

2021-04

April 8, 2021

By E-mail: Two Pages plus Attachment

Distribution of this Bulletin

Please ensure this bulletin is circulated to all administrative staff, in the district office and schools, who must rely on the collective agreement in the performance of their duties.

Layoffs — Legislative Requirements

As this is the time of year that school districts may be considering the layoff of employees for educational and/or budgetary reasons, BCPSEA provides this reminder of the processes outlined in legislation that may apply in addition to the processes found in your collective agreements.

❖ ***Labour Relations Code (the Code)***

Section 54 of the Code is applicable, “If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies...” (54(1)).

Section 54 notice must provide sufficient time to meet in good faith for meaningful discussions with the impacted union to endeavour to develop an adjustment plan. Notice should be given when you reasonably know the anticipated decision, but before the final decision is made. The Code requires at least 60 days’ notice.

Districts are reminded of the **2019 amendments to the Code, which allow for either party to apply for mediation** with the Labour Relations Board (LRB) when the parties are unable to reach agreement on an adjustment plan.

When districts are reviewing whether section 54 notice needs to be provided, particular consideration must be given to determining whether a “significant number of employees” have their security of employment affected. The words in section 54 have been given a broad and liberal interpretation. For example, in *Pacific Press*, BCLR No. B374/96, the proposed change would have affected approximately 37 employees out of a bargaining unit of 850 (roughly 4%). The LRB found this to be a significant number in absolute terms (as opposed to percentage of the bargaining unit).

Although the section 54 notice may or may not be applicable to your anticipated layoff situation, you may wish to follow the process on a “without prejudice” basis to avoid any potential LRB challenges by your local union. Your letter of notice should include wording such as, “Without prejudice to our position that section 54 of the *Labour Relations Code* does not apply, we are providing you with notice under section 54, and ask that a meeting be scheduled to discuss layoff issues.”

Section 54 of the Code is attached at page 3 of this bulletin for ease of reference.

❖ ***Employment Standards Act (ESA)***

Note that Section 64 of the ESA outlines a process to be followed, “If the employment of **50 or more employees** at a **single location** is to be terminated **within any 2 month period....**” [emphasis ours].

A school or administration building is considered a single location. Therefore, the ESA only applies when 50 or more employees are being laid off from one school or building.

Questions

If you have any questions, please contact your [BCPSEA labour relations liaison](#).

Attachment: Section 54 of the *Labour Relations Code*

Attachment: Section 54 of the Labour Relations Code**Adjustment plan**

- 54(1) If an employer introduces or intends to introduce a **measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees** to whom a collective agreement applies, [emphasis ours]
- (a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and
 - (b) after notice has been given, the employer and trade union must meet, in good faith, and endeavor to develop an adjustment plan, which may include provisions respecting any of the following:
 - (i) consideration of alternatives to the proposed measure, policy, practice or change, including amendment of provisions in the collective agreement;
 - (ii) human resource planning and employee counseling and retraining;
 - (iii) notice of termination;
 - (iv) severance pay;
 - (v) entitlement to pension and other benefits including early retirement benefits;
 - (vi) a bipartite process for overseeing the implementation of the adjustment plan.
- (2) If, after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.
- (2.1) If, after meeting in accordance with subsection (1), the parties have not agreed to an adjustment plan, either party may apply to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties in developing an adjustment plan.
- (2.2) An application under subsection (2.1) must include a list of the disputed issues.
- (2.3) If a mediator is appointed, the parties must provide the mediator with the information the mediator requests concerning the proposed measure, policy, practice or change, the anticipated impact of the proposal and the efforts to develop an adjustment plan.
- (2.4) If, after mediation, the parties have not agreed to an adjustment plan, the mediator may make recommendations for the terms of an adjustment plan for consideration by the parties.
- (2.5) If, after mediation, the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.
- (3) Subsections (1), (2) and (2.5) do not apply to the termination of the employment of employees exempted by section 65 of the Employment Standards Act from the application of section 64 of that Act.