

Dear Colleague:

The situation you currently face is without a doubt one of the most discouraging any worker can experience. Dismissal, even when it is honorable, exacts an emotional toll.

This booklet of information has been prepared by the Illinois Education Association-NEA to help you through this difficult time. It outlines a number of steps you can take: first, to ensure that you will receive all the benefits due you from both the Board of Trustees and the State; and second, to ensure that your rights of seniority and recall are protected. If you have questions about the material in the booklet or if you need additional information, please feel free to call your local UniServ director.

Be assured that while you are coping with this situation as it affects you personally, your association is attacking the problems that have contributed to your situation. IEA-NEA continues to fight against cuts in and for increased funding at both the state and national levels. Currently IEA-NEA is actively seeking enhanced revenue to properly support education funding in Illinois. Your association is committed to the ongoing effort to provide appropriate funding to keep quality employees in public education.

Sincerely,

Your IEA-NEA Leaders and Staff

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REDUCTION IN FORCE (“RIF”)

Over 20 years ago, Illinois law was amended with the support of the Illinois Education Association to give some protections to faculty members of Community College Districts when there is a reduction in teaching staff. It is important that the faculty members understand their rights if their Community College Board is contemplating reductions or if they themselves become a victim of an honorable dismissal (or “RIF”).

Because there are many unanswered questions in the statute it is anticipated that new issues will arise all the time. Therefore, it is important that you carefully review your situation and if there are specific questions, you should contact your local association or UniServ director.

COVERAGE OF THE ACT

The first issue is whether an individual is covered by the RIF provision of the Community College Act. Unlike the Tenure Act for elementary and secondary faculty members, the Community College Act gives some protections to tenured and non-tenured faculty members when there is a reduction in force. It does not, however, cover all employees of the Community College.

Only a "faculty member" has any protection. This term is defined as:

...[A] full time employee of the District regularly engaged in teaching or academic support services, but excluding supervisors, administrators, and clerical employees.

Therefore, part-time employees are not protected. It is not clear, however, whether a tenured faculty member who has elected to go on part-time status voluntarily or involuntarily would retain rights under the statute. If you fall within this category you should consult with your UniServ director as to the particular facts. Persons who are supervisors, administrators, and clerical employees are specifically excluded.

A person is considered to be employed full time if he/she is employed in a full-time position for the normal academic year. Therefore, it is not necessary to have a twelve-month contract to fall within this Act. Similarly, a faculty member need not teach full time but merely be "regularly engaged in teaching or academic support services." This means that a person who does research in combination with teaching is covered. The person must, of course, be employed full time.

Academic support is not defined in the statute. However, one court has held that this would include a person who assists in teaching or research. In that case, a person who held the position of Auditutorial Nursing Laboratory Instructor and ran two laboratories used for nursing instruction would be considered to be providing academic support services. Therefore, it would be reasonable to assume that librarians, research personnel, and persons who run learning laboratories are included in the statute.

RIF PROCEDURES

In the event that a Board decides to reduce the number of faculty members or discontinue a particular type of teaching service or program, notice must be given no later than sixty (60) days before the end of the school year. The school year is defined as the regular academic year and would probably be considered to be the last day for giving exams. The notice must include a statement that the person is being dismissed for "honorable" reasons and it must state the reason, such as a reduction in total teaching staff.

There is no requirement, unlike the laws applicable to K-12 faculty and Educational Support Personnel, as to the method of giving the notice. Therefore, any reasonable method of giving notice such as certified mail, registered mail, regular mail, or in person would probably be sufficient. It is, however, important to be certain that the notice is given in a timely fashion and in the proper form. Failure to give the notice in the proper time frame will result in an automatic re-employment for the following school year.

These procedures must be followed regardless of whether the faculty member is tenured or non-tenured.

BARGAINING OBLIGATION

A decision to RIF for economic reasons is a mandatory subject of bargaining. Your exclusive bargaining representative has the right to demand to bargain that decision and its effect, unless your collective bargaining agreement has a “zipper clause” or some other provision which waives or precludes such bargaining during the term of the contract, **e.g.**, RIF language in an existing collective bargaining agreement.

