

WHAT TO DO IF YOU'RE RIF'd

A Guide for MTA Members
Published by the Massachusetts Teachers Association

YOUR LEGAL RIGHTS WHEN FACING A LAYOFF

CONTRACT RIGHTS – HIGHER ED, ESPs, & TEACHERS

If you are notified that you will be laid off, be sure to review the reduction in force (RIF) provisions of your collective bargaining agreement (also known as your contract). If you have any questions about whether the school district followed the proper layoff procedures under the contract, contact your local president immediately. Most contracts contain time limits for filing grievances and your contract rights may be lost if the time limit is not met.

TEACHERS: PTS STATUS AND LAYOFFS

You have “professional teacher status” (PTS) if you are a teacher, school librarian, school adjustment counselor, school social worker, school psychologist or a school nurse employed by a school committee and you have completed three consecutive years in your current school district. (We will use the term “teacher” in this pamphlet to refer to all of these positions.) PTS rights are set forth in Chapter 71, Sections 41 and 42, of the Massachusetts General Laws (M.G.L.) *For service to count toward PTS, a teacher must hold a license valid for the position in which they are employed, but it does not matter whether that license is an provisional, initial, or professional license.*

PTS Teachers. Even if you have PTS, you can be laid off because of a “reduction in force” (RIF), a reorganization due to declining enrollment, or other budgetary reasons. However, there is a condition in the statute: if there is a teacher without PTS who is holding a position for which you hold a valid license, the school district is required to offer you that position.

Some collective bargaining agreements permit more senior teachers to displace (“bump”) less senior teachers when a RIF occurs. If you are a teacher with PTS, however, the law permits you to “bump” a less senior PTS teacher only if you are currently licensed for that teacher’s position and if you are “at least as qualified for the position” as the less senior incumbent. See M.G.L. Chapter 71, Section 42. Your contract may indicate what qualifications are necessary for you to bump into another position. By law, any such bargained qualifications must include as primary factors indicators of job performance and the best interests of the students and school district. If there is a conflict between the provisions of your collective bargaining agreement and this section of the law, the law prevails.

If you have questions about your layoff rights as a PTS teacher under your contract or under the PTS law, contact your local president as soon as possible.

NON-PTS Teachers. Teachers who do not have PTS can be “non-renewed” for the next school year but must be given a nonrenewal notice on or before June 15. See M.G.L. Chapter 71, Section 41. Prior to 1993, the law provided for an April 15 deadline for nonrenewal notices and some contracts may still require that nonrenewal notices be given to non-PTS teachers by April 15. Sometimes, school districts facing uncertain funding for the next school year give

blanket nonrenewal notices to nontenured teachers, eventually recalling some or all of them for the next school year when the budget is finally determined.

Non-PTS teachers may have layoff rights under their collective bargaining agreement, such as seniority rights over other non-PTS teachers and other procedural requirements that the employer must follow. As in the case of PTS teachers, however, a non-PTS teacher generally could “bump” into another position only if he or she is currently licensed and at least as qualified as the incumbent teacher.

ESPs & CIVIL SERVICE

In addition to contract rights, Educational Support Professionals (ESPs) and others may also have layoff and bumping rights under the state Civil Service Law (M.G.L. Chapter 31). Most Civil Service layoff and bumping rights apply only to employees who hold a permanent civil service appointment. The only exception is that provisional appointees must be laid off before any temporary appointees.

Seniority under the Civil Service Law begins on the date of the employee’s first permanent appointment within the appointing authority. In most cases, the “appointing authority” is the municipal school department. *Seniority does not necessarily begin on the employee’s date of hire.*

Order of Layoff under Civil Service. All provisional appointees must be laid off first, and then all temporary appointees must be laid off before any permanent appointees. Within the groups of provisional and temporary employees, the Civil Service Law does not grant any seniority rights or require any particular order of layoff. If it is necessary to lay off permanent appointees, layoffs are in order of reverse Civil Service seniority within the “departmental unit.” The “departmental unit” is usually the school department.

