

New York State
Department of Civil Service

Committed to Innovation, Quality and Excellence

**Guidelines for the Administration of
Reductions in Force in
Local Government**

Opportunities at work.



Andrew M. Cuomo
Governor

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information to individuals with disabilities. If you need an auxiliary aid or service to make this information available to you, please contact the New York State Department of Civil Service Public Information Office at (518) 457-9375.

TABLE OF CONTENTS

| | |
|--|-----------|
| USING THESE GUIDELINES..... | 4 |
| AN INTRODUCTION TO LAYOFFS..... | 5 |
| THE LEGAL CONTEXT OF LAYOFFS..... | 5 |
| LAYOFFS ARE EMERGENCIES..... | 5 |
| THE EMPLOYEES' PERSPECTIVE | 6 |
| THE ROLE PLAYED BY OTHERS OUTSIDE THE ORGANIZATION | 6 |
| PLANNING FOR LAYOFFS | 7 |
| PRELIMINARY DECISIONS..... | 7 |
| SENIORITY ROSTERS AND PERSONNEL INFORMATION | 7 |
| RETENTION STANDING..... | 8 |
| PREPARING SENIORITY ROSTERS | 9 |
| ORGANIZING FOR LAYOFFS..... | 10 |
| DETERMINING POSITIONS TO ABOLISH..... | 10 |
| CHANNELS OF COMMUNICATION | 10 |
| DEALING WITH THE EMPLOYEES..... | 11 |
| LAYOFF INFORMATION PACKAGES..... | 11 |
| LAYOFF MEETINGS..... | 11 |
| LAYOFF METHODS AND PROCEDURES..... | 12 |
| THE LAYOFF PLAN..... | 12 |
| IDENTIFYING WHO WILL BE AFFECTED | 12 |
| Non-Competitive, Labor, and Exempt Class and Unclassified Service..... | 12 |
| Non-Permanent Competitive Class Employees | 13 |
| Competitive Class Employees..... | 13 |
| REDUCTIONS IN FORCE IN A LAYOFF UNIT | 13 |
| Categories of Employees | 13 |
| Step 1 - Suspension of Competitive Class Non-permanent Employees..... | 14 |
| Step 2 - Suspension of Competitive Class Permanent Probationers | 14 |
| Step 3 - Suspension of Competitive Class Permanent Employees..... | 15 |
| Who Are Not on Probation. | 15 |
| VERTICAL DISPLACEMENT | 15 |
| Bumping..... | 15 |
| Procedure for Bumping..... | 16 |
| Retreat..... | 16 |
| Conditions for Retreat..... | 17 |
| Procedures..... | 18 |
| EMPLOYEE CHOICES..... | 18 |
| PRELIMINARY NOTICE OF IMPACT | 18 |
| VERTICAL DISPLACEMENT..... | 18 |

| | |
|---|-----------|
| NOTIFICATIONS | 19 |
| NOTICES TO EMPLOYEES | 19 |
| REASSIGNMENT WITHIN TITLE..... | 20 |
| INFORMATION TO CIVIL SERVICE | 20 |
| REEMPLOYMENT METHODS AND PROCEDURES | 20 |
| PREFERRED LISTS | 20 |
| Ordering of Names on Preferred List Certifications | 21 |
| Conditions of Selection and Reinstatement | 22 |
| Time Frames | 22 |
| Interviews..... | 22 |
| Reporting Results of Canvass | 22 |
| Clearing Certifications | 22 |
| APPOINTMENT PROCESSING | 23 |
| EFFECTS OF PREFERRED LIST DECLINATIONS | 23 |
| Declinations Generally..... | 23 |
| Preferred List Declinations | 23 |
| Temporarily Inactive Status | 24 |
| REINSTATEMENT FROM PREFERRED LIST | 24 |
| ELIGIBILITY | 25 |
| APPENDIX A | 26 |
| GLOSSARY OF CRITICAL CONCEPTS | 26 |
| CONTENT | 26 |
| CONTINGENT PERMANENT EMPLOYEES | 27 |
| CONTINUOUS SERVICE | 27 |
| In Another Civil Division | 27 |
| In Same Civil Division..... | 28 |
| DIRECT LINE TITLES FOR VERTICAL DISPLACEMENT | 29 |
| LAYOFF | 29 |
| LAYOFF UNITS | 30 |
| LEAVES - THE RIGHTS OF EMPLOYEES ON LEAVE | 30 |
| PART-TIME COMPETITIVE CLASS EMPLOYEES | 31 |
| Shared Positions..... | 31 |
| Less than Full-Time Classified Positions..... | 32 |
| Less than Full-Time Budgeted Positions | 32 |
| Shared-Position Situations | 32 |
| Less than Full-Time Classified Position Situations | 33 |
| Less than Full-Time Budgeted Position Situations | 34 |
| Preferred List Rights | 35 |
| REASSIGNMENTS | 35 |
| RETENTION STANDING | 35 |
| RETIREMENT..... | 36 |
| SENIORITY | 36 |
| TRAINEE TITLES | 36 |

TRANSFER OF WAR VETERANS OR EXEMPT VOLUNTEER FIREFIGHTERS (§86) 37
WAR VETERANS, SPOUSES OF DISABLED WAR VETERANS & BLIND EMPLOYEES (§85.7)... 37
APPENDIX B 39
REFERENCES 39
Civil Service Law 39
Municipal Civil Service Rules 39
Manuals..... 39
Other Civil Service Publications..... 39

USING THESE GUIDELINES

These Guidelines provide information to municipal civil service agencies and appointing authorities to use when administering a reduction in force in New York State local government. The Guidelines focus on the procedures, policies and issues that apply to permanent employees in the competitive jurisdictional class affected by layoffs pursuant to §80 of the Civil Service Law.

The Guidelines are divided into several sections:

An Introduction to Layoffs provides a general discussion of the context within which layoffs occur, and the effects a layoff can have on an agency.

Planning For Layoffs and Organizing for Layoffs provides advice and information about the initial stages in a workforce reduction.

Layoff Methods and Procedures provide a narrative, step-by-step discussion of the process of carrying out a reduction in force.

Employee Choices discusses the issues of verification of personnel information, and communications with employees about reassignment and displacement opportunities.

Notifications describes the formal layoff notification process.

Reemployment Methods and Procedures defines the types of preferred lists certified by the local civil service agency, and provides information on how to use them.

Appendix A: A Glossary of Critical Concepts contains detailed discussions of some of the more complex issues, which sometimes arise in layoff situations. Over time, a number of legal opinions/court cases have defined the rights of various employees who may be affected by a layoff. These decisions are summarized under the topics, which are listed on the first page of the appendix.

Appendix B: References list the specific sections of law, local rules, and other sources of information about layoffs.

Many of the terms used have specific legal and/or technical meanings, which must be understood by those reading these guidelines. Additionally some terms are used interchangeably throughout the manual, e.g., "layoffs" and "reductions in force."

AN INTRODUCTION TO LAYOFFS

The procedures for conducting a layoff are extremely complex, and in these guidelines we have attempted to be as detailed and comprehensive as possible. However, it is important to understand the larger context within which any significant reduction in force takes place. This introductory chapter briefly discusses some considerations that should be kept in mind by those responsible for managing a layoff.

THE LEGAL CONTEXT OF LAYOFFS

Section 80 of Civil Service Law is the primary controlling provision regarding layoffs in local government. This section of law and provisions in municipal civil service rules are applicable only to reductions in force that affect competitive class positions and competitive class employees. There are other sections of Civil Service Law that provide special considerations for blind employees, war veterans, and exempt volunteer firefighters, which will be discussed later in these guidelines.

The laws, rules, regulations, and policies concerning layoffs provide a detailed process for the separation of competitive class employees in layoff situations. Retention standing is a principle that dictates not only the precise steps that must be carried out, but directs the sequence and timing of those steps. This requires management to follow specific methods and procedures for layoff administration. Since the appointing authority of any civil division, department, or agency is ultimately responsible for carrying out layoffs, it is important that these requirements be recognized and understood from the outset. It is recommended that those who must administer a layoff be thoroughly familiar with the laws and rules that address layoffs. These are listed in Appendix B of these Guidelines and referenced throughout the text.

