

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Layoffs

Proposed Readoption with Amendments: N.J.A.C. 4A:8

Authorized By: Civil Service Commission, Robert M. Czech, Chairperson, Civil Service Commission.

Authority: N.J.S.A. 11A:2-6.d, 11A:2-11.h, 11A:2-28, 11A:6-28, and 11A:8-1 through 11A:8-4.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-004.

A **public hearing** concerning the proposed readoption with amendments will be held on:

February 3, 2016, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by March 4, 2016, to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Or electronically at: <http://info.csc.state.nj.us/cscmailer>

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 4A:8 is scheduled to expire on December 23, 2015. Pursuant to N.J.S.A. 52:14B-5.1.c(2), that expiration date is extended 180 days to June 20, 2016. The Civil Service Commission has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:8 was last readopted in 2008, various amendments have been adopted pursuant to Commission review of the rules and a petition for rulemaking.

Initially, it is noted that a number of sections in N.J.A.C. 4A:8 still refer to the Department of Personnel, Commissioner of Personnel, and Merit System Board, although the terminology changed pursuant to P.L. 2008, c. 29. All sections will be described in below with language as currently expressed in these sections. Proposed amendments to rules to refer to the Civil Service Commission and Chairperson of the

Civil Service Commission will be described at the end of this Summary.

Subchapter 1 concerns layoff procedures to be followed by State agencies and by those political subdivisions subject to Title 11A of the New Jersey Statutes. N.J.A.C. 4A:8-1.1 explains the division of authority concerning layoff actions. The rule provides that the decision to institute a layoff action rests with the individual appointing authority, while the responsibility for determining the rights of all affected employees remains with the Civil Service Commission. In 2014, subsection (a) was amended to include reference to the job banding program. See 45 N.J.R. 1535(a); 46 N.J.R. 1331(c), effective June 2, 2014.

It is noted that N.J.A.C. 4A:8-1.1A, Temporary Layoffs, was repealed effective December 21, 2009. See 41 N.J.R. 3139(a); 4701(a).

N.J.A.C. 4A:8-1.2 describes alternative measures available to appointing authorities to lessen the possibility of layoffs.

In addition to alternative measures, all of which require employee consent, N.J.A.C. 4A:8-1.3 provides for pre-layoff actions to lessen the possibility, extent, or impact of layoffs. See N.J.A.C. 4A:8-1.3(a). It is noted that subsection (b) requires the appointing authority to lessen the impact of any layoff action on permanent employees.

The subsection explains that employees without permanent status, and then those with the least seniority, shall be placed in positions being vacated, reclassified, or abolished. Subsection (c) requires consultations with negotiations representatives. Subsection (d) permits the Civil Service Commission to provide assistance to any appointing authority requesting help in implementing pre-layoff actions.

N.J.A.C. 4A:8-1.4 describes the role of the Civil Service Commission in reviewing

appointing authority actions prior to the issuance of layoff notices to employees. This section lists the information that must be provided to the Commission at least 30 days before the issuance of layoff notices and explains the remedial action the Commission may take upon receipt, or in the absence of timely receipt, of this information. In particular, under paragraph (a)6, appointing authorities are required to provide a detailed explanation of all alternative and pre-layoff actions that have been taken or have been considered and determined inapplicable. Additionally, paragraph (a)7 requires that appointing authorities provide a summary of consultations with affected negotiations representatives. Paragraph (a)8 requires that appointing authorities provide a list of affected negotiations representatives, their addresses, and the units they represent. Subsection (c) requires appointing authorities to keep records of those employees receiving layoff notices. Subsection (d) sets forth the timetable within which a layoff action may occur. Subsection (e) requires that the Civil Service Commission provide a copy of the layoff plan to affected negotiations representatives as it affects their represented employees once the layoff plan is approved.

N.J.A.C. 4A:8-1.5, regarding layoff units and job locations, defines the unit of government in which layoffs and the resulting displacement of employees, are to be confined. In State service, the layoff unit is an entire department or autonomous agency; in a county or municipality, the layoff unit is a department, unless a different layoff unit consisting of one or more departments is approved by the Chairperson of the Civil Service Commission. In 2010, new subsection (b) was added to provide that in the Judiciary, the layoff unit shall be a vicinage or the Central Office and include all programs administered by that vicinage or Central Office. See 42 N.J.R. 1278(a);

2406(a), effective October 18, 2010. Additionally, new paragraph (d)3 was added to provide that, in the Judiciary, each vicinage, and the Central Office, shall be considered a separate job location.

