

Chapter Pers 22

LAYOFFS

Pers 22.01 Purpose	Pers 22.057 Refusal to accept reemployment
Pers 22.02 Definitions	Pers 22.06 Reinstatement/restoration of promoted or transferred employees
Pers 22.03 Qualifying conditions	Pers 22.065 Reinstatement/restoration of laid off employees
Pers 22.035 Procedure for making layoffs	Pers 22.07 Layoff of seasonal employees
Pers 22.04 Alternatives in lieu of separation	Pers 22.08 Emergency layoff of employees
Pers 22.05 Notice prior to layoff; appeal notice; limitations	Pers 22.09 Layoff plan subject to approval
Pers 22.055 Recall from layoffs; rights and conditions	
Pers 22.056 Pay provisions	

Pers 22.01 Purpose. This layoff procedure is adopted pursuant to section 16.28 (2), Wis. Stats., and is intended to be fair to and understandable by all employees; and to retain for the state service its most effective and efficient personnel; and to insure that all layoff actions are appropriately and systematically administered.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.02 Definitions. (1) **EMPLOYING UNIT.** For purposes of this chapter, employing unit is the same as defined and established under Wis. Adm. Code section Pers 1.02 (7). ✓

(2) **LAYOFF UNIT.** For purposes of this chapter, the term layoff unit shall be synonymous with employing unit as defined and established under Wis. Adm. Code section Pers 1.02 (7). ✓

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.03 Qualifying conditions. (1) **LAYOFFS BY CLASS.** Whenever it becomes necessary for an appointing authority to lay off an employe as a result of a shortage or stoppage of work or funds, functional reorganizations, or the abolishing of a position, he/she shall do so by classes, or recognized options within the class as approved by the director, within an employing unit.

(2) **CERTAIN EMPLOYEES RELEASED FIRST.** An employe with permanent status in class in a permanent position shall not be laid off from any position while any limited term employe (including emergency and provisional) or original appointment probationary employe is continued in a position of the same class or approved option within the class in the employing unit in which the layoff occurs.

(3) **PROMOTED EMPLOYEES SUBJECT TO LAYOFF.** See Wis. Adm. Code section Pers 16.03 (6) regarding employes subject to layoff while serving a promotional probationary period within an agency in which the layoff occurs.

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.

Pers 22.035 Procedure for making layoffs. Employees within the class or approved option within the class in which layoff is to occur shall be laid off by seniority, with the seniority credit of all employees in the class computed on the basis of continuous state service as set

Register, September, 1975, No. 237

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forth in Wis. Adm. Code section Pers 19.01. A seniority ranking of all such employes shall be made accordingly, with any resulting tie cases to be ranked (relative to each other) according to their total continuous state service in that class or approved class option. If a tie still exists between 2 or more employes after completing the above, seniority 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 (least senior) employe laid off first, except that up to 2 employes or 20% (whichever is greater) of the number of employes within the class or approved class option identified for layoff may be exempt from the procedure at the discretion of the appointing authority. Exemptions may be used to retain employes having special or superior skills; for affirmative action purposes; or for such other purposes as may be determined by the appointing authority. Exercise of such exemption shall be declared by the appointing authority as part of the layoff plan submitted under Wis. Adm. Code section Pers 22.09. Any employe laid off shall be placed on the mandatory restoration register for the class or approved option within the class established for the employing unit.

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History: Cr. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.04 Alternatives in lieu of separation. In the event that the services of an employe with permanent status in class are about to be terminated by layoff in a given class as a result of a reduction in force, these alternatives shall be available, in the order listed below, in lieu of separation, provided that the order of layoff as set forth in the law and these rules permit:

(1) **TRANSFER.** The employe shall have the right to move to a vacancy in the same class and approved option within the agency. The employe may also be considered for other vacancies within the agency in a class, for which he or she meets the necessary education, experience, capacity, knowledge and skill, and that has the same pay rate or pay range maximum.

(2) **BUMPING.** Where no vacancy exists, the employe identified for layoff shall be entitled to exercise bumping rights within the employing unit. This right entitles the employe to induce the layoff process in a lower class or approved option in the same series or in a class or approved option in a series having the same or lower pay rate or pay range maximum within the employing unit in which he/she had previously obtained permanent status in class. However, exercising such bumping rights does not guarantee the employe a position in the class or option selected; it only requires the employe to be included along with the other employes in the class or option when the layoff process as provided in Pers 22.035, is applied to determine which employe is laid off as a result of the bumping. An employe electing to bump 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.

