

# Appendix E

**OPSEU Collective Agreement  
Explanatory Note**

**Impact of Leaves of Absence and  
Temporary Assignment on Surplus  
Notice and Voluntary Exit  
Applications**

**Article 20.2 and 20.7**

**Updated September 2017**

Explanatory Notes on the application of the Ontario Public Sector Employees Union (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, their 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.

Issues:

- To clarify how various leaves of absence (LOA) and temporary assignments (TAs) affect the issuance of notice of lay-off and notice periods.
- To clarify how such leaves affect applications for the voluntary exit option under Article 20.7.
- To ensure consistent and equitable treatment of employees from ministry to ministry.

## **Application:**

### **A. Surplus Notice**

The following describes the treatment of employees' surplus notices when they are on leaves of absence or temporary assignments as amended in the 2018-2021 Collective Agreement. Treatment differs depending on when notice of lay-off is given — that is, if notice is given **before** or **during** a leave of absence or temporary assignment.

Leaves of absence include pregnancy leave (Article 50 and 76), parental leave (Article 51 and 77), educational leave, discretionary/special leave with/without pay (Article 24 and 25), self-funded leave (Article 25), jury duty leave (Article 27) and secondments to organizations outside the OPS (for example: municipal or federal governments) which are treated as unpaid leaves of absence.

## **1. Treatment of Surplus Notices During Leaves of Absence or Temporary Assignments**

### Absences due to Illness/Injury – Article 20.2.2.3

Where an employee's home position is declared surplus while he or she is away on sick leave (Short-Term Sickness Plan (STSP), Long-Term Income Protection (LTIP), or Workers' Safety Insurance Board (WSIB) claim), the ministry will advise the employee that his or her home position is being declared surplus in accordance with its regular practice (for example: by telephone, registered mail, etc.). Ministries should be especially sensitive to an employee's personal circumstances when they deliver the message during an absence due to illness. Formal surplus notice will be given when the employee is able to return to work on a full-time basis. Ministries will keep a record of all correspondence with employees in accordance with its regular practice.

### Absences due to Leaves of Absence – Article 20.2.2.4

Where an employee's home position is declared surplus while he or she is away on a leave of absence, the ministry will advise the employee that his or her home position is being declared surplus and offer him/her the option of:

1. returning early from his or her leave of absence and receiving formal surplus notice at that time; or
2. returning at the end of his or her leave of absence and receiving formal surplus notice at that time.

### Absences due to Temporary Assignments – Article 20.2.2.5

Where an employee's home position is declared surplus while he or she is on a temporary assignment, the employee's home ministry has the option of:

1. returning the employee to his or her home position and issuing formal surplus

notice; or

2. issuing formal surplus notice and allowing the employee to remain on the temporary assignment until he or she is assigned to a permanent vacancy or the temporary assignment ends, whichever occurs first.

If the home ministry allows the surplus employee to remain on the temporary assignment and that assignment extends beyond the six months of the employee's notice of lay-off period, the employee will continue to work in the temporary assignment until it ends. Employment stability entitlements, based on the employee's home (surplus) position, will continue throughout the temporary assignment until the end of the employee's six month notice of lay-off period. Recall entitlements, if applicable, would commence at the end of the temporary assignment. The home ministry of the employee who was issued notice of lay-off will be responsible for payment of enhanced severance, termination pay and any other eligible payments (for example: unused compensating leave), if applicable.

## **2. Treatment of Surplus Notices Issued Before a Leave of Absence or Temporary Assignment Begins**

Absence due to Illness/Injury – Article 20.2.2.6

### **LTIP or WSIB:**

Where an employee has already been issued a notice of lay-off before he or she begins a LTIP or WSIB leave of absence, the employee's notice of lay-off period shall be put on hiatus. During the hiatus period, all employment stability entitlements are put on hold until the employee is able to return to work on a full-time basis. His or her notice of lay-off period shall resume along with his or her employment stability entitlements upon return to work on a full-time basis.

### **STSP:**

Where an employee has already been issued a notice of lay-off and begins a sick leave under STSP and is expected to return to work within one month (for example: cold or flu), his or her surplus notice will not be put on hiatus. But, if, after one month on STSP the employee's prognosis for returning to work remains uncertain, his or her notice of lay-off period shall be put on hiatus until he or she is able to return to work on a full-time basis. His or her notice of lay-off period shall resume along with his or her employment stability entitlements upon return to work on a full-time basis. The hiatus period will not be retroactive.