Additionally, the municipal civil service agency plays a vital role in layoff situations. Management must initiate contact with the municipal civil service agency early and must maintain contact throughout the layoff process. The civil service agency knows the requirements of the law and rules governing layoffs, has the official employment history record for each employee, is responsible to identify the employee(s) to be laid off and determines the rights to which laid off employees are entitled.

LAYOFFS ARE EMERGENCIES

Layoffs can and do occur for a number of reasons--abolition of positions, agency reorganizations, realignment of functions within and among units of government. Although the majority of layoffs involve only a limited number of employees, times of major fiscal constraint can result in significant numbers being threatened or affected by layoff. Such times are emergencies, which interrupt the ongoing business of government and disrupt the lives of employees.

THE EMPLOYEES' PERSPECTIVE

At the first hint of layoffs, employees begin to worry. Distrust may grow and all too easily lead to a "them" versus "us" reaction by employees. Worry can quickly turn to panic; morale may go down while absenteeism goes up; some valuable employees may leave and the work may all but stop. Management must communicate early and often with employees to prevent this from happening. Even in the early stages of a potential layoff, when nothing definite is known, a statement of concern from management and a commitment to provide information as it becomes available is reassuring.

An employee who has been told that he/she will be laid off often experiences trauma. Initial reactions of disbelief are replaced with fear and anger. However, sooner or later most employees will begin to ask questions about their rights and their opportunities. Management must recognize these reactions in employees and be prepared to deal with them. The importance of keeping communication channels with employees open and of providing constant and consistent information and support cannot be overemphasized.

THE ROLE PLAYED BY OTHERS OUTSIDE THE ORGANIZATION

Layoffs usually involve organizations outside of the governmental unit. Negotiated agreements with unions usually contain one or more articles about layoffs. Not surprisingly, employees typically turn to their union representatives in layoff situations when they believe that management is not providing them with accurate or timely information, or because they hope that the union can prevent a layoff from taking place. Like management, the unions can find themselves caught between competing groups of employees who stand to win or lose depending on which way a particular layoff decision is made. The unions can be a valuable communication channel to employees who are reluctant to believe what management says.

Significant layoffs often bring media attention and may arouse the awareness of a number of special interest groups. If the agency has a public relations staff they should be thoroughly briefed on the layoffs. It is necessary that they understand the underlying concepts of layoffs, since misstatements will only contribute to the rumors and fears. Legislators will sometimes call with questions on behalf of their constituents, or attorneys representing employees may contact the agency that contemplates layoffs. Accuracy and consistency of information is crucial.

PLANNING FOR LAYOFFS

In planning for a layoff it is important that the municipal civil service agency and the management of the governmental jurisdiction work together and communicate frequently on all aspects of the pending abolition of positions.

PRELIMINARY DECISIONS

Layoffs may be mandated by political, fiscal or programmatic decisions which too often do not take into account the complexity of the layoff process or the disruptive impact that even a small layoff can have on programs, organizations and staff. For the municipal civil service administrator perhaps the most difficult and important phase of the layoff process is when the first serious discussions take place. As an administrator responsible for assisting the civil division in carrying out the layoffs, it is essential during these preliminary discussions to be able to provide feedback on the actual effects any decisions will have. As the layoff proceeds the preliminary decisions about which programs, which titles, and how many positions may be affected may have to be modified.

It is important to remember the roles and responsibilities of the civil service administrator and the appointing authority. It is the appointing authority that must designate the positions to be abolished. Once that decision is made, the governmental jurisdiction must provide the civil service agency with a list of the names, titles, work locations, and/or position control number (if available) of the affected employees. Civil service determines the rights of the employees and advises the appointing authority of the names of the employees that will actually be laid off.

SENIORITY ROSTERS AND PERSONNEL INFORMATION

Layoffs may bring to light errors in personnel records or incorrect personnel transactions that have occurred in the past. It is incumbent on the municipal civil service agency to ensure that personnel records accurately reflect the layoff rights of each affected employee.

The first step the civil service administrator must take to ensure that the records are correct is to prepare seniority rosters from the official civil service records for all titles which will or may be affected and transmit those rosters to the appointing authority. On the roster, there may be differences between the governmental jurisdiction's records and official civil service records on some employees. For example, the official civil service records may indicate an employee is a non-veteran while the governmental jurisdiction records show veteran. In these cases the appointing authority must contact the civil service agency to correct the records and provided required documentation, e.g., copies of DD-214, appointment letters, probationary reports, etc.

Finally, the seniority roster ranking of any employees currently on probation who will complete probation prior to the date of layoff must be reviewed and updated to reflect their correct rank as of the layoff date.

RETENTION STANDING

In order to understand the rights of competitive class employees, it is necessary to understand the concept of "retention standing."

Whether or not an employee is retained in or displaced from his/her position by vertical displacement (bumping or retreat) depends upon the employee's *retention standing* as compared to that of other employees in the same title, in a lower direct line title, or in the employee's retreat title, as may be appropriate as the layoff process is implemented.

An employee's *retention standing* comprises two essential components: status and seniority. These are defined in part by law and rule and part by the employee.

1. The first component is the civil service status of the employee, that is, whether the employee is:
 - a. permanent and having completed the required probationary period;
 - b. permanent but serving a probationary period at time of layoff;
 - c. contingent permanent (as may be provided for in local civil service rule);
 - d. provisional; or
 - e. temporary.

The second component is the seniority of the employee, that is, the date of the employee's first permanent appointment in the classified service followed by continuous service as defined in §80 of Civil Service Law. Seniority is adjusted for service as a war veteran, disabled war veteran, or spouse of a disabled war veteran as defined in and provided for by §85 of Civil Service Law and blind employees are granted absolute preference, in their status component.

It is important to note that the second component of the retention standing may be exercised only within each category of the first component. Consequently, the first determination with respect to retention standing must be made using the first component—the civil service status of the employees affected. In paragraph 1. above, the employee status categories are listed in order of priority from the one having the greatest to the one having the least value for purposes of retention. The order of the two highest categories, consisting of permanent employees, is specified by law as well as by rule. The order of the three lower categories, consisting of non-permanent employees, is not specified by law although local rules may do so.

As indicated above, the first component is used to provide the first determination of which employee or employees in a given title must be suspended or displaced as a result of a reduction in force. Which of the five status groups will be affected will depend upon the total number of employees in that title that will be displaced, and the number of employees in each status group in that title. While it may be possible to proceed with the layoff process using only the first component (for example, where the only employee to be

displaced is provisional or temporary), it will generally be necessary to utilize the second component of retention standing as well, that is, seniority.

Within each of the two higher status categories, that is, employees with permanent status who have either completed or are still in their probationary period, seniority must be applied in order to determine relative retention standing. Within each of the three lower status categories, that is, employees with no permanent status in the title, seniority may or may not be applied in accordance with a local civil service rule. It is recommended that within each category, the employee with the greatest seniority have the highest retention standing.

The retention standing defines the employee's relative right to be retained or be displaced; at best it provides the employee with an opportunity which the employee is free to utilize or not. This is true with respect to either component of the retention standing. For example, a permanent employee has the right to displace a probationary employee but may elect not to do so; similarly, a more senior permanent employee has the right to displace a more junior permanent employee but, again, may elect not to do so.

PREPARING SENIORITY ROSTERS

The municipal civil service agency prepares seniority rosters for each title by layoff unit.

- a. Permanent competitive class employees on leave from a position must be considered with employees actually serving in that title. The seniority roster must show the "hold" position with the encumbering employee's name in the appropriate rank on the seniority roster and indicate if a non-permanent employee is serving in the encumbered "hold" position.
- b. Although individuals in trainee and journey level positions are assigned separate titles, all employees serving in these titles are treated as one group in one title for layoff purposes.
- c. The seniority roster lists all incumbents by title in the layoff unit. Incumbents are listed by retention standing—those with least retention standing last, those with the greatest retention standing first, as indicated as follows:
 1. Permanent employees not on probation
 2. Permanent employees on probation
 3. Non-permanent employees (Temporary, Provisional, Contingent Permanent*)
- e. Non-permanent employees in a title have no retention standing and are equally at risk in layoff situations. However, humane and logical considerations lead to a recommended layoff order of non-permanent employees as follows:
 1. Temporary
 2. Provisional
 3. Contingent Permanent*

This does not preclude using the date of appointment to the classified service as an equitable mechanism for determining the "seniority" by which non-permanent employees may be terminated when some others may be retained.