The requirements for notice of a layoff are set forth in N.J.A.C. 4A:8-1.6. Subsection (a) requires that permanent employees and employees serving in a working test period are entitled to a 45-day layoff notice. It is proposed that subsection (a) be amended to clarify and ensure that a general written notice, or personal service when an employee is unavailable, is to be provided to employees whose positions may not have been targeted for layoff, but may be impacted by other employees who exercise their lateral and demotional rights in a layoff at least 45 days prior to the layoff. This amendment would clarify the requirements of N.J.S.A. 11A:8-1.a that permanent employees receive written notice of an impending layoff and therefore could prevent the appointing authority's liability for backpay.

Subsection (b) sets forth the information that the notice must contain. Subsection (c) requires appointing authorities to keep records of those employees receiving layoff notices. Subsection (d) sets forth the timetable within which a layoff action may occur. Subsection (e) indicates that layoff rights and related seniority determinations shall be based on the layoff's effective date. Subsection (f) requires issuance of a final written notice to employees of their status once the Civil Service Commission has determined all layoff rights. Paragraph (f)1 requires that an employee who is notified of his or her separation due to layoff must be informed of vacancies in other State departments or agencies to which the employee would have the right to accept appointment, so long as he or she is qualified and has received at

least a “Commendable” in the most recent final PAR rating. It is proposed that paragraph (f)1 be amended to be consistent with the language at N.J.A.C. 4A:6-5.1(b) 2 and (d). Thus, such employees would have to be rated at least a three (Successful) in a five-level rating scale or a two (Successful) in a three-level rating scale in the most recent final PAR rating or equivalent to have the right to accept an appointment in lieu of separation.

Subchapter 2 defines the rights afforded employees in a layoff action and explains the exercise of those rights in State and local service. N.J.A.C. 4A:8-2.1 describes the three types of employee rights in a layoff action: lateral title rights, demotional title rights, and special reemployment rights. Subsection (a) defines lateral title rights. In 2009, reference to State service were deleted in paragraphs (a)1 and (b)1. See 40 N.J.R. 4381(a); 41 N.J.R. 399(b), effective January 20, 2009.

N.J.A.C. 4A:8-2.2 concerns the exercise of lateral and demotional rights in a layoff. Subsection (a) requires that employees be ranked in order of seniority in a layoff action. When any State employee, regardless of veterans status, exercises lateral or demotional rights within a job location, the job location shall be in his or her department or autonomous agency, in accordance with N.J.A.C. 4A:8-2.2(b). A similar provision is set forth in subsection (c) for local employees.

Subsection (d) provides the order in which lateral and demotional rights are awarded. Of note is N.J.A.C. 4A:8-2.2(d)3, which provides that, when there are multiple provisionals with underlying permanent status at a job location, the specific position against which a lateral or demotional right is exercised is based on the level of the permanent title held and seniority. Also of interest is paragraph (d)5, which

concerns the exercise of lateral and demotional rights against the position held by a permanent employee whose most recent PAR rating is “Unsatisfactory,” and applies to both State and local service. Paragraph (d)6, regarding the exercise of lateral or demotional rights against the position held by the permanent employee with the least seniority, applies to both State and local service.

Subsection (e) notes that employees serving in a working test period shall be provided rights to their probationary titles in accordance with the method afforded permanent employees in subsection (d). Subsection (f) sets forth the additional demotional rights that may be exercised based on an employee’s “previously held” title.

Subsection (g) addresses an employee’s placement in a trainee title as a result of exercising a lateral or demotional right. In 2010, subsection (g) was amended to include reference to the job banding program. See 45 N.J.R. 500(a); 46 N.J.R. 1331(c), effective June 2, 2014. Subsection (h), regarding the order in which employees may exercise demotional title rights, provides that an employee may exercise demotional rights regardless of the amount of seniority he or she has vis-à-vis the employee against whom he or she is exercising those rights.

N.J.A.C. 4A:8-2.3 pertains to the exercise of special reemployment rights. Subsection (a) states that a permanent employee shall be granted special reemployment rights based on the permanent title from which the employee has been laid off, demoted, or displaced by job location. Paragraphs (a)1 through 3 set forth the ways in which special reemployment rights and job locations interact. Subsection (b) sets forth the priority of special reemployment lists, with paragraph (b)1 providing special reemployment list priority over specific eligible lists. N.J.A.C. 4A:8-2.3(b)2

provides that special reemployment lists shall take priority over noncompetitive appointments.