If you are an ESP holding a permanent appointment in a lower grade position, and you work in a higher-grade position under a provisional or temporary appointment, layoff and bumping rights under the Civil Service Law apply only to your permanent position. In your higher position, you are treated as provisional or temporary. However, you have the right to resume your lower, permanent position provided that position continues to exist and is not held by a more senior permanent appointee.

Bumping Rights under Civil Service. If you are a permanent employee who is about to be laid off, you may “bump” or displace a provisional, temporary or less senior permanent employee in a position in the next lower title or titles in their job series. To exercise this right, you must file a written consent within seven days after you receive your official layoff notice. If you choose to bump, you waive the right to a hearing or to challenge your layoff under Civil Service procedures.

Recall and Reemployment Rights under Civil Service. If you are a laid-off permanent employee and a position in your permanent title becomes available in the school department, you are entitled to be recalled to that position in order of your Civil Service seniority. These recall

rights last for ten years and also apply if you have elected to “bump down” as noted above. You may also request the state Personnel Administrator place your name on a special Civil Service reemployment list in order of your seniority. You must make this request within two years of your layoff. Your name is then certified to other Civil Service appointing authorities for vacancies, in order of seniority in the title you formerly held, just as if your name appeared on a civil service appointment list.

Procedural Requirements and Appeal Rights under Civil Service. If you are a permanent Civil Service employee, you must be given a written notice stating the reasons for the layoff and provided with a copy of sections 41 through 45 of the Civil Service Law. Upon at least seven days’ notice, the school department must conduct a hearing about the contemplated layoff and then decide whether the layoff is justified.

There are two ways you can challenge the school department’s layoff decision. First, you can appeal to the state Civil Service Commission in Boston but you must do so within *ten days* (not including Saturdays, Sundays and holidays). The Civil Service Commission will conduct a hearing, similar to a trial in court, to review the layoff and the losing party can seek Court review of the Civil Service Commission’s decision. Second, instead of going to the Civil Service Commission, you could file an appeal in Superior Court and you would have to do so within six months of receiving the school department’s layoff decision. Both the Civil Service Commission and the courts are likely to uphold a school department’s good faith judgment that a layoff was necessary. However, if the employer made a mistake in the process (for example, by laying off the more senior employee), you may be reinstated with back pay and benefits.

Civil Service and the Collective Bargaining Agreement: ESPs represented by the MTA who have permanent Civil Service appointments are also usually covered by collective bargaining agreements. *If there is a conflict between RIF provisions in the contract and Civil Service requirements, the Civil Service requirements take priority.* For example, a contract could not give a provisional employee seniority rights over a permanent employee, because that would conflict with the Civil Service law. However, your contract may give you additional rights that are not granted or governed by the Civil Service Law. For example, a contract could provide for the order of layoff among the groups of provisional or temporary employees.

If you have questions about your layoff rights as an ESP with a civil service appointment, contact your local president as soon as possible.

Address and Web sites for Civil Service Issues:

Massachusetts Division of Human Resources
100 Cambridge Street, Suite 600
Boston, MA 02114
(617) 878-9700
www.mass.gov/orgs/civil-service

Massachusetts Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

(617) 979-1900

<http://www.mass.gov/orgs/civil-service-commission>

HEALTH INSURANCE AFTER A LAYOFF

K-12 STAFF

Summer. If you are a teacher or other public school employee and you are laid off or non-renewed at the conclusion of a school year, you are entitled to remain in the school district's health insurance plan *with the employer continuing to contribute its usual portion of the monthly premiums for July and August, in most instances.* If you are paid on a ten-month basis, your portion of the monthly premiums for July and August should be deducted over the course of the school year or from your last paycheck. If this does not occur, contact your local president immediately. Again, your right to file a grievance may be lost if you do not act promptly.

COBRA. Under the federal "COBRA" laws, you are entitled to remain in the school district's group health (and, where available, dental) insurance plans for up to 18 months after you are laid off, or longer under narrow circumstances. However, this is expensive. Laid off employees are required to pay the full premium costs of their insurance plans, and they may also be required to pay up to an additional 2% for administrative costs.

