

## Chapter ER-MRS 22

### LAYOFF PROCEDURE

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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.

**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.

**History:** Cr. Register, February, 1983, No. 326, eff. 3-1-83.

**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 having labor agreements.

(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.

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

(a) A class;

(b) Class subtitle;

(c) Progression series that has been approved by the secretary 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 secretary for use by the agency.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88

**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 occurs who are performing duties which the employee would be qualified to perform after being given the customary orientation provided to newly hired workers and who are:

(1) Limited term employees, including provisional employees;

(2) Employees serving on a project appointment; and

(3) Employees 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; am. (intro.) and (1), Register, February, 1983, No. 326, eff. 3-1-83; am. (intro.), Register, May, 1988, No. 389, eff. 6-1-88.

**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 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; renun. from Pers 22.09 and am., Register, February, 1981, No. 302, eff. 3-1-81.

**ER-MRS 22.06 Procedure for making layoffs.** (1) In the layoff plan submitted to the administrator, 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.

(2) The appointing authority may exempt from the layoff group up to 2 employees or 20%, whichever is greater, of the number of employees in the layoff group to retain employees having special or superior skills or for other purposes as determined by the appointing authority. In addition, for affirmative action purposes, as defined in s. 230.03 (2), Stats., the appointing authority may exempt, subject to the approval of the administrator, female, minority and handicapped employees in the layoff group. Exercise of these exemptions may be requested by the appointing authority as part of the layoff plan submitted under s. ER-MRS 22.05.

(3) The remaining employees, plus those on an approved leave of absence, in the layoff group, shall be ranked by seniority computed on the basis of continuous service as set forth in s. ER 18.02 (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. 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, unless that employee later refuses a reasonable offer of reappointment.

History: Emerg. cr. eff. 4-25-75; cr. Register, September, 1975, No. 237, eff. 10-1-75; renun. 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.

**ER-MRS 22.07 Notice prior to layoff; appeal notice.**

Any employee affected by layoff shall be given written notice of the action, not less than 15 calendar days prior to its 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. The employee shall be entitled to appeal the layoff 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. 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; renun. 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.

**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 these alternatives shall be available in the order listed below

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 in direct order of their seniority, most senior first:

(1) **TRANSFER.** (a) All employees 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 employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in the position; or

2. Within the agency, to any vacancy in the approved layoff group from which the employee is being laid off 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.

3. An employee who transfers to a position in a different employing unit of the same agency may be required to serve a probationary period in accordance with s. 230.28 (1) (am) or (4), Stats., as applicable. During this probationary period, the employee may be removed from the position without the right of appeal and restored to his or her former position or transferred to a different position. If the employee's former position has been abolished, and there is no other vacant position in the agency in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided for a newly hired worker, the employee shall be treated as if he or she had been restored to the previous position, and the provisions for making layoffs under this chapter shall apply.

(c) An employee who transfers between agencies as a result of layoff may be required by the appointing authority to serve a probationary period, except that an employee who is serving a promotional probationary period must complete that probationary period in the new position. In addition, an employee who is serving a permissive probationary period may be required to complete that probationary period in the new position. If on probation, the employee may be terminated without the right of appeal. However, if terminated while on probation as a result of transfer between agencies as a result of layoff, the employee shall have restoration rights under s. ER-MRS 22.10 (2). If the employee is not required to serve a probationary period, the employee immediately attains permanent status in class in the class to which the employee has transferred.

(2) **DEMOTION AS A RESULT OF LAYOFF.** If no transfer under sub. (1) is available and if there is a vacancy available for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in such positions, in a higher level position than could be obtained through displacement under sub. (3), 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) *Within an agency.* An employee may demote to a position in a lower classification in the same agency in lieu of being terminated as a result of layoff.

1. An employee demoted under this sub. immediately attains permanent status in class in the class to which the employee is demoted, except that an employee demoted to a position in a differ-

ent employing unit of the same agency may be required to serve a probationary period in accordance with s. 230.28 (1) (am) or (4), Stats., as applicable. During this probationary period, the employee may be removed from the position without the right of appeal and restored to his or her former position or transferred to a different position. If the employee's former position has been abolished, the employee shall be given consideration for any vacancy within the agency in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided for newly hired workers. If no such vacancy exists, the employee shall be treated as if he or she has been restored to the previous position, and the provisions for making layoffs under this chapter shall apply.

2. 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).

3. 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, see s. ER 29.03 (8) (d) 1.

(b) *Between agencies.* An employee may demote to a position in a lower classification in a different agency in lieu of being terminated as a result of layoff.

1. The employee may be required to serve a probationary period at the discretion of the appointing authority, and if during this period the employee's services are found to be unsatisfactory, the employee may be terminated without the right of appeal. However, if terminated while on probation, the employee shall have restoration rights under s. ER-MRS 22.10 (2). If the employee is not required to serve a probationary period, the employee immediately attains permanent status in class in the class to which the employee is demoted.

2. An employee who demotes as a result of layoff between agencies shall have his or her pay determined under s. ER 29.03 (8) (d) 2.

(3) **DISPLACEMENT.** (a) If there is no position obtainable under subs. (1) and (2) at the same or higher level than any position obtainable under this subsection, an employee may exercise a right of displacement within the employing unit.

