

# Personnel Monthly

## State Personnel Board Joins Lawsuit Against ASEA and Nationwide

Due to the volume of requests for information concerning the *Gwin v. ASEA and Nationwide* lawsuit, an overview of the claims and the basis for the State Personnel Board joining in the lawsuit against ASEA and Nationwide is provided below.

NOTE: The *Gwin* lawsuit and the information below concern only the deferred compensation program offered through Nationwide/ASEA - not the program offered through the Retirement Systems of Alabama (RSA-1). They are two entirely separate programs. Information on RSA-1 can be found at <http://www.rsa-al.gov/RSA-1/rsa-1.html>.

NOTE: The "PEBCO, Inc." corporation referred to in this article is not the same as, or associated with, the corporation previously known as PEBCO, which was associated with Nationwide.

The State Personnel Board recently joined in a lawsuit against ASEA and Nationwide. The proposed class-action lawsuit claims that money related to State employee deferred compensation accounts is being given - without the knowledge or consent of State employees - to a "for-profit corporation" named PEBCO, Inc. - which is owned by ASEA. Confused? Keep reading.

In 2004, ASEA recommended to the State Personnel Board that it approve a particular Deferred Compensation Plan which, at that time, had 23,000 active and retired employee participants. This Plan provided for Nationwide to continue as the service provider for deferred compensation for State employees.

Unknown to the State Personnel Board, ASEA/PEBCO and Nationwide entered into a "confidential contract" in which ASEA/PEBCO would receive payments from Nationwide. It was only after this lawsuit was filed that Nationwide admitted that there was a confidential agreement and then acknowledged that these "payments" are disclosed on ASEA's tax returns which, as ASEA is a tax-exempt labor organization, are public record. These tax returns reveal that ASEA has received over \$4,000,000 since 2004 as a "PEBCO endorsement fee" or "Nationwide commission."

Why did the State Personnel Board join in this lawsuit against ASEA and Nationwide? The reason is simple: The State Personnel Board approved the Nationwide/ASEA Deferred Compensation Plan recommended by ASEA for the benefit of State employees. Not only did ASEA fail to inform the Board that there was a "confidential contract" providing millions of dollars to ASEA at the expense of State employees, but ASEA has also continued to refuse to provide the Board with documents surrounding the Plan or contracts. Though these documents concern an Internal Revenue Code Section 457 Tax Deferred Compensation Plan, approved by a State statute, for the benefit of State Employees, ASEA will not produce these documents. The State Personnel Board also contacted Nationwide representatives and directed them to place

these payments to ASEA/PEBCO into an interest bearing account or pay the money into the Court in order to protect participant assets. Rather than complying, Nationwide responded that this directive could be seen as "unlawful interference" with their contract with ASEA/PEBCO and required, among other things, that the Board receive the written consent of ASEA/PEBCO to place these payments into an account for the benefit of State employees who participate in the plan. After several months of failing to resolve these issues, the State Personnel Board had no choice but to join in the lawsuit against ASEA/PEBCO and Nationwide.

A request has been filed with the Court to place these payments from Nationwide to ASEA/PEBCO into a trust to be held for the benefit of the plan participants. A hearing concerning this request is set for March 25, 2009. The State Personnel Board believes that as a State employee who participates in this Deferred Compensation program you have a right to see the documents that govern your deferred compensation plan and have a right to know any and all fees that you are being charged.

Please visit our website for updates on this case and to view copies of documents and pleadings filed in the lawsuit. For more information, a *Forbes* magazine article entitled: "On your side? How a cozy contract between Nationwide and an Alabama state employees union is a good deal—except for the workers," can be found at <http://www.forbes.com/forbes/2008/0811/038.html>.

## 2009 Legislative Kickoff

The 2009 Legislative Session officially kicked off on February 3rd. The State Personnel Department is supporting several bills this year, each of which will

greatly benefit state employees if passed. For those of you who are interested in the legislative process as a whole, a legislative refresher is detailed below, fol-

lowed by a brief synopsis of the bills we support.