Other sources of health insurance. In addition to exercising COBRA rights, individuals and families may obtain coverage through the Massachusetts Health Insurance Connector Authority at www.mahealthconnector.org. The Health Connector is Massachusetts' insurance exchange under the Affordable Care Act and offers access to subsidized health insurance coverage, either through the public CommonHealth program or private insurance, depending on income and other resources. Loss of health insurance coverage from work is a qualifying life event which permits enrolling in a plan through the Connector outside of the open enrollment period within 60 days of losing employer coverage.

Retirement & Health Insurance. If you retire after being laid off, you may be eligible for your school district's retiree health insurance plan, if you are currently enrolled in the district's group health insurance. Municipalities/regional school districts may impose restrictions on retirees returning to the health plan later when they are not enrolled in health insurance when they retire, so you should check on your school system's requirements for retiree participation in group insurance if you are not currently enrolled in a health plan through your school district. If you are eligible to retire at the time you are laid off (see section on Retirement below for eligibility information), but choose to defer retirement until a later date, you may remain in the school district's group health insurance plan until you retire (even after the 18-month COBRA period), provided you pay the full premium during that time. In order to be eligible for GIC health insurance benefits at retirement, you must be eligible for and collecting a pension from a municipal retirement system or another retirement system eligible for GIC benefits.

If you have questions about your health insurance benefits as a retiree, you should ask your local association president.

HIGHER ED

Your coverage ends at the end of the month following the month you end state service, provided that your premium for that month is paid.

GIC Layoff Coverage. If you are laid off, you may continue to receive GIC health insurance for 39 weeks but you will have to pay the full premium cost. At the end of the 39 weeks, you may elect COBRA health coverage within 60 days for 9 additional months of health coverage (for the 18 months total health coverage permitted by COBRA).

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Other sources of health insurance. In addition to exercising COBRA rights, individuals and families may obtain coverage through the Massachusetts Health Insurance Connector Authority at www.mahealthconnector.org. The Health Connector is Massachusetts’ insurance exchange under the Affordable Care Act and offers access to subsidized health insurance coverage, either through the public CommonHealth program or private insurance, depending on income and other resources. Loss of health insurance coverage from work is a qualifying life event which permits enrolling in a plan through the Connector outside of the open enrollment period within 60 days of losing employer coverage.

Retirement & Health Insurance. You qualify for state retiree benefits if you retire from UMass and other state colleges and universities or certain other authorities and receive a pension from a public retirement system. If you choose to defer retirement with vested pension rights, you may continue to receive health insurance until you start collecting your pension but you will have to pay the entire premium cost. If you have questions about insurance coverage, contact your local association president.

UNEMPLOYMENT COMPENSATION

Eligibility. Generally, you are eligible for unemployment benefits if you become unemployed or partially unemployed when laid off due to budget cuts, reorganization, or declining enrollment. You must be able, available, and actively searching for work during any period you receive unemployment benefits. Also, you must have earned at least \$5100 during the 4 calendar quarters prior to the quarter in which you file for benefits and you must have earned at least 30 times the amount of benefits you would be eligible to receive on a weekly basis. If you obtain part-time employment, or already had such employment concurrent with the job from which you were laid off, you may be eligible to collect reduced benefits.

How much will my benefits be. If you are eligible, generally your weekly benefit will be approximately 50% of your average weekly gross wages, capped at \$823 per week. There is an additional allowance of \$25 per dependent (dependent allowance not to exceed 50% of your

weekly benefit amount). You may be eligible for up to 26 weeks of benefits (sometimes longer if the federal government has implemented an extended benefits program).

When to apply. You should apply the first week you are unemployed. There is a one-week waiting period before benefits start. If you are laid off at the end of a school or academic year, you are eligible to collect benefits as soon as the school year is over (i.e., approximately the end of June, following the one-week waiting period), unless and until you receive “reasonable assurance” of a job for the upcoming school year or find other “suitable employment.” If you are a K-12 educator, you may collect benefits over the summer even if you are still receiving paychecks during those months, since your salary is considered to have been fully earned during the school year and “deferred” over the summer. However, as soon as any school employee receives in writing “reasonable assurance” of a job in any school system for the next school year, eligibility for unemployment stops. If you continue to collect benefits after that time, DUA may seek reimbursement of overpayment of benefits.