PREFERENTIAL BUMPING RIGHTS

The statute gives certain preferential bumping rights in the event of a reduction in force to those faculty members who are tenured. There are no preferential bumping rights between non-tenured faculty members regardless of the number of years of employment and no such rights for part-time employees.

A tenured faculty member has a preferential right to continued employment over all non-tenured faculty members and over such employees, i.e., other tenured employees, with less seniority. In order to have such a right, the faculty member must be "competent to render" the service in question.

Each year, a Community College Board, unless otherwise provided in a collective bargaining agreement, must establish a list, categorized by position, showing the seniority of each faculty member for each position entailing services such faculty member is competent to render. Copies of the list must be distributed to the faculty association on or before February 1.

At this point, there is very little interpretation of the meaning of some of these key terms in this statute. What interpretation exists has taken a very narrow view of the preferential rights. For instance, **there is no right to bump part-time faculty**. This means that a Community College can decrease the number of full-time faculty while continuing to employ part-time faculty teaching similar to identical courses. If the Community College decides to actually increase part-time faculty, it may be possible to argue bad faith. The UniServ director should be notified immediately of any increase.

A dismissed faculty member also would not be allowed to bump non-tenured or less-senior tenured faculty members out of individual courses that they are competent to teach. The only bumping rights would be if the dismissed faculty member was competent to teach each and every course in the entire position held by a non-tenured or less-senior tenured faculty member.

There is no definition of "competent to render" in the statute. Therefore, the faculty member should first look to see if this term is defined in any collective bargaining agreement. If no such provision exists, the faculty member would have obvious rights to bump less-senior faculty members teaching in the same discipline in a position that the dismissed person has previously taught. More difficult questions arise when the dismissed faculty member has never actually taught the courses but they are in the same discipline or if the position is in a different discipline altogether. It should be remembered that the statute does not give the Board authority to make judgments concerning relative qualifications as long as the person is competent to render the services. However, the Board probably has the authority to set some minimum requirements for the position (e.g., a Masters Degree). Questions concerning competency should be referred to the UniServ director for evaluation.

If these issues are addressed in the collective bargaining agreement, it is important that they be evaluated immediately after the Board takes action to reduce its faculty. The agreement will undoubtedly contain a grievance procedure ending in binding arbitration. Failure to file a grievance within the applicable time may mean that the faculty member gives up his rights altogether. The time period for filing a grievance is often short, so prompt actions needs to be taken. If this is not covered by a collective bargaining agreement, a remedy may exist in court where filing deadlines are more liberal.

RECALL RIGHTS

The second set of rights given by the statute is recall rights if a vacancy arises. The dismissed faculty member has recall rights for a period of 24 months from the beginning of the school year for which the faculty member was dismissed. This means that a faculty member dismissed in Spring2003, effective at the end of the year, would have recall rights until the first day of school in the Fall2005.

The recall rights would involve any vacancy involving services which the dismissed faculty member is competent to render. A vacancy can arise in a number of ways. This includes retirement, voluntary leaves, increase in the number of faculty members, etc. Therefore, vacancies may occur even if the Board does not actually increase the number of faculty members back to the number existing before the reductions.

Once again, the faculty member must be competent to render the service in question. As this term is not defined in the statute, we would look to the same sources discussed in this booklet under "Preferential Bumping Rights." The statute also does not define whether the competency is determined as of the date of discharge or the date of re-employment. Therefore, if a faculty member attains additional qualifications, such as a new degree in a different area, this should be reported to the Board as soon as possible. If for instance, a history teacher gets a Masters Degree in English, he or she may have recall rights in English as well as history. At the very least, the qualifications must be in existence when the position is ready to be filled.

Both tenured and non-tenured faculty members have recall rights under the statute. A tenured faculty member has preferential rights over all non-tenured and less-senior tenure faculty members. Therefore, the most senior tenure faculty member will be recalled first.