Subsection (c) provides that all employees shall be placed on a special reemployment list for an unlimited duration. Thus, all permanent employees who are laid off, whether they are State or local, veteran or non-veteran, are placed on a special reemployment list for an unlimited duration. N.J.A.C. 4A:8-2.3(c)1 delineates the ranking of eligibles on special reemployment lists. It requires that individuals be ranked on the list based on the employee's permanent title and seniority at the time of layoff, in accordance with the method for calculating seniority in effect at the time of the list's certification.

Paragraph (c)2 specifies that an employee who accepts appointment to a position in another department or agency in accordance with N.J.A.C. 4A:8-1.6(f)1 shall not be placed on a special reemployment list. Paragraph (c)3 states that, following appointment, an employee's name shall be removed from the list for any title with the same or lower class code, with the proviso that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

Subsection (d) provides that employees who resign or retire in lieu of lateral or demotional displacement or layoff will not be placed or remain on a special reemployment list. Subsection (e) states that, in State service, employees who refuse reemployment to a job location will be removed from future certifications to that location for the title and all previously held lateral or lower titles. Subsection (f) was corrected in 2012, to provide that the name of an employee shall be removed from all applicable special reemployment lists where the employee receives an

intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within one year of the effective date of a layoff resulting in the employee's separation from service. See 44 N.J.R. 2057(a), effective August 6, 2012.

N.J.A.C. 4A:8-2.3(g) provides that the name of an employee laid off from the title of Police Assistant and placed on a special reemployment list shall be removed from the list once the employee is over the age of 35. N.J.A.C. 4A:4-2.3(b)2i, which provides that a person is not eligible for appointment to the title of Police Officer if he or she is over the age of 35, is cross-referenced. (It is noted that, once a Police Assistant is over the age of 35, he or she is not eligible for promotion to the title of Police Officer.)

N.J.A.C. 4A:8-2.4(a) provides the definition of seniority for all employees except those serving in police and fire titles. Subsection (b) concerns the definition of seniority for employees serving in police and fire titles. Subsections (a) and (b) were amended for grammatical changes in 2014. See 45 N.J.R. 525(a); 46 N.J.R. 497(a), effective March 17, 2014. N.J.A.C. 4A:8-2.4(c) describes "preferred status," which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title. Paragraphs (c)1 through 3 set forth the criteria for determining preferred status. The priority of employees exercising preferred status in paragraph (c)3 is based solely on two things: the class code of the permanent title from which the employee was laid off or demoted, and the seniority held in the higher title. N.J.A.C. 4A:8-2.4(d) through (g) concern deductions from and accrual of seniority for layoff purposes in different situations. Paragraphs (d)3 and 4 and subsections (e) and (g) were amended for grammar and technical purposes. See 45 N.J.R. 525(a); 46 N.J.R. 497(a), effective March 17, 2014. Subsection (h) concerns breaking a tie in seniority

between two or more employees. In 2014, paragraph (h)2 was amended to add that the tied employees must also have been subject to the same PAR rating scale and paragraphs (h)9 and 10 were amended to make these tie-breakers dependent on whether all tied employees were rated by the same supervisor and subject to the same PAR rating scale. See 45 N.J.R. 525(a); 46 N.J.R. 497(a), effective March 17, 2014.

N.J.A.C. 4A:8-2.5 concerns the interaction between reassignments and layoffs.

N.J.A.C. 4A:8-2.6 describes the procedures to be followed when an employee wishes to appeal either the “good faith” of a layoff action or the determination of layoff rights. It is proposed that paragraph (a)2 be amended to delete reference to a right to further appeal to the Commissioner of Personnel, as that position no longer exists and layoff appeals are addressed by the Civil Service Commission. It is further proposed that subsection (b) be amended to provide that appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information.

Technical amendments are proposed pursuant to P.L. 2008, c. 29.

Throughout the chapter, references to the “Department of Personnel” would be changed to the “Civil Service Commission,” “Chairperson or designee,” “a representative of the Civil Service Commission,” or “Civil Service Commission staff,” as appropriate. Similarly, references to the “Commissioner of Personnel,” “Commissioner,” or “Chair/CEO” would be changed to the “Chairperson” or “Chairperson or designee,” as appropriate. Finally, references to the “Chairperson of the Civil Service Commission or designee” would be changed to the “Chairperson or designee,” references to the “Merit System Board” would be changed to the “Civil

Service Commission,” and references to the “Board” would be changed to the “Commission.”