Absence due to Leave of Absence – Article 20.2.2.7

Where an employee's position is declared surplus before he or she begins a leave of absence, the employee may choose to:

1. decline a hiatus in the surplus period during his or her leave of absence; or
2. accept a hiatus in surplus notice period during the leave of absence, (when the employee returns from the leave of absence, his or her surplus notice period will resume); or
3. return early from his or her leave of absence, (when the employee returns from the leave of absence, his or her notice period will resume).

Note: Declining a hiatus means that the employee would return early from his or her leave of absence.

#### Absence due to Temporary Assignment – Article 20.2.2.8

Where an employee receives surplus notice before he or she begins a temporary assignment or secondment within the OPS, and before the employee is eligible for a targeted direct assignment into a temporary assignment, the employee's surplus notice will be put on hiatus for the duration of the temporary assignment provided that the temporary assignment was obtained through the competitive recruitment process. The employee may continue to identify and be considered for permanent vacancies under Article 20.3 (Targeted Direct Assignment).

At the end of the temporary assignment, the employee's surplus notice will resume along with all remaining employment stability entitlements. The employee will return to his or her home position for the balance of his or her notice of lay-off period.

Where the employee's temporary assignment is not obtained through the competitive recruitment process, the employee's surplus notice period will not be placed on hiatus, and will run concurrently with the temporary assignment. The employee will only have employment stability entitlements during his or her six month surplus notice period. The employee will have no employment stability entitlements from the end of his or her surplus notice period until the end of the temporary assignment period. Recall entitlements will commence at the end of the employee's temporary assignment.

### **B. Voluntary Exit Option (VEO)**

An employee who has registered his or her position for VEO can withdraw his or her registration at any time, as long as the position has not already been offered in writing and accepted by an employee who is on surplus notice through the targeted direct assignment process. An employee who is registered for VEO, and who no longer wishes to exit the OPS through his or her VEO, must withdraw his or her registration for VEO.

To volunteer his or her position again for a VEO, the employee must resubmit his or her registration.

Refer to the VEO Explanatory Note for a description of how leaves of absence due to sickness or injury are treated for employees who offer up their jobs for the VEO registry.

### **1. Absences due to Illness/Injury**

Where an employee is on a STSP leave of absence and has registered or wishes to register his or her position for the VEO under Article 20.7, his or her position will be available for targeted direct assignment throughout his or her STSP leave of absence period. The employee's employment and STSP benefits will be terminated after an employee who has received a surplus notice has accepted a targeted direct assignment to his or her position. The employee who is registered for the VEO will be eligible for voluntary exit payments on the date when the employee in receipt of a surplus notice has reported for duty to his or her position.

Where an employee has registered or wishes to register for the VEO and is on LTIP or WSIB leave of absence, his or her VEO registration shall be considered "inactive" and removed from posting until such time as he or she is able to return to work on a full-time basis. The employee's position will not be available for targeted direct assignment during his or her LTIP or WSIB leave of absence period.

### **2. Leaves of Absence**

Where an employee is away on an approved leave of absence other than due to illness/injury, he or she may register for the VEO. The employee's position will be made available for targeted direct assignment during his or her leave of absence. The employee's employment and leave of absence will be terminated after an employee who has received notice of lay-off has accepted a targeted direct assignment to his or her position. The employee who is registered for the VEO will be eligible for voluntary exit payments on the date when the employee in receipt of notice of lay-off has reported for duty to his or her position.

### **3. Temporary Assignments**

Where an employee is on a temporary assignment, he or she may register for the VEO. The employee's home position will be made available for targeted direct assignment while he or she is on his or her temporary assignment. If an employee in receipt of a notice of lay-off has accepted a targeted direct assignment to the employee's position while he or she is on a temporary assignment, the manager of that temporary assignment will decide whether the employee will exit immediately or complete the temporary assignment before exiting with voluntary exit payments.

