

Reduction In Force



Assistance Guide For School Employees



WEA
WASHINGTON
EDUCATION
ASSOCIATION

Office of the General Counsel P.O. Box 9100 Federal Way, WA 98063-9100

This publication is intended only to be a general guide that provides basic information for school employees who have been laid off. This booklet is not intended to provide legal advice on specific problems. It is subject to periodic updates, and should not be relied upon beyond the year of publication listed below. A legal opinion in any particular situation will depend on the facts of your situation. Individuals need to make direct contact with their local association when they are RIFed. Your local president is prepared to provide additional advice on your rights and to help you gain as many benefits as possible during this difficult time in your career.

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Section 1: Know Your Legal Rights

School districts must follow both Washington state statutes and your collective bargaining agreement to carry out a reduction in force. To challenge your layoff, you may be able to file a grievance, appeal to a hearing officer or file an action directly in court. The best procedure or combination of procedures will vary according to the facts of each employee's situation. The law provides different rights and procedures in connection with reductions in force depending upon the type of employee affected. For example, the rules are different for classified employees; provisional certificated employees; continuing contract certificated employees; leave replacement and retire/rehire certificated employees; and supplement contract employees, such as coaches. A consultation with your UniServ representative or local president will help to determine which of the following procedures, if any, are appropriate for your case.

Arbitration Under the Collective Bargaining Agreement

Your collective bargaining agreement (CBA) is likely to have specific rules for layoff and recall. Generally, if your CBA allows nonrenewals to be arbitrated, the quickest way of enforcing rights under the contract is filing a grievance and going to arbitration under the grievance procedure in the collective bargaining agreement. The procedures for doing this are described in the contract sections covering layoffs and grievances.

To initiate a grievance, an employee or local association must file within a specified number of days after receiving a RIF notice. If the grievance cannot be settled during meetings attended by the employee, the Association and district administrators, an arbitration hearing may be held before an arbitrator chosen by mutual agreement of the Association and the District. The arbitrator will then issue a binding decision. Although arbitration decisions are sometimes appealed to court, the courts rarely overturn an arbitrator's decision.

Appeal to a Hearing Officer Under State Law

Teachers and other certificated employees with continuing contracts have the right to challenge a nonrenewal or layoff under RCW 28A.405.210. This statute provides that no certificated employee may be nonrenewed unless he or she receives written notice of the probable cause for nonrenewal on or before May 15. However, if the state Legislature has not passed an appropriations act by May 15, then the notice may be delayed until June 15. See (SB 5487, adopted 2009).

The determination of probable cause for nonrenewal (layoff) must be made by the Superintendent, and the notice must specify the cause or causes for nonrenewal. This notice must be served upon the employee personally, by certified or registered mail or by leaving a copy of the notice at the employee's regular residence with some person of suitable age and discretion who also is a resident at that location.

To challenge a determination of probable cause for nonrenewal, a continuing contract certificated employee can file a notice of appeal and request for hearing. Any such appeal must be filed **within 10 calendar days** of receipt of the notice of probable cause. The notice of appeal and request for hearing must be filed with the president, chair, or secretary of the board of directors of the District. (The school district superintendent acts as "secretary" of the board of directors.) The employee may choose either an open or closed hearing.

If you decide to file an appeal letter, we suggest that you make two copies of the letter. Hand deliver one to your Superintendent's office and have the second copy stamped "Received" by them with their office stamp.

The hearing officer will be a neutral attorney or arbitrator chosen by mutual agreement of the employee's representative and the district. If no agreement can be reached, the court will appoint a hearing officer.

The hearing officer presides at the hearing and after the close of the hearing transmits a decision to the district and the employee. An employee whose nonrenewal is upheld by the hearing officer can appeal to court, although hearing officers' decisions are rarely overturned on appeal.

Many districts send RIF notices in the spring to more certificated employees than necessary. Because the District may be uncertain of its finances or staff needs until the beginning of the next school year, the District may try to keep its options open by notifying more employees prior to the May 15 deadline than will ultimately be laid off, and then recalling some of them as its staffing needs become more certain. However, in the current economic climate, it is likely that there will far fewer recalls than have occurred in years past.

A continuing contract certificated employee who receives a non-renewal notice due to enrollment decline or loss of revenue may request that the selection of a hearing officer be postponed until July 25.

WE ADVISE THAT EMPLOYEES STIPULATE IN THEIR NOTICE OF APPEAL THAT THE SELECTION OF A HEARING OFFICER BE POSTPONED UNTIL JULY 25.

