

Work Force Adjustment: Questions and Answers

Adapted from a document prepared by the National Joint Council

Q1. To whom does Work Force Adjustment apply?

With the exception of members of the executive (EX) category and certain others for whom the Executive Employment Transition Policy (EETP) would apply, all indeterminate public service employees, both represented and unrepresented, are covered under Work Force Adjustment (WFA) agreements. Where Treasury Board is the employer, those agreements are included either as an addendum to collective agreements with bargaining agents (e.g. CAPE, PSAC, PIPSC and others), or as a National Joint Council (NJC) Work Force Adjustment Directive. Certain Schedule V employers, including the Canada Revenue Agency, also have their own WFA agreements as part of their collective agreements.

Q2. What does WFA offer to an indeterminate employee in a WFA situation?

WFA agreements emphasize employment continuity. Every current WFA agreement ensures that, whenever possible, indeterminate employees affected by Work Force Adjustment are given every reasonable opportunity to continue their careers as public service employees.

1. Under WFA agreements, every indeterminate employee whose services are no longer required because of a Work Force Adjustment situation, *and* for whom the Deputy Head knows or can predict employment availability, will receive a written guarantee of a reasonable job offer within the public service.
2. Provisions are also included to address circumstances in which the deputy head makes a decision not to offer a guarantee of a reasonable job offer. Where no guarantee is made within the Core Public Administration, employees are to be accorded a period of 120 days, called the opting period, during which to choose one of the three possible transition support options described in WFA Part VI, Options for Employees.

Q3. What is a reasonable job offer?

A reasonable job offer is an offer of indeterminate employment within the Core Public Administration that is usually at the employee's current level, but which in some circumstances may involve a lower level position appointment with salary protection.

The department will try to match the employee's skills, experience, interest, and preferred area of mobility with the reasonable job offer. In certain circumstances, however, a job opening in another location could be considered as a reasonable job offer, since there is no guarantee that a job will be found in a local area. An employee who is declared surplus must be trainable, must cooperate in placement efforts, and must not unduly restrict his or her mobility.

Q4. What is salary protection? What does it mean in relation to a reasonable job offer?

Surplus employees and laid-off persons appointed to lower level positions under WFA agreements have their original salary protected, in accordance with their collective agreements. As such, the salary of the appointee is protected until such time as that person is appointed to a position equivalent to the maximum rate of pay of his or her previous substantive position, or until the person refuses an offer of appointment equivalent to the maximum of the former group and level, usually within the same geographical area. Salary protection will continue, even if the employee voluntarily leaves the position to accept an equivalent or higher position not yet at the former level.

Q5. What factors does the Deputy Head consider when determining whether or not to provide a guarantee of a reasonable job offer?

Deputy Heads usually only consider exemptions from offering a guarantee of a reasonable job offer in situations where it is unlikely that another position in the Public Service will be found for an affected employee within a one-year period.

Exemption from the guarantee would usually only occur where:

1. the Core Public Administration is no longer employing the skills of the affected employee;
2. the skills of the affected employee are very specialized, and retraining would be onerous or inappropriate; or
3. the work location is in a remote area with little federal government presence.

On the request of the employee, the Deputy Head will provide his or her reasons in writing for not providing a guarantee of a reasonable job offer.

Q7. How long will the guarantee of a reasonable job offer be in effect?

An employee who receives a written guarantee of a reasonable job offer remains in surplus status until he or she is either appointed to another indeterminate position, is laid off, or chooses to resign. Employees could receive a reasonable job offer as soon as the first day of their surplus period, or later, since there is no time limit.

If an employee refuses a reasonable job offer, the employee can be laid off, providing the layoff occurs no sooner than six months from the start of his or her surplus status.

Q8. What WFA provisions apply to employees in situations where no guarantee of a reasonable offer is extended?

Employees who do not receive a written guarantee of a reasonable job offer will instead be accorded in writing with a period of 120 days during which to choose from one of three options:

Option A: a 12-month surplus period during which to find another position;

Option B: an offer of a transition support measure (TSM), which is a lump-sum payment tied to years of service; or

Option C: an offer of a sum equivalent to the TSM, plus an education allowance.

