Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.



# Chapter ER-MRS 22

## LAYOFF PROCEDURE


ER-MRS 22.01 Purpose.
ER-MRS 22.02 Definitions.
ER-MRS 22.025 Vacancies, how filled.
ER-MRS 22.03 Application.
ER-MRS 22.035 Layoff group.
ER-MRS 22.04 Certain employees released first.
ER-MRS 22.05 Layoff plan subject to approval.
ER-MRS 22.06 Procedure for making layoffs.
ER-MRS 22.07 Notice prior to layoff; appeal notice.
ER-MRS 22.08 Alternatives to termination from the service as a result of layoff.
ER-MRS 22.09 Failure to accept reasonable offer of appointment.
ER-MRS 22.10 Restoration rights and conditions.
ER-MRS 22.11 Reinstatement eligibility and conditions.
ER-MRS 22.12 Layoff of seasonal and sessional employees.
ER-MRS 22.13 Layoff of school year employees.
ER-MRS 22.14 Temporary layoff of employees.


**Note:** Chapter Pers 22 was renumbered chapter ER-Pers 22, effective March 1, 1983. Chapter ER-Pers 22 was renumbered chapter ER-MRS 22 under s. 13.93 (2m) (b) 1., Stats., Register, October, 1994, No. 466; Corrections made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576.

**ER-MRS 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.

**ER-MRS 22.02 Definitions.** The following are definitions for terms used in this chapter:

**(1)** "Continuous service," has the meaning given under s. ER 1.02 (6).

**(2)** "Layoff group," means an aggregation of related positions which is the group of employees from which the layoff will be made.

**(3)** "Progression series," has the meaning given under s. ER 1.02 (32).

**(4)** "Subtitle," means a secondary explanatory title which is used to identify positions whose duties distinguish them from other positions in the same class in terms of the qualifications required for successful performance in the position.

**(5)** "Vacancy" or "vacant position" means a classified position to which a permanent appointment may be made after the appointing authority has initiated an action to fill that position and the position has been fully authorized and budgeted by law.

**Note:** The definitions of employing unit, layoff and recruitment option are set forth under s. ER-MRS 1.02 (7), (11) and (28), respectively.

**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; am. (1), Register, February, 1983, No. 326, eff. 3-1-83; r. and recr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; emerg. cr. (5), eff. 6-12-95; cr. (5), Register, December, 1995, No. 480, eff. 1-1-96.

**ER-MRS 22.025 Vacancies, how filled.** For purposes of this chapter, the appointing authority shall fill vacancies in the following order, after considering transfers, demotions and reassignments limited to persons currently employed in the employing unit who are not affected by the layoff:

**(1)** Through alternatives in lieu of termination as a result of layoff.

**(2)** Through restoration following layoff for persons with restoration rights obtained from layoff prior to July 1, 2016.

**History:** Cr. Register, February, 1983, No. 326, eff. 3-1-83; CR 18-006: am. (2) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 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 employees not included in certified bargaining units under s. 111.825 (1) (g), Stats.

**(3)** Except as provided in ss. ER-MRS 22.12, 22.13 and 22.14, this chapter shall not apply to:

(a) Temporary layoffs not to exceed 20 working days.

(b) Seasonal layoff of seasonal employees.

(c) School year employees at institutions and schools, during recesses in the academic year or summer. In accordance with s. ER 18.14 (2) (c), such employees shall be considered on an approved leave of absence without pay during these periods.

(d) Project employees.

**(4)** The layoff grouping under s. ER-MRS 22.06, shall not apply to employees in positions funded by nonstate funds made available contingent on special employee 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; am. (3) (a), Register, February, 1983, No. 326, eff. 3-1-83; am. (3) (c), Register, May, 1988, No. 389, eff. 6-1-88; corrections in (3) (intro.) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 18-006: am. (2) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.035 Layoff group. (1)** The layoff group, within the employing unit, may be identified by, but not limited to:

(a) A class;

(b) Class subtitle;

(c) Progression series that has been approved by the administrator for use by the agency; or

(d) Recruitment option.

