to Step 3. If the surplus employee is more senior and is qualified to perform the work of the least senior employee in a FO-3 position, this is his or her identified displacement.

However, if the surplus employee is not qualified, go to Step 2.

Step 2: Same Classification, Reverse Order of seniority of the next least senior employee

Identify the next least senior employee in the same classification (FO-3), within MTO. This will be the identified displacement, provided the surplus employee is qualified to perform the work of the identified least senior employee.

Continue to identify employees in reverse order of seniority until someone is found who has less seniority than the surplus employee and who holds an FO-3 position for which the surplus employee is qualified.

If there is no employee that holds an FO-3 with less seniority whose work the surplus employee is qualified to perform, proceed to Step 3.

Step 3: Classifications (in descending order) in the Same Classification Series

Find the least senior employee in the classification series immediately below the surplus employee's current classification — in this case, the least senior employee who holds a FO-2 within MTO. If the surplus employee has greater seniority and is qualified to perform the work, this is his or her identified displacement.

If the surplus employee is not qualified, continue to identify employees in reverse order of seniority until someone is found who has less seniority than the surplus employee and who holds a FO-2 position for which he or she is qualified.

If there is no such employee in the FO-2 classification, identify the least senior employee in the FO-1 classification. If the surplus employee has greater seniority and is qualified to perform the FO-1's work, this is his or her identified displacement.

If the surplus employee is not qualified, continue to identify employees in reverse order of seniority until an employee is found who has less seniority and who holds a FO-1 position for which the surplus employee is qualified.

If there is no less senior employee who holds a FO-1 position whose work the surplus employee is qualified to perform, proceed to Step 4.

Step 4: Other Classes Previously Held Within Home Ministry

Review other classifications which the surplus employee in the FO-3 classification held during his or her period of continuous service.

Consider classifications within home ministry:

- held at MTO only;
- held within a 40 kilometre radius of the surplus employee's headquarters; and
- held either on a full-time basis or performed the full range of job duties on a temporary basis for at least 12 months.

If held temporarily, the surplus employee

- cannot have been assigned to "underfill" the position;

- must have been in “active” service for the twelve (12) months (that is, periods of “inactive” service, such as leaves of absence, sick leave, etc. will not be counted);
- does not have to be in the positions for the twelve (12) consecutive months but can be cumulative; and
- can have performed the full range of job duties on a temporary basis as a fixed-term employee, seasonal employee, or student.

For explanation purposes, let’s say the surplus employee in a FO-3 previously held positions in Information Officer 2 (IO-2) and Information Officer 1 (IO-1) classifications at MTO. He or she also held a position in the Office Administration 10 classification at the Ministry of Finance (FIN) as well as at MTO. All positions were held within a 40 kilometre radius of the surplus employee’s current headquarters.

Choose the classification with maximum salary closest to but not greater than the maximum salary of the FO-3 classification. In this example, the IO-2 classification would be the only selected classification as the classification salary maximum is closest to the maximum salary of the FO-3. Identify employees in reverse order of seniority until a less senior employee who holds an IO-2 position is found whose work the surplus employee can perform. If there is no such employee in the IO-2 classification, proceed to Step 5. Do not look at positions in the IO-1 or OAG-10 classifications.

B. Home Ministry, Beyond a 40 Kilometre Radius (at employee’s request only)

The Employer searches for a displacement opportunity beyond a 40 kilometre radius of the employee’s headquarters, if the employee identifies the additional geographical search in his or her OPSEU Displacement Election Form. Before the employee requests this option, it is important for him/her to understand that:

- the least senior employee will be identified for displacement, wherever in the province that employee is headquartered; and
- no relocation expenses are paid.

Step 5: Identify Displacement Beyond 40-Kilometre Radius

If the surplus employee identifies that he or she is willing to displace beyond a 40 kilometre radius of his or her headquarters, the Employer will apply Steps 1 to 4 above to employees whose headquarters are beyond a 40-kilometre radius. To recap, these steps are:

Steps 1 and 2 - **Same classification**: in reverse order of ministry-wide seniority, look for the least senior employee who holds a FO-3 classification whose

headquarters is beyond a 40 kilometre radius and whose work the surplus employee is qualified to perform. If someone is found, this will be the identified displacement. If not, proceed to Step 3.

Step 3 - Classifications in the same class series, in descending order: in reverse order of ministry-wide seniority, look for the least senior employee who holds a FO-2 classification whose headquarters is beyond a 40 kilometre radius and whose work the surplus employee is qualified to perform. If someone is found, this will be the identified displacement.

If not, in reverse order of ministry-wide seniority, look for the least senior employee who holds a FO-1, whose headquarters is beyond a 40 kilometre radius and whose work the surplus employee is qualified to perform. If no one is found, proceed to Step 4.

Step 4 - Other classifications previously held: in reverse order of seniority, look for the least senior employee in the IO-2 classification, whose headquarters is beyond a 40 kilometre radius and whose work the surplus employee is qualified to perform. If someone is found, this is the identified displacement. (See Step 4 under “A: Home Ministry, Within a 40 Kilometre Radius” above, for more complete instructions.)

If no one is found, the Employer will search for a displacement at another ministry, as described in Step 6 below.

C. Other Ministries, Within 40 Kilometres

Step 6: Previous Positions at Other Ministries

Based on information provided by the surplus employee and his or her home ministry, the Employer will search for a less senior employee for him/her to displace at another ministry where he or she previously worked during his or her period of continuous service.

Displacement between ministries is limited to **positions**, not classifications, which the employee previously held at the particular ministry or ministries in question. A **position** is described as follows:

The position, identified by job title and position group code, must be in the same classification, have the same job specification (including subsequent updates), in the same ministry and work location, in the same administrative district or unit, institution or other such work unit as the position previously held by the surplus employee.