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed readoption of N.J.A.C. 4A:8 with amendments would continue the primacy of seniority in the layoff process. Except for limited circumstances, such as the breaking of ties in seniority, the use of performance factors in the layoff process is not included in the rules. The Civil Service Commission anticipates that employees would benefit from the objective formula seniority provides for determining the order of layoffs. This formula rewards longevity. The process is virtually identical between State and local service.

The Civil Service Commission anticipates positive social impact from the amendment to N.J.A.C. 4A:8-1.6(f)1, if rated a three (Successful) in a five-level rating scale or a two (Successful) in a three-level rating scale in the most recent final PAR rating (or equivalent) since this change consistent N.J.A.C. 4A:6-5.1(b)2 and 5.1(d).

Moreover, N.J.A.C. 4A:8-1.4 would continue to strengthen the ability of the Civil Service Commission to perform an effective review of an agency’s layoff plan. Providing a copy of the approved layoff plan to union representatives, as set forth in subsection (e), would continue to improve communications to employees about an impending reduction in force. N.J.A.C. 4A:8-1.5(c), which provides for county-wide job

locations in State service, should continue to reduce the “bumping” that occurs during a layoff. However, the Civil Service Commission is aware that displacement, even within a county, may be a hardship for some employees, particularly those who rely on public transportation. Therefore, N.J.A.C. 4A:8-2.2(b) and 2.3(a)1 would continue to provide that employees will have the option to exercise lateral, demotional, and special reemployment rights first within the municipality in which the employee’s facility or office is located.

N.J.A.C. 4A:8-1.6, Layoff notice, would continue to clearly indicate that personal service is the preferred method of providing an employee with notice of a layoff. If an employee is on a leave of absence or otherwise unavailable for personal service, and certified mail is used instead, the employee would also have a full 45 days’ notice, as he or she does now, since the 45 days would be counted from the date of notice by the postal service. The proposed amendment to subsection (a), which would clarify that employees in positions not targeted in a layoff but may nevertheless be affected by the layoff must be given 45 days notice, is expected to have a positive social impact by ensuring that the requirements of N.J.S.A. 11A:8-1.a are satisfied. Also, N.J.A.C. 4A:8-1.6(f)1 would continue to give employees separated in a layoff the opportunity to accept jobs in other departments or agencies for which they are qualified, which would mitigate the hardship caused by being laid off.

Additionally, extending demotional rights to a “previously held title” provides a valuable option for some employees, in N.J.A.C. 4A:8-2.2(f), but it also has a negative impact on other employees who would not ordinarily be affected by a layoff action. N.J.A.C. 4A:8-2.2(f)1 would continue to ensure that such extended rights would not be

granted when the employee has superior options through the exercise of lateral or demotional rights.

N.J.A.C. 4A:8-2.3, which provides for special reemployment rights of an unlimited duration would continue to afford expansive special reemployment opportunities. Provisions requiring removal of names from a special reemployment list under clearly delineated circumstances remain unchanged, such as the removal of the name of an employee who is laid off from the title of Police Assistant due to being over age 35. This type of provision has a positive social impact because, even if an over-age individual were appointed from the special reemployment list, and satisfactorily served the remainder of the year in the title of Police Assistant, by statute, the over-age employee would not thereafter be eligible for appointment to the title of Police Officer. Therefore, reemployment as a Police Assistant would neither serve the interests of the employee nor the municipality.

N.J.A.C. 4A:8-2.4(a) would continue to provide for jurisdiction seniority for non-police and fire titles in State and local service, which means that employees with many years of service in a jurisdiction would still get credit for that service in a layoff action, even if they have relatively little time in their latest job title. Second, the process of calculating seniority would continue to be less complex than it used to be when title seniority was used, thus making layoff actions easier to administer for appointing authorities and the Civil Service Commission.

N.J.A.C. 4A:8-2.4(c)3 has a positive social impact by informing all civil service appointing authorities and employees that class codes are used in both State and local

service and ensure the use of one efficient system of comparing job title levels throughout civil service. Moreover, when career service employees have the opportunity for advancement to the Senior Executive Service or a high-level unclassified appointment, they should not be discouraged by the loss of seniority. Accordingly, N.J.A.C. 4A:8-2.4(d) would continue to provide that such types of service would not be deducted from seniority.

As to N.J.A.C. 4A:8-2.5, Reassignments, the provisions in this rule would continue to ensure that an appointing authority does not negate all of the displacements resulting from a layoff, while providing significant flexibility to appointing authorities and employees to establish acceptable work patterns following the layoff. Posting requirements would still ensure that employees are informed of opportunities for reassignment.