- f. Probationers and permanent employees are grouped separately and are ranked among themselves in seniority order. This date includes adjustments for war veteran's status. When no information on war veteran's status is available, employees are treated as non-veterans.
- g. Blind employees will appear as the most senior employees among all employees with absolute retention standing in the title. For example, a blind probationer is the most senior of all probationers in that title regardless of date of original permanent appointment, but still has less retention standing than non-blind permanent employees in the title who are not on probation.
- h. War Veterans, disabled War Veterans and the spouse of 100% disabled War Veterans who are the head of the household shall have their seniority adjusted as follows:
 - 1. War Veterans - back date seniority 30 months
 - 2. Disabled War Veterans - back date seniority 60 months
 - 3. Spouse of 100% disabled War Veteran - back date seniority 60 months

*Refer to local municipal civil service rules to determine the specific rights of employees whose appointments are recorded as contingent permanent

ORGANIZING FOR LAYOFFS

Appointing Authority's Responsibilities

Although each layoff is unique and each civil division's management must determine their own best response, the following should be considered by appointing authorities when organizing for a layoff:

DETERMINING POSITIONS TO ABOLISH

The management of the governmental jurisdiction has the responsibility to determine how many and which positions will be abolished. Once management decides on the number of positions in each title that will be abolished, this information must be transmitted to the municipal civil service agency for a determination of the employees who will be affected.

CHANNELS OF COMMUNICATION

Specific individuals should be designated to provide layoff information to management, employees, unions, local civil service, and the media. Meetings should be held regularly to

coordinate information. The municipal civil service agency must be contacted early in the process and kept constantly informed of decisions or plans of action.

DEALING WITH THE EMPLOYEES

Despite all efforts to keep things quiet until definite decisions have been made, rumors of layoffs usually leak out. These rumors often dramatize and exaggerate the "bad news." Unchecked they may cause morale to crash, absenteeism and turnover to soar, and productive work to stop.

It is essential that management deal realistically and openly with employees from the start. Memos or bulletins should be provided to affected employees as soon as any information is available and meetings should be held with the management staff of the programs being affected.

LAYOFF INFORMATION PACKAGES

One of the first tasks to handle layoffs should be to begin to prepare information packages to be sent to employees.

It may be necessary to send informational packages to employees as the layoff progresses, depending upon what is known and on the stage of the layoff. The following information should be included in these packages at some point:

1. An explanation of why the layoffs are necessary.
2. A statement of which titles/locations are expected to be affected.

A form confirming each employee's current title and status and any other relevant personnel information (obtained from civil service).

3. An explanation of how suspensions within a title are determined.
4. An explanation of vertical displacement (bumping and retreat).
5. An explanation of the method which will be used to give employees their opportunity to displace in seniority order.
6. Municipal civil service agency publication "Information for Municipal Employees affected by Layoffs."
7. Names and phone numbers of individuals in the layoff jurisdiction and civil service agency who will answer questions on the layoff.

LAYOFF MEETINGS

In large scale layoffs it is usually necessary and appropriate to schedule layoff meetings with employees in order to communicate management's intent, to provide employees with information they need to make intelligent choices, and to explain the administration of the layoffs.

The agenda for such meetings usually includes:

Governmental jurisdiction representatives who explain the "who" and "why" of the layoff.

- Municipal civil service agency representatives who explain the technical aspects of layoffs, and preferred lists.
- Union representatives who describe the impacts on negotiated benefits.

LAYOFF METHODS AND PROCEDURES

Municipal Civil Service Agency Responsibilities

THE LAYOFF PLAN

Once the decisions on programs, titles, and positions are made by the appointing authority, the municipal civil service agency must begin the process of determining which employees will be affected, who will be laid off, and who will have vertical displacement rights (bumping or retreat). Note that the funding source for the positions in a title designated for layoff is NOT a consideration in determining which employees in the title are laid off.

To create a layoff plan, first list all the titles in each title series that will be laid off. Seniority rosters for all the listed titles must be developed.

To start, look first at the highest level titles that are designated for layoff. Decisions to abolish one or more positions at the highest level are likely to affect employees at the next lower level, through returns to "hold" positions and vertical bumping or retreat. These employees will, in turn, affect employees in the next lower level title, etc. Next determine which lower level titles are in direct line (see Appendix A).

Where there are no lower level direct line titles (i.e., titles with the same generic root) the employees' personnel histories must be reviewed to determine which, if any, lower level titles may be impacted by retreat.

IDENTIFYING WHO WILL BE AFFECTED

Non-Competitive, Labor, and Exempt Class and Unclassified Service

Employees in unclassified service, and in positions in the exempt, non-competitive, and labor class in local government have no retention standing under Civil Service Law, nor do they have rights to have their names placed on preferred lists. However, non-competitive and labor class employees who are war veterans or exempt volunteer firefighters may have rights to transfer (see Section 86 CSL).

NOTE: Before separating such employees, the appointing authority should determine if the employees have rights provided by a bargaining unit agreement.

Non-Permanent Competitive Class Employees

All positions occupied by non-permanent competitive class employees in titles to be impacted by layoffs should be considered as potentially identified for layoff. Non-permanent employees may be on leave from positions to which they have a "hold," they should be returned to their "hold" position if they are to be laid off.

Competitive Class Employees

Permanent and probationary competitive class employees have their retention standing and displacement rights determined by §80 of the Civil Service Law and Local Civil Service Rules. When all positions in a title are abolished, all employees in the title are laid off. When only certain positions in a title are abolished, determinations must be made concerning which employees have rights to be retained in a position and which are to be laid off. This is determined by the relative retention standing of all employees in the title as specified in the appropriate section of the laws and rules. Which employees must be laid off is NOT necessarily determined by which positions have been designated for abolition. Similarly, employees do not have rights to retain a specific position; rather, they have rights to retain their status in a title.

REDUCTIONS IN FORCE IN A LAYOFF UNIT

Referring to your layoff plan, identify the highest level titles in which positions will be abolished, and the number of positions to be abolished in that title. Use the seniority roster to identify employees' retention standing.

When a position is abolished, the employee in that position may not be the individual that is laid off. If the employee in the position that is identified for abolition has greater retention standing than any other employee in the same title in the layoff unit, then the employee in the position to be abolished will be offered an opportunity to displace the employee in the same title with the least retention standing.

Categories of Employees

Up to three categories of employees may exist in each title identified. Each category and the relative retention standing of the employees in each category is discussed below:

Permanent Employees - Identify employees serving in permanent status who are not on probation, or who may complete probation prior to the date of layoff. These employees have the most retention standing. They are entitled to exercise vertical displacement rights.

Probationary Employees - Identify employees serving on probation. Probationary employees have fewer rights to retain a position than permanent employees who are not on probation and greater retention standing than non-permanent employees. If any of these employees will complete probation before the date of layoff, you must consider them as permanent employees.

3. Non-permanent Employees - Identify all temporary, provisional and contingent permanent employees. Temporary and provisional employees have the least retention standing, no rights to preferred lists, and must be suspended before permanent or permanent probationary employees serving in the layoff title. Contingent permanent employees may have retention standing over temporary and provisional employees and may have preferred list rights; refer to municipal civil service rules to determine rights of contingent permanents.

Based on the number of filled positions to be abolished, count up on the seniority roster until a sufficient number of positions have been identified and draw a line. Vacant positions may or may not be included in the positions to be abolished; that decision rests with the legislative body where the layoff is occurring. The names of employees who are on leave must also appear appropriately ranked among the names of employees who are actually serving in a position; employees on leave have the same rights, and must be accorded their appropriate retention standing and displacement rights from their "hold" positions.

Depending on the retention standing of the employees whose names appear below the line, carry out the appropriate steps below:

Step 1 - Suspension of Competitive Class Non-permanent Employees

If any of the non-permanent employees are on leave from other permanent positions, restore them to their "hold" position.

If any of the employees are on leave from other departments or agencies, notify those departments or agencies that the employees will be laid off and may be returning.

If the employees have no "hold" positions, prepare a notice of separation.

Step 2 - Suspension of Competitive Class Permanent Probationers

Identify the specific probationers (beginning with the least senior, as determined in the same manner as for permanent employees) to be laid off.