How to apply. You may file a claim with the Division of Unemployment Assistance (DUA) either online or by telephone. The online application is available at <https://www.mass.gov/how-to/apply-for-unemployment-benefits>. If you are filing by telephone, call 1-877-626-6800. As of this writing, it is not possible to apply for unemployment benefits in person. Full information on filing claims can be found on the DUA Web site: <https://www.mass.gov/doc/a-guide-to-benefits-and-employment-services-0/download>.

When you file, be prepared to give DUA the following information: your Social Security number, the year you were born, your home address and telephone number, whether you have filed a claim in Massachusetts or any other state during the past 12 months, your last day of employment, the names and addresses of all employers you have worked for during the 15 months prior to filing your claim and the dates you worked for each of them, the names, dates of birth and Social Security numbers for any dependent children, and your alien registration number if you are not a U.S. citizen. If you have been given a recall date by your employer, you should also be prepared to give this date to the DUA. If you are an adjunct faculty, you should also have the following information: any of employment; documents relating to whether employment offered is in the same capacity and the economic terms and conditions of the offer; evidence relating to staffing levels; and evidence relating to the institution’s budget.

The DUA Web site and the MassHire Career Centers have a wide range of free services to help persons seeking employment, including a computerized job bank, employment counseling, job search workshops and local labor market information. You can find a Career Center through the Commonwealth’s Web site at www.mass.gov/masshire-career-centers.

How to appeal denial of unemployment benefits. If you are disqualified from benefits, make an appeal request immediately. This does not require you to write a detailed letter or draft an argument. It is simply a notice that must be provided to the DUA to schedule an appeal hearing. *You must file the appeal request with the DUA within 10 days of the date the denial was mailed or sent to you, not the date you receive it.* Late appeals may be allowed for good cause, meaning circumstances beyond your control, but it is always better to timely file. You must timely file the appeal but you should also contact your local association president. As an MTA

member, you may be entitled to be represented by an MTA attorney at no charge in a hearing regarding your unemployment compensation eligibility.

COVID-19 AND UNEMPLOYMENT

Special benefits and procedures are applicable if your layoff is related to the COVID-19 pandemic. There is no waiting for COVID-19-related unemployment benefits, so if your layoff is related to COVID-19, you should file for benefits as soon as possible. Further information regarding this special situation is available at <https://www.mass.gov/info-details/update-massachusetts-department-of-unemployment-assistance-announces-guidance-on-cares>. The MTA also has a Q&A on unemployment benefits that can found at: <https://massteacher.org/mta-membership/legal-resources/frequently-asked-questions-about-unemployment>.

RETIREMENT

You are eligible to retire (1) if you are laid off at any age and have 20 or more years of service as a public employee and (2) if you are 55 years of age and have at least 10 years of service.

The first kind of retirement is called a “termination retirement” and is available if you were a member of the retirement system prior to April 2, 2012 and you have at least 20 years creditable service, and your separation is completely voluntary. If you take a termination retirement allowance, your annual pension will consist of 1/3 of your average regular compensation for your highest three consecutive years, plus an annuity based upon the amount of your contributions.

The second kind of retirement is a superannuation retirement. Your allowance will be determined by a formula using your years of service, your age at retirement, and your average regular compensation for your highest three consecutive years. It could also be affected by your status as a veteran.

