

Updated March 2014

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 2013-2014 OPSEU Collective Agreement apply as of April 1, 2013.

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 layoff should contact the designated Human Resource contact that is identified in their notice of layoff letter.

What are the requirements for Surplus Notice Alert?

Article 20.1.2.1 requires that the Employer provide all employees in an administrative district or unit, institution or other such work area with a Surplus Notice Alert not less than 6 working days in advance of providing any official written notice of lay-off. The purpose of this Surplus Notice Alert is to allow time to offer all employees in the affected job function an opportunity to volunteer to exit under one of the options in Article 20.1.2.3. It is also intended to allow those employees whose positions are specifically identified for surplussing to consider their exit options under Article 20.1.2.3.

The Surplus Notice Alert process differs from the pre-notice process in the 2009-2012 OPSEU Collective Agreement, which required that the Employer notify individually impacted employees of their surplus status 10 working days in advance of providing any official written notice of lay-off. Now, the Employer will, six days in advance of an official written notice of lay-off, provide Surplus Notice Alert letters to:

- All employees in the identified work unit, stating the job functions and number of positions to be reduced.
- Individually impacted employees, stating that their position has specifically been identified for surplussing, and offering them the ability to exit the organization with one of the options outlined in Article 20.1.2.3,

- All employees in the affected job function, as identified by the employer, offering those employees the ability to exit the organization with one of the options outlined in Article 20.1.2.3.

Employees who wish to volunteer under the Surplus Notice Alert process as per Article 20.1.2.2(a) and (b) must respond to the Employer, in writing (by filling out a Voluntary Election Form), within 5 working days of the issuance of the surplus notice alert.

An employee is eligible to exit under the Surplus Notice Alert process if they:

- Have a home position specifically identified for surplussing and elect to exit the OPS with one of the options outlined in Article 20.1.2.3 (and not seek a targeted direct assignment or displacement); or
- Have a home position in an affected job function and elect to exit the OPS with one of the options outlined in Article 20.1.2.3; and
- are the most senior employee requesting to exit; and
- their exit does not exceed the number of positions required to be reduced.

“Work unit” should be defined as broadly as possible within the parameters of ministry decision-making and downsizing plans.

Where no volunteers have been identified under the Surplus Notice Alert process, employees whose positions have been specifically identified for surplussing shall receive notice of layoff in accordance with Article 20.2.

For the purpose of establishing timelines, the Surplus Notice Alert period should begin the first full working day following the receipt of the written Surplus Notice Alert. For example, if a Surplus Notice Alert were to be received at 2:30pm on March 4, 2013, the first full working day of a 6-day Surplus Notice Alert period would be March 5, 2013.

The 6-month notice period begins no earlier than the 7th working day following the receipt of the written Surplus Notice Alert. There will also be an official notice of lay-off letter delivered on that same day.

The official notice of lay-off letter will identify the lay-off date which is the last day of the 6th month of notice at the end of that working day.

The Employer must advise OPSEU of the time and place of the Surplus Notice Alert meeting and notice of layoff meeting. As such, this information should be provided to the local OPSEU representative a reasonable amount of time prior to the expiry of the period following official disclosure to the OPSEU president of the surplussing activity.

What are the options for employees who are exiting under Surplus Notice Alert?

Employees who elect to exit under the Surplus Notice Alert have the following options as outlined in Article 20.1.2.3:

- Pay in Lieu of notice either as a:
 - A lump sum payment of six months' pay plus severance as provided for in Article 53 or 78 and enhanced severance under Paragraph 4b of Appendix 9*; or
 - Continuance of salary plus benefits (except Short Term Sickness Plan (STSP) and Long Term Income Protection (LTIP)) commencing on the surplus date for the duration of the notice period, plus severance as provided for in Article 53 or 78, and enhanced severance under Paragraph 4b of Appendix 9*; or
- Immediate retirement if eligible for a permanent pension factor (90, 60/20, Age 65) under the OPSEU pension plan; or
- Pension Bridging pursuant to paragraph 2a of Appendix 9 (Employment Stability), if eligible, to the employee's first permanent unreduced pension factor (90, 60/20, Age 65), under the OPSEU pension plan.

*Paragraph 4b of Appendix 9 will not apply to employees who: are eligible to retire and receive an actuarially unreduced pension; or will become entitled to receive an actuarially unreduced pension through the application of paragraph 2a of Appendix 9; or employees described in paragraph 1 of Appendix 9 who are transferred to a new employer; or who decline a transfer to a new employer per paragraph 1b of Appendix 9.

What are the pay in lieu options for employees who have received Notice of Layoff under Article 20.2?