Probationers who were promoted or are on leave from another position have a "hold" position and are to be restored to the "hold" position. If these employees are on leave from other departments or agencies, notify the department head that the employees will be laid off and will be returning.

Probationers who do not have a "hold" position to which they can return are eligible to bump or retreat.

- ❖ Probationers with no other permanent competitive class status are eligible to bump or retreat only to a lower level competitive class position filled by a probationary or non-permanent employee.
- ❖ Probationers who are eligible should have their opportunities to bump or retreat determined only after employees who are not on probation have exercised their opportunities.

Step 3 - Suspension of Competitive Class Permanent Employees Who Are Not on Probation

These employees have the most retention standing and may have vertical displacement (bump or retreat) rights. Identify the specific employees who will be laid off, and beginning with the most senior, determine his/her vertical displacement rights.

VERTICAL DISPLACEMENT

Bumping

"Bumping" means to displace another employee in a position in a lower level direct line title in the layoff unit. In order to determine bumping rights you will need to refer to the seniority rosters and layoff plan for the lower level direct line titles. Only competitive class employees can bump to competitive class positions. Bumping across jurisdictional class lines, e.g., competitive to non-competitive, is not provided for in civil service law or rules.

To determine whether any employee has bumping rights ask the following questions:

Are there direct line lower level positions? Direct line means having the same generic root, and does not include related or collateral line titles allowed to compete in promotion examinations.

EXAMPLE: CHIEF ACCOUNTANT, PRINCIPAL ACCOUNTANT, SENIOR ACCOUNTANT, ACCOUNTANT

Are these positions occupied? For bumping to occur, the lower level position must be occupied. They can be occupied by either permanent or non-permanent employees. A position from which an employee is on leave is considered occupied. If the positions are all vacant, or being abolished, they are not available for bumping. (Vacancies not being abolished are, however, available at the discretion of the appointing authority for reassignment of employees.) Where a middle level title in a series is simultaneously abolished, determine if the next lower level in the series is occupied.

If the answer to both these questions is "yes," the employee has bumping rights. If the answer to either question is "no," the employee has no bumping rights.

NOTE: The employee need not have ever held a lower level position in the title series to be eligible for bumping rights. For example, if an employee was appointed to a position of

Senior Clerk from an open-competitive eligible list, he/she could bump to a Clerk position notwithstanding the fact he/she never served as a Clerk.

After determining whether an employee has rights to bump you must determine if the employee has sufficient retention standing to have an opportunity to displace the employee with the least retention standing in the layoff unit in the occupied lower level position. The following question must be answered:

"Does the employee to be laid off have greater retention standing than any employee in the direct line title?"

Simply put, this means that a permanent employee can bump a less senior permanent employee, or any probationary or non-permanent employee, but a probationer can only bump a less senior probationer or any non-permanent employee. If both employees have the same status and the same seniority, the higher level employee cannot bump.

If the answer to this question is "yes," the employee has an opportunity to bump. If the answer to the question is "no" the employee has no opportunity to bump.

NOTE: The employee has only one opportunity to bump the employee with the least retention standing. The employee cannot choose which employee with less retention standing to bump.

Procedure for Bumping

1. Determine the direct line title below the layoff title in question.
2. Determine if there are occupied positions in the layoff unit in the next lower level title in direct line of promotion. "Occupied" includes positions in which non-permanent employees are serving and positions from which permanent employees are on leave.
3. If no lower level occupied positions exist in the title in direct line of promotion in the layoff unit, the employees have no rights to bump. Skip steps 4 and 5 below and determine if these employees have rights to retreat (see below).

Compare the retention standing of the bumping employee to the employee with the least retention standing in the lower level position. If the bumping employee has greater retention standing, bumping may occur; if the bumping employee has equal or lesser retention standing, bumping may not occur, nor is the employee eligible for retreat.

4. Complete the above steps for all employees in seniority order in all competitive class titles being affected by layoff. Whether or not an employee has rights to bump, or accepts an opportunity to bump, his/her name will be placed on a preferred list.

Retreat

"Retreat" means to displace the employee serving in a position in the layoff unit in the last lower level title held on a permanent basis. Retreat can occur only when no lower level positions exist in a direct line of promotion in the layoff unit, or when the lower level

positions exist but are unoccupied. Employees who have a right to bump but are unable to do so because they lack sufficient retention standing, are not eligible to retreat.

Conditions for Retreat

There can be no opportunity to bump.

1. Service in the prior position must have been satisfactory.
2. The retreat title must be in the layoff unit.
4. The retreat position must be competitive.
5. The retreat position must be in a lower salary grade.
6. The retreat position incumbent must not have greater retention standing.
7. A title change in the retreat position without substantial change of duties does not prevent retreat. (e.g., if some positions titled Clerk were re-titled Clerk I with no significant change in duties; a displaced employee who had been promoted from Clerk might retreat to Clerk I.)
8. Retreat may not occur to a position in a title twice removed from the current title. If the title in which the employee last served on a permanent basis does not now exist in the layoff unit, the employee may not retreat to another title in which he/she previously served.

Procedures

In order to determine retreat rights, refer to the employee's employment history, and to seniority rosters for the titles the retreating employees last held on a permanent basis at a lower level. *(NOTE: "Skip over" any intervening titles in which the employee served on a non-permanent basis. It does not matter when, how long or where the title was held to be considered for retreat.)*

1. Beginning with the employee with the greatest retention standing, determine if the employee's last permanently held lower level competitive class title exists in the layoff unit, and if it is currently occupied. "Occupied" includes positions in which non-permanent employees are serving and positions from which permanent employees are on leave. If the title does not exist or is not occupied or is being abolished, the employee has no right to retreat.
2. If the title is occupied, identify the employee with the least retention standing in the lower level title.
3. Compare the retention standing of the retreating employees. The employee with the greatest retention standing has the first right to retreat.
4. Determine if this retreating employee has greater retention standing than the least senior employee in the retreat title. If so, the employee has an opportunity to retreat.
5. Repeat 1 through 4 until all employees in the layoff title have been accounted for.
6. Whether or not an employee accepts a retreat opportunity, his/her name will be placed on a preferred list for the title from which the employee was laid off.

It is suggested that a list that categorizes the employees who have been affected and how they have been affected be developed (i.e., restoration to hold items, whether they exercised displacement rights).

EMPLOYEE CHOICES

PRELIMINARY NOTICE OF IMPACT

It is important to notify employees of the potential for layoff as soon as determinations have been made as to which titles and locations will likely be affected. Additionally, the bargaining unit agreement in effect may specify a minimum period of advance notification. The appointing authority is responsible to insure that there is compliance with the terms and conditions in the agreement.

VERTICAL DISPLACEMENT

Throughout the layoff process, it is necessary to communicate with employees to determine their willingness to accept vertical displacement opportunities. This information is necessary for the administration of the layoff.

In small-scale layoffs involving only a few employees, and where opportunities for vertical displacement will be limited, the contacts can be made in person or by telephone and then followed up with a confirming letter. However, in large-scale layoffs where more people are involved it may be necessary to gather information about employees' preference by sending a specially prepared information package explaining vertical displacement within the layoff unit.

From the employees' standpoint, it is obviously preferable to be able to make choices from those options that will actually be available to each individual employee. This requires that final vertical displacement rights be determined for each employee and transmitted to each individual.

However, in large-scale layoff situations, this may not be possible. Instead, it may be necessary to provide all potentially affected employees with information of where the vertical displacement could occur; then ask them to indicate if they would accept a lower level position, if available, through vertical displacement (bumping or retreat).

NOTIFICATIONS

Appointing Authority Responsibility

NOTICES TO EMPLOYEES

It is recommended that the appointing authority prepare a standard notification letter for each group that will vary according to the effect the layoff has had. For example, any or all of the following layoff situations may occur:

- Employees are laid off and have their names placed on a preferred list and either
 - accept a bump or retreat to a lower level position, or
 - refuse a bump or retreat to a lower level position, or
 - are not eligible to bump or retreat
- Employees are laid off and have their names placed on a preferred list and return to their "hold" position if they have one, or
- Employees do not have permanent status and are laid off.

The layoff notification should state precisely what has happened to the employee, and where and when the employee is supposed to report to work (if applicable). The notification should be accompanied by the *Information for Municipal Employees Affected*

by Layoff booklet. Notices should also contain a statement about benefits available such as accumulated vacation credits, overtime credits and health insurance coverage, and should provide a phone number in the civil division for employees to contact.