This will maximize the potential for recalls to take place prior to a decision being issued by a hearing officer which may be adverse to the member.

Direct Appeal to Court Under State Law

Instead of requesting a hearing before a hearing officer, a continuing contract employee who receives a notice of probable cause based upon lack of sufficient funds or loss of levy election may appeal directly to court. Under RCW 28A.405.380, such a direct appeal is commenced by filing a notice of appeal with the court and serving a copy to the secretary of the school board **within 10 calendar days** after the employee receives the RIF notice.

Appeal Rights of Provisional Employees

State law greatly restricts the statutory appeal rights of provisional certificated employees. Although some provisional certificated employees may be able to file a grievance under the collective bargaining contract, the only appeal rights under state statutes are provided by RCW 28A.405.220.

That statute provides that no provisional employee may be nonrenewed unless the employee receives a notice of nonrenewal by May 15. If the state Legislature has not passed an appropriations act by May 15, then the notice may be delayed until June 1.

The notice must be served upon the employee personally, or by certified or registered mail or by leaving a copy of the notice at the employee's regular residence with some person of suitable age and discretion who also is a resident at that location.

Unlike continuing contract certificated employees, provisional employees are only provided with an opportunity for an informal meeting with the district superintendent. To do so, the provisional employee must file a request for such a meeting with the Superintendent **within 10 calendar days** after receiving the non-renewal notice. The meeting must be held within 10 days after the superintendent's receipt of such a request, and the provisional employee must be given notice of the date, time and place of this meeting at least three days before the scheduled date. At the meeting, the employee has the opportunity to refute any facts upon which the nonrenewal was based and to argue for reconsideration of the non-renewal decision.

Within 10 days following the meeting, the superintendent must either reinstate the employee or submit to the district board of directors a written report stating the reasons for the recommendation of nonrenewal. The board of directors must consider the superintendent's report at the next scheduled board meeting. A copy of the superintendent's report must be delivered to the employee at least three days prior to the board meeting. The board must consider any written communication which the provisional employee files with the superintendent prior to the board meeting.

The board of directors must give the provisional employee written notice of its decision within 10 days after the meeting at which the superintendent's recommendation was considered. The decision of the board of directors is not subject to any appeal.

Who is a provisional employee?

Washington law, not the school district, defines who is a provisional employee. The general rule is that employees in their first three calendar years of certificated employment with the district are provisional¹. However, an employee who has previously completed at least two calendar years of certificated employment in another Washington state school district will be provisional for only one calendar year in the new district. A "year" under the statute does not refer to a school year, but to a 12-month period of time. Thus, if you begin employment in December of one school year, the first year of employment will be finished in December of the next school year.

Classified Employees

Classified employees do not have the right to a statutory hearing to challenge their layoff, and thus typically must rely upon the collective bargaining agreement for protection during layoff. However, a classified employee occasionally may need to enforce the contract in court if the CBA does not contain an arbitration clause. Contact your UniServ representative for further information.

Leave Replacement and Retire/Rehire Employees

Leave replacement employees and retire/rehire employees do not have any statutory appeal rights to challenge the discontinuance of their contract, and rarely, if ever, do

¹ A principal *may* choose to convert a provisional employee to continuing contract status after the employee receives a satisfactory evaluation (defined as one of the top two levels of a four tier evaluation system) in the second year of employment.

they have the ability to grieve such an action. Rather, such contracts are for a time-period certain, and expire on their own terms when that time is reached. RCW 28A.405.900.

Supplemental Contracts

Supplemental contracts are not subject to protections of the continuing contract law. RCW 28A.405.240. Statutory appeals do not cover the loss of supplemental contracts for work outside the normal school day or the school year for students.

Actions you are responsible for if you are RIFed

1. Contact your UniServ representative immediately upon receipt of a RIF notice.

You will want to explore with your UniServ representative and local president whether it is possible and appropriate to file a grievance to challenge your RIF. Do not assume that the local association or the UniServ has an accurate list of those who have been RIFed. Remember there are legal and contractual time limits that you must meet or you will forfeit your right to challenge being RIFed.

2. If you are a certificated employee, you must file an appeal notice with the Superintendent within 10 calendar days of receipt of a RIF notice in order to preserve your right to a statutory hearing.

Certificated employees have a right to a statutory process, and also may have the right to file a grievance and proceed to arbitration under the terms of your collective bargaining agreement. Some contracts provide that you must choose one forum or the other. You should promptly consult with your UniServ representative or local president to determine which avenue is appropriate in your case so that you can make that determination in time to make a timely appeal.

