

CONTRACT INTERPRETATION MANUAL

Article 19 Layoff and Recall

Interpretation Guidelines

Know your rights

If there is a significant change in the workplace, the Employer must give notice and have discussions with the relevant unions in accordance with Section 54 of the Labour Relations Code. Discussions may result in a Labour Adjustment Agreement including displacement process or variations of the Collective Agreement language.

The Employer must notify employees in writing of a displacement. Maximum notice is 60 days. (Article 19.02).

If you are displaced, there will be a meeting with yourself, your Steward and management (Article 19.01 (B)).

Under the PCA an employee has access to all the vacancies (this includes “unfilled vacancies”) of the Employer, whether posted or not (Article 19.01 (B) (1)).

The Employer must provide the employee with:

1. A list of all the vacancies (including unfilled vacancies) for the Health Authority which includes:
 - (a) A list of all positions at the worksite filled by employees who are junior to the employee;
 - (b) A list for the Health Authority of all positions filled by employees who are junior to the employee which they have access to once they exhaust their comparable positions at their own worksite.
2. Employees are required to take a comparable position at their own worksite should one be available before moving on to bumping outside their worksite. If there is no comparable position available, the employee may opt for a noncomparable position or may bump at another Employer worksite. Criteria for a comparable position is listed in Article 19.01 (B) (2) (e) (ii).
3. Information regarding any other options that may be available at that time.

Article 19.01 Displaced Employees

Layoffs are done in the reverse order of seniority, that is most junior employees are laid off first.

Article 19.01 (B) Displaced Employees' Options

Displaced employees will have access to all Employer vacancies posted or unposted. The employee will meet with their Steward and the Employer representative(s). At the meeting they will be provided with a vacancy list, a seniority list for the work site, and a seniority list for the Employer, and any other options that may be available. Have the displaced employee check that their seniority date is correct as this impacts the bump positions that are available to them.

The employee has 7 calendar days to provide the Employer with a list of positions they have chosen at their worksite. If there are no comparable positions at their worksite (Article 19.01 (B) (2) (e) for definition of

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comparable position) they have a further 7 days to provide the Employer with a list of their choices in order of preference from other worksites of the Employer. List as many options as possible, for which the employee is qualified, trying to keep the list of positions specific (e.g. not listing all the nurses positions that may work in ICU). The displaced employee may choose from vacancies or bumping in any order and should be advised to make several choices.

Employees on leave will be served with their displacement notice and may elect to make their choices while on leave at the time of the displacement occurring or when they return to work based on vacancies and seniority lists current at the time. The employee may ask for information, such as rotations and job descriptions.

Article 19.01 (B) (1) Vacancies

If an Employer is aware of upcoming displacements they may temporarily fill regular vacancies for up to 2 months prior to upcoming displacements.

Displaced employees shall have first consideration of all vacancies posted or unposted, as well as those previously posted but unfilled, if capable and qualified for the position. Selection for the vacancies will be by seniority of the displaced employees.

If the displaced employee is deemed not qualified for the chosen vacancy the employer must provide the usual unit orientation, training and education to the employee as long as the orientation doesn't exceed 6 weeks. This option is only available once per layoff. If the employee is unsuccessful after the orientation, they must fill a comparable position.

If the displaced employee is deemed not qualified, ask questions like, does the employer hire new grads on the unit or ask the manager to describe the normal orientation provided to new hires.

First consideration for vacancies is given to displaced employees at the same worksite as the vacancy then to displaced employees from other worksites of the employer and 3rd consideration to all other employees.

Article 19.01 (B) (2) Bumping

Employees who do not wish to select a vacancy or where no vacancies are available may elect to bump.

As above if the Employer deems an employee not qualified for a bump choice they must provide them with the regular unit orientation, training or education as long as it doesn't exceed 6 weeks. If choosing a specialty position (e.g. Critical Care, OR, Labour and Delivery) the employee must have the required education. Wages and benefits during the orientation, education and/or training continue as per the employee's previous position.