(3) **VOLUNTARY DEMOTION.** See Wis. Adm. Code section Pers 17.04(4).

Register, September, 1975, No. 237

(4) **INVOLUNTARY DEMOTION.** See Wis. Adm. Code section Pers 17.04 (2). ✓

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, September, 1975, No. 237, eff. 10-1-75. *- emerg 4-25-75*

Pers 22.05 Notice prior to layoff; appeal notice; limitations. Any employe affected by such layoff or reduction in pay or position 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 board upon filing a written request with the board within 15 calendar days of the effective date of the decision or within 15 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 board, unless such order is stayed by a court of competent jurisdiction.

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

Pers 22.055 Recall from layoffs; rights and conditions. (1) **RETURN TO SAME EMPLOYING UNIT.** When a vacancy occurs in an employing unit from which an employe was laid off or demoted in lieu of layoff, employes shall be recalled in the inverse order of layoff unless the employe has exercised his or her right to transfer. A laid off employe failing to respond within 10 work days to the offer of reemployment or who upon acceptance fails to be available for work within 5 work days after acceptance, shall forfeit any further recall rights. If extenuating circumstances prevent an employe from reporting for work within 5 work days after acceptance or making other arrangements with the employer, the employe shall not forfeit the right to further recall when other vacancies occur providing the nature of the extenuating circumstances was acceptable to the appointing authority.

(2) **RETURN TO DIFFERENT EMPLOYING UNIT OR AGENCY.** When a vacancy occurs anywhere in state service other than the employing unit from which the employe was laid off or demoted in lieu of layoff, see Wis. Adm. Code section Pers 16.03. ✓ *- emerg 4-25-75*

History: Cr. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.056 Pay provisions. Upon reinstatement/restoration of laid off employes, their pay shall be set in accordance with the provisions of Wis. Adm. Code sections Pers 16.06 ✓ or 16.07 ✓, whichever is applicable.

History: Cr. Register, September, 1975, No. 237, eff. 10-1-75. *- emerg 4-25-75*

Pers 22.057 Refusal to accept reemployment. When a laid off employe refuses a reasonable offer of reemployment in the employing unit from which he or she was laid off, providing the conditions and time limits specified in Wis. Adm. Code section Pers 22.055 ✓ are met, he or she shall forfeit any further mandatory restoration rights.

History: Cr. Register, September, 1975, No. 237, eff. 10-1-75. *- emerg 4-25-75*

Pers 22.06 Reinstatement/restoration of promoted or transferred employes. (1) **EMPLOYEES SERVING A PROBATIONARY PERIOD AS A**

Register, September, 1975, No. 237

RESULT OF A PROMOTION WITHIN AN AGENCY. See Wis. Adm. Code section Pers 16.03 (6). ✓

(2) EMPLOYES SERVING A PROBATIONARY PERIOD AS A RESULT OF A TRANSFER WITHIN AN AGENCY. See Wis. Adm. Code section Pers 15.04 (2) (b). ✓

(3) EMPLOYES SERVING A PROBATIONARY PERIOD AS A RESULT OF A PROMOTION OR TRANSFER BETWEEN AGENCIES. If an employe, promoted or transferred from one agency to another, is laid off due to lack of work or funds while serving a probationary period in the new position, he or she may be reinstated to the position he or she vacated, or one of like nature, in any agency where such a position is available.

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History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.065 Reinstatement/restoration of laid off employes. Any restoration or reinstatement of laid off employes shall be made in accordance with Wis. Adm. Code section Pers 16.03. ✓

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History: Cr. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 22.07 Layoff of seasonal employes. For provisions of layoff of seasonal employes see Wis. Adm. Code chapter Pers 9.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 22.08 Emergency layoff of employes. The director may in emergency conditions approve exceptions to the layoff procedure 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 director.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 22.09 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 and submit it to the director for his review and approval prior to implementation.

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History: Cr. Register, September, 1975, No. 237, eff. 10-1-75.