In order to displace someone at another ministry, the surplus employee must:

- have held the identified employee’s position at that ministry (same classification, same location);

- have held the position either on a full-time basis or performed the full range of job duties on a temporary basis for at least 12 months; and
- have a current headquarters within a 40 kilometre radius of the current incumbent's headquarters where the surplus employee has previously held the position.

If held temporarily, the surplus employee:

- cannot have been assigned to “underfill” the position;
- must have been in “active” service for the 12 months (that is, periods of “inactive” service, such as leaves of absence, sick leave, etc. will not be counted);
- does not have to be in the positions for 12 consecutive months but can be cumulative; and
- can have performed the full range of job duties on a temporary basis as a fixed-term employee, seasonal employee, or student.

For each ministry where the surplus employee previously worked, the Employer will review positions which the surplus employee held at that particular ministry. The Employer will identify **the one (1) position** with maximum salary closest to but not greater than the surplus employee's current maximum salary.

To displace an employee holding this position, the surplus employee must be qualified to perform the work of the identified employee. The Employer will determine if a surplus employee is qualified by comparing his or her skills with the skills required for the position.

Where the surplus employee has worked at several ministries, the Employer will identify **the one (1) position** at each ministry with maximum salary closest to but not greater than the surplus employee's current maximum salary. The Employer will rank the selected positions (one from each ministry) from highest to lowest maximum salary. Beginning at the top of the list, the Employer will search for a displacement opportunity in the highest-paying position at the first ministry. If no displacement is found, the Employer will search for a displacement in the next highest-paying position at the second ministry.

For example: A surplus employee that held a FO-3 home position with a salary maximum of \$1406.47, held four positions in three ministries, the positions were:

- One Ministry of Government and Consumer Services (MGCS) positions in a 10OAD classification with a salary maximum of \$1050.13

- Two Ministry of Labour (MOL) positions; one in a IO3 classification with a salary maximum of \$1632.56 and one in a ECON 2 classification with a salary maximum of \$1313.97
- One Ministry of Education (EDU) position in a 12OAD classification with a salary maximum of \$1261.88

The Employer would identify only one position within each ministry that has a salary maximum closest to the surplus employee's salary maximum. The search would be conducted in the following order:

- Conduct a search for MOL positions at the ECON2 classification as it has the highest salary maximum for all positions across the three ministries, which is closest to the surplus employee's FO-3 salary maximum. The surplus employee is not eligible to MOL IO3 positions since the salary maximum is higher than the current surplus employee FO3 salary maximum. If the surplus employee is not eligible to displace a ECON2 MOL position, proceed to conduct a search for the next position with the second highest salary range
- Conduct a search for EDU positions at the 12OAD classification as it has the second highest salary maximum for all positions across the three ministries. If the surplus employee is not eligible to displace a 12OAD EDU position, proceed to conduct the search for the next position with the third highest salary maximum
- Conduct a search for MGCS position at the 10OAD classification. If the surplus employee is not eligible to displace a 10OAD MGCS position then no displacement opportunity was identified

The designated Human Resource contact will advise the surplus employee of the final outcome (displacement or no displacement).

If no displacement has been found after fully exhausting the above six (6) steps, the surplus employee cannot exercise displacement rights.

Comparison of Maximum Salaries

Steps 4 and 6 of the displacement sequence require comparison of the maximum salary of the surplus employee's classification with the maximum salary of classifications (or positions) he or she previously held. Weekly maximum salaries are used for this comparison.

Depending on which hours of work schedule applies to a classification, an employee is required to work either 36 ¼ or 40 hours per week. To calculate the maximum weekly salary for a particular classification, multiply the scheduled weekly hours of work by the maximum hourly rate for that classification.

OPSEU Displacement – Summary Chart

The review stops immediately at the first point when it is confirmed that the surplus employee is qualified to perform the work of the identified employee with the least seniority.

Article 20.4 of the collective agreement defines the consecutive order of review for identifying a potential displacement opportunity as follows:

Step	Ministry	Classification	Distance to Employee Headquarters
1.	Home	Same – least senior	< 40 kilometres
2.	Home	Same – in reverse order of seniority	< 40 kilometres
3.	Home	Same class series in descending order – in reverse order of seniority	< 40 kilometres
4.	Home	Other classifications employee held either full-time or temporary (full range of duties) for a minimum of 12 months – select the 1 class with the highest maximum closest to but not exceeding the maximum of the surplus employee’s classification – in reverse order of seniority.	< 40 kilometres

If surplus employee requests, then (note – if employee does not request a search outside 40 kilometres, then go to number 9).

Step	Ministry	Classification	Distance to Employee Headquarters
5.	Home	Same – least senior	> 40 kilometres
6.	Home	Same – in reverse order of seniority	> 40 kilometres
7.	Home	Same class series in descending order – in reverse order of seniority	> 40 kilometres
8.	Home	Other classifications employee held either full-time or temporary (full range of duties) for a minimum of 12 months – select the 1 class with the highest maximum closest to but not exceeding the maximum of the surplus employee’s classification – in reverse order of seniority.	> 40 kilometres

If surplus employee requests, then

Step	Ministry	Classification	Distance to Employee Headquarters
9.	Home	<p>Other classifications employee held either full-time or temporary (full range of duties) for a minimum of 12 months – select the 1 class with the highest maximum closest to but not exceeding the maximum of the surplus employee’s classification – in reverse order of seniority.</p> <p>(Note – regardless of whether the employee requests a search outside 40 kilometres, the Employer will search for this option (number 9) if the employee so requests.)</p>	< 40 kilometres