

Chapter Pers 22

LAYOFF PROCEDURE

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Pers 22.01 Purpose. This layoff procedure is adopted under s. 230.34 (2), Stats., and is intended to be fair to and understandable by all employees; retain for the state service its most effective and efficient personnel; and insure that all layoff actions are appropriately and systematically administered.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. am. eff. 4-25-75; am. Register, September, 1975, No. 237, eff. 10-1-75; am. Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.02 Definitions. (1) **LAYOFF.** Layoff means the removal of an employe, in accordance with the procedure specified in this chapter, from a position in the class, class subtitle or progression series in which a reduction in force is to be accomplished.

(2) **EMPLOYING UNIT.** For purposes of this chapter, employing unit means the same as defined under s. Pers 1.02 (4), Wis. Adm. Code and established under s. 230.30, Stats.

(3) **LAYOFF UNIT.** For purposes of this chapter, the term layoff unit means the same as employing unit as defined and established under s. Pers 1.02 (4), Wis. Adm. Code.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. r. and recr., eff. 4-25-75; r. and recr. Register, September, 1975, No. 237, eff. 10-1-75; renum. (1) and (2) to be (2) and (3), cr. (1), Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.03 Application. (1) This chapter shall be applied by the appointing authority in the event of an impending reduction in work force.

(2) This chapter shall apply only to those employes not included in certified bargaining units having labor agreements.

(3) Except as provided in ss. Pers 22.12, 22.13 and 22.14, Wis. Adm. Code, this chapter shall not apply to:

(a) Emergency or temporary layoffs of less than 21 working days.

(b) Seasonal layoff of seasonal employes.

(c) School year employes at institutions and schools, during recesses in the academic year or summer. In accordance with s. Pers 18.05 (1) (c), Wis. Adm. Code, such employes shall be considered on an approved leave of absence without pay during these periods.

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(d) Project employees.

(4) The layoff grouping under s. Pers 22.06, Wis. Adm. Code, shall not apply to employees in positions funded by nonstate funds made available contingent on special employe eligibility requirements under s. 230.34 (2m), Stats. However, if layoff is to be made among such employees, the provisions of this chapter shall apply.

(5) The appointing authority shall identify the position or positions to be eliminated in the event of a reduction in the work force.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), r. (2) to (5), cr. (2) and (3), Register, September, 1975, No. 237, eff. 10-1-75; r. and recr. (1), renum. (2) to be Pers 22.04, r. (3), cr. (2) to (5), Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.04 Certain employes released first. Before an employe with permanent status in class in a permanent position is laid off, the appointing authority shall terminate all employes in the same class, class subtitle or progression series in the employing unit in which the layoff occurs, as follows:

- (1) Limited term employes, including emergency and provisional;
- (2) Employes serving on a project appointment; and
- (3) Employes serving an original appointment probationary period.

History: Cr. Register, September, 1975, No. 237, eff. 10-1-75; renum. from Pers 22.03 (2) and am., Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.05 Layoff plan subject to approval. Whenever it becomes necessary for an agency to lay off employes, the appointing authority shall prepare a comprehensive written plan for layoff following the procedure specified in this chapter and submitted to the administrator for review and approval prior to implementation.

History: Emerg. cr. eff. 4-25-75; cr. Register, September, 1975, No. 237, eff. 10-1-75; renum. from Pers 22.09 and am., Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.06 Procedure for making layoffs. (1) The appointing authority shall identify the class, the class subtitle as approved by the administrator at the time of layoff, or the classification progression series approved by the administrator, in which layoff is to occur, hereafter called the layoff group.

(2) The appointing authority may exempt from the layoff group up to 2 employes or 20%, whichever is greater, of the number of employes in the layoff group. In applying the percentage, any fraction shall be rounded to the next whole number. Exemptions may be used to retain employes having special or superior skills; for affirmative action purposes; or for other such purposes as may be determined by the appointing authority. Exercise of these exemptions shall be declared by the appointing authority as part of the layoff plan submitted under s. Pers 22.05, Wis. Adm. Code.

