ACEP CAPE
Association canadienne des employés professionnels | Canadian Association of Professional Employees

Workforce Adjustment 2025

Guide for CAPE EC and TR members

Created with special thanks to our colleagues at the Association of Canadian Financial Officers.

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Table of contents

Introduction

Workforce adjustment

Step 1: Notification to the union

Step 2: Notification to employees of affected status

Step 3: Voluntary departure program

Step 4: SERLO

Step 5: Notification of WFA status

- Overview of potential outcomes for affected members
- Guaranteed reasonable job offer
- Opting employee

Alternation

Retraining

- Chénard v. Treasury Board (ESDC) 2020 FPSLREB 15

Key improvements

What to do if you are affected by WFA

Reference: Key elements of the NJC WFAD

Introduction

This short guide is intended to help CAPE members and local leaders understand how workforce adjustment (WFA) is supposed to work. The guide shares lessons learned from the most recent period of WFA, called the deficit reduction action plan, or DRAP, which began in 2011 under the last Conservative government. The guide also includes updates on recent legislative and collective agreement changes, and commentary on how to deal with a WFA situation if you or your colleagues are affected.

Workforce adjustment

A WFA can occur when a department decides that the services of one or more indeterminate employees will no longer be required beyond a specified date due to:

1. a lack of work
2. the discontinuance of a function
3. a relocation in which the employee does not want to relocate
4. an alternative delivery initiative

CAPE members in the EC and TR bargaining units are covered by the National Joint Council Workforce Adjustment Directive, which forms part of their collective agreements. CAPE members at the Library of Parliament and Office of the Parliamentary Budget Officer are covered by an employer policy and should seek guidance from their labour relations officer if affected by WFA.

The NJC directive is shared by several public sector unions, including the Association of Canadian Financial Officers and the Association of Justice Counsel. Colleagues represented by PIPSC and PSAC have slightly different provisions for WFA.

The following sections of this guide will explain the WFA process according to the National Joint Council WFA directive contained in the EC and TR collective agreements.

Step 1: Notification to the union

When a department has determined that a WFA situation must occur, advance notice must be given by the department to bargaining agents like CAPE as early as possible but no less than two days prior to notifying affected employees. Departments must also inform the Treasury Board Secretariat in advance when six or more employees are affected.

The directive requires that consultation occur between the department and bargaining agent(s) throughout the WFA process and “as completely as possible”. It is CAPE’s

expectation that whenever a WFA occurs the relevant department establishes a joint committee with union representatives to share information and consider all options to minimize the impact on employees. CAPE representatives can review information shared by the employer and advocate for members – but *they do not "co-manage" the surplus or layoff proces*s.

Ideally, these committees should be the main forum between management and union that ensure transparency and accountability, and that every measure is taken by management to minimize the impact on employees.

Unfortunately, a major shortcoming during DRAP was that management did not take the obligation to consult with unions seriously. In most cases the employer simply sent unions the required minimal notice but left the committees on the sidelines.

Step 2: Notification to employees of affected status

Notification of affected status occurs when an indeterminate employee is informed that their services *may* no longer be required. Notice of affected status does not mean you will be laid off, only that your position will be included in a WFA assessment. You can think of it as being identified as "at risk" of WFA.

While on affected status, a review is required at least annually for each affected position to determine whether the employee remains "affected" or if their position is no longer at risk.

Unfortunately, managers and WFA letters often direct employees with questions to management labour relations or HR professionals, and historically these representatives are often wrong in their advice or explanations. It is always recommended for CAPE members to cross-reference the information they are given with the WFA directive itself, to speak to their local leader and colleagues, and to contact the CAPE national office if they are concerned their rights have been violated.

You may contact the CAPE national office by calling 613-236-9181 or 1-800-265-9181 or by emailing representation@acep-cape.ca.

Step 3: Voluntary departure program

Following improvements to the directive in 2019, a voluntary departure program is *mandatory* whenever five or more employees are affected by a WFA. It is optional if less than five are affected. This step occurs *before* the department assesses and selects individual employees for layoffs.

The voluntary departure program essentially offers all affected employees the chance to voluntarily depart the public service with one of the lump sum payment options normally offered to surplus/laid-off employees.