1. The employee may exercise the right of displacement in the order which will achieve the highest level position to which the employee has rights. If qualified to perform the work after customary orientation provided for newly hired workers in such positions, an employee may exercise the right of displacement only to one of the following:

a. A position in the same or counterpart pay range in which the employee had previously attained permanent status in class.

b. A lower level within the employee's present classification series.

c. A position in a lower class in which the employee had previously attained permanent status in class.

d. A lower level within an approved progression series in which the employee had previously attained permanent status in class at a higher level.

2. If the employee has previously attained permanent status in class in a position whose classification had been affected by an action of the administrator, the employee shall immediately attain rights to the classification which replaced the original classification of the position previously held by the employee.

3. Exercise of such displacement rights does not guarantee the employee a position in the class or subtitle selected. It only requires the employee to be included along with other employees in the class or subtitle when the layoff process as provided in s. ER-MRS 22.06 is applied to determine which employee is laid off as a result of displacement.

4. An employee who elects to exercise displacement rights has 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.

5. If there is more than one position in the same or counterpart pay range to which the employee is eligible to exercise the right of displacement, the appointing authority may designate the position to which the employee shall first exercise the right of displacement.

(b) An employee who exercises displacement rights within the employing unit as a result of layoff immediately attains permanent status in class in the class into which the employee has been placed.

(c) An employee who exercises displacement rights shall have his or her pay determined under s. ER 29.03 (8) (c).

**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.

#### **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 5 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 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.

(e) The pay range of the position offered is no more than 3 pay ranges or counterpart pay ranges 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.

#### **ER-MRS 22.10 Restoration rights and conditions.**

An employee or former employee who transfers or demotes to another agency as a result of layoff under s. ER-MRS 22.08 (1) or (2) and is terminated while on probation, exercises displacement rights as a result of layoff under s. ER-MRS 22.08 (3), is demoted as a result of layoff under s. ER-MRS 22.08 (2), or is terminated as a result of layoff, 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 employee was terminated as a result of layoff, exercised displacement rights, demoted as a result of layoff, or transferred or demoted between agencies as a result of layoff and was terminated while on probation, the employee shall be recalled in inverse order of layoff providing the employee is qualified to perform the work after being given the customary orientation provided newly hired workers in such position, unless the employee previously declined a similar offer.

(2) **RETURN TO THE AGENCY.** When a vacancy occurs in the agency in the approved layoff group from which the employee was

terminated as a result of layoff, exercised displacement rights, demoted as a result of layoff, or transferred or demoted between agencies as a result of layoff and was terminated while on probation, the employee shall be recalled in inverse order of layoff, providing the employee is qualified to perform the work after being given the customary orientation provided newly hired workers in such position, unless the employee previously declined a similar offer. The order for recall of an employee who transferred or demoted between agencies as a result of layoff and was terminated while on probation shall be determined on the basis of the effective date of the layoff. An employee recalled to a different employing unit in the agency may not be required to serve a probationary period.

**Note:** For pay of employees restored following layoff see s. ER 29.03 (7).

**(3) REQUIREMENTS FOR RESTORATION.** An employee or former employee having restoration rights under this section who fails to accept a reasonable offer of reappointment within the agency within 5 work days of the offer or who, upon acceptance, fails to be available for work within 10 work days after acceptance, forfeits any further restoration rights under s. ER-MRS 22.10. If extenuating circumstances prevent an employee or former employee from reporting for work within 10 work days after acceptance or making other arrangements with the employer, the employee does 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. ER 29.03 (7).

**(6) EXPIRATION OF RIGHTS:** An employee who transfers as a result of layoff under s. ER-MRS 22.08 (1) (a) 1. or 2., or who is restored after termination in lieu of layoff while serving a probationary period resulting from a promotion or transfer within the agency under s. ER-MRS 14.03 (1) or 15.04 (2), respectively, or who is restored or reinstated to a position within the agency in the same or counterpart pay range shall have no further restoration 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; 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.

**ER-MRS 22.11 Reinstatement privileges and conditions.** (1) When a vacancy, for which the employee is qualified, occurs in another employing unit of the agency in any class other than the approved layoff group from which the employee was terminated:

- (a) As a result of layoff;
- (b) Exercised displacement rights;
- (c) Demoted as a result of layoff; or

(d) Transferred or demoted between agencies as a result of layoff; and was terminated while on probation, the employee may be reinstated at the discretion of the appointing authority within a 3-year period from the date of any of the actions taken in this subsection as a result of being subject to layoff.

**Note:** For pay of employees upon reinstatement following layoff, see s. ER 29.03 (6). For pay of employees upon reinstatement where a probationary period is required, see s. ER 29.03 (2) (b).

(2) When a vacancy, for which the employee is qualified, occurs anywhere in state service other than the agency from which the employee was terminated as a result of layoff, exercised displacement rights, or demoted as a result of layoff, the employee may be reinstated at the discretion of the appointing authority within a 3-year period from the date of action resulting from layoff.

**(2m)** 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. ER-MRS 16.04 (1) (a).

**(3)** For pay provisions upon reinstatement where a probationary period is required, see s. ER 29.03 (2) (b).

**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.

**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 administrator 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 administrator, 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 administrator for approval prior to implementation. Consecutive temporary layoffs in the same employing unit may not be approved by the administrator 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.