Whether retirement is best for you, and which type of retirement allowance is most advantageous, will depend upon your age, years of service, and expectation of returning to public service. MTA provides consultation for members with MTA Retirement Consultants. These consultants can assist you in evaluating your retirement options. You can make an appointment to see an MTA Retirement Consultant in the MTA’s Quincy office by calling 617-878-8240. MTA Retirement Consultants also hold office hours on Saturdays in the MTA Regional Offices and are available for phone consultation. A listing of MTA Regional Offices appears at the end of this pamphlet. The Regional Office schedule and phone numbers for MTA Retirement Consultants are published in “MTA Today” and listed on the MTA Web site under MTA Membership – Retirement Planning. In addition, the Client Service representatives of the Teachers Retirement System (or your local retirement board) can assist you in evaluating your options. More information about the Teachers’ Retirement System can be found at: www.mass.gov/mtrs. Information about the State Retirement Board can be found at: www.mass.gov/orgs/massachusetts-state-retirement-board

If you retire, you may be eligible for MTA legal services for employment-related matters, including disputes with your retirement system. To be eligible, you must have maintained unbroken MTA membership for the five consecutive years immediately preceding retirement and then have maintained continuous MTA membership as a retiree (either as an annual retired member or as a life member).

Should you withdraw your contributions? If you are involuntarily laid off and do not retire, you have a right to withdraw the money that was deducted from your paychecks for retirement contributions, plus all accrued interest. It takes approximately 60 days for the Retirement System to process your request. Once those contributions are returned to you, you will not be required to pay them back unless you return to service and wish to purchase credit for your prior years. However, there are important considerations:

- If you return to public service after withdrawing your contributions, the retirement system will treat you as a new member of the retirement system and you will have to pay the rate of contribution and receive the level of benefits that apply to new members. While you will have the option of purchasing your prior service, you will still be treated as a new member. For example, at this time new members of the Teachers Retirement System must contribute 11% of their salaries toward retirement, and are subject to a higher minimum retirement age, and a different formula to calculate pension amounts. Depending on when you became a member and whether you have opted for Retirement Plus, you may be contributing at a lower rate and be subject to more advantageous provisions relating to age of retirement and calculations of benefits. *If you do not withdraw your contributions and return to service, you will be able to maintain your previous lower rate of contribution and higher level of benefits.*
- There are likely to be substantial federal tax implications if you take a direct refund without rolling the funds over into another qualified retirement plan. You should discuss this with your retirement system's Client Service representatives and/or a tax adviser *beforehand*.

JOB SEARCH SUGGESTIONS

Planning Your Job Search

A successful job search involves commitment and careful preparation. This first step is to investigate the job market to identify openings. Speak to relatives, friends, coworkers (current/former), fellow members of professional organizations and other acquaintances and tell them that you are looking for employment. These personal contacts can provide valuable job leads or referrals. You may want to join on-line platforms like LinkedIn (www.linkedin.com) but research how to best create a profile and use the platform for networking and job searching. Seek out job fairs and networking opportunities.

If you work in a K-12 district, check School Spring for job openings (www.schoolspring.com). Individual districts also frequently post job openings on their own websites; they may or may not cross-post on School Spring so you should check multiple places. If you work in higher education, publications such as Inside Higher Education and Chronicle of Higher Education may contain job postings. Also check individual institution's websites for job

postings as well. Other trade journals or periodicals may also have job postings or leads. Additionally, the Massachusetts Association of School Superintendents posts jobs on its website: <https://www.massupt.org/jobs/>.

Other resources include: state jobs posted on the Commonwealth's website: <https://www.mass.gov/find-your-future-commonwealth-job>; employment and training resources on the Department of Unemployment Assistance website: <https://www.mass.gov/masshire-career-centers>.

If you have an on-line presence on platforms such as Facebook, Twitter, Instagram, and so on, you should review what your accounts reveal about you. Employers may check the internet as part of a background check.

The Application Process

There are three critical components to this process: the cover letter, the résumé and the interview.

Cover Letter

The cover letter is a brief (one page, three or four paragraphs) letter of introduction that accompanies and complements your résumé. Cover letters are usually tailored to a specific position and should highlight your most notable qualifications, skills and achievements that are related to that position. Be sure to include the position for which you are applying, how your qualifications will benefit the district or organization, and a brief statement of noteworthy accomplishments.

