

## Appendix F

OPSEU Collective Agreement  
Explanatory Note

Employment Stability  
Appendix 40

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 Appendix 40 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 Appendix 40?

Where there is a transformation program where 30 or more OPSEU represented employees will be issued notices of lay-off, the Ministry Employee Relations Committee (MERC), made up of representatives from both OPSEU and the employer, may agree to apply all or part of Appendix 40 to the impacted employees. When it has been mutually agreed to by the MERC that Appendix 40 will apply, employees who will be issued notices of lay-off as a result of the transformation program may have the opportunity to be considered for targeted direct assignment (TDA) opportunities **in advance of receiving their notice of lay-off.**

Under this Appendix, interested impacted employees who have yet to receive notice of lay-off will be deemed to have received their notice of lay-off under Article 20.3 for the purpose of TDA only. This differs from the TDA entitlement under Article 20 of the collective agreement in that under Article 20, employees are only eligible to be considered for a TDA opportunity **after** they have received their notice of lay-off and elected to remain available for TDA.

### Advanced Targeted Direct Assignments

**Question 1. How will employees be advised that they are eligible for consideration under Appendix 40?**

After OPSEU has been advised by the employer of a transformation program resulting in 30 or more OPSEU represented employees receiving notices of lay-off, the MERC may discuss the application of Appendix 40. If the MERC parties mutually agree to apply all or part of Appendix 40, the Employer will then advise impacted employees of the sections of Appendix 40 which the MERC have agreed shall apply.

**Question 2. How does an employee qualify for a TDA under Appendix 40?**

To be eligible for a TDA opportunity under Appendix 40, the employee must:

- 1) Be a regular full-time or regular part-time employee whose home position will be declared surplus as a result of a transformation program initiative whereby thirty (30) or more OPSEU represented employees will be declared surplus (not including a “sale of business: pursuant to Section 69 of the *Labour Relations Act, 1995*”) in a ministry where the MERC has agreed to apply all or part of Appendix 40 to the impacted OPSEU represented employees; and
- 2) Complete and forward to the designated Human Resources contact, the Appendix 40 TDA Election Form within ten (10) business days from the date he or she receives notification of eligibility for consideration under Appendix 40.

**Question 3. Does the TDA process under Appendix 40 differ from Article 20.3?**

No. Targeted direct assignments to positions under Appendix 40 will be made on the same basis as outlined in Article 20.3 with respect to full time regular employees and Article 62.1 with respect to part-time regular employees. Where an employee is eligible for a targeted direct assignment under Appendix 40, the employee must use the Ontario Public Service Careers website to identify a vacancy which he or she believes he or she has entitlements to (see Q. 5). The employee is required to submit their Employee Portfolio (EP) prior to the closing date of the competition. Employees will only be eligible to permanent vacancies or Voluntary Exit Option (VEO) positions.

**Question 4. Are there any differences in entitlements between full-time and regular part-time (RPT) employees?**

RPT employees have access to all Appendix 40 entitlements provided to full-time employees, except that RPT employees can only be assigned to RPT positions. Full-time employees can be assigned to RPT positions.

**Question 5. How does the employee apply for an advanced TDA under this process?**

Where an impacted employee is advised that they are eligible to access advanced TDA under Appendix 40, and has received confirmation from the designated Human Resources contact that their TDA Election Form has been received, he or she will be eligible for TDA to permanent vacancies and voluntary exit option positions. The employee who has been deemed to have 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. The employee is required to submit their EP to the [applyTDA@ontario.ca](mailto:applyTDA@ontario.ca) prior to the closing date of the competition

**Question 6. How does an employee know when they have been assigned to a permanent vacancy or VEO position through the advanced TDA process?**

If an employee is deemed qualified for a position at the entry level, the employee will receive a letter indicating that they have received a TDA to a position in accordance with Appendix 40 (Note – an employee who accepts an advanced TDA to a VEO position must be able to perform the normal requirements of the position without training). The employee must accept or refuse the TDA within five (5) business days from the date of TDA offer made. If the employee fails to respond within this time frame he or she will be deemed to have refused the TDA opportunity resulting in a forfeiture of Appendix 40 entitlements.