Displaced employees choose a position to bump by designating:

1. The FTE
2. Unit/department/program (program is for community nurses only)
3. Shift pattern identified as days/evenings; days/nights; evenings/nights; days; evenings; or nights.

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For example, the identified position would be Surrey Memorial Hospital 3N surgical FT days/nights. For community and Public Health positions discuss with your LRO how to identify positions. The bump will then be to the junior employee with the designated FTE, shift pattern and unit/department or program (for community nurses). Bumped employees will receive layoff notice and will have the same contract provisions in Article 19.01 (B) accorded to them.

Bumping begins at own worksite and follows steps (1) to (3) above.

If there is no comparable position available at the worksite and the employee does not volunteer to bump into a non-comparable position they will have exhausted their options at their own worksite and may exercise their options as above at other worksites of the same employer.

A comparable position is defined as:

1. Sharing a similar clinical focus (e.g. medical, surgical, extended care, intensive care etc) with the employee's pre- displacement field of practice;
2. +/- 0.2 of the employee's pre-displacement FTE;
3. Does not require a change of status (FT or PT); and
4. Within their pre-displacement wage rate.

Bumping or displacement does not include promotions unless agreed to by the Union and Employer.

Article 19.01 (B) (3) Lay-off

If there is no satisfactory position available, the employee may elect lay-off.

Article 19.01 (B) (4) Access to Casual Work

Laid-off employees may access casual work without effecting their laid-off status. When accessing casual work they are only entitled to casual benefits except as outlined in Article 19.03.

Article 19.01 (B) (5) Severance Allowance

Laid-off employees are entitled to severance allowance as per Article 55.

Article 19.01 (C) Displacement Process

Employer may process all displacements and subsequent steps as they occur or delay the steps until all subsequent postings and bumping placements are known.

Accommodated employees are subject to displacement. When employees who have been accommodated are displaced, Union and Employer representatives will meet to find a placement that maintains a reasonable accommodation or identify alternative options for the senior employee. Please involve your LRO and/or DTA LRO in these situations.

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If a displaced employee is unable to meet the job requirements during the qualifying period they shall be entitled to one additional access to the provisions in Article 19.01 (B) if unsatisfactory a second time they will be laid off.

Any change of position under Article 19.01 (B) (2) will not result in either a promotion or demotion unless mutually agreed to (e.g. the choice does not involve moving from a Level 3 to Level 4 position or from Level 4 to Level 3).

If the displaced employee exhausts all comparable options and fills a lower rated position under 19.01 (B) (1) or (2) they will continue to be paid at their current rate of pay until the rate of pay in the new position equals or exceeds the rate of pay for the previous position (Red Circled). Red Circling doesn't apply if the employee voluntarily chooses a lower rated position when an equivalent position that they are capable and qualified for exists at their own work site or within the geographic area with the same Employer.

Seniority and Benefits go with the member to the new worksite.

Related to the Employer finding employees not qualified for vacancies or bumps, the issue often depends on allowing the employee the time in the qualifying period to demonstrate they are capable and qualified for the position.

Arbitration Awards

1. Kootenay Boundary Community Health Services Society; BCNU: (Hall) 2006 (Salmon). Arbitration on employee being deemed not qualified for bump selection.
2. HEABC; BCNU; Interior Health: Vernon Community Mental Health: (Burke) 2004 (Rauhala). Employer deemed employee not qualified for the bump options. This is an expedited award.
3. Interior Health Authority; BCNU: (Hodges) 2012 (McFadden). Employer deemed employee not qualified for her displacement option. This is an expedited award.

Article 19.02 Advance Notice

Regular employees who are laid off shall receive notice or pay in lieu based on the calculations in this Article. Past service ported from a previous Employer shall not be included as service for the purpose of this Article. Notice period must be for time scheduled to be worked and does not include scheduled vacation.

Affiliates

Affiliates are covered by the provisions of Article 19 but have no bump options outside their worksite (Appendix H and Appendix BB).

The Union is actively encouraging affiliate Employers and Health Authorities to enter into agreements to expand the options for displaced affiliate employees wherever possible. These are usually "without prejudice" agreements.