**(2)** All positions in the layoff group must be in the same pay range except when the layoff group is a progression series which has been approved by the administrator for use by the agency.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) (c), (2) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. (1) (intro.) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.04 Certain employees released first.** Before an employee with permanent status in class may be laid off, the appointing authority shall terminate all employees in the approved layoff group in the employing unit in which the layoff

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.



occurs who are serving an original appointment probationary period unless authorized by the director.

**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; am. (intro.) and (1), Register, February, 1983, No. 326, eff. 3-1-83; am. (intro.), Register, May, 1988, No. 389, eff. 6-1-88; CR 18-006: renum. (intro.) to ER-MRS 22.04 and am., r. (1) to (3) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.05 Layoff plan subject to approval.** Whenever it becomes necessary for an agency to lay off employees, the appointing authority shall prepare a comprehensive written plan for layoff following the procedure specified in this chapter and submitted to the director 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; correction made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER-MRS 22.06 Procedure for making layoffs. (1)** In the layoff plan submitted to the director, under s. ER-MRS 22.05, the appointing authority shall recommend the layoff group in which the layoff is to occur. The layoff group shall reflect the staffing processes followed for included positions. Full-time and part-time positions may constitute different layoff groups. The primary order of layoff is determined by job performance. Thereafter disciplinary records, seniority, and ability are factors used to determine the order of layoff action.

**(2)** The appointing authority will determine the order of layoff primarily based on job performance. Employees, including those on an approved leave of absence, in the layoff group, will be grouped by category of performance based on the evaluation categories established in the employee's annual performance evaluation. To determine the most appropriate category for layoff grouping, the appointing authority will use the current year and previous 4 years.

**(3)** Within each performance category, the employees in the layoff group shall be ranked by seniority computed on the basis of continuous service as set forth in s. ER18.02 (2) and (3), with any resulting tied cases to be ranked, relative to each other, according to their total continuous service in the approved layoff group. If, after completing this ranking, a tie still exists between 2 or more employees, continuous service of the tied employees shall be determined by age, with the oldest employee deemed to have the greatest continuous service. Disciplinary record review will consist of an employee's disciplinary records from the current and previous 4 years. An appointing authority may request the exemption of an employee from the seniority order due to the results of the disciplinary record review. Ability is applied by requesting to retain up to 20% of the employees in the layoff group who have special or superior skills as determined by the appointing authority. Remaining employees shall be laid off according to their continuous service ranking, with the employee with the least continuous service laid off first.

**(4)** With the agreement of the appointing authority, an employee with more continuous service in the layoff group may volunteer to be terminated from employment in lieu of the layoff of an employee with less continuous service, with the guarantee that the appointing authority will not challenge the volunteering employee's eligibility for unemployment compensation.

**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; am. (1) and (2), cr. (4), Register, February, 1983, No. 326, eff. 3-1-83; am. Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 04-138: am. (2) Register June 2005 No. 594, eff. 7-1-05; correction in (1), (2) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.07 Notice prior to layoff; appeal notice.** **(1)** Any employee affected by layoff shall be given written notice of the anticipated action, not less than 60 calendar days prior to its effective date. If the appointing authority is provided fewer than 60 days' notice of the need for layoff, because of loss of funding or otherwise, the director may authorize a layoff notice of 30 calendar days prior to the effective date. The written notice of layoff shall, to the extent practicable, include the specific alternatives within the agency available at that time to the employee in lieu of termination. The appointing authority shall continue to keep the employee aware of new alternatives available up to the effective date of the layoff.