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For more details, see the specific provisions contained in **Part VI** of applicable WFA agreement (for CAPE members, see The NJC *Work Force Adjustment Directive*: <http://njc-cnm.gc.ca/directive/wfad-dre/index-eng.php>)

Q9. What is ALTERNATION, and when is it possible?

Alternation refers to a provision within the WFA agreements wherein an *opting* employee who wishes to remain in the Core Public Administration exchanges positions with a non-affected employee willing to leave the Core Public Administration with a TSM or an educational allowance. An opting employee is an individual who has not received a guarantee of a reasonable job offer and who has been accorded a period of 120 days during which to select one of the three transition-support options provided to opting employees. Management will decide whether a proposed alternation will result in retaining the skills required to meet the on-going needs of the unaffected position.

Under these circumstances, the following conditions apply:

1. Alternation is to be applied like any other collective agreement provision.
2. All departments must participate in the alternation process.
3. The process is limited to the opting employee's opting period (120 days).
4. The opting employee (for whom the substantive position is being eliminated) must meet the position requirements of the unaffected position.
5. The potential exists for quick placement and savings, where matches work.
6. Alternation must occur on a specified date *agreeable to the department*. No "future considerations" can be arranged.

Q10. What WFA provisions apply when departmental work is being transferred either to a separate employer or outside of the Core Public Administration?

In circumstances where departmental work is being transferred to a separate employer or outside of the Core Public Administration, employees are provided access under WFA Part VII to provisions specifically addressing three possible types of alternative service delivery initiatives. Employees affected by a decision to transfer any work, undertaking, or business of the Core Public Administration to any body or corporation that is a separate employer or that is outside of the Core Public Administration are given access to specific provisions tailored to address the type of employment arrangement being offered. For details, see the specific provisions contained in Part VII of WFA Agreements.

Q11. When extending a reasonable job offer, how wide is the geographic area considered for redeployment to other positions?

WFA agreements state that, where practicable, a reasonable job offer will be located within the employee's headquarters area as defined in both the National Joint Council (NJC) *Travel Directive* and *Integrated Relocation Directive*. Departments will be expected to confer with PSC officials responsible for the Priority Administration System to try to find jobs in employees' preferred areas of mobility, but employees are expected to be willing to move to where jobs are located.

Q12. Does a job offer from a separate employer such as the Canada Revenue Agency constitute a reasonable job offer?

Generally, a job offer from a Financial Administration Act Schedule V employer to a surplus employee may be considered a reasonable job offer (RJO) if the job offer meets the criteria for an RJO as defined in WFA agreements under Definitions.

In a situation resulting from an alternate delivery initiative, the terms and conditions of a job offer from a separate employer referenced in Part VII of WFA provide the basis for determining the type of offer being extended by the separate employer. There are three types of offer referenced in Part VII of WFA agreements: Type I and Type 2 offers are deemed to constitute a reasonable job offer. For greater certainty, see the three different types referenced in WFA, Part VII.

Q13. What about circumstances involving the relocation of a work unit?

If an employee is declared affected because his or her work unit is to be relocated to another area beyond what is considered to be normal commuting distance, WFA agreements provide that the employee will receive written notice in the form of a letter advising that the work unit is moving. The letter will also accord the affected employee with a period of six months during which to decide whether or not the employee wishes to move with the position or to be declared surplus.

Should the employee decide not to move with the relocated position, then the deputy head, after having considered all of the relevant factors, will then write and provide the employee with either a guarantee of a reasonable job offer or access to the Options set out in WFA Part VI. It is possible at some point that the employee's relocated position could be offered to the employee as a reasonable job offer, in the event that other employment cannot be found in the employee's preferred location.

Q14. What if an employee is on leave when a WFA situation occurs in his or her department?

If an employee is away on leave without pay, and if the employee's position has not been staffed indeterminately, then the employee is to be notified about the WFA situation at the same time as other affected employees. The decision as to whether a guarantee of a reasonable job offer or access to the Options will be accorded to the employee will only be made when the employee returns to work at the end of the leave period.