Examples of the type of provisions that have been included in these agreements are:

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1. A commitment to retaining all nurses affected by the implementation of a new staffing model;
2. Access to refresher/retraining, vacancies existing within the Health Authority;
3. A canvass process to identify staff who want to remain within Residential Care and those opting for displacement;
4. A mutually agreed process for displacement and rotation line selections where appropriate; or
5. Mutually agreed criteria for participation in a refresher/re-training program.

Appendix H - MOA re Laid-Off Employees and External Health Authority Vacancies (2006)

Laid off employees within the geographic region of the Health Authority who have exhausted their Article 19 options, i.e. where there are no displacement or bumping options within their own worksite and as a result the employee is on lay-off, will have:

1. Access to placement into external vacancies within the Health Authority, or
2. If required, appropriate orientation and education for the scope of practice necessary for safe practice in the acute or community setting.

Article 19.03 - Benefits Continued (after layoff)

1. Employees with more than one year of service:
 - (a) Accrue benefits (e.g. sick leave, vacation, pension etc) for first 20 days (Article 37); and
 - (b) Have their benefits maintained for the balance of one year.
2. Post-probationary employees with less than one year of service:
 - (a) Do not accrue benefits for the first 20 days; and
 - (b) Do have their benefits maintained for one year after layoff.
3. Probationary employees:
 - (a) Do not accrue benefits for the first 20 days; and
 - (b) Do have their benefits maintained for 3 months.

After 20 days the employee will need to contact the Employer to make arrangements to maintain their health and welfare plans and contact the appropriate pension plan (e.g. MPP, PSPP) to purchase service for the pension plan.

Article 19.04 – Recall

Employees on layoff may only turn down one recall to a comparable regular position without affecting their layoff status.

The Employer is required to give 7 days notice by registered mail to the employee of recall to work.

The employee is required to report to work within 7 days of receiving the registered letter or the Employer will consider the employee to have abandoned their right to re-employment.

The requirement to report within 7 days is waived if the employee has to give notice to another Employer.

No recall can result in a promotion, unless agreed to by both the Union and the Employer.

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The recalled employee has to serve a qualifying period (Article 18.04) and is entitled to orientation (Article 18.05).

If the employee is found to be unsatisfactory during the qualifying period, they will be returned to the recall list (Article 18.04). However, total time on the recall list cannot exceed one year. For example, if the employee is recalled after 11 months on recall and after a month they are determined to be unsatisfactory in the recalled position, they may be terminated.

Given the potential for termination, Stewards need to be advised by the Employer of any employee that is in danger of failing their qualifying period after recall.

Article 19.05 - Recall Period

Employees who are post-probationary have one year to be recalled to a regular position and then they are considered to have been terminated.

Probationary employees only have three months to be recalled before they are considered terminated.

Employees terminated as a result of layoff and expiration of recall rights are entitled to severance pay (Article 55). Also, if the employee is 55 years or older, they may be entitled to cash-in of sick leave credits (Article 42.11).

Article 19.06 - Leaves of Absence

Employees on leaves of absence (e.g. an employee on parental leave) cannot be laid off until the conclusion of their leave.