Alabama has 35 Senators and 105 Representatives, each



Don't forget to activate your WeSave Card at [www.wesave.com/al](http://www.wesave.com/al)!

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### Special points of interest:

- **State Personnel Training Schedule**
- **Donated Leave Requests: Your fellow State employees need your help!**
- **The next State Personnel Board Meeting is scheduled for March 11, 2009 at which time the Public Hearing on the proposed TRIF rule will be held.**

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## Legislative Kickoff, Continued

ected to four year terms. The legislators meet each year for thirty legislative days. During these thirty days, bills are entered into the House of Representatives and/or the Senate. After each bill is initially entered, it is read for the first time and assigned to a Standing Committee based on content of the bill. Each body has between 17 and 22 Standing Committees, ranging from 4 to 15 members each. A committee can receive the bill and choose to take no action or report the bill out of committee. If the bill is reported out of a committee, it receives its second reading. The bill receives its third reading and is read at length, unless reading is waived. If the bill receives a majority vote, it has "passed" and is sent to the other body where it travels the same process as it did in the house of origin. If the bill passes the second body, it goes to the house of origin for enrollment. The bill is then signed by the Speaker of the House, the Presiding Officer of the Senate and the Secretary of the Senate or the Clerk of the House. The signed and enrolled bill is then sent to the Governor. The bill becomes law if the Governor signs it, if the Governor does not sign or veto it within 10 days, or if the Governor's veto is over-ruled by a majority vote in each body.

The State Personnel Department supports several employee related bills this year. During these tough financial times, the passage of the Employee Protection bill is es-

essential for Merit System employees. The House version of the bill (House Bill 220) is sponsored by Representative Hill and the Senate version (Senate Bill 114) is sponsored by Senator Means. These bills state that a state agency or appointing authority may not abolish a classified position through the layoff provisions if the state agency or appointing authority is employing an individual or individuals outside the Merit System to perform substantially similar duties. The Employee Protection bills are very similar to the non-controversial lay-off bill that was close to passage during the 2008 Legislative Session. Hopefully, the support of all agencies and organizations will result in passage of these important bills.

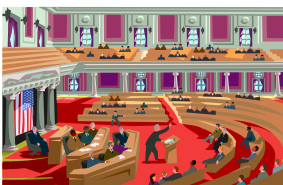
Another bill supported by the State Personnel Department is the Redaction bill. The Senate version of the bill (Senate Bill 297) is sponsored by Senator Beason. The bill would limit access to a person's identifying information, ultimately protecting state employees from identity theft and fraud. By law, State employees' files are currently available for public inspection. The bill would allow a state department or agency to redact, remove or cover identifying information such as date of birth, home

address, home phone number and financial information, unless a state employee has previously given consent to release such information.

The State of Alabama is struggling with budget cuts and proration. If the Alabama Employees' Suggestion Incentive Program bill passes, state employees will have a chance to help. The Senate version of the bill (Senate Bill 144) is sponsored by Senator Bedford and the House version of the bill (House Bill 602) is sponsored by Representative Keahey. The program, which has been funded in the past, would make financial incentive awards to state employees whose adopted suggestions result in a substantial financial savings or improvement in the efficiency of state operations. Detailed information on how to make suggestions and the amount of an award will be provided to you if the bill is passed.

Each citizen of the State of Alabama has the ability to play an active role in the legislative process. Remember, it is the legislator's duty to represent the people of their district; let them know what you like or dislike. A complete list of Legislators is available at the Secretary of State's Office. Your input is instrumental in their decision-making!

For more information on legislative bills or to find your local Representative or Senator, please visit <http://alisondb.legislature.state.al.us/acas/ACASLogin.asp>.



## Personnel Training Schedule—March 2009

The seminars listed below are being offered in March. All training offered by Personnel is free to the employee and the agency. For more information visit the State Personnel website at [www.personnel.state.al.us](http://www.personnel.state.al.us). To register for a class, please see your agency's training coordinator. We look forward to seeing you in class!