3. Keep the District and your UniServ office informed of your address and telephone number.

Recall notices issued by the school district may require you to reply by a certain deadline. You may lose your right to recall if you fail to respond promptly. When you leave town for an extended period of time or when your address changes, notify the District and try to arrange for someone to monitor your mail and to be on the lookout for any correspondence from the District.

4. **Notify the UniServ office and your District if you accept a position with a different school district.**

It is important that the UniServ office maintains an accurate list of those who are still seeking employment.

5. **Remember you may sign only one teaching contract.**

If you accept a position with a different school district and a position subsequently becomes available in your current school district, you may not accept the position in the current school district unless you are released by the other school district. It is usually prudent to accept an available position and not wait the entire summer to see if you are recalled by the school district. You must be aware, however, that if you accept a new position, you may be unable to accept your former position if it becomes available.

6. **If you are receiving unemployment benefits and accept employment with a school district for the subsequent school year, you must notify the Unemployment Compensation Division immediately.**

School employees may not receive unemployment compensation during the summer if they have a “reasonable assurance” that they will be employed in a similar position during the subsequent school year. When you are RIFed, you are eligible for unemployment because you no longer have such a reasonable assurance of continued employment. However, once you gain employment for the subsequent school year, you may no longer be eligible to collect unemployment benefits.

***SAMPLE LETTER TO SUPERINTENDENT
(Certificated Continuing Contract Employees Only)***

Date

_____, Superintendent
_____ School District Street
Address or PO Box _____
WA 98xxx

Dear _____:

Pursuant to 28A.405.210, I request a hearing to determine if there is a sufficient cause to nonrenew my teaching contract. I am willing to stipulate that the selection of a hearing officer be postponed until 10 days following July 15, in accordance with this statute.

Please contact me after July 15 to discuss arrangements for the selection of a hearing officer.

I request an open/closed hearing.

Sincerely,

(Member's signature, printed name, address and telephone number)

SAMPLE LETTER FOR PROVISIONAL EMPLOYEES

(Date)

Mr./Ms. _____, Superintendent

_____ School District No. ____

(Address)

(City) WA 98____

Dear _____:

Pursuant to RCW 28A.405.220, I request that you reconsider your decision not to renew my contract. I also request an opportunity to meet with you within 10 days after you receive this letter. Please notify me at least three days in advance of the date, time and place of the meeting.

Sincerely,

(Member's signature, printed name, address and telephone number)

Section 2: WEA/NEA Membership and Continued Benefits

Membership in WEA/NEA

For employees terminated at the end of the school year, membership in WEA/NEA is effective through Aug. 31. After that date, you may continue your membership as described below. For more information, contact WEA's Membership Department at 1-800622-3393, Ext. 7105 or via e-mail at member.records@washingtonea.org.

WEA Reserve Membership

Reserve membership is available to employees who have been active members and who lose their jobs due to reduction in force.

Membership Services for Reserve Members

The following services will be provided to Reserve WEA members:

- WEA and NEA publications and Member Benefit Program Eligibility
- WEA Member Benefit Discounts
- NEA publications and benefits

WEA Joblink

The Joblink is a year-round Internet service providing contact information for Washington state public schools, as well as a link to teachers-teachers.com, listing education jobs throughout the country. The WEA Joblink is accessible at no charge at www.washingtonea.org.

Fringe Benefit Plans

Continuing health-care coverage during a period of unemployment is important. If you have a working spouse or domestic partner, you might be able to obtain coverage under his/her group program. If not, then you should contact your district payroll office and/or health-care carrier for information on continuing your coverage after your district coverage ends.

RIFed certificated employees probably will have their district-paid health care and dental coverage continued through Sept. 30. Other (noncertificated) employees may

have health-care coverage continue through Sept. 30, but in some cases, this will require employee payment of premiums for August and September. Make these arrangements with your payroll office. ***The federal law, COBRA, requires that RIFed employees be allowed to self-pay for health care benefits for 18 months or until re-employed (whichever is less), provided the employee is not eligible for Medicare. The school district is required to send you a notice of your COBRA rights. (Please note that COBRA applies to groups with 20 or more employees.)***

You should also check with your district payroll office for more information and details.

WEA Select Medical Plan (Premera Blue Cross), Dental Plan (Washington Dental Service), Managed Dental Plan (Washington Dental Service and Willamette Dental of Washington), and Vision Plan (Premera Blue Cross and VSP)

If your district qualifies for COBRA continuation (more than 20 employees), you are eligible to self-pay for coverage for a period of up to 18 months. Your monthly premiums must be paid through the district payroll office on the same basis as a leave of absence.