Under the WFA directive, voluntary departure shall not be used to exceed reduction targets, and if the number of volunteers is greater than the required number of positions to be eliminated, volunteers are selected in order of seniority. The voluntary departure period should be no less than 30 days.

Step 4: Selection of employees for retention or layoff

The selection of employees for retention or layoff process, or "SERLO", follows if there are insufficient volunteers through the voluntary departure stage to eliminate the number of required positions. SERLO does not form part of the WFA directive, nor collective agreements, and is instead found in the Public Service Employment Regulations and a unilateral employer policy. These two authorities give the employer broad discretion when selecting who will be laid off and who will be retained.

In January 2025, the employer further modified this process through changes to the employment regulations and the SERLO policy. Departments now have even greater discretion to determine who is laid off and who is retained. Deputy heads may freely choose "the essential qualifications that are most relevant for the work to be performed" as well as any additional qualifications "considered to be an asset… currently or in the future". They may also select any assessment method they wish, including past performance reviews, interviews or exams.

Before using any selection method, the deputy head must evaluate and identify whether the assessment method "includes or creates biases or barriers that disadvantage persons belonging to any equity-seeking group" and make "reasonable efforts" to remove or mitigate any bias or barrier.

Using whatever assessment methods and factors are identified, the deputy head will select which employees are to be laid off. Importantly, **the department must record the reasons for selecting or not selecting each employee for layoff.**

Employees affected by a SERLO process must be notified in writing, and this notification must include information regarding the qualifications, requirements and needs for which the employees will be assessed, and the assessment methods that will be used. Employees must also be given the opportunity to request accommodation measures.

Public sector unions have opposed the lack of consideration of seniority as a factor in SERLO, and while the Public Service Commission invited CAPE and other stakeholders

to provide input when developing these latest changes to the Public Service Employee Regulations, it is clear that our input and the interests of our members were ignored in the January 2025 updates.

If you believe that a SERLO process has been conducted unreasonably, in bad faith, or in a discriminatory or arbitrary manner, you should contact the CAPE representation team to discuss possible recourse options.