Non-tenured faculty members have preferential rights over any new faculty member. There is nothing in the statute, however, which gives any preference among the non-tenure faculty members. Therefore, the Board has the right to decide which non-tenure faculty members are rehired first regardless of the length of their prior service. This can, of course, be altered by a collective bargaining agreement.

Any faculty member who is honorably dismissed should keep the Board informed of an address and phone number where she or he can be reached. The Board should also be kept advised of any additional qualifications attained after dismissal. If a position is offered, the faculty member must respond immediately to avoid giving up recall rights.

Once again, if recall rights are covered by a collective bargaining agreement, the grievance procedure will have to be followed. As these timelines are often short, prompt attention must be given to see if there are any violations.

SAMPLE LETTER REQUESTING RECALL

Date

Mr./Ms. _____, Title

_____, IL _____

Dear Mr./Ms. _____:

I have enjoyed my employment with the _____ Community College. Recently my staff position was cut. Should a position become available for which I am competent to render service, please contact me at:

Address:

Phone:

Thank you,

HEALTH INSURANCE

Traditionally, some community colleges have provided summer health insurance coverage to faculty who have been reduced-in-force (“RIF”). While some colleges have provided coverage, reasoning that such faculty have already provided services entitling them to pay and benefits over the summer months, others have relied upon collective bargaining agreements, health insurance contracts, board policies, employee handbooks and/or past practices to provide it. **If you receive a RIF notice and it either indicates that you will not or is unclear about whether you will receive summer health insurance coverage, you should immediately contact your local association and UniServ director, in order to resolve this issue.**

At the point where your board properly ceases health insurance coverage, both federal and state law guarantees persons who are covered by group health insurance policies the right to continue this coverage at his or her own expense. While state law applies no matter the size of the community college district, federal law (commonly known as “COBRA”) applies if a district employs more than 20 employees and offers a group health insurance plan. COBRA covers self-insured plans as well as plans operated through an insurance company.

If an employee is honorably dismissed, the employer must notify the plan administrator within thirty (30) days of the dismissal. The plan administrator then has fourteen (14) days to notify the employee and spouse (and any other covered dependent who does not reside with the employee or spouse) of his or her rights to continue coverage. The employee and any others who receive notice have sixty (60) days after the date the notice is provided to make an election to continue coverage. This means that it is extremely important for the employee to act promptly if he or she wants to continue coverage.

An employee who is honorably dismissed can continue under the group coverage for a period of up to eighteen (18) months dismissal termination. This period is extended to eleven (11) months if the employee is disabled at the time of termination. Coverage may not be conditioned on a person’s insurability at the time of the continuation of coverage. The continued coverage will end when the employee becomes covered under another group health plan.

During the continuation period, the honorably dismissed employee will be required to pay the health insurance premiums (including any portion previously paid by the employer). The law guarantees that the premium during the continuation period will not exceed 102% of the group premium. This results in a considerable savings over individual coverage. Failure to make the payments within thirty (30) days of the date due will result in an end to continued coverage.

After the continuation period expires (eighteen (18) months in the case of a honorably dismissed employee), the former employee must be given the opportunity to convert to a conversion health plan otherwise generally available under the group policy. This has the effect of insuring that the employee will be able to obtain coverage.

In addition, the federal Health Insurance Portability and Accountability Act (“HIPAA”) requires that an employer provide to an employee a certificate of prior creditable insurance coverage when the employee ceases to be covered under the employer’s health insurance plan or becomes covered under COBRA, and when COBRA

coverage ceases. The certificate of prior coverage may help reduce any pre-existing condition waiting period that the employee's next employer may have in its health insurance policy. The requirement to provide this certificate applies even if a community college has elected to be exempt from other aspects of HIPAA. The employee has 62 days from the cessation of coverage to enroll in another health insurance policy, in order to take advantage of this pre-existing condition waiting period benefit.