REASSIGNMENT WITHIN TITLE

Once the determination is finalized by the municipal civil service agency as to the employees who will be laid off in a given title, it may be necessary for employees remaining in the title to be reassigned to different work sites under the jurisdiction of the appointing authority.

For example, a custodian position in a school district is abolished. An employee in an elementary school has the least retention standing and is laid off. The school district may reassign a custodian from another location in the district to the elementary school.

Any reassignments that are required must be made in conformance with applicable municipal civil service rules or bargaining unit agreements.

INFORMATION TO CIVIL SERVICE

A Report of Personnel Change Form (RPC) should be prepared for each personnel action required by the layoff. The form must indicate those who are being appointed to lower level positions and their title, salary level and status in those positions. The reports should be sent to the municipal civil service office for recording on employee history roster records.

REEMPLOYMENT METHODS AND PROCEDURES

Permanent and probationary employees in the competitive class who are displaced from their positions will have their names placed on preferred lists. These lists must be used by departments and agencies in the same civil division where the layoffs occurred to fill positions before promotion lists, or open-competitive lists may be certified.

In addition to the preferred list rights provided in reductions in force situations by §81, permanent employees are also provided with reemployment rights pursuant to other sections of the Civil Service Law (§70.2, §71 and §73), municipal civil service rules, Military Law, and the Retirement and Social Security Law. While the specific list rights of eligibles may be limited by the law that entitles them to preferred list status, the following discussion covers all eligibles whose names appear on a preferred list established in accordance with §81 of the Civil Service Law.

PREFERRED LISTS

The municipal civil service agency establishes preferred lists effective the date of a layoff. The preferred list is a mandatory list for use in the civil division in which the layoff occurred.

Each individual has a maximum of four years of eligibility on any preferred list. The names of individuals impacted by subsequent reductions in force are interfiled on existing preferred lists.

Preferred list eligibility is granted for an individual's title of layoff, lower level titles in the direct line of promotion to the layoff title, and for other titles considered to be comparable based on a high degree of similarity between duties, minimum qualifications and examinations.

Ordering of Names on Preferred List Certifications

Many factors affect the ordering of names on preferred list certifications. Some are related to the position to be filled, i.e., the title, agency layoff unit, and type of appointment which will be offered or may be allowed (permanent, contingent permanent or temporary). Other factors pertain to title comparability decisions, and the eligibles' retention standing at the time of layoff. Certifications should indicate whether eligibles are being certified title for title, as a direct line eligible, or as a comparable title eligible. Within each such certification category, names are further ordered according to retention standing.

Preferred lists must be certified in the following order:

1. First, to the same titled position;
 2. Second, to any title in a lower grade in line of promotion;
 3. Third, to any comparable position.
-
- ❖ When certifying to the same title, all individuals on the preferred list in the same title from the same layoff unit are certified first.
 - ❖ Next, all individuals on the preferred list in the same title from other departments and agencies in the same civil division are certified.
 - ❖ When that list is completely exhausted, all the names of individuals on preferred lists for higher salaried titles in line of promotion from the same layoff unit are combined and placed on one certification for appointment. The names are ranked by retention standing order; the one with greatest standing is first.
 - ❖ When that list is completely exhausted, the names of individuals on preferred lists for higher salaried titles in line of promotion from other layoff units are combined and placed on one certification for appointment. The names are ranked by retention standing order; the one with greatest standing is first.
 - ❖ When certifying to any comparable position, all the names of individuals on preferred lists for comparable titles in the layoff unit are combined and placed on one certification for appointment. The names are ranked by retention standing order.

- ❖ When that list is completely exhausted, all the names of individuals on preferred lists for comparable titles in other layoff units are combined and placed on one certification for appointment. The names are ranked by retention standing order.

Conditions of Selection and Reinstatement

Reinstatements made from preferred list certifications must be made according to the "Rule of 1" (i.e., agencies must appoint the first preferred list eligible willing to accept the position). No probationary period is required or permitted, unless the eligible was serving in probationary status at the time of layoff; in that case the eligible is required to complete the remainder of his/her probationary period.

When a probationer is certified for reinstatement to a lower grade position, he/she must serve the probationary period which is required for such position had the appointment been made from an open-competitive eligible list. If the probationer has previously successfully completed a probationary term at this level position, no probationary term is required.

If, thereafter, the probationer is reinstated to a position in the grade from which he/she was laid off, the probationer must complete his/her probationary term in such position.

Time Frames

Appointing authorities normally have 30 days from the date of the certification to canvass, interview and report results to the municipal civil service agency. The municipal civil service agency must order the termination of provisional and temporary employees in less than 30 days when it is known that there are eligibles willing to accept reinstatement from the preferred list.

Interviews

Appointing authorities should ensure that sufficient time is scheduled for interviews, and must accurately inform eligibles of the terms and conditions of the employment being offered. In addition, they are responsible for conducting interviews in accordance with professional and legal standards, and they should make every effort to inform eligibles of the consequences of declining a job offer. If a job offer is made at the interview, the eligible individual should be given a reasonable amount of time to accept or decline.

Reporting Results of Canvass

If the municipal civil service agency does not canvass, it is essential that appointing authorities accurately report canvass results in a timely manner. Declinations must be documented in writing. When reporting appointments, appointing authorities should indicate the type, and effective date, in the space provided opposite the eligible's name on the certification.

Clearing Certifications

Because a declination limits an eligible's subsequent reemployment opportunities, the municipal civil service agency must require that appointing authorities submit appropriate documentation to serve as the basis for clearing certifications. Additionally, eligibles should be informed of the consequences of declining an offer of employment.

In the case of a canvass conducted by mail, the original canvass letter returned by the eligible is required to be returned to civil service. If an eligible fails to respond to a mail canvass, a copy of the canvass letter mailed to the eligible is required.

The municipal civil service agency may conduct a follow-up canvass to verify the accuracy of appointing authorities' reports. If, in the judgment of the municipal civil service agency, undue influence or other improper practices were used to obtain declinations, appointing authorities must not be allowed to make appointments from other sources and must appoint from the preferred list or leave the positions vacant.

APPOINTMENT PROCESSING

As with other personnel transactions, appointments from preferred list certifications are reported via Reports of Personnel Change Form (RPC) to the municipal civil service agency.

EFFECTS OF PREFERRED LIST DECLINATIONS

Declinations Generally

A declination is a refusal to accept an appointment. Such refusals may result from an eligible's response to a canvass letter, failure to respond to a canvass letter, refusal at or after an employment interview, or as a result of failing to report for work. In any case, two general principles always apply:

1. Declinations of reinstatement to temporary positions do not affect the eligible's active status for reinstatement to permanent positions.
2. Declinations of reinstatements to positions at salaries lower than the salary at the time of layoff do not affect the eligible's active status for certification to positions with a salary equivalent to the position from which the individual was laid off.

Preferred List Declinations

Refusal of an offer of reinstatement to a permanent position at layoff salary grade:

Eligible's name is removed from the preferred list.

Refusal of an offer of reinstatement to a permanent position at a salary lower than the layoff salary:

Eligible's name is removed from the preferred list for positions at or below the salary offered.

- The eligible remains active for higher salaried positions.

Refusal of an offer of reinstatement to a permanent position in a comparable title:

Eligible's name is removed from further certification to that comparable title;

- Eligible's name may, at the discretion of the local civil service agency, remain on the preferred list for the title from which the individual was laid off.

Temporarily Inactive Status

If, because of serious personal or medical reasons, an eligible is unable to accept any job offer, he/she may request to be placed in inactive status. Such requests must be made in writing and approved by the municipal civil service agency. At any time thereafter, the individual may request in writing to have his/her name reactivated on the preferred eligible list.

REINSTATEMENT FROM PREFERRED LIST

Once permanently restored to the layoff salary, the eligible's name will be removed from the preferred list. Acceptance of a temporary appointment will have no effect on eligibility for permanent appointment. The following describes the effects of permanent appointments:

- Permanent appointment to a position at the same salary as the salary at time of layoff, regardless of location:
 - The eligible's name is removed from the preferred list.
- Permanent appointment to a position at a lower salary than that at time of layoff:
 - The eligible's name is removed from the Preferred List for positions at that salary and lower, for all locations. Remains active for higher salaried positions.