**March 10:**  
"Interview and Selection" in Montgomery

**March 12:**  
"Family and Medical Leave Act" (morning program) in Montgomery

**March 12:**  
"Family and Medical Leave Act" (afternoon program) in Montgomery

**March 18:**  
"Customer Service" in Montgomery

**March 25:**  
"Sexual Harassment Prevention" morning program in Montgomery

**March 25:**  
"Sexual Harassment Prevention" afternoon program in Montgomery

**March 26:**  
"Performance Appraisal for Supervisors" in

Montgomery

**March 30:**  
"Performance Appraisal for Supervisors" in Montgomery

**March 31:**  
"Progressive Discipline" in Montgomery



## Temporary Reduction in Force Frequently Asked Questions

Personnel costs are a major expense for most state agencies. When costs are directed to be cut and other cost cutting measures have been exhausted, the only method currently available for agencies to reduce personnel costs is through the layoff procedure. The

proposed TRIF amendment to the Layoff Rule will provide an additional step prior to the permanent loss of jobs and is designed to assist agencies in working through some of the most difficult financial times this country has ever experienced. Based upon emails, phone calls,

and letters, the following are the most frequently asked questions concerning the proposed TRIF. For answers to more frequently asked questions, please visit <http://>

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## Frequently Asked Questions, Continued

[www.personnel.state.al.us/](http://www.personnel.state.al.us/) and click on the "Common TRIF Questions Answered" link. If your questions are not answered, please do not hesitate to contact us at [newsletter@personnel.alabama.gov](mailto:newsletter@personnel.alabama.gov).

**Q: What are the differences between a Layoff and TRIF?**

**A: Layoffs:**

In the event of a layoff, positions are abolished and the employees occupying these positions may lose their jobs, be forced to compete for transfers or roll-back to a previously held merit system position in that agency. Employees who are laid off will be paid their annual leave, but will lose their sick leave unless rehired by the State within four (4) years.

Employees will be placed on the re-employment register for a period of two (2) years.

If eligible, a laid off employee may receive unemployment benefits ranging from a minimum of \$45.00 per week to a maximum of \$255.00 per week. To receive the latest information regarding unemployment, access the Department of Industrial Relations website at <https://dir.alabama.gov/uc/claims.aspx#q5>.

Employees will qualify for COBRA health insurance coverage at a current cost of \$791 per month for single coverage. COBRA coverage normally will last 18 months, but may possibly be extended to 36 months. In light of changes due to the recent Economic Stimulus Package, please visit the Department of Labor's website for up-to-date information at [http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.HTML](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML).

**TRIF:**

Under TRIF, employees will keep their jobs. In some situations, an agency may still be forced to resort to permanent layoffs. The use of TRIF, however, will lessen the number of employees who would have otherwise been laid off.

All employees in the affected classification (s) in an agency will lose up to a maximum of one (1) day of pay in a semi-monthly pay period, or one (1) day a month, or one day every three (3) months, etc. as directed by the agency.

Employees will see no change in the cost or coverage of their health insurance, an-

nual and sick leave accrual or seniority.

**Q: I received an email stating that the Alabama State Personnel Board proposed a rule change that would grant it the authority to temporarily reduce Alabama's state workforce for up to 24 days per year and that the amount of days worked and pay would be reduced by a figure that the Personnel Board deemed appropriate. Is this true?**

**A: No.** The State Personnel Board has scheduled a public hearing on March 11, 2009 at 10:00 a.m. in the office of the State Personnel Department to consider a proposed amendment to the existing Layoff Rule. The proposed amendment to the Layoff Rule limits the amount of time that an employee can be placed on TRIF to one (1) day per semi-monthly pay period in a fiscal year. Under the proposed TRIF amendment, it is the decision of the agency - not the State Personnel Board or the State Personnel Director - that determines whether TRIF is needed and the number of TRIF days needed.