Additional Resources

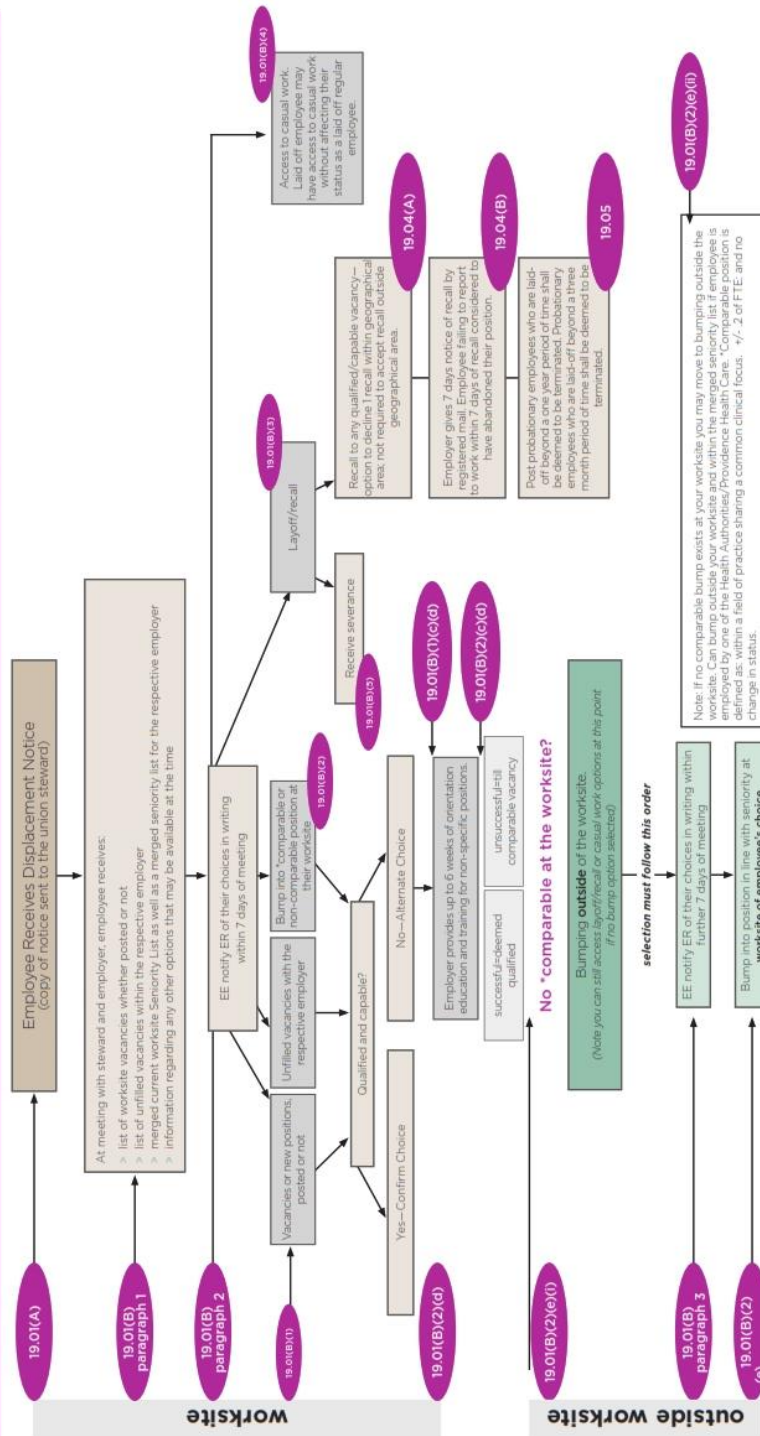
BCLRB Decisions

1. May 24, 2002 - BCLRB No. B182/2002 – Section 54 Decision – decided four issues:
 - (a) When Section 54 notice must be given;
 - (b) Who should give the notice: HEABC, the Health Authority or the facility;
 - (c) To whom should notice be given: The Association, the individual Union or local representatives of the Union; and
 - (d) In general terms, what should be contained in the notice. (Article 20).
2. June 28, 2002 - BCLRB No. 232/2002 – Sections 35 and 142 Decision – Successorship and Seniority.
3. August 20, 2002 - BCLRB No. 274/2002 – Section 35 Decision – Dovetailing Seniority Lists.
4. January 9, 2003 - BCLRB No. B8/2003 – Section 35 Decision – Dovetailing Seniority and Application of BCLRB No.274/2002 decision.

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NBA Displacement Process: Effective April 1, 2012

Resourceful Steward Article 19



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Footnotes

Article	19
Sub-Article	19.01, 19.02, 19.03, 19.04, 19.05, 19.06
Last Update	26-08-2021
Related Articles	2, 6, 13, 17, 18, 20, 21, 22, 23, 37, 55, Appendix H, Appendix BB, Appendix CC, Appendix DD