**Question 7. What happens to an employee's notice of lay-off when they accept an advanced TDA under Appendix 40?**

When an employee accepts a TDA in advance of their notice of lay-off under Appendix 40, they will no longer be considered an impacted employee and all other employment stability rights including but not limited to those under Article 20 and Appendix 9 of the OPSEU Collective Agreement will be forfeited.

**Question 8. Can an employee refuse a TDA under Appendix 40?**

Yes. An employee who has applied for a TDA can refuse the TDA under Appendix 40. However, the employee will no longer be considered for any further assignments until they are issued their Notice of Lay-off pursuant to Article 20. At that point, they will be entitled to their full employment stability entitlements pursuant to Article 20 of the OPSEU Collective Agreement.

**Question 9. If an employee has completed and submitted an Appendix 40 Registration Form for advanced TDA, can the employee withdraw their registration?**

Yes. An employee can withdraw their registration at any time in writing. However, the employee will no longer be eligible for TDAs until they are issued a notice of lay-off,

which would provide them with their full employment stability entitlements pursuant to Article 20 of the OPSEU Collective Agreement.

**Question 10. If an employee has identified and applied to a vacant position(s) through the TDA process, can the employee withdraw their application?**

If an employee applies to multiple competitions through the TDA process, his or her applications will be considered on a chronological basis that aligns with the closing date of the job posting. Should an employee wish to withdraw from a competition, he or she must do so prior to the closing date of the identified job posting. It should be noted, the employee is not permitted to withdraw after the closing date of the job posting; he or she will be considered for the position.

**Question 11. Can an employee who is placed in a TDA through this process and starts working in the position change their mind and either return to their former position to await their notice of lay-off or be eligible for further TDA prior to receiving notice of lay-off?**

No. An employee cannot change their mind. Where an employee has been offered a TDA under Appendix 40 and has accepted it, they cannot return to their former position nor will they be eligible for other TDAs.

**Question 12. What happens if a TDA is not found for an employee while registered for TDA opportunities in advance of their notice of lay-off?**

The employee will be issued their notice of lay-off when they would have otherwise received it under Article 20 of the Collective Agreement and will be entitled to the rights and entitlements under Article 20.

**Question 13. Are relocation expenses reimbursed if employees apply for and are assigned to a TDA beyond 40 Kilometres from their home position?**

No. If an employee has chosen to apply to a TDA beyond the 40 kilometre radius of their headquarters and is assigned to such position, relocation expenses will not be paid by the employer.

**Question 14. Can employees who are eligible for TDAs under Appendix 40 be placed in positions of employees who have registered to volunteer to exit under Article 20.7 (VEO)?**

Yes, assignments will be made on the same basis as outlined in Article 20.3 with respect to full-time regular employees and Article 62.1 with respect to part-time regular employees.

**Question 15. If an impacted employee accepts a TDA while the home ministry still needs the work to be done, can the ministry decide to fill the vacated position with a fixed term employee?**

Yes. However, the parties have agreed that time spent by fixed term employees filling a vacancy that resulted from an assignment under Appendix 40 will not be included for the purpose of conversion under Article 31A.15 of the Collective Agreement.

**Question 16. What is the salary treatment for employees who accept a TDA pursuant to Appendix 40 to a vacancy whose classification has a maximum rate below the maximum rate of their own classification?**

If employees are assigned into lower-paying positions through TDA pursuant to Appendix 40, they will continue to be paid the salary of their former positions and are entitled to salary progression based on merit to the maximum salary of their former positions for the term of the salary cycle that is, for the term of the current OPSEU Collective Agreement. Any revision of the maximum salary of the former position that takes effect during the term of the Collective Agreement in which an employee starts the new assignment will be deemed to be the new maximum salary. This is known as 'red-circling'.