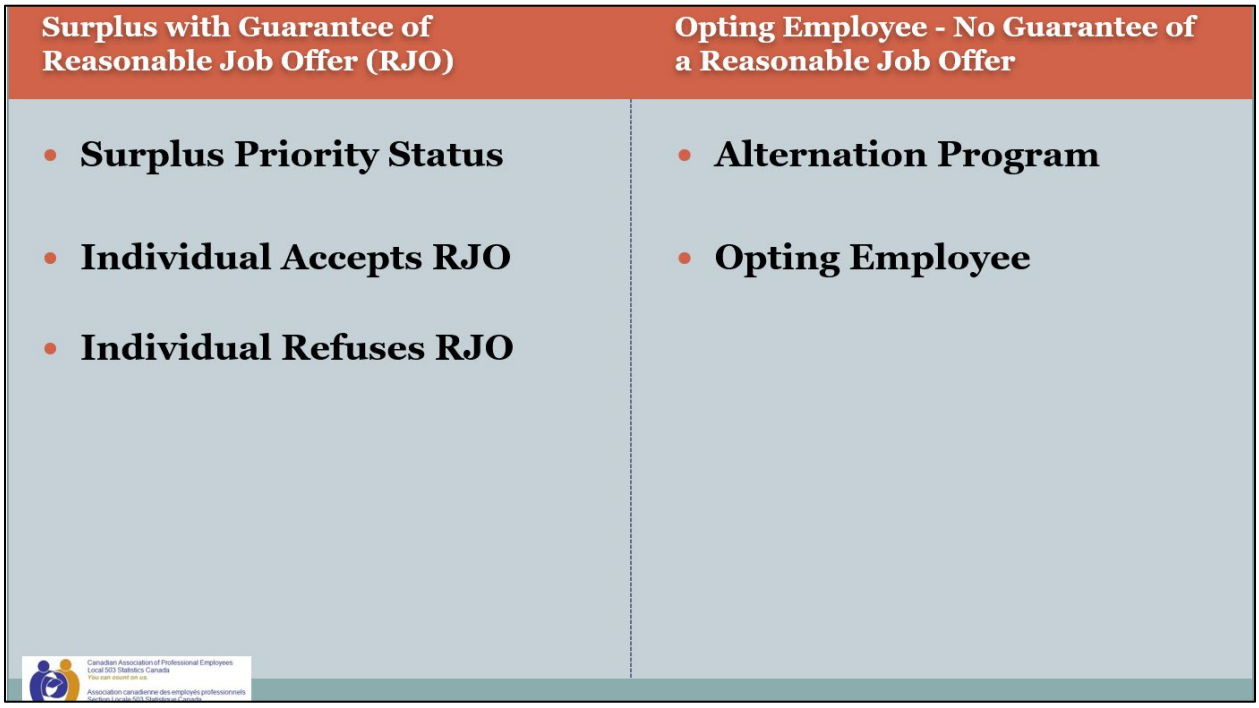
Step 5: Notification of WFA status

When the department has completed the voluntary departure and SERLO processes, if a position has been designated for WFA, that employee will receive a written notification informing them and identifying their WFA status. The notice *must* include a copy of the applicable WFA provisions, as well as an explanation of the reasons why they have been designated for WFA.

There are two main types of WFA status:

1. **Surplus with guarantee of reasonable job offer** – When the deputy head knows or can predict employment availability, the employee will receive a written guarantee of a reasonable job offer within the public service.
2. **Opting employee (no guarantee of a reasonable job offer)** – Where no guarantee can be made for a reasonable offer, employees are to be given an opting period of 120 days during which they may choose from one of four possible transition support options or incentives described in the WFA directive and explained below.

Overview of potential outcomes for affected members



Guaranteed reasonable job offer

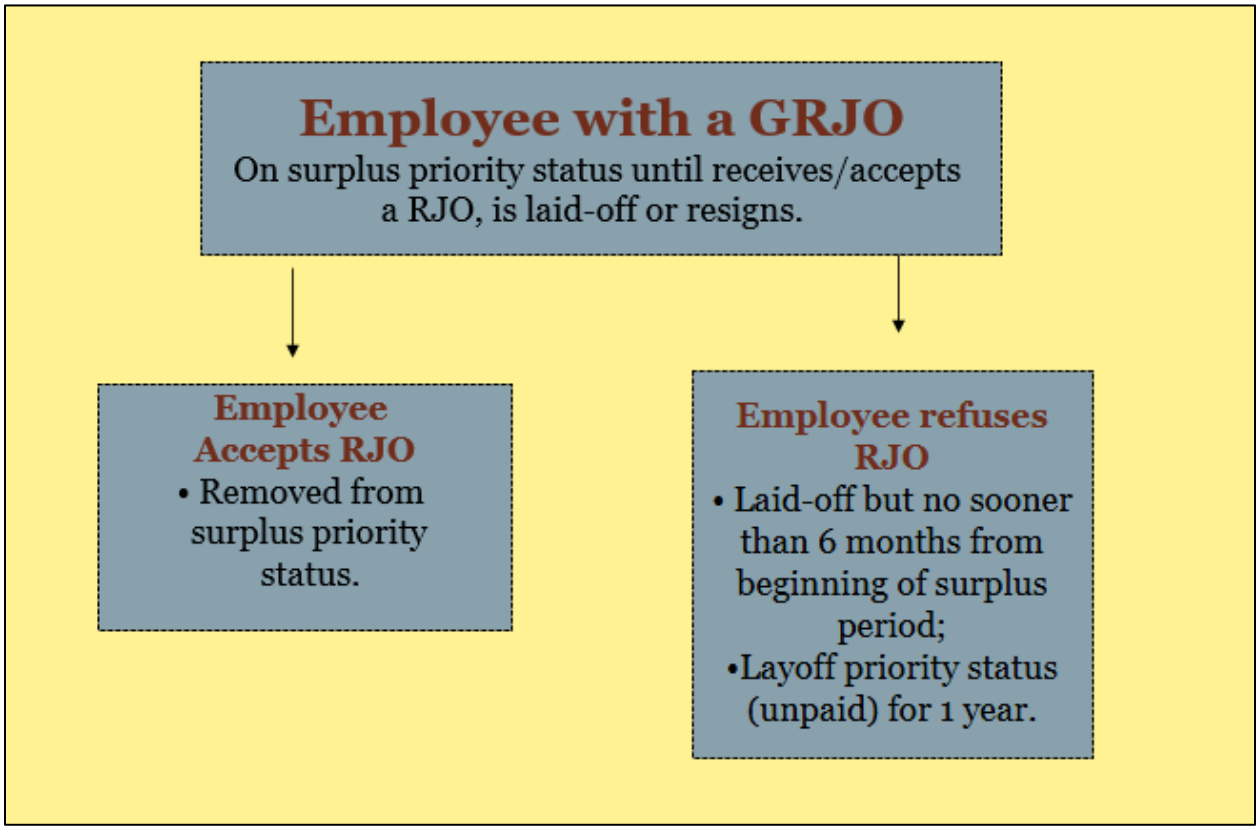
A guaranteed reasonable job offer is a guarantee provided by the employer to some affected employees, promising an offer of indeterminate employment elsewhere within the core public service. A member who receives a guaranteed reasonable job offer is placed on “paid surplus status” and is expected to continue to be assigned meaningful work. This status lasts until they receive and accept a real reasonable job offer, resign, or refuse a reasonable job offer.