N.J.A.C. 4A:8-2.6 would continue to provide all career service employees in State and local government with a mechanism to challenge their layoffs and the calculation of their layoff rights. No negative social impact is expected from the amendment to paragraph (a)2, which would delete reference to a right to further appeal to the Commissioner of Personnel, as that position no longer exists and layoff appeals are addressed by the Civil Service Commission. However, a positive social impact is expected from the amendment to N.J.A.C. 4A:8-2.6(b), which provides that appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information. With the opportunity to rectify any deficiencies that may be identified, the appellant's appeal is processed at a predictable pace, which would benefit the appellant, the appointing authority, the Commission,

and the Office of Administrative Law (OAL).

The rules in N.J.A.C. 4A:8 would continue to provide a regulatory framework for reductions in force. In the absence of readoption of this chapter, civil service employers and employees would have no guidance on layoffs, other than the provisions of Title 11A of the New Jersey Statutes.

Finally, it is noted that the proposed amendments to several rules in Chapter 8 that would change terminology to reflect enactment of P.L. 2008, c. 29, are anticipated to have neither a positive nor a negative social impact, as the amendments are technical and do not substantially change the rules.

Economic Impact

The Civil Service Commission anticipates that the proposed readoption of N.J.A.C. 4A:8 with amendments would have a positive economic impact. The readoption of these rules would continue to keep subjectivity from the process, reduce the number of disputes and appeals, and economically benefit all employees who would be treated in accordance with their years of service.

The Civil Service Commission anticipates no negative economic impact from the amendment to N.J.A.C. 4A:8-1.6(f)1, if rated a three (Successful) in a five-level rating scale or a two (Successful) in a three-level rating scale in the most recent final PAR rating (or equivalent) since this change consistent N.J.A.C. 4A:6-5.1(b)2 and N.J.A.C. 4A:6-5.1(d).

The Civil Service Commission anticipates a positive economic impact to appointing authorities from its proposed amendment to N.J.A.C. 4A:8-1.6(a). Where non-targeted positions did not receive notice, the Civil Service Commission has

awarded the appellant's backpay. This amendment will clarify the requirement that appointing authorities must give notice to non-targeted positions and will likely aid them in avoiding liability for backpay. The amendment is also expected to have a positive economic impact on employees in positions not targeted by a layoff but who are impacted by those exercising their lateral or demotional rights by providing them 45 days to search for employment.

No negative economic impact is expected from the amendment to N.J.A.C. 4A:8-2.6(a)2, which would delete reference to a right to further appeal to the Commissioner of Personnel, as that position no longer exists and layoff appeals are addressed by the Civil Service Commission. The Civil Service Commission further expects a positive economic impact from the amendment to N.J.A.C. 4A:8-2.6(b), which provides that appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information. The rule promotes the processing of an appeal at a predictable and efficient pace, thus necessitating the utilization of fewer resources on the part of the appointing authority, the Commission, and the OAL.

If this chapter were not readopted, there would be a severe negative impact on public employers and employees, as well as the taxpaying public. Since the provisions of Title 11A of the New Jersey Statutes provide mainly broad, general guidance on layoffs, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Finally, it is noted that the proposed amendments to several rules in Chapter 8 that would change terminology to reflect enactment of P.L. 2008, c. 29, are anticipated

to have neither a positive nor a negative economic impact, as the amendments are technical and do not substantially change the rules.

Federal Standards Statement

A Federal standards analysis is not necessary, as there are no Federal standards or requirements applicable to the subject matter of the rules proposed for readoption with amendments. The rules proposed for readoption with amendments concern layoffs of New Jersey civil service employees and are authorized by State law as indicated in the Summary and notice heading above.

Jobs Impact

It is anticipated that a positive jobs impact should result from adoption of the rules proposed for readoption with amendments. State employees who are separated from service in a layoff would have the opportunity to accept positions in other State departments or agencies for which they are qualified. Additionally, those laid-off State employees not accepting any such available positions would be placed on a special reemployment list for an unlimited duration, so that they would always have the opportunity to regain their State employment in the future.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption with amendments would have any agriculture industry impact. The rules involve public sector employment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for

readoption with amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules would regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the rules proposed for readoption with amendments concern public sector employment, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the rules proposed for readoption with amendments concern employment in the public sector, they would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:8.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated with brackets [thus]):

SUBCHAPTER 1. PROCEDURES

4A:8-1.2 Alternatives to layoff

(a) – (b) (No change.)