**(2)** Seven calendar days prior to the layoff effective date, the appointing authority will issue the employee a final written notice of impending layoff. The notice shall include the employee's right to grieve the layoff decision under s. 230.445, Stats. No notice of appeal or pending litigation as a result thereof, affects any determination previously or subsequently made by the appointing authority, until an order is entered by the commission, unless the 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; am. Register, February, 1983, No. 326, eff. 3-1-83; CR 18-006: renum. ER-MRS 22.07 to (1) and am., cr. (2) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.08 Alternatives to termination from the service as a result of layoff.** If an employee with permanent status in a class has received a notice of layoff under s. ER-MRS 22.07 (1), alternatives shall be available in the order listed in this section until the effective date of the layoff. Employees in the same layoff group who are laid off on the same date shall have the right to exercise the following alternatives to termination from the service as a result of layoff with the most qualified employee, as determined by the appointing authority, being offered the available vacancy first. This offer shall be subject to the criteria for a reasonable offer of appointment under s. ER-MRS 22.09:

**(1)** TRANSFER. (a) All employees who have received a notice of layoff have the right to transfer within the agency to any vacancy in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in the position.

(b) An employee who transfers within the agency as an alternative to termination from the service immediately attains permanent status in class in the class to which the employee transfers, except that:

1. An employee who is serving a promotional probationary period must complete that probationary period in the new position.

2. An employee who is serving a permissive probationary period may be required to complete that probationary period in the new position.

**(2)** DEMOTION. If no transfer under sub. (1) is available and if there is a vacancy available within the agency for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in such positions, an appointing authority shall offer the employee a demotion to that vacancy. This offer shall be subject to the criteria for a reasonable offer of appointment under s. ER-MRS 22.09 and the following:

(a) An employee demoted under this subsection immediately attains permanent status in class in the class to which the employee is demoted, except that an employee who is serving a promotional probationary period must complete that probationary period in the new position if that position is at a higher level than the position from which the employee promoted.

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.



(b) For pay provisions regarding an employee who is demoted by the appointing authority, as a result of a layoff to the highest level vacancy available for which the employee is qualified, see s. ER 29.03 (8) (c) or the compensation plan.

(c) For pay provisions regarding an employee who chooses, with the approval of the appointing authority, to be demoted as a result of layoff to a vacancy which is at a lower level than other available vacancies to which the employee could be demoted or transferred under sub. (1), see s. ER 29.03 (8) (d) 1. or the compensation plan.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. am. 4-25-75; 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; am. (intro.), (1) (a) 1. and 2., (b) and (c), cr. (1) (b) 3., renum. (2) and (3) to be (3) and (2) and am., Register, February, 1983, No. 326, eff. 3-1-83; am. (1) (a) 1. and 2., (b) 3., (2) (intro.) and (a), (b) 2., (3) (a) and (c), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; emerg. am. (3) (a) 1., eff. 6-12-95; am. (3) (a) 1., Register, December, 1995, No. 480, eff. 1-1-96; CR 04-138: am. (2) (a) 2. and 3., (2) (b) 2., (3) (a) 2. and (3) (c) Register June 2005 No. 594, eff. 7-1-05; correction in (3) (a) 2. made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. (intro.), renum. (1) (a) (intro.) to (1) and am., r. (1) (a) 1., 2., (b) 3., (c), am. (2) (intro.), consol. (2) (a) (intro.) and 1. and renum. to (2) (a) and am., renum. (2) (a) 2., 3. to (2) (b), (c) and am. (c), r. (2) (b), (3) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.09 Failure to accept reasonable offer of appointment. (1)** An employee who has been notified of layoff and fails to accept a reasonable offer of permanent appointment within the agency within 2 work days of the offer or who, upon acceptance, fails to be available for work within 5 work days after acceptance forfeits any further rights to an appointment under ss. ER-MRS 22.08 and 22.10.

**(2)** As determined by the appointing authority, an offer of appointment shall be considered reasonable if it meets the following 5 conditions as of the date of the offer:

(a) The position is one which the employee 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 employee could either transfer or demote.