What is a “reasonable job offer”? A reasonable job offer is defined in the WFA directive as:

- Indeterminate employment
- Within the core public administration or a separate agency
- May be in a different location
- May be in a different department
- At the same or a lower level (but always with salary protection and reinstatement priority at old level)

If an employee refuses a reasonable job offer they can be laid off one month thereafter, but not less than six months from being declared surplus. They will not have access to lump sum options or the waiver of pension penalties.

In the case of “alternative delivery” situations (i.e. outsourcing) the definition of a reasonable job offer is expanded. Contact your labour relations officer if you are informed that you are affected by WFA through an alternative delivery initiative or outsourcing specifically.



Opting employee

Employees for whom the employer cannot guarantee a reasonable job offer are referred to as “opting employees,” or No GRJO, and will be given a choice of four options in their WFA status notification:

Option A (default): 12-month surplus with priority status – Employee laid off if no reasonable job offer is secured by end of surplus period, or if they refuse a reasonable job offer. Since improvements were made to the WFA directive in 2019, these employees may also participate in *alternation* (explained further below) during this surplus period.

Option B: Layoff with transition support measures – A lump sum payment based on years of service in exchange for resignation, considered a “layoff” for severance pay purposes.

Option C(i): Layoff with education allowance and transition support – An allowance of up to $17,000 for receipted expenses for tuition, books and equipment.

Option C(ii): Leave without pay with education allowance and transition support – This variation of option C means the employee delays their departure date for up to two years while they attend a learning institution. They can remain enrolled in the public service pension and benefits plan.

In addition to the entitlements of their chosen options, all opting employees will also receive an additional $1,200 for counselling.

Employees must still receive meaningful work during the opting period of 120 days, as well as during the 12-month surplus period for those that pick Option A. Management is ultimately responsible for selecting the departure date for employees who choose to resign under options B and C.

Alternation

Alternation is a system whereby an opting employee can avoid layoffs if they can find a suitable person (an “alternate”) who occupies a secure position and who is prepared to leave the public service by trading places with the opting employee. The alternate would be given the choice of the same “opting options” for lump sum payments and education supports for opting employees.

Alternation was previously only possible during the 120-day period for opting employees to choose from their options. However, following the 2019 improvements to the WFA directive, alternation will remain available to employees who have selected Option A throughout their 12-month surplus period. The alternate’s transition support measures will be reduced by one week for each completed week of the opting employee’s surplus period.

In practice, alternates typically volunteer if they are considering retirement in the next couple of years. The alternate employee could find the options appealing, and sufficient reason to leave the public service earlier than originally planned. Other employees may want to change careers or have personal reasons to leave. Whatever their reasons, so long as they are the incumbents of positions that are neither affected by WFA nor surplus, they can volunteer to have their name added to a volunteers list.

Alternations must still be approved by the receiving manager, who will need to evaluate the opting employee’s qualifications. This can all take time, therefore opting employees should communicate as early as possible with prospective alternates to explore the possibility of an exchange of positions.

Every department and agency covered by the WFA directive must have a system to facilitate alternation, including a list of volunteers. However, one of the major shortcomings during DRAP was that department and Public Service Commission alternation lists (including a system of equivalencies between classifications) were constantly out of date. Furthermore, most employer representatives in labour relations and HR did not understand the process, especially when finding alternates in other classifications. For these reasons, CAPE and most other unions have maintained their own lists to assist members seeking alternation. The responsibility for finding matches and proposing alternations rests with the two employees concerned and the relevant receiving manager.