(3) The remaining employes, plus those on an approved leave of absence, in the layoff group, shall be ranked by seniority computed on the basis of continuous state service as set forth in s. Pers 18.02 (2) and (3), Wis. Adm. Code, with any resulting tie cases to be ranked, relative to each other, according to their total continuous state service in that class, approved class subtitle, or classification progression series. If a tie still exists between 2 or more employes after completing the above, seniority

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of the tied employes shall be determined by age, with the oldest employe deemed to have the greatest seniority. Employes shall be laid off according to their seniority ranking, with the lowest ranked, which means the least senior, employe laid off first.

History: Emerg. cr. eff. 4-25-75; cr. Register, September, 1975, No. 237, eff. 10-1-75; renum. from Pers 2.035 and am., Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.07 Notice prior to layoff; appeal notice. Any employe affected by such layoff shall be given written notice of such action, not less than 15 calendar days prior to the effective date thereof. The employe shall be entitled to appeal such action to the commission upon filing a written request with the commission within 30 calendar days of the effective date of the decision or within 30 calendar days after receipt of notice of the action, whichever is later. Such notice of appeal, and any pending litigation as a result thereof, shall in no way affect determinations previously or subsequently made, until an order is entered by the state personnel commission, unless such order is stayed by a court of competent jurisdiction.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. am. eff. 4-25-75; am., Register, September, 1975, No. 237, eff. 10-1-75; renum. from Pers 22.05 and am., Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.08 Alternatives in lieu of layoff. In the event that the services of an employe with a permanent status in a class are about to be terminated by layoff as a result of a reduction in force, these alternatives shall be available, in the order listed below, in lieu of layoff, provided that the order of layoff as set forth in the law and these rules permit:

(1) **TRANSFER.** (a) All employes who have received a notice of layoff have the right to transfer:

1. Within the employing unit: to any vacancy in the same or counterpart pay range for which the employe is qualified to perform the work after being given the customary orientation provided to new workers in the position; or

2. Within the agency: to any vacancy in the same class, class subtitle or progression series from which the employe is being laid off.

(b) An employe who transfers within the agency in lieu of layoff immediately obtains permanent status in class in the class to which the employe transfers, except that an employe who is serving a promotional probationary period must complete that probationary period in the new position. In addition, an employe who is serving a permissive probationary period may be required to complete that probationary period in the new position.

(c) An employe who transfers between agencies in lieu of layoff may be required to serve a probationary period at the discretion of the appointing authority, except that an employe who is serving a promotional probationary period must complete that probationary period in the new position. In addition, an employe who is serving a permissive probationary period may be required to complete that probationary period in the new position. If on probation, the employe may be terminated without the right of appeal. If the employe is not required to serve a probationary period, the employe immediately obtains permanent status in class in the class to which the employe has transferred.

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(2) **DISPLACEMENT.** (a) An employe shall be entitled to exercise a right of displacement only if there is no vacancy to which he or she could transfer or demote under sub. (1) or (3) that is at a higher level than can be obtained through displacement. Such employe identified for layoff shall be entitled to exercise displacement rights within the employing unit. This right entitles the employe to induce the layoff process in a lower class or approved subtitle in the same series or in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit, in which the employe has previously obtained permanent status in class, and to lower classes or approved subtitles in those classes in a progression series in which the employe has previously obtained permanent status in class at a higher level. However, exercising such displacement rights does not guarantee the employe a position in the class or subtitle selected; it only requires the employe to be included along with other employes in the class or subtitle when the layoff process as provided in s. Pers 22.06, Wis. Adm. Code, is applied to determine which employe is laid off as a result of displacement. An employe electing to exercise displacement rights shall have 5 calendar days from the date of written notification of impending layoff or receipt of such written notification, whichever is later, to exercise that option.

(b) An employe who exercises displacement rights within the employing unit in lieu of layoff immediately obtains permanent status in class in the class into which the employe has been placed.