Résumé

Your résumé is a snapshot of your relevant skills, experiences and accomplishments. It should be no more than two pages in length and should focus on areas of specific relevance to the position you seek. Although there are many ways to construct your résumé, you should include the following information: name, address, telephone number, education, and summary statement of qualifications, professional experience and major accomplishments. You should also consider including professional references. The design should be simple and easy to read and should emphasize your relevant strengths.

Interview

Successful interviews require careful preparation. Your preparation starts with research. Become knowledgeable about the position, the place you want to work, and the community. Next, prepare honest but dynamic oral responses to the general type of interview questions that you can expect to be asked. Start by reviewing your skills, experiences and accomplishments that are relevant to the job opening. Practice responses to interview questions that include the relevant information you want to convey. Be sure to talk about accomplishments and successes.

Remember when answering questions always try to refer to your skills, experiences and accomplishments.

Common Interview Questions

Tell me about yourself?

Refer to your qualifications.

What are your strengths?

Relate to the job qualifications.

What are your weaknesses?

State a weakness and your improvement efforts.

Why are you applying for this position?

Refer to the reputation of the district or company.

Why should we hire you?

Refer to your qualifications and accomplishments.

Other Questions:

Why did you choose this field of work?

How did you handle a difficult work situation?

What are your outstanding achievements?

What are your career goals?

Why did you leave your last job?

Remember to remain positive in your answers and while promoting your skills!

MAINTAINING YOUR MTA MEMBERSHIP

Per the MTA by-laws, MTA members who have been laid off are entitled to remain members of MTA at 15% dues rate (and 50% of NEA dues rate) for three years or the period during which they are entitled to recall, whichever is longer. We welcome your continued membership and, especially during the disruption to our schools caused by the pandemic, we look forward to fighting alongside you in our collective response to layoffs. Fighting for our jobs is part of the fight for the education our students deserve and for funding equity or school districts that serve low income communities and students and families of color.

Keep in mind as well that, in the event that you encounter difficulty in collecting unemployment or problems with your health insurance or retirement benefits, you may need legal assistance to enforce your rights. If you have a legal problem in these areas and you have maintained your MTA membership, an MTA attorney may be assigned to assist you.

In addition to legal services, MTA membership gives you access to benefits such as discounted auto, homeowners, life, disability and dental insurance, mortgage refinancing, financial planning, long-term care, vision care and access to over 1,000 discounts in New England provided through MTA Benefits. For more detail on your benefits through MTA membership, call 1-800-336-0990 or go to www.mtabenefits.com.

DISCLAIMER

The information contained in this booklet is provided for general informational purposes only based on the law at the time it was written. It is not intended to be legal advice and should not be taken as such. The principles discussed herein do not necessarily apply to all fact situations and issuance of this advisory does not establish an attorney-client relationship. You should not act or refrain from acting on the basis of this information without seeking appropriate legal advice on the particular facts and circumstances of your situation. If you have questions, please contact your local MTA affiliate or MTA field representative.

MTA OFFICES

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2 Heritage Drive, 8th Floor
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617-878-8000
800-392-6175
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617-878-8236
800-392-6175
617-248-0194 (fax)

Auburn Office (Central)

48 Sword Street
Auburn, MA 01501

Eff. 7/1/2020:

12 East Worcester Street, 2nd Fl.
Worcester, Massachusetts 01604
508-791-212
800-542-5504
508-753-4503 (fax)

Quincy Office (Metro)

2 Heritage Drive, 8th Floor
Quincy, MA 02171
781-380-1410
800-479-1410
781-380-1441 (fax)

Holyoke Office (Western)

55 Bobala Road, Suite 3
Holyoke, MA 01040
413-535-2415
800-432-1117
413-535-0196 (fax)

Lynnfield Office (Northeast)

50 Salem Street
Building B, Suite #9
Lynnfield, MA 01940
781-246-9779
800-421-3332
781-246-9774 (fax)

Pittsfield Office (Berkshire)

188 East Street
Pittsfield, MA 01201-6124
413-499-0257
800-464-8088
413-442-4099 (fax)

Raynham Office (Southeast)

756 Orchard Street, 3rd Floor
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