(c) The assigned shift or number of work hours required does not vary substantially from the number of work hours previously worked.

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

(e) The pay range of the position offered is no more than 3 pay ranges or counterpart pay ranges, or one broadband pay range, lower than the pay range of the position from which the employee was laid off.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (1) and (2) (intro.), cr. (2) (e), Register, February, 1983, No. 326, eff. 3-1-83; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; emerg. am. (2) (intro.) and (e), eff. 6-12-95; am. (2) (intro.) and (e), Register, December, 1995, No. 480, eff. 1-1-96; CR 04-138: am. (2) (a) to (c) Register June 2005 No. 594, eff. 7-1-05; CR 18-006: am. (1), (2) (c), (e) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.10 Restoration rights and conditions.** An employee laid off prior to July 1, 2016 maintains the restoration rights that existed at the time the employee was laid off.

**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; am. (intro.) through (4) and (6), Register, February, 1983, No. 326, eff. 3-1-83; am. (2), r. (5), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556; CR 04-138: am. (intro.), and (4) Register June 2005 No. 594, eff. 7-1-05; CR 18-006: r. and recr. Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.11 Reinstatement eligibility and conditions. (1)** An employee laid off prior to July 1, 2016, maintains the reinstatement eligibility that existed at the time the employee was laid off.

**(2)** Any person who has held a position and obtained permanent status in class under the civil service law and rules and who is laid off on or after July 1, 2016, is eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified for a 3-year period from the date of the layoff.

**(2m)** A person who is reinstated to an employing unit or agency other than the one from which the person earned reinstatement eligibility may be required to serve a probationary period. See s. ER-MRS 16.04 (1) (a).

**(3)** For pay of employees upon reinstatement following layoff, see s. ER 29.03 (6) or the compensation plan. For pay provisions upon reinstatement where a probationary period is required, see s. ER 29.03 (2) (b) or the compensation plan.

**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; am. (1), Register, February, 1983, No. 326, eff. 3-1-83;renum. (1) to (2) to be (2) and (2m), cr. (1), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2m) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; cons. and am. (1) (a) to (d), cr. (1m), am. (2), Register, December, 1999, No. 528, eff. 1-1-00; CR 04-138: r. (1), (2) (a) and (b), am. (1m) and (2) (intro.), and (3) Register June 2005 No. 594, eff. 7-1-05; CR 18-006: cr. (1), r. (1m), r. and recr. (2), am. (2m) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 22.12 Layoff of seasonal and sessional employees. (1)** Employees in seasonal or sessional positions are employed for specific seasonal or sessional periods. Upon expiration of such periods, seasonal and sessional employees 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)** Employees 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.

**ER-MRS 22.13 Layoff of school year employees. (1)** School year employees whose services are not required during a summer recess are granted summer leave under the provisions of s. ER 18.14 (2) (c), and are not considered to be in layoff status.

**(2)** School year employees 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; am. (1), Register, May, 1988, No. 389, eff. 6-1-88.

**ER-MRS 22.14 Temporary layoff of employees.** The director may approve exceptions to the procedures outlined in this chapter for temporary layoffs not to exceed 20 working days. Temporary layoffs may apply to some, or all of the employees in an employing unit. The appointing authority may recommend, subject to approval of the director, a plan for temporary layoffs, stating the reason for the temporary layoffs, the classes and number of employees affected in the employing unit, and the specific number of such days affected employees will be laid off. The plan shall be submitted to the director for approval prior to implementation. Consecutive temporary layoffs in the same employing unit may not be approved by the director for the same reason which caused the initial temporary layoff, unless a plan for permanent layoff has been submitted.

**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; am. Register, February, 1983, No. 326, eff. 3-1-83; am. Register, May, 1988, No. 389, eff. 6-1-88; correction made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

***Published under s. 35.93, Stats. Updated on the first day of each month. Entire code is always current. The Register date on each page is the date the chapter was last published.***