**Q: Must the TRIF day be taken at one time or can it be spread out over the semi-monthly pay period?**

**A:** An agency may allow those on TRIF to take the day in hour increments as long as the total time does not exceed one (1) work day in a semi-monthly pay period. For example, an employee whose normal work day is 8 hours may leave early for 1 hour a day for 8 days or work half days, two days during that pay period or any combination thereof, as long as it is approved by the agency.

**Q: May employees volunteer for TRIF?**

**A:** Yes. If a TRIF has been put in place in your agency, volunteers, may participate in TRIF, with the approval of the appointing authority, even if their classifications are not selected for TRIF. The maximum of one (1) day per semi-monthly pay period will apply regardless of volunteer status.

**Q: How will an agency implement TRIF?**

**A:** TRIF may be implemented: (1) agency-wide, (2) by classification or classification series, or (3) by employee volunteers, with the approval of the appointing authority. For example, if an agency decides to TRIF employees in "Classification A," then the employees in "Classification A" in the Montgomery central office of the agency as

well as employees in "Classification A" in all field offices would be subject to TRIF. An agency-wide TRIF will apply to everyone in the agency, regardless of status. (Elected officials cannot be subject to TRIF, but may voluntarily reduce their salaries).

**Q: What must an agency do to implement a TRIF?**

**A:** The agency must submit a TRIF plan for review and acceptance to the State Personnel Director. A TRIF plan will only be accepted by the Director if the agency has exhausted all other cost-savings measures.

**Q: Will all agencies be subject to TRIF?**

**A:** While any merit system agency will have the option to use TRIF, if necessary, many agencies receive funds through a variety of sources and may not be experiencing budget shortfalls or deficits. TRIF only provides an option, if needed, to agencies considering a permanent layoff.

**Q: Will my insurance, leave accruals, or seniority be affected by TRIF?**

**A:** No. While on TRIF, your salary will be reduced, however, you will be considered in "full time status" for seniority related and certain benefits. Annual and sick leave will accrue at the normal rate, health insurance coverage or cost will not be affected, and there will be no break in service for seniority related purposes.

**Q: I am enrolled in DROP, will TRIF affect my DROP status?**

**A:** No. TRIF will not affect DROP status. However, an employee in DROP is not exempted from participation in TRIF.

**Q: Can leave be used on a TRIF day?**

**A:** No. The use of leave will not be allowed for the TRIF day. Leave can be approved for any other regular scheduled work day during that pay period.

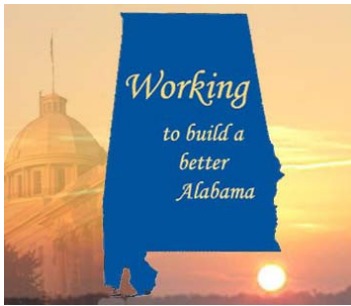
**Q: May an agency implement TRIF at any time, for any reason?**

**A:** No. An agency may invoke TRIF only when confronted with financial constraints whereby revenue is insufficient to meet its obligations and other means of reducing costs have been exhausted. Financial information submitted in the TRIF plan will be verified through the State financial officers.

State Personnel Department

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The Alabama Merit System law created the Personnel Department to be administered by a Personnel Director who answers to an independent board. The Board currently consists of five members who serve staggered six-year terms. Two members are appointed by the Governor, one by the Lieutenant Governor, one by the Speaker of the House, and one member is an elected classified state employee who is subject to all merit system rules and regulations.

By law the Board is required to meet once each month. Its principal functions are to:

- \*adopt and amend rules and regulations;
\*adopt and modify classification and pay plans;
\*hear the appeals of employees who have been dismissed;
\*represent the taxpayers' interest in the improvement of personnel management in the state; and
\*advise and assist the Personnel Director.

The Personnel Department is divided into 9 major areas: Classification and Pay; Examination; Certification; Payroll/Records Audit; Information Technology; Training; Legal; Administrative Law Judge; and Special Projects. Please remember, the Personnel Department is here to protect the merit system and to serve as a resource for State employees and the citizens of Alabama!