If your school district's size (fewer than 20 employees) does not require COBRA continuation, arrangements have been made for participants in the WEA Medical, Dental, Managed Dental and Vision Plans to self-pay for continued coverage under the group plan for up to 12 months. Monthly premiums would be paid through the district payroll office on a similar basis as a leave of absence.

District-Sponsored (Non-WEA) Medical Plans and Health Maintenance Organizations (HMO), Dental and Vision Plans

Continuation of medical coverage with district-sponsored plans (e.g., PPOs, HMOs, etc.) will vary from district to district. If your district qualifies for COBRA, the same timeframe described above will apply. The district-sponsored plan may or may not have specific reduction in force language or provisions for districts with less than 20 employees. Contact your school district payroll office, insurance carrier or HMO directly for information on continued coverage.

Individual Medical Insurance Policies

Several carriers offer individual insurance policies that you may purchase directly from them. Most offer an array of benefit designs and associated premiums. These policies are different than group and are available for individuals to purchase to cover

themselves and/or their family. Most, if not all, policies include a waiting period for any pre-existing conditions, which may be waived if you previously had coverage, and you enroll within a certain period of time (currently 63 days) after the date your coverage terminated. These policies may also include specific benefit caps such as a limit on prescription drugs, so please review the details carefully to find the policy that works best for you and/or your family. For more information contact:

- Premera Blue Cross: 800-752-6663 or www.premera.com
- Regence: 800-458-3523 or www.regence.com
- Group Health Cooperative: 800-358-8815 or www.ghc.org
- LifeWise of Washington (subsidiary of Premera): 800-592-6804 or www.lifewisewa.com

Disability Insurance

The WEA Select Voluntary Disability Plan and the WEA Select Group Long-Term Disability Plan may not be continued after termination of employment. Most disability plans do not allow for continuation of coverage after your employment has ceased.

Term Life Insurance

Term life insurance plans often allow you to convert your employer-sponsored group or voluntary life plan to a group-like or individual policy when your district coverage terminates. This is referred to as “portability” and “conversion.” Most plans require you to apply for coverage and submit the initial premium within 30 days after your district coverage ends. Benefits and rates typically are different than the group plan. Availability of this coverage will vary from district to district. Contact your district payroll office for more information.

NEA Term Life and AD&D Insurance

Members covered under NEA-sponsored insurance plans may continue coverage as long as NEA membership is maintained.

Creditor Payments

Some creditors will work with you regarding restructuring your payment obligations in the event of a layoff. If you are unable to make full monthly payments on outstanding loans, you should consider contacting your creditors to make arrangements for extending payments.

Section 3: Unemployment Compensation

If you are laid off, you should immediately apply for unemployment compensation with the nearest office of the Washington State Employment Security Department. The Employment Security Department will determine your eligibility as well as the duration and amount of any weekly benefit payments. ***Be sure to take the RIF notification letter that you received from your district when you file your claim.***

To be eligible for benefits, you must be involuntarily unemployed — through no fault of your own. Never assume that you are ineligible. Check with your Employment Security office.

Even if your paychecks continue through the summer, you probably will be eligible for unemployment benefits shortly after you have finished your duties for the school year. There is a one-week waiting period after the end of work before your compensation payments begin. If your claim is allowed, the weekly compensation payments begin two or three weeks after application.

Consult the telephone directory for the job service center nearest you. The listing will be under:

Washington State: Employment Security Department Unemployment Compensation Division

The local job service centers are also listed on the Department's Web site at: www.esd.wa.gov/uibenefits/index.php.

If your claim is denied or challenged, you may appeal and get a hearing. Information on your appeal rights will accompany any such notice you receive.

Section 4: Retirement

Upon termination of employment, you become inactive in your retirement system: TRS, PERS or SERS. When this happens, you may apply for retirement benefits, apply for a refund of your contributions to the system, or you may elect to roll your contributions over to another qualified retirement plan like an IRA. In making a decision regarding your retirement contribution, carefully read the pamphlets on TRS, SERS or PERS published by:

***Washington State Department of Retirement Systems
P.O. Box 48380
Olympia WA 98504-8380***

(360) 664-7000 or toll free (outside the Olympia area) 800-547-6657 TDD Line (for the hearing impaired)

***(360) 586-5450 or toll free (outside the Olympia area) 800-377-8895 Web site:
www.drs.wa.gov***

You should call the Washington State Department of Retirement Systems with questions about rights under the benefit systems.