However, if an employee has been on leave without pay for more than one year, and if the employee's substantive position had subsequently been staffed on an indeterminate basis, it is then expected that the employee on leave would normally have been accorded a leave of absence priority entitlement. There would be no application of WFA in that circumstance.

Q15. What are the rights of a term employee in a Work Force Adjustment situation?

Work Force Adjustment circumstances and rules vary by organization. Section 7 of the Treasury Board's *Term Employment Policy* contains details on notice and time counting towards indeterminate employment in those organizations subject to the TB policy (PSSRA 1-1). Separate employer organizations have their own policies on term employment, which may differ from the Treasury Board policy. More information regarding Work Force Adjustment in a specific organization can be obtained from the local manager or human resources advisor concerned.

Q16. If employees are declared surplus, how can they improve their chances of finding employment?

Employees who are seeking redeployment share equally in the responsibility for resolving their situations. This means that they should actively participate in the redeployment process.

1. It is important that they provide timely information and
2. be available for job interviews, and
3. that they give serious and thoughtful consideration to all job opportunities.
4. Employees should be aware of their entitlements and obligations associated with their priority status, and
5. they should use departmental resources such as managers, HR advisors, and the Career Transition Centres.

Q17. What special counseling assistance is provided to employees who have been designated as either affected or surplus under WFA?

The various WFA agreements state *that departments must inform and counsel affected and surplus employees as early and as completely as possible*. In addition, departments must assign a counselor to each opting employee, surplus employee, and laid-off person to work with them throughout the process.

Such counseling is to include explanations and assistance concerning:

1. the WFA situation and its effect on that individual;
2. the WFA directive;
3. the PSC's Priority Administration System and how it works from the employee's perspective;
4. preparation of a curriculum vitae or resume;
5. preparation for an interview with the PSC;
6. the employee's rights and obligations;
7. the employee's current situation (e.g., pay, benefits such as severance pay and superannuation, classification, language rights, years of service);
8. alternatives that might be available to the employee (alternation, appointment, relocation, retraining, lower-level employment, term employment, retirement including possibility of waiver of penalty if entitled to an annual allowance, transition support measure, education allowance, resignation, accelerated lay-off);
9. the likelihood that the employee will be successfully appointed;

10. the meaning of a guarantee of reasonable job offer, a 12-month surplus priority period in which to secure a reasonable job offer, a transition support measure, or an education allowance;
11. the Human Resources Centres and their services (including a recommendation that the employee register with the nearest office as soon as possible); preparation for interviews with prospective employers;
12. repeat counseling as long as the individual is entitled to a staffing priority and has not been appointed; and
13. advice provided to the employee that refusal of a reasonable job offer will jeopardize both chances for retraining and overall employment continuity.

Q18. If employees return to the Core Public Administration after having received a Work Force Adjustment lump-sum payment, what rules apply?

If employees receive a Work Force Adjustment lump-sum payment (including pay in lieu of unfulfilled surplus period, a transition support measure, or an education allowance under a WFA agreement, a lump-sum payment under the Executive Employment Transition Policy, or a top-up allowance, retention payment or a special payment as a result of an Alternative Delivery Initiative under a WFA agreement), they are required to declare that they have received such a payment, should they seek to return to the Core Public Administration. They will be required to repay an amount corresponding to the period from the effective date of re-appointment to the end of the original period covered by the total of the lump-sum payment. Other conditions may apply in specific circumstances. Employees are advised to consult their compensation advisor for more information.

Q19. What are the employer's responsibilities as it concerns retraining for vacant positions of employees who have been designated as either affected or surplus under the WFAD?

Part IV of the WFAD provides that your department shall make every reasonable effort to retrain affected and surplus employees and laid-off persons for existing vacancies and anticipated vacancies. It is your responsibility and the responsibility of your department to identify retraining opportunities. When a retraining opportunity has been identified, the deputy head of your department shall approve up to two years of retraining.

It is CAPE's position that if you are entitled to retraining to vacant positions. If you identify a position that you could occupy subject to reasonable training, then the employer must consider your appointment and provide you with up to two years of retraining. If the employer refuses to provide you with a retraining opportunity for a vacant position that you could occupy, please contact CAPE.

For more information or assistance from the Canadian Association of Professional Employees, please call or write to:

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