The State Personnel Board is scheduled to meet on March 11, 2009 at 10:00 a.m. in the Board Room on the 3rd Floor of the Folsom Administrative Building in Montgomery. The meeting is open to the public.

Donated Leave Requests



To assist those who have qualified for catastrophic sick leave, State Personnel is listing the names of those State employees who are in need of donated leave. The following individuals need your help:

- Lynn Alford with Public Health;
Addie Allen with Public Health;
David Allen with Human Resources;
Donnie Arnold with Pardons & Paroles;
Rachel Babb with Rehabilitation Services;
Suzanne Barfield with Rehabilitation Services;
Percy Barlow with Transportation;
Cassandra Belyeu with Tourism and Travel;
Kera Bradley with Human Resources;
Alan Bryant with Transportation;
JenaAnne Campbell with Corrections;
L'Erin Carlis with Public Safety;
Bessie Carter with Mental Health;
Linda Chestang with Mental Health;
Kissi Coley with Public Health;
Joni Coman with Revenue;
John Connell with Conservation;
Lanya Daffin with Human Resources;
Velvet Davis with Youth Services;
Margo DeLee with Human Resources;
Kidada Dixon with Transportation;
Mary Dove with Transportation;
Phillip DuBose with Public Health;
James Farris with Revenue;
Camilla Franklin-Gibson with Education;
Jacqueline Gaines with Human Resources;
Kelvin Gary with Corrections;
Kenneth Golson with Finance;
Murphy Golson with Transportation;
Mary Joan Greene with Public Health;
Tabitha Grier with Conservation;
Gloria Higgins with Human Resources;
Jessica Ivy with Mental Health;
Karlynn Johnson with Human Resources;
Simone Johnson with Mental Health;
David Keeton with Industrial Relations;
Andrew King with Transportation;
Dawn Renee Lane with Conservation;
J. Roger Lovelace with Public Health;
Brenda Lyles with Transportation;
Joseph Mallard with Transportation;
Joe Marvin, III with Transportation;
Lori McInerney with Transportation;
Edwina McKinney-Tate with ABC Board;
Barbara Mills with Human Resources;
Shannon Mitchell with Public Health;
Elise Moore with Rehabilitation Services;
Gary Moore with Transportation;
Andrea Northcott with Corrections;
Penny Parker with Mental Health;
Tracy Parks with Human Resources;
Teresa Parnell with Transportation;
Crystal Patterson with Human Resources;
Denise Perone with Mental Health;
Jan Perry with Corrections;
Amy Pickett with Industrial Relations;
Regina Portis with Mental Health;
Barbara Pritchett with Human Resources;
Stephanie Reynolds with Mental Health;
Amanda Ricks with Pardons & Paroles;
Shenita Rivers with Public Health;
Shirley Robinson with Mental Health;
Bonnie Russell with Transportation;
Stephanie Sammons with Transportation;
Jason Sassin with Public Safety;
Sandra Scott with Public Health;
LaToya Shannon with Public Health;
Katherine Sharich with ABC Board;
Dawn Sladek with ABC Board;
Patricia Smith with Human Resources;
Jacqueline Stokes with Human Resources;
Kimberly Taylor with Public Health;
Lois Thomas with Finance;
Joan Thompson with Conservation;
Alma Thorneberry with Public Health;
Timothy Townsend with Revenue;
Pamela Walker with Revenue;
Crystalee Walters with Public Health;
Kory Ward with Tourism and Travel;
Donna Whatley with Education;
Brenda Whetstone with Industrial Relations;
Cheryl White with Insurance;
Johnnie Williams with Mental Health;
Victoria Williams with Conservation;
Brian Wilson with Finance;
Jemica Wilson with Public Health;
Evelyn Wright with Mental Health; and
Janelle Zeigler with Public Health.

For more information on how to donate leave to one of these individuals, please visit the State Personnel Department website at www.personnel.state.al.us. To donate your leave to a qualified employee, please visit your personnel manager and request a Form 25A or download it from the State Personnel website.