State law also provides continuation and conversion rights for health insurance when an employee is dismissed. State law will apply even in the case of those districts with less than twenty (20) employees. An employee who has been continually insured under a group health insurance policy is covered by State law. Once again, notice of continuation rights must be given to the employer and the employee must elect to avail himself of the continuation privilege.

The employee has a right to continue coverage on the same coverage or under the group policy for a period of nine (9) months after termination. There are specific exceptions which allow the plan administrator to delete dental, vision care, prescription drugs, disability income, and specific diseases from coverage. As with COBRA, the employee must pay the premium (including the employer paid portion). However, the premium cannot exceed that under the group policy. Failure to pay the premium in a timely fashion or coverage under a new group policy will terminate continuation privileges.

Also, as with COBRA, the State law also allows the honorably dismissed employee to get a conversion policy at the expiration of the continuation period. The new premium is calculated according to age and class of risk, but conditions of health are not to be considered as a basis for classification. Conversion must be allowed without evidence of insurability.

UNEMPLOYMENT COMPENSATION

A faculty member who is honorably dismissed becomes eligible to receive unemployment compensation benefits at the close of the school year and after receiving his or her final paycheck. The Board is required to pay all accrued but unpaid wages no later than the next regularly scheduled pay day. The faculty member should take his or her dismissal notice to the Unemployment Compensation Office on the first visit. This should be done immediately. However, because one's overall benefits are based on the individual's "base year," each person must determine when it is most advantageous for him/her to apply for benefits. For example, if one applies for unemployment benefits in June, the base period is January 1 through December 31 the preceding year. If one waits until July to apply for benefits, the base period is April 1 through March 31 of the current year. Benefits are based in part on the compensation received during the base period, so date of application will affect the benefits to which one is entitled. The member should consult with his/her local Unemployment Compensation Office regarding when to file in order to maximize benefits.

A person who is eligible for benefits will receive benefits based on a formula which takes into account the size of a person's family and the amount of wages last earned. The statute puts a cap on the amount of money, which can be received, and this amount changes yearly. For accurate information about the benefit to which you are entitled, contact or visit the nearest Unemployment Compensation Office.

During the time that a person is receiving unemployment benefits, he or she must be able to work, available for work and actively seeking work. The State of Illinois requires a person receiving benefits to contact at least three prospective employers each week to satisfy the search requirements. In order to be considered a contact, the person receiving benefits must either write the prospective employer or contact the prospective employer in person. It is not sufficient to call the employer on the telephone. An accurate record of all contacts should be kept including the person contacted, the method of contact, and the date of contact. Copies of all letters to prospective employers should be kept.

A person is not required to conduct a job search for positions beneath his or her training and experience. However, a faculty member may not restrict his or her search only to other faculty positions. Once all faculty possibilities have been searched, the person must begin to look at other occupations which require similar training. The person may restrict the search to a reasonable geographic area such as one-half-hour-to-one-hour driving time. However, if all teaching opportunities are exhausted within this geographic area, it may be appropriate to expand the search to other professions. It is also important to point out that if the faculty member wishes to receive benefits for the summer months, he or she must apply for employment over the summer and not merely for the following fall.

If the faculty member is offered a full-time contract during the summer for the following fall, he or she will no longer be eligible to receive benefits during the summer.

WHO IS ELIGIBLE FOR UNEMPLOYMENT COMPENSATION?

All community college employees who are unemployed and meet the eligibility requirements can draw benefits.

WHAT ARE ELIGIBILITY REQUIREMENTS?

- 1. You are unemployed.
- 2. You must have earned a set minimum amount of wages or salary in your base period (which is the four consecutive calendar quarters preceding the last quarter). Please contact the nearest State Unemployment Office to find out this amount.