ELIGIBILITY

Employees whose names are on preferred lists are eligible to participate in promotion examinations and are eligible for reinstatement or transfer as provided in the municipal civil service rules.

- The period of time an employee is on a preferred list is counted as continuous service in the title for purposes of seniority.

APPENDIX A GLOSSARY OF CRITICAL CONCEPTS

CONTENT

The law and rules governing layoffs and reemployment often make specific distinctions and provide specific definitions. Furthermore, a number of considerations and legal interpretations have been made over time which may help in defining important distinctions among the rights of the variety of employees who may be affected by a layoff.

The following section discusses concepts and issues that must be clearly understood in order to equitably and legally administer a work force reduction.

| | |
|---|----|
| CONTINGENT PERMANENT EMPLOYEES | 27 |
| CONTINUOUS SERVICE | 27 |
| In Another Civil Division | 27 |
| In Same Civil Division | 28 |
| DIRECT LINE TITLES FOR VERTICAL DISPLACEMENT | 29 |
| LAYOFF | 29 |
| LAYOFF UNITS | 30 |
| LEAVES - THE RIGHTS OF EMPLOYEES ON LEAVE | 30 |
| PART-TIME COMPETITIVE CLASS EMPLOYEES | 31 |
| Shared Positions | 32 |
| Less than Full-Time Classified Positions | 32 |
| Less than Full-Time Budgeted Positions | 32 |
| Shared-Position Situations | 32 |
| Less than Full-Time Classified Position Situations | 33 |
| Less than Full-Time Budgeted Position Situations | 34 |
| Preferred List Rights | 35 |
| REASSIGNMENTS | 35 |
| RETENTION STANDING | 35 |
| RETIREMENT | 36 |
| SENIORITY | 36 |
| TRAINEE TITLES | 37 |
| TRANSFER OF WAR VETERANS OR EXEMPT VOLUNTEER FIREFIGHTERS (§86) ... | 37 |
| WAR VETERANS, SPOUSES OF DISABLED WAR VETERANS & BLIND EMPLOYEES (§85.7) | 38 |
| REFERENCES | 39 |
| Civil Service Law | 39 |
| Municipal Civil Service Rules | 39 |
| Manuals | 39 |
| Other Civil Service Publications | 39 |

CONTINGENT PERMANENT EMPLOYEES

An important principle underlying any discussion of the rights of contingent permanent employees is that contingent permanent employees only have such rights of permanent employees as are provided in the municipal civil service agency rules. These rights vary from civil service agency to civil service agency. Refer to the municipal civil service rules in effect to determine the rights of contingent permanent employees.

CONTINUOUS SERVICE

For purposes of layoff, continuous service for determining seniority under §80 is defined as permanent classified service unbroken by periods out of service of one year or more.

There are some other situations (see §80.2) which are specifically defined as not constituting a break in service for purposes of determining seniority dates.

Periods of authorized leave of absence

- Periods out of service in which the employee's name was on a preferred list
- Periods out of service for employees separated and reinstated pursuant to §71
- Provisional and temporary service, or service in the unclassified service, immediately preceded and followed by (next workday) permanent classified service

Other situations that affect employees' seniority:

A resignation followed by a reinstatement or reappointment one year or more subsequent to the resignation constitutes a break in service.

Temporary or provisional service preceding the original permanent appointment does not count. However, temporary or provisional employment immediately preceded and followed the next workday by permanent classified service employment does not interrupt continuous service.

The permanent service of any employee who transferred from another civil division starts on the date of his/her original permanent appointment in the classified service in the first civil division if provided for in the local civil service layoff rules.

In applying the above, the following methods or calculations should be followed:

In Another Civil Division

If a person resigns from Civil Division A and is reinstated in Civil Division B to the same title or another comparable title within less than one year on a permanent basis in accordance with the provisions of the local reinstatement rule which indicate that the conditions of transfer must be met, there is no break in service if provided for in the local civil service layoff rules.

- If a person resigns from Civil Division A and is appointed, not reinstated, in Civil Division B, either to the same title or another title, even if on a permanent basis, there is a break in service regardless of the time-span between the resignation and the new appointment.
- If a person resigns from Civil Division A and is reinstated in Civil Division B more than one year after the resignation, there would be a break of service even if the reinstatement were permitted by the municipal civil service rules.

In Same Civil Division

- If a person resigns from the service in Civil Division A and is reinstated to his/her former position or re-appointed to a different position on a permanent basis in Civil Division A within one year of the date of resignation, there is no break in service.
- If a person resigns from Department A and immediately (next workday) is appointed to a provisional or temporary position in Department B in the same civil division, there is no break in service if the person acquires permanent status immediately (next workday) following the provisional or temporary service, regardless of the time served as a provisional or temporary.
- If a person resigns from Department A and is appointed (more than one workday after resignation) to a provisional or temporary position in the same civil division, there is a break in service if the person does not acquire permanent status within one year from the date of the resignation from Department A. This is because the provisional or temporary appointment did not immediately (next workday) follow the resignation from the permanent position.
- If a person resigns from Department A, and immediately (next workday) is appointed to a provisional or temporary position in Department B, is thereafter terminated, and subsequently (more than one workday after termination) receives a permanent appointment in any department in the civil division, there is not a break in service if the permanent appointment is effective within one year of the resignation from the original permanent appointment in Department A.

The critical issues in the above situations are:

"Immediately" always means next workday.

Provisional or temporary service, in order to be counted, must be immediately preceded and immediately followed by a permanent appointment.

If the provisional or temporary service is not immediately preceded and followed by a permanent appointment, the time between permanent appointments may not exceed one year to be considered continuous service.

The phrase in Section 80.2 "in the service" means in the service of the same civil division (county, city, town, village, school district, etc.). In the case of cities, city school districts, housing authorities, and parking authorities are considered different civil divisions.

- The term "re-appointed" also means "appointed" if such appointment is permanent and in the service of the same civil division.
- When an individual is "reinstated" to a position in a different civil division, the person does not have a break in service if the reinstatement takes place within one year. This is because the person had to be otherwise eligible for transfer and is, therefore, considered to have met the criteria for transfer. Refer to local civil service layoff rule regarding seniority of transferees.

DIRECT LINE TITLES FOR VERTICAL DISPLACEMENT

"Direct line" for the purpose of vertical displacement in the competitive class (bumping) is based on §80.4, and is interpreted narrowly to mean that positions must have the same title except for level designation (e.g., Senior, Principal, Chief). Titles must have a common generic root. For example, the generic root of Principal Accountant is Accountant; therefore, the next lower level title in "direct line" is Senior Accountant. Titles with other generic roots or parenthetics, such as Senior Accountant (Employment Security), are not considered "direct line" for the purpose of vertical displacement even though Senior Accountants (Employment Security) or other parenthetic or other titles listed on promotion examination announcements may have been promoted to Principal Accountant.

LAYOFF

The term "layoff" is used whenever an employee is separated from service as a result of the abolition of a position. However, not all employees who are "laid off" are entitled to rights under the sections of the Civil Service Law which are concerned with reductions in force. To have rights under §80, and §81, the employees, and the nature of the separation, must meet the following conditions:

The separation must be a result of the abolition or reduction in rank or salary grade of one or more encumbered positions.

- The employees must have permanent competitive status at the time of layoff.
- The positions must be in the competitive class.

Employees need not have been completely separated from service in order to have rights pursuant to these sections. Employees who have lost their permanent status, or who have had to bump or retreat to a lower level, or who have lost their permanent "hold" positions have all been "laid off."

LAYOFF UNITS

It is within the defined layoff unit that employees are suspended or demoted, exercise their rights to be retained or within which they vertically displace (bump or retreat).

