



BULLETIN

## Bumping rights

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What  
rights do  
HSA  
members  
have to  
"bump"  
when faced  
with a lay-  
off?



An HSA member facing lay-off may be able to bump a more junior employee. Many collective agreements clearly indicate that employees affected by lay-off have the right to transfer to jobs held by employees with less seniority. We refer to this process as "bumping". Although not all collective agreements the HSA agreement does not refer expressly to bumping. Articles 10.01 and 10.05 have been found by arbitrators to extend "bumping" rights to HSA employees. If an employee wishes to bump into a higher-rated position, the employee must satisfy the test in Article 10.01. More specifically, Article 10.01 contains a competition clause. Internal candidates must compete with each other on the basis of capability, performance and qualifications. Where these are relatively equal between the two candidates, then seniority will be the determining factor. In the context of "bumping" rights, the employee seeking to bump must be able to demonstrate that she or he is at least relatively equal to the incumbent in terms of qualifications, capability and performance. Where an employee wishes to bump into a lower-rated position or a position rated at the same level, currently held, then the test is different. Arbitrator Munro concluded that Article 10.01 applies to upward bumps but that Article 10.05 applies to lateral and downward bumps. Article 10.05 does not contain a competition clause; it contains a "seniority" clause. Provided that the employee seeking to displace an employee with less seniority has the sufficient ability to perform the job held by the junior employee. *Reine Meyers is Executive Directors ... Legal Services for HSA*

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