

# Reduction In Force

## Assistance Guide For School Employees

2010

Office of the General Counsel  
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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.

## ***If You Receive a RIF Notice***

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.

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 appeal to a hearing officer or file an action directly in court.

## ***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 non-renewed unless he or she receives written notice of the probable cause for nonrenewal on or before May 15.

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 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.

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 – an open hearing is one which anyone can attend. A closed hearing includes only the concerned parties. We advise a closed hearing.

**If you choose a statutory hearing, the district pays the cost of the hearing officer. You may represent yourself or hire an attorney to represent you.**

***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 15th.***

***WE ADVISE THAT EMPLOYEES STIPULATE IN THEIR NOTICE OF APPEAL THAT THE SELECTION OF A HEARING OFFICER BE POSTPONED UNTIL JULY 15th.***

***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.***

If you decide to file an appeal letter (page 4), 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.

### ***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.

**If you choose to go to court you will be responsible for the filing fee (about \$200). You may represent yourself or hire an attorney to represent you.**

***SAMPLE LETTER TO SUPERINTENDENT***

***(Certificated Continuing Contract Employees Only)***

Date

Mr./Ms. \_\_\_\_\_, 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 non-renew my teaching contract. I am willing to stipulate that the selection of a hearing officer be postponed until 10 days following July 15th, 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. *(Choose one)*.

Sincerely,

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

## ***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 two calendar years of certificated employment with the district are provisional. 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.

## ***Appeal Rights of Provisional Employees***

That statute provides that no provisional employee may be non-renewed 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.**

If you decide to file an appeal letter (page 7 for provisional employees), 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.

***SAMPLE LETTER FOR PROVISIONAL EMPLOYEES***

(Date)

Mr./Ms. \_\_\_\_\_, Superintendent  
\_\_\_\_\_ School District  
Street Address or PO Box  
\_\_\_\_\_ WA 98xxx  
Dear \_\_\_\_\_:

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)