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the [Department of Personnel] **Chairperson or designee**;

2. – 5. (No change.)

(d) – (e) (No change.)

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the [Department of Personnel] **Chairperson or designee** prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees' right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) – (c) (No change.)

(d) Upon request by an appointing authority, assistance may be provided by [the Department of Personnel] **Civil Service Commission staff** in implementing pre-layoff measures.

4A:8-1.4 Review by [Department of Personnel] **the Civil Service Commission**

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the [Department of Personnel] **Chairperson or designee**, the following information shall be submitted by an appointing authority to the [Department of Personnel] **Chairperson or designee**:

1. – 8. (No change.)

(b) In local jurisdictions having a performance evaluation program approved by the [Department of Personnel] **Civil Service Commission**, the appointing authority shall also submit the names of permanent employees who have received a rating [below Commendable] **of Unsatisfactory** or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in [(a) 5] **(a)5** above shall be filled, except under exceptional circumstances with the approval of the [Commissioner] **Chairperson or designee**, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the [Commissioner] **Chairperson or designee** may take appropriate remedial action, including:

1. – 4. (No change.)

(e) Upon approval of the layoff plan, the [Department of Personnel] **a representative of the Civil Service Commission** shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

4A:8-1.5 Layoff units and job locations

(a) – (b) (No change.)

(c) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Civil Service Commission, a different layoff unit consisting of one or more departments may be approved by the [Chair/CEO of the Civil Service Commission] **Chairperson** under the following procedures:

1. A request may be submitted by an appointing authority to the [Chair/CEO] **Chairperson** or the matter may be initiated by the [Chair/CEO] **Chairperson**.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the [Chair/CEO] **Chairperson**.

3. After receipt of the request, the [Chair/CEO] **Chairperson** shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the [Chair/CEO] **Chairperson** shall issue a determination approving, modifying, or rejecting the proposed layoff unit, after considering:

i. – v. (No change.)

(d) In State service, the [Chair/CEO] **Chairperson or designee** shall determine job locations within each department or autonomous agency.

1. (No change.)

2. The [Chair/CEO] **Chairperson or designee** shall assign a job location to every facility and office within a department or autonomous agency.

3. – 4. (No change.)

(e) (No change.)

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. **For positions that are not targeted by a layoff but may be impacted by employees exercising their lateral or demotional rights, a general written notice must be served by the appointing authority personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail, at least 45 days prior to the action.** A copy of the notice [serviced] **served** on employees shall be provided to [the Department of Personnel] **a representative of the Civil Service Commission** and affected negotiations representatives.

1. In State service, the [Commissioner] **Chairperson or designee** may order a greater period of time for written notice to employees.

(b) – (c) (No change.)

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the [Commissioner] **Chairperson or designee** for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the [Department of Personnel] **Chairperson or designee** of employees who successfully complete their working test periods prior to displacement. The [Department of Personnel] **Chairperson or designee** shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the [Department of Personnel] **Civil Service Commission**, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated [Commendable or above] **a two (Successful) or above in a three-level rating scale or a three (Successful) or above in a five-level rating scale** in the most recent final PAR rating (or equivalent), shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to

such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the [Department of Personnel]

Chairperson or designee based on the following criteria:

1. – 4. (No change.)

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than, but related to the affected title of the employee. Demotional title rights shall be determined by the [Department of Personnel] **Chairperson or designee** based on the following criteria:

1. – 4. (No change.)

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral, and lower related titles.

Special reemployment rights shall be determined by the [Department of Personnel] **Chairperson or designee** in the same manner as lateral and demotional rights.

1. (No change.)

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the [Department of Personnel] **Chairperson or designee**:

1. – 4. (No change.)

(e) – (f) (No change.)

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which [or] he **or** she has been laid off, demoted, or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. (No change.)

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job

location. As permitted by the [Department of Personnel] **Chairperson or designee** for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the [Department of Personnel] **Chairperson or designee** for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) – (g) (No change.)

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the [Commissioner] **Chairperson or designee** for good cause:

1. – 3. (No change.)

(b) – (c) (No change.)

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency, or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the [Merit System Board] **Civil Service Commission** (see N.J.A.C. 4A:2-2.9 [et seq.]); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the [Department of Personnel, with a right to further appeal to the Commissioner] **Civil Service Commission** (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested. **Appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information.**

(c) (No change.)