The impact of any layoffs is always confined to layoff units and to the titles and positions identified in these units. Formal definitions of layoff units exist for every department and agency and are found in the municipal civil service rules. Layoff units typically consist of:

1. A department of government in a town, county or village
2. A school district
3. A community college
4. A special district

LEAVES - THE RIGHTS OF EMPLOYEES ON LEAVE

The policies, rules and contractual agreements, which govern employees on leave, remain in effect in layoff situations. Employees on leave from a position in a title affected by layoff must be treated for layoff purposes as if they were actually serving in their "hold" position. Where such employees are affected, agencies should be aware of the following:

A. Some types of leaves are mandatory, i.e., required to be granted by an appointing authority by Civil Service Law or Rule, other statute, or by negotiated agreement. Other types of leaves are discretionary on the part of the appointing authority. Granting a leave constitutes an agreement between the appointing authority and employee that generally cannot be broken except by mutual agreement. However, there may be several exceptions to this:

- Probationers may request restoration to a hold position prior to end of their leave, and the appointing authority may restore them (local rules may require restoration upon request).
- Permanent competitive class employees who have been temporarily or provisionally appointed to another competitive class position may be restored to their hold position upon request, if provided by the municipal civil service rules.

B. Employees with rights to return to a "hold" position generally have a right to return to a position in the title from which they are on leave. This is not to say that appointing authorities cannot reassign "hold" positions and employees based on program need, or when required by layoffs. In this case an employee does not have rights to be restored to any one specific position but rather the employee has a right to one of the positions in the title. Employees are considered to be on leave from a title, and have rights to their former status. When restoration to a "hold" position occurs the appointing authority may designate the specific position. An appointing authority may change a designated leave position and may reassign an individual to a "hold" position in a different physical location at any time, consonant with local rules and any applicable collective bargaining agreement.

C. Employees who elect to return to a "hold" position prior to the date of layoff have, in effect, resigned from their position, and do not have rights under §80 to the position they left if it is subsequently abolished.

D. Employees who are on leave from a "hold" position and serving a probationary period are to be restored to the "hold" position if the position in which they are serving as a probationer is affected by layoffs. If the probationers do not have a "hold" position to return to, they are eligible to vertically displace; however, probationary employees may only bump or retreat to positions occupied by probationers or non-permanent employees serving in lower level titles.

E. Employees whose permanent competitive class "hold" positions are abolished may have rights to have another position assigned to them as their new "hold" if they have greater retention standing than any other employee serving in the title in the layoff unit where the "hold" title exists. In the event another position is not available for designation as a "hold," the employee would have his/her name placed on a preferred eligible list for the "hold" title and would exercise his/her further rights through bumping and retreat.

PART-TIME COMPETITIVE CLASS EMPLOYEES

The term "part-time" actually covers a wide variety of work situations and schedules. Any work schedules where an employee works less than full-time is considered under this heading. In most situations and for most purposes, permanent competitive class part-time employees are treated the same as permanent competitive class full-time employees.

All arrangements for less than full-time employment are at the discretion of appointing authorities and can be changed at any time unless the work schedule was specifically guaranteed as a condition of employment at the time of appointment, or unless such schedules are included in negotiated agreements. When an appointing authority changes schedules, employees may not be entitled to rights to displace nor have their names placed on preferred lists if they refuse to work the altered schedule.

However, when permanent competitive class less than full-time employees are affected by abolition of positions, they must be accorded their retention, displacement and preferred list rights in layoff situations. To preserve the rights of employees and to ensure equity, it is recommended to distinguish among the various types of less than full-time employees.

The ultimate decision as to how to treat less than full-time positions in the event of a layoff rests with the municipal civil service agency. Below are three types of less than full-time employment and suggested methods to effectuate layoffs for those positions.

Shared Positions

Shared positions are defined as situations in which two or more employees are paid from one full-time budgeted position and also "share" the same work station or work location. A typical shared-position situation would exist when one employee working mornings and a second employee working afternoons fill one position. Shared-position employees are

considered interchangeable in terms of duties and working hours. One full-time employee can subsequently fill positions previously filled on a shared basis.

Less than Full-Time Classified Positions

Some positions are classified for filling at less than full-time. These may be defined as working less than a full year (i.e., 10 month, 9 months) or working less hours than in a regular work schedule (i.e., 20 hour, 30 hours, etc.). In these instances, separate specifications may have been prepared, separate eligible lists may have been established or separate certifications made for appointment.

Less than Full-Time Budgeted Positions

Some positions are budgeted for filling at less than full-time. In these cases the title remains the same and no distinction is made by the municipal civil service agency when establishing an eligible list, or certifying eligibles for appointment. An appointing authority may, in accordance with municipal civil service rules and negotiated agreements, increase or decrease the hours of work for a position or reassign an incumbent to another position with the same title having greater or fewer hours of work.

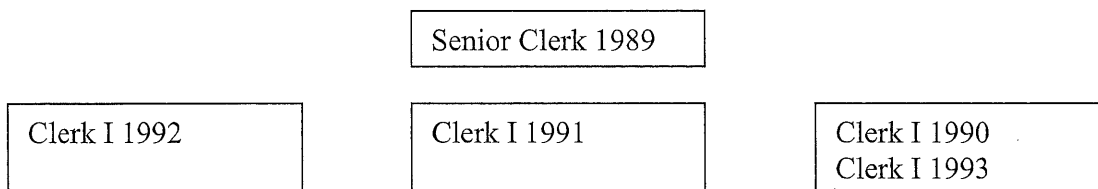
The rights of permanent employees to be retained in these three types of situations or to displace into these situations will vary depending on which type of less than full-time employment is involved and municipal civil service agency policy.

The following general guidelines are intended to promote fair and equitable treatment of employees. Municipal civil service agencies must exercise good judgement in their application.

Shared-Position Situations

Employees in shared positions must be considered equally along with full-time employees in layoff situations. Where a shared position is abolished, the employees should be considered as if they were serving full-time in determining their retention and displacement rights. Agencies may reassign such employees to work full-time or less than full-time at the discretion of the appointing authority. Permanent employees in shared positions must be offered the same vertical displacement as full-time employees in the same title in the same layoff unit. Similarly, full-time employees at a higher level may displace such shared-position employees.

The following sample situation illustrates the principles involved and provides a guide in managing shared-position situations. In this sample, all employees depicted are permanent. The position which is indicated by the box with two employees is a shared position.



Assume the Senior Clerk position is abolished. The Senior Clerk has bumping rights and chooses to exercise these rights. The Senior Clerk must be compared against all of the incumbents of the three positions of Clerk I.

Clerk I - 1993 is the least senior employee and must be laid off.

Clerk I - 1990 has more seniority than the other entry-level employees and must be offered a Clerk I position full-time.

If Clerk I - 1990 **refuses to work full-time**, he/she is suspended and may be given preferred list rights, and Senior Clerk - 1989 bumps to the previously shared position as a full-time employee.

If Clerk I - 1990 **agrees to work full-time**, he/she continues in the previously shared position as a full-time employee. Senior Clerk 1989 then bumps Clerk I - 1992, who is laid off.

Suppose, however, that both the shared-position Clerk I's had greater seniority than the Senior Clerk. Then the Senior Clerk would bump the least senior full-time Clerk 1 (1982) and the shared-position employees would not be affected. These results assume that the agency cannot accommodate the employees' wishes for less than full-time. The agency may decide to arrange alternative schedules for the employees if they meet program needs.

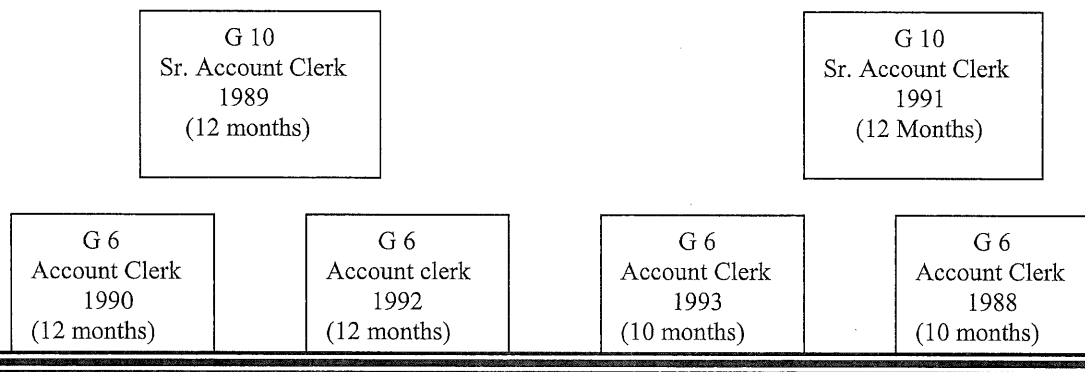
Less than Full-Time Classified Position Situations

Positions classified as less than full-time should be considered separately from full-time positions in the same title in all initial layoff and displacement situations. Full-time employees having vertical bump or retreat rights should be compared first against other full-time employees in the lower level positions.