IF YOU FILE FOR BENEFITS IN:

YOUR BASE PERIOD IS:

April, May, or June
 July, August, or September
 October, November, or December
 January, February, or March

January 1 through December 31
 April 1 through March 31
 July 1 through June 30
 October 1 through September 30

- 3. You must have earned wages in at least two calendar quarters. (January-March, April-June, July-September, October-December)
- 4. A set minimum amount of your earnings must have been earned outside the quarter of your highest wages. Please contact the nearest State Unemployment Office to find out this amount.
- 5. You are able to work, available for work, and actively seeking full-time employment in an area for which you are qualified.
- 6. You have registered for work with the local State Employment Service Office.
- 7. You have registered and served a one-week "waiting period."

WHAT ARE THE BENEFITS?

Benefits are paid on a weekly basis. You must meet all the above eligibility requirements each week that you apply for benefits.

Your Weekly Benefit Amount (WBA) is a percent of your Average Weekly Wage (AWW). Your AWW is based on the wages you earned in the two high quarters of your base period. There is a minimum WBA. In addition, your WBA can differ depending upon whether you have dependents, how many dependent children you have, and whether you have a working or non-working spouse. Furthermore, you will not receive benefits for your first week of unemployment — it is classified as a “waiting week.”

DEFINITIONS:

The term “child” means natural child, step-child, or adopted child who is either under 18 or unable to work because of illness or disability and who is receiving and has received for 90 days immediately preceding claimant’s benefit year more than one-half cost of support from claimant; or if both parents are working, at least 25% of support from the applicant. Only one parent can claim the children’s allowance during a benefit year.

“Non-working spouse” means lawful husband or wife who has received more than one-half cost of support from claimant during 90 days immediately preceding claimant’s benefit year providing such spouse has insufficient wage credits to be eligible for benefits.

DISQUALIFICATION:

If you voluntarily quit without good cause, are legitimately discharged for misconduct, or refuse suitable work, you **will be totally** disqualified. You can only become eligible again by getting another job and earning at least as much as your weekly benefit amount **in four separate** weeks.

School employees are not eligible for benefits during the summer if they have been rehired for the next year.

- NOTE:**
- er* EVEN IF YOU DON’T THINK YOU’RE ELIGIBLE, FILE!
 - er* BE SURE TO FILE AS SOON AS POSSIBLE. FILE THE FIRST DAY AFTER YOU ARE NO LONGER WORKING!
 - er* ALL APPEALS MUST BE FILED WITHIN SPECIFIED TIME LIMITS. A LATE APPEAL IS AN AUTOMATIC WAIVER OF YOUR RIGHTS.
 - er* UNEMPLOYMENT BENEFITS ARE SUBJECT TO STATE AND FEDERAL INCOME TAXES.

SUGGESTIONS AND COMMENTS:

- er* Take a copy of your RIF notice when you file for benefits.
- er* Take a copy of last year’s W-2 forms.
- er* Do not tell the deputy (adjudicator) you will not accept or look for non-teaching positions unless you mean it. Such statements may disqualify you for benefits.

- er* Since you are unemployed, DO NOT RESTRICT your work search to teaching positions. By doing so you may become disqualified for benefits under SEC 500C of the Unemployment Compensation Act. A minimum of two non-teaching contacts per week is recommended.
- er* Design and maintain a “work search record.” Note on your record all attempts to secure a job: i.e.,
 - er* Date of Attempt
 - er* Method (letter, interview, telephone calls, etc.)
 - er* Employer Name and Address
 - er* Name and Title of Person Contacted
 - er* Results of Contact
- er* Always take your “work search record” with you to the unemployment office.
- er* Keep a file of all material received from the unemployment office. Make a copy of all material provided to the unemployment office and place in file.
- er* If you are denied benefits - file a timely written protest. Your protest will be assigned to a hearing officer, and you will be notified of your hearing date.
- er* Continue to file for benefits even though your claim was denied.
- er* Take your file of documentation with you to the hearing since “Rules of Evidence” apply. Unless you prefer, it is not necessary to have an attorney represent you. The hearing officer will tape the proceeding during which he will ask you questions like: Why are you unemployed? What are you doing to find a job?
- er* One of your previous employers may also attend the hearing. DO NOT be anxious — the hearing is seldom a confrontation situation.
- er* If the hearing officer rules against, you, file a timely appeal in writing of that decision to the Board of Review.
- er* You probably will not be asked to attend the Board of Review Hearing. The Board normally reads the record, listens to the tapes, and renders an opinion.
- er* If the Board of Review rules against you, the next level is Circuit Court.
- er* Upon request, the IEA-NEA Legal Services Department will review your file and determine if it should be pursued in the Circuit Court arena.
- er* If you have any questions about your claim or proceedings, contact your IEA-NEA regional office for assistance or clarification.