Retraining

Affected employees, surplus employees and laid-off members alike may be eligible for up to two years of retraining under certain circumstances. The WFAD establishes that:

> "To facilitate the redeployment of affected employees, surplus employees, and laid-off persons, departments or organizations shall make every reasonable effort to retrain such persons for:
>
> - existing vacancies; or
> - anticipated vacancies identified by management."

Employees, their home department or an appointing department may identify retraining opportunities for up to two years, but approval authority rests with the deputy head of the home department.

There are additional conditions if the status of the employee is surplus or laid off.

> For surplus employees*:* Retraining must be necessary to facilitate appointment to a specific vacancy, or to enable qualifications for an anticipated vacancy where there is a shortage of candidates. There must be no other qualified candidates on the priority list.
>
> For laid-off employees: Retraining must be necessary to facilitate appointments to a specific position, and they must already meet the minimum requirements of the position. There must be no other qualified people on the priority list.

Chénard v. Treasury Board (ESDC), 2020 FPSLREB 15

> Historically, the retraining process has been completely misunderstood by the employer. In some cases, this has meant CAPE members are denied retraining opportunities which they should be entitled to.

In one such case, *Chénard v. Treasury Board (ESDC) 2020 FPSLREB 15*, CAPE won an important legal victory in a grievance for an EC member at Statistics Canada laid off in 2013. The decision sheds light on what the obligation for departments "making every reasonable effort to retrain" ought to look like in practice.

In *Chénard,* an experienced EC-07 was laid off from their home position and was then unsuccessful in several competitions for lower-level positions during their post-layoff priority period. In principle, the member should have been given preference over all other candidates so long as they met the minimum qualifications of those positions. However, the employer claimed the grievor did not meet the essential qualifications of the positions, and no retraining was offered to them because the employer believed the grievor could not acquire the required skills within the two-year limit established for retraining in the WFA directive.

The board found that the employer acted arbitrarily and unreasonably both in ignoring the grievor's extensive experience when evaluating the essential qualifications of the position, as well as denying them a retraining program without due consideration for actual training options. According to the decision, the directive requires "a serious evaluation of [the employee's] competencies based on *potential* retraining."

The decision confirmed that there is a shared obligation between the home department and receiving department to offer a reasonable and appropriate retraining plan for any employee affected by a workforce adjustment. In the words of the adjudicator in *Chénard*, this means they should be offered "every reasonable opportunity to continue [their] public service career with a retraining period… for a position at a comparable level or for a position at a lower level after the employer had exhausted all other possibilities."

Chénard affirmed what the plain language of the WFA directive already says. Retraining should be offered even in *anticipation of* a need to fill a vacancy at a specific group and level or other positions through a pool of candidates. Surplus or laid-off CAPE members with priority should insist that a reasonable and appropriate retraining plan be provided for both specific vacancies and anticipated needs, and – when involved in competitions – insist that that their qualifications be considered "supplemented" by any necessary and reasonable retraining.

Key improvements to the WFA directive since DRAP

Since the DRAP era, CAPE has negotiated improvements to the directive through our representation at the National Joint Council along with our union colleagues. These improvements include:

- An increase in the education allowance maximum from $11,000 to $17,000
- An increase in the counselling for opting employees from $600 to $1,200
- A requirement that notifications of WFA status include the reasons for being declared surplus
- The requirement for a voluntary departure program to be organized when five or more employees of the same group and level are affected
- Expanded access to alternations to include Option A opting employees during the 12-month surplus priority status. Alternation was previously only available during the 120-day opting period.

What to do if you are affected by WFA

Your employer is responsible for providing information and basic advice to affected, surplus and laid-off employees early and completely on all matters related to a WFA situation.

It is essential that you familiarize yourself with the National Joint Council's WFA directive, ask management questions and speak to your local and/or national union representative. Remember that PIPSC and PSAC colleagues have different WFA provisions than CAPE and other unions.

If you are unsure about the information or advice that management has provided, and after reviewing the relevant sections of the WFA directive, you should contact CAPE's national office for support.

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Reference: Key elements of the NJC WFAD (WFAD appendix D)