**Temporary Vacancies**

**Question 17. Are impacted employees who elect for TDAs under Appendix 40 eligible for temporary vacancies?**

Yes, only where the MERC have agreed to apply Paragraph 2 of Appendix 40 to the impacted employees; then, the impacted employees are eligible for assignment into temporary assignments of at least six (6) months that are posted in accordance with Article 8 at any time while eligible for under Appendix 40, provided that:

1. they apply for and indicate on their application that they are eligible for a temporary assignment under Appendix 40;
2. he or she meets the entry level qualifications for the position;
3. there is no other person who is qualified to perform the required duties, who has a greater length of continuous service and who is eligible for assignment to the vacancy either pursuant to Article 20.3, Article 20.6 (Recall) or Appendix 40; and
4. the vacancy is in the same ministry of the employee's home position.

**Question 18. What happens if an employee is issued a notice of lay-off while on a temporary assignment?**

The home ministry has the option of:

- A) returning the employee to his or her home position and issuing the notice of lay-off at that time; or
- B) giving the employee his or her notice and allowing the employee to remain on temporary assignment until directly assigned into a permanent vacancy or the temporary assignment ends, whichever occurs first.

**Question 19. Does an employee remain eligible for TDAs under Appendix 40 if the ministry has placed them in a temporary assignment?**

Yes. The employee will be considered for permanent opportunities under Paragraph 3 of Appendix 40 if they meet the eligibility criteria and have completed an Appendix 40 TDA election form within ten (10) business days from the date they receive notification of eligibility for consideration under Appendix 40.

**Question 20. What is the salary treatment for employees who accept a TDA pursuant to Appendix 40 to a temporary vacancy whose classification has a maximum rate below the maximum rate of their own classification?**

If employees are assigned into a lower-paying temporary vacancy through TDA pursuant to Appendix 40, they will continue to be paid the salary of their former positions and are entitled to salary progression based on merit to the maximum salary of their former positions for the term of the salary cycle – that is, for the term of the current OPSEU Collective Agreement. Any revision of the maximum salary of the former position that takes effect during the term of the Collective Agreement in which an employee starts the new assignment will be deemed to be the new maximum salary. This is known as ‘red-circling’.

**Recruitment Supports**

**Question 21. Are employees eligible for time off to attend interviews within the OPS?**

Impacted employees continue to retain all entitlements under the current Collective Agreement. If they are eligible for consideration under Appendix 40 and meet the criteria under Article 6.4, eligible employees are entitled to time off with no loss of pay and no loss of credits to attend an interview within the OPS where the timing does not unduly interfere with operating requirements.

**Question 22. How do eligible employees apply for the time off to attend interviews outside the OPS?**

Appendix 40 entitles employees to take up to 2.5 days per calendar year to attend an interview outside of the OPS with no loss of regular pay and no loss of credits. At least forty-eight (48) hours prior to the time off, eligible employees must advise their direct supervisor in writing that they will be requiring time off. Employees should record their absence under the General Absences section of the My Attendance page in the Employee Suite of WIN by noting the time off (up to a total of 2.5 days) as Discretionary Leave Paid (DSP) – Up to Six Months (D1) and noting “Job interview-non OPS” under the reasons for the leave.

**Question 23. Are eligible employees entitled to any travel expenses if they attend interviews outside of the OPS?**

No. The entitlement under Appendix 40 is to time off only. Any travel expenses associated with this time off would be the responsibility of the employee.

**Career Supports**

**What types of things should the ministry and its local OPSEU counterparts consider with respect to career and other transitional training options and to ensure impacted employees are provided with information?**

Appendix 40 defers to parties to best determine these issues.

The parties could explore, for example, such things as providing impacted employees with training on how to complete employee portfolios, resume writing, interview skills etc.