Surplus Notice – During	Surplus Notice - Before
<p><b>Position is declared surplus During sick leave of absence (STSP/LTIP/WSIB):</b></p> <ul style="list-style-type: none"> <li>• Notify employee that the position has been declared surplus.</li> <li>• Issue surplus notice when the employee returns to work full time</li> </ul>	<p><b>Position is declared surplus Before sick leave of absence begins:</b></p> <p><b>LTIP/WSIB leaves of absence:</b></p> <ul style="list-style-type: none"> <li>• The employee’s surplus notice period is <b>put on hiatus</b>.</li> <li>• The balance of the employee’s surplus notice period resumes when the employee is able to return to work on a full-time basis.</li> </ul> <p><b>STSP leaves of absence:</b></p> <ul style="list-style-type: none"> <li>• The employee’s surplus notice period is <b>put on hiatus until the employee is able to return to work on a full-time basis, if</b> at the beginning of STSP, medical evidence indicates that the absence will be <b>greater than one month</b>.</li> <li>• The employee’s surplus notice period is not put on hiatus until the employee is able to return to work on a full-time basis, if the employee is on sick leave (for example: cold/flu) and is <b>expected to return within one month</b>.</li> <li>• The employee’s surplus notice period is put on hiatus until the employee is able to return to work on a full-time basis, if after one month, the employee’s prognosis for returning to work remains uncertain. <b>The hiatus will not be considered retroactive</b>.</li> <li>• The employee in receipt of a surplus notice has been assigned to a new position through the targeted direct assignment process <b>before</b> going on STSP/LTIP/WSIB, the accepting ministry must honour the leave of absence.</li> </ul>

Surplus Notice – During	Surplus Notice - Before
<p><b>Position is declared surplus During leave of absence:</b></p> <ul style="list-style-type: none"> <li>• Notify employee that the position has been declared surplus and give the employee the option to: <ul style="list-style-type: none"> <li>○ Return early from leave and receive surplus notice;</li> </ul> <p style="text-align: center;">Or</p> </li> <li>• Return at the end of the leave and receive the surplus notice at that time.</li> </ul>	<p><b>Position is declared surplus Before leave of absence begins:</b></p> <ul style="list-style-type: none"> <li>• Employee may opt to: <ul style="list-style-type: none"> <li>○ Accept a hiatus in his or her surplus period;</li> </ul> <p style="text-align: center;">Or</p> <li>○ Return early from his or her leave of absence.</li> </li></ul> <ul style="list-style-type: none"> <li>• When the employee returns from leave, the balance of his or her surplus notice period resumes.</li> <li>• If the employee in receipt of a surplus notice is assigned to a new position through the targeted direct assignment process <b>before</b> going on leave, the accepting ministry must honour the leave of absence.</li> </ul>

Leave of Absence Such As:

- Pregnancy/Parental Leave
- Educational Leave
- Discretionary Leave
- Special/Compassionate Leave
- Self-funded Leave
- Jury Duty Leave
- To work at an outside organization (for example: municipal/federal governments)

<b>Surplus Notice – During</b>	<b>Surplus Notice – Before</b>
<p><b>Position is declared surplus During temporary assignment:</b></p> <p>The <b>manager</b> of the home position has the option of:</p> <ul style="list-style-type: none"> <li>• Returning the employee to his or her home position and giving surplus notice;</li> </ul> <p style="text-align: center;">Or</p> <ul style="list-style-type: none"> <li>• Giving the employee his or her surplus notice and allowing the employee to remain on temporary assignment until he or she is permanently assigned or the temporary assignment ends, whichever occurs first.</li> </ul>	<p><b>Position declared surplus Before temporary assignment begins:</b></p> <p><b>Temporary assignment is filled competitively:</b></p> <ul style="list-style-type: none"> <li>• The employee’s surplus notice is put on hiatus during the temporary assignment and the employee may continue to identify and be considered for vacancies under Article 20.3 (Targeted Direct Assignment).</li> <li>• At the end of the temporary assignment, the balance of the surplus notice period resumes.</li> <li>• The employee is returned to the home position if it still exists or to a comparable position within the ministry/OPS.</li> </ul> <p><b>Temporary assignment not filled competitively:</b></p> <ul style="list-style-type: none"> <li>• The employee’s surplus notice will Not be placed on hiatus but will run concurrent with the assignment.</li> <li>• The employee’s employment will conclude at the end of the temporary assignment or at the end of the employee’s notice of lay-off end date; whichever is later.</li> <li>• The employee will not have employment stability entitlement after the employee’s notice of lay-off end date (lay-off date).</li> <li>• The employee will be eligible for recall rights, if applicable.</li> </ul>