SAMPLE LETTER REQUESTING FINAL COMPENSATION

Date

Mr./Ms. _____, Title
_____ Community College
_____, IL _____

Mr./Ms. _____:

I do hereby formally request immediate payment of all the earned compensation due me for the current school term.

Sincerely,

CONTINUATION OF IEA-NEA MEMBERSHIP

Frequently IEA-NEA Legal Services has been the key to ensuring that the contractual and statutory rights of RIFed educational employees are honored by local boards.

You may maintain your legal protection, along with all other rights and benefits of active membership in the IEA-NEA, at half dues. This special dues rate is available to you so long as you are eligible to be recalled or for three years, whichever is longer.

You can't buy this kind of protection anywhere else for so little money. It can mean the difference between future employment in your current location and relocation to find other employment.

If you have questions or need additional information, call your UniServ director.

SUMMARY OF LEGAL RIGHTS (Section 3B-5 of the Community College Act)

Reductions In Force and Seniority

If the dismissal of a faculty member for the ensuing school year results from the decision by the Board to decrease the number of faculty members employed by the Board or to discontinue some particular type of teaching service or program, notice shall be given the affected faculty member not later than 60 days before the end of the preceding school year, together with a statement of honorable dismissal and the reason therefore; provided that the employment of no tenured faculty member may be terminated under the provisions of this Section, while any probationary faculty member, or any other employee with less seniority, is retained to render a service which the tenured employee is competent to render. In the event a tenured faculty member is not given notice within the time herein provided, he shall be deemed reemployed for the ensuing school year.

Recall Rights

Each board, unless otherwise provided in a collective bargaining agreement, shall each year establish a list, categorized by positions, showing the seniority of each faculty member for each position entailing services such faculty member is competent to render. Copies of the list shall be distributed to the exclusive employee representative on or before February 1 of each year. For the period of 24 months from the beginning of the school year for which the faculty member was dismissed, any faculty member shall have the preferred right to reappointment to a position entailing services he is competent to render prior to the appointment of any new faculty member; provided that no non-tenure faculty member or other employee with less seniority shall be employed to render a service which a tenured faculty member is competent to render.

THE STEPS TO TAKE

when you are facing an honorable dismissal

1. Be sure to keep a copy of your honorable dismissal letter. You will need to take a copy of the letter to the Unemployment Compensation Office on your first visit.
2. Secure a copy of your salary statement to take with you to the Unemployment Compensation Office. In consultation with your UniServ director, obtain and review a complete copy of your personnel file to be sure that it contains accurate records regarding your employment, evaluations, and other documents.
3. Immediately upon receipt of your honorable dismissal letter, send a letter to the college administration stating your desire to be considered for other positions.
4. On the last day of school, send a letter to the college administration to request immediate payment of all compensation due for the current school year. Be certain to have your administration agree in writing that your earned insurance benefits will continue until the first day of the next school term. Check your locally negotiated contract and your insurance policy (contract) for specifics. Receipt of insurance benefits during the summer months should not affect your eligibility for unemployment, since such benefits are merely later payment for a benefit earned while you were employed. NOTE: Under COBRA, you are eligible (at your own cost) for continuation of insurance benefits after the board paid group health insurance ceases. Check with your UniServ director.
5. On the last day of school you may apply for unemployment insurance benefits. **Please be aware that:** you must be actively seeking and available for employment during the summer months to qualify for unemployment benefits for that period. This booklet contains information on how to proceed.
6. If you have questions or need additional information, call your UniServ director.