(c) An employe who exercises displacement rights shall retain the current rate of pay. If the present rate of pay is above the maximum of the pay range or pay rate for the class into which the employe has been placed, the employe's pay rate shall be red circled. See s. Pers 29.025, Wis. Adm. Code.

(3) **DEMOTION IN LIEU OF LAYOFF.** (a) *Within an agency.* An appointing authority shall offer an employe a demotion to the highest level vacancy available for which the employe is qualified, after the customary orientation provided to new workers in the position, after taking into consideration the employe's appointment preferences, in lieu of laying the employe off when the employe cannot be appointed under s. Pers 22.08 (1) and (2), Wis. Adm. Code. Such offer shall meet the criteria for a reasonable offer of appointment under s. Pers 22.09, Wis. Adm. Code.

1. An employe demoted in lieu of layoff immediately obtains permanent status in class in the class to which the employe is demoted.

2. An employe who chooses, with the approval of the appointing authority, to be demoted in lieu of layoff to the highest level vacancy available for which the employe is qualified within the employing unit, or an employe who is demoted by the appointing authority in lieu of layoff to the highest level vacancy available for which the employe is qualified within the agency, shall have his or her pay red circled if the present rate of pay is above the maximum of the pay range or pay rate for the class to which the employe is demoted.

3. For pay provisions regarding an employe who chooses, with the approval of the appointing authority, to be demoted in lieu of layoff to a vacancy which is at a lower level than other available vacancies to which the employe could be demoted, see s. Pers 29.03 (8) (b), Wis. Adm. Code.

(b) *Between agencies.* An employe may move to a position in a lower classification by demotion in a different agency in lieu of being laid off.

1. The employe may be required to serve a probationary period at the discretion of the appointing authority, and if during this period the employe's services are found to be unsatisfactory, the employe may be separated without the right of appeal. If the employe is not required to serve a probationary period, the employe immediately obtains permanent status in class in the class to which the employe is demoted.

2. An employe who demotes in lieu of layoff between agencies may be paid at any rate within the pay range for the class to which demoted which is not greater than the last rate received by the employe immediately prior to the demotion, except that no employe with permanent status in class shall be paid less than the PSICM for the class.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. am. 4-26-75; am., Register, September, 1975, No. 272, eff. 10-1-72; (intro.), (1) and (2) renum. from Pers 22.04 and am., r. (3) and (4), cr. (3), Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.09 Failure to accept reasonable offer of appointment. (1) An employe who has been notified of layoff and fails to accept a reasonable offer of appointment within the agency within 10 work days of the offer or who, upon acceptance, fails to be available for work within 10 work days after acceptance or 15 work days from the date of offer, whichever is less, shall forfeit any further rights to an appointment under s. Pers 22.08, Wis. Adm. Code.

(2) An offer of appointment shall be considered reasonable if it meets the following 4 conditions as of the date of the offer:

(a) The position is one which the employe who would be qualified to perform after customary orientation provided to new workers in the position;

(b) The position is the highest level position available within the agency to which the employe could either transfer or demote;

(c) The number of work hours required does not vary substantially from the number of work hours previously worked; and

(d) The position is located at a work site that is within reasonable proximity of the original work site.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.10 Restoration rights and conditions. An employe or former employe who exercises displacement rights in lieu of layoff under s. Pers 22.08 (2), Wis. Adm. Code, is demoted in lieu of layoff under s. Pers 22.08 (3), Wis. Adm. Code, or is laid off, shall, under s. 230.34 (2), Stats., be granted the following considerations for a 3-year period from the date of such action:

(1) **RETURN TO SAME EMPLOYING UNIT.** When a vacancy occurs in the employing unit at or closest to the same or counterpart pay range level from which an employe was laid off, exercised displacement rights, or demoted in lieu of layoff, the employe shall be recalled in inverse order of layoff providing the employe is qualified to perform the work after being given the customary orientation provided newly hired workers in such position.

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(2) **RETURN TO THE AGENCY.** When a vacancy occurs in the agency in the class, class subtitle or progression series from which the employe was laid off, exercised displacement rights or demoted in lieu of layoff, the employe shall be recalled in inverse order of layoff.