Article 20.2 stipulates that a ministry must provide surplus employees with six (6) months notice of lay-off, **or with mutual consent**, any surplus employee may resign and receive equivalent pay in lieu of notice (in the form of a lump sum payment or continuance of salary plus benefit [except STSP and LTIP]). Pay in lieu (PIL) or continuance of salary plus benefit shall only be granted **where a ministry determines that operational requirements permit** an employee's exit from the workplace prior to the expiration of six months notice.

Surplus employees can request PIL at any time during the notice period, and consent can be given, again, based on operational circumstances. Where an employee accepts a lump sum or salary continuance option, the employee's last day at work is 5 working days after the employee advised the Employer of their request for PIL, or as mutually agreed between the Employer and employee. Ministries should ensure that there is sound rationale for denying an employee's request for lump sum or salary continuance, and that the rationale is documented.

Employees who choose to stay in the OPS will be considered to be on working notice. This means that if there is work available, they will continue working. The Employer may also require the employee to stay home on salary continuance (for example: if there is no work to perform). The surplus employee continues to be entitled to all surplus provisions.

It is possible for an employee's lay-off date to be delayed. For more information, see Article 20.8 (Temporary Vacancies) and the Explanatory Note regarding "Impact of Leaves of Absence And Temporary Assignments on Surplus Notice and Voluntary Exit Applications"

Does an employee who has taken PIL retain any surplus entitlements?

Taking PIL is considered a resignation from the OPS, and most entitlements under Article 20 are forfeited. (Note that the Record of Employment (ROE) will identify "shortage of work" as the reason for issuing the ROE.) An employee who resigns and receives PIL does, however, remain eligible for:

- termination payments (Articles 53 or 78)
- enhanced severance (If eligible under Appendix 9, paragraph 4(b))
- right to apply to restricted competitions for 24 months following the originally scheduled lay-off date

Employees choosing to take PIL are not entitled to tuition reimbursement under Article 20.5.

As these employees have the right to apply to restricted competitions for 24 months following their originally scheduled lay-off date, restricted competitions can be accessed on the career portal website at <http://www.gojobs.gov.on.ca/ALLJobs.aspx>

What happens if an employee who has resigned and taken a lump sum payment as their PIL option (Article 20.2.1.4(a)) is re-employed in the OPS?

If a former employee who has taken lump sum payment as their PIL option secures other employment in the OPS prior to the original lay-off date some repayment of the lump sum payment package is required. The repayment safeguards the Employer from paying the employee twice for the same period of time.

Pay-in-lieu of notice – Lump Sum Payment (Article 20.2.1.4): required

- pro-rated to reflect the balance of time left in the notice period

- this means that if the former employee is re-hired after the 6-month notice period has gone by, no repayment of PIL required

Enhanced severance (Appendix 9, paragraph 4(b)): required

- the total amount received must be repaid

Termination payments (Articles 53 and 78): optional

- employees can repay any, all or none of the termination payments received
- Repaying the termination payments will benefit the employee at a future resignation date by increasing the amount of payment in the future (see section below on How does re-employment affect the continuous service date)

There is no obligation to repay any amount where re-employment occurs more than 24 months after the lay-off date.

Employment in the OPS refers to any position in the public service, Regular and Fixed-Term.

The chart below sets out details of repayment.

Timing of Re-employment	Repayment Requirements: Pay in lieu of notice (Article 20.2)	Repayment Requirements: Termination Payments (Articles 53 and 78)	Repayment Requirements: Enhanced Severance (Appendix 9, paragraph 4(b))
Before end of notice period (lay-off date_	Pro-rated – balance of time left in notice period	Optional	100%
Within 24 months after lay-off date	None	Optional	100%
More than 24 months after lay-off	None	None	None

When is repayment required?

Repayment is required prior to the start date of the new job. The Employer must receive payment in full on the date the former employee reports to work. Where payment is in the form of transfers from the former employee's financial institution, the Employer must receive signed, executable transfer orders/ documents from the former employee on the date the former employee reports to work.

How does re-employment affect the continuous service date?

For all purposes except for termination payments:

The employee's continuous service date includes both service up to the last day of active work and the accumulation of service after the date of re-appointment.

For the purpose of termination payments, the employee has the discretion to choose to repay all or part of the termination payments received (Article 53 – full-time employees; Article 78 – RPT employees). Termination payments are based on the continuous service date. Repaying the termination payments will benefit the employee at a future resignation date by increasing the amount of payment in the future. There are two scenarios:

1. If the employee repays the termination payments:
 - The new continuous service date will start at the date equal to the time repaid. The time the employee was not employed will not be counted. For example, if the employee repays all the termination payments, then at a future resignation date, the employee is entitled to receive termination payments based on the original continuous service date (i.e. prior to taking PIL) less the break in service. If person was gone for 18 months, then 18 months will be deducted from the amount of service.
2. If the employee chooses not to repay the termination payments:
 - The new continuous service date will be the start date in the new job.