(3) **REQUIREMENTS FOR RESTORATION.** An employe or former employe having restoration rights under this section who fails to accept a reasonable offer of reappointment within the agency within 10 work days of the offer or who, upon acceptance, fails to be available for work within 10 work days after acceptance or 15 work days from the date of the offer, whichever is less, shall forfeit any further restoration rights under s. Pers 22.10, Wis. Adm. Code. If extenuating circumstances prevent an employe or former employe from reporting for work within 10 work days after acceptance or making other arrangements with the employer, the employe shall not forfeit the right to further restoration when other vacancies occur, providing the nature of the extenuating circumstances was acceptable to the appointing authority.

(4) **PAY ON RESTORATION.** See s. Pers 20.03 (7), Wis. Adm. Code.

(5) **RED CIRCLING.** If the employe is restored to the highest level vacancy within the employing unit or within the agency, if the vacancy in the agency is at a higher level than available in the employing unit from which the employe was laid off, the employe's pay rate calculated in accordance with s. Pers 22.10 (4), Wis. Adm. Code, shall be red circled if it is above the maximum of the pay rate or pay range for the class to which the employe is restored. See s. Pers 29.025, Wis. Adm. Code.

(6) **EXPIRATION OF RIGHTS.** An employe who transfers in lieu of layoff under s. Pers 22.08 (1), Wis. Adm. Code, or who is restored after termination in lieu of layoff while serving a probationary period resulting from a transfer or promotion within the agency under ss. Pers 15.04 (2) and 14.03 (1), Wis. Adm. Code, respectively, shall have no further restoration or recall rights.

History: Cr. Register, September, 1975, No. 272, eff. 10-1-75; cr. (intro.), (1) renum. from Pers 22.055 (1) and am.; cr. (2) to (6), Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.11 Reinstatement privileges and conditions. (1) When a vacancy, for which the employe is qualified, occurs anywhere in state service other than the agency from which the employe was laid off, exercised displacement rights, or demoted in lieu of layoff, the employe may be reinstated at the discretion of the appointing authority within a 3-year period from the date of such action resulting from layoff.

(2) A person who is reinstated to an agency other than the one from which the person earned reinstatement eligibility may be required to serve a probationary period. See s. Pers 16.04 (1) (a), Wis. Adm. Code.

(3) For pay provisions upon reinstatement following layoff, see s. Pers 29.03 (6), Wis. Adm. Code.

(4) For pay provisions upon reinstatement where a probationary period is required, see s. Pers 29.03 (2) (b), Wis. Adm. Code.

History: Cr. Register, September, 1975, No. 272, eff. 10-1-75; (1) renum. from Pers 22.055 (2) and am.; cr. (2) to (4), Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.12 Layoff of seasonal and sessional employes. (1) Employes in seasonal or sessional positions are employed for specific sea-
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sonal or sessional periods. Upon expiration of such periods, seasonal and sessional employes may, at the discretion of the appointing authority, be laid off until the beginning of the next seasonal or sessional work period. Such layoffs are not subject to any of the other provisions of this chapter.

(2) Employes in seasonal or sessional positions, who are laid off with the understanding that there is little or no expectation of future seasonal or sessional employment, shall be laid off in accordance with the provisions of this chapter as if they held permanent positions.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.13 Layoff of school year employes. (1) School year employes whose services are not required during a summer recess are granted summer leave under the provisions of s. Pers 18.05 (1) (c), Wis. Adm. Code, and are not considered to be in layoff status.

(2) School year employes whose services are not expected to continue in the ensuing school year shall be laid off in accordance with the provisions of this chapter.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81.

Pers 22.14 Emergency layoff of employes. The administrator may, in emergency conditions, approve exceptions to the layoff procedures outlined above. However, such layoffs shall be temporary and not exceed 20 working days. The specific number of such days affected employes are laid off, as recommended by the appointing authority, is subject to approval by the administrator.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from Pers 22.08 and am., Register, February, 1981, No. 302, eff. 3-1-81.