Only when there are no full-time positions available for vertical displacement do we recommend that agencies compare the seniority of such remaining full-time employees against employees in part-time budgeted and/or classified positions for possible vertical displacement.

The following sample situation illustrates the principles involved and provides a guide in managing such situations. In the sample situation '88 and '93 are classified less than full-time as 10-month positions. The two Grade 10 positions (both 12-month) are abolished.

All employees depicted are permanent competitive, non-probationers.



* '89 bumps '92

* '91 lacks sufficient seniority to bump '90 and, therefore, '91 should be offered the 10-month position held by '93.

* If '91 refuses then '92 should be offered '93's 10-month position.

Now assume in the above sample that the two G-10 items held by '89 and '91 are also 10-month positions. In that case:

* '89 would bump '93, but '91 lacks sufficient seniority to bump '88.

* '91 should be offered the full-time position held by '92.

To reiterate, the opportunity to change from full-time to less than full-time, or vice versa, should be considered as an option that an agency should exercise for employees with no other opportunities. For example, an employee in a full-time position below which there are no lower level occupied full-time positions in direct line should then have his/her retreat rights determined. Only where this employee has no retreat opportunities to a full-time position would the agency then compare the employee against employees serving in less than full-time classified positions who do occupy positions in lower level direct line titles.

Less than Full-Time Budgeted Position Situations

Positions budgeted as less than full-time, which are not distinguished separately by classification, or eligible list certification, should not be considered separately in initial layoff and displacement situations.

All employees in a title, regardless of the hours worked, or the months per year of employment, would be compared against all other employees in the same title for purposes of vertical displacement.

The following sample situation illustrates the principles involved and provides a guide in managing such situations.

In the sample situation one grade 9 Senior Custodian position is abolished. All employees depicted are permanent competitive, non-probationers.

G9
Sr. Custodian 1990
(12 months)

G 9
Sr. Custodian 1991
(12 months)

G 5
Custodian 1992
(12 months)

G 5
Custodian 1993
(10 months)

G 5
Custodian 1994
(20 hrs a week)

* '91 bumps '94

To reiterate, in this situation, no consideration is given to the hours worked or the months of employment. Once Senior Custodian-1991 bumps to Custodian, the appointing authority may reassign the employee to a position with more hours or, a different annual work schedule in accordance with the existing municipal civil service rules and negotiated bargaining unit agreements.

Preferred List Rights

Regardless of the type of position from which a permanent employee is laid off, they will have their name entered on preferred lists. Part-time employees will be certified for both full-time and part-time vacancies if one of the following conditions is met:

- The employee was in a shared position, or
- The employee was in a less than full-time budgeted position.

If neither of these conditions is met, the employee's name will only be certified for employment to positions deemed comparable by the local civil service agency.

REASSIGNMENTS

The term "reassignment" is commonly used to cover a variety of personnel changes. However, most municipal civil service rules define reassignment either as "... the change, without further examination, of a permanent employee from one position to a position in the same title under the jurisdiction of the same appointing authority", or "... the change, without further examination, of a permanent employee from one position to another similar position under the jurisdiction of the same appointing authority."

Reassignment is a management prerogative, and the majority of reassignments are "changes" in which the employee is moved from one position to another position in the same title, with no change in the employee's appointment status.

RETENTION STANDING

Retention Standing comprises two essential components: status and seniority. These are defined by law and rule; in practice their exercise is determined in part by law and rule and part by the employee.

The first component is the civil service status of the employee, that is, whether the employee is:

- a. permanent and having completed the required probationary period;
- b. permanent but serving a probationary period at time of layoff;
- c. contingent permanent (if provided for by local civil service rules);
- d. provisional; or

e. temporary.

The second component is the seniority of the employee, that is, the date of the employee's first permanent appointment in the classified service followed by continuous service as defined in §80 of Civil Service Law. Seniority is adjusted for service as a war veteran, disabled war veteran or spouse of a disabled war veteran as defined in and provided for by §85 of Civil Service Law; provided, however, that blind employees be granted absolute preference.

RETIREMENT

Some employees who are eligible will consider retirement when layoffs are announced. Those who retire prior to the abolition of their positions or prior to their displacement from their positions are not eligible to displace nor to have their names placed on preferred lists.

Those who retire upon or subsequent to layoff, after their names have been placed on preferred lists, will have their names certified just like any other laid-off employee.

Employees considering retirement should be referred to the New York State Retirement System.

SENIORITY

Seniority for purposes of layoff is not necessarily synonymous with seniority for other purposes such as promotion, retirement, anniversary dates, leave accrual, or for bidding for shift work.

For purposes of layoff, an employee's seniority date is defined as:

"Date of original permanent appointment in the classified service of the governmental jurisdiction in which the abolition or reduction of positions occurs, and continuous service since that date. Under certain circumstances, credit for prior service with other governmental employers may be allowed by local civil service rules. The statutory definition of continuous service allows certain specified types of brief breaks without loss of active continuity."

This date is adjusted, however, for war veterans (who get 30 months' additional seniority), disabled war veterans and the spouses of disabled war veterans with 100% service connected disability (who get 60 months' additional seniority), and legally blind employees (who, regardless of their original date of permanent appointment, are considered the most senior employees of all employees in their title in the same category of retention status).

TRAINEE TITLES

Where there are trainee titles through which employees advance to reach a journey level title, employees in trainee titles and the journey level are considered as one title for purposes of retention and displacement.

For example, if a competitive class position of Probation Officer is to be abolished, all employees in the following titles in the layoff unit in the competitive class must have their retention standing determined as if they are all in the same title:

Probation Officer Trainee
Probation Officer

TRANSFER OF WAR VETERANS OR EXEMPT VOLUNTEER FIREFIGHTERS (§86)

Civil Service Law §86 provides that non-competitive class or labor class employees whose positions are abolished, for one year from the date of layoff, have rights to a transfer to another similar vacant position at the same salary grade provided they are either:

- Honorably discharged veterans who served in time of war, or
- Exempt volunteer firefighters (as defined in the General Municipal Law).

This right is not provided to "private secretaries, cashiers or deputies of any official or department."

The exercise of transfer rights under this section is a rare occurrence in layoff situations and no body of standard administrative policy or procedure has been developed for handling such cases. However, agencies should be aware that the law states that appointing authorities have the duty to effect such transfers. It has been generally accepted that the employee is responsible for identifying the positions available for transfer pursuant to this section.

WAR VETERANS, SPOUSES OF DISABLED WAR VETERANS & BLIND EMPLOYEES (§85.7)

Certain employees, who are permanent in the competitive class, are provided with additional seniority in layoff situations.

- Disabled war veterans' seniority dates are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service.

Non-disabled war veterans' seniority dates are deemed to be 30 months (2 1/2 years) earlier than their date of original permanent appointment to the classified service.

- Spouses of disabled war veterans' (with a 100% service connected disability), and who are also head of household, seniority dates are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service.
- Blind employees who are permanent in the competitive class are granted absolute preference in retention by §85.7. Since the wording of §85.7 requires it to be "read" in conjunction with §80, and the provisions of these latter sections distinguish between the rights of probationers and non-probationers, blind employees are provided absolute preference in a title as a probationer or a non-probationer, as the case may be. Therefore, a blind probationer, while deemed to be the "most senior" of all

probationers, would be laid off before any employee in the title who had completed probation.

Some other points about veterans are:

- State residency at the time of layoff is not required to receive additional seniority;
- "Disabled war veterans" are those so defined by the Veterans Administration. This status must be established on or before the date of layoff, and cannot be retroactively applied if this status is granted after that date.

The terms "war veteran" and "disabled war veteran" are defined in Civil Service Law §85 which also includes the definition of "time of war" during which the veteran or disabled veteran was required to serve to be eligible for additional seniority credits.

APPENDIX B

REFERENCES

Civil Service Law

- §80 Suspension or demotion upon the abolition or reduction of positions
- §81 Preferred lists; certification and reinstatement therefrom
- §85.7 Preference in retention upon the abolition of positions
- §85.8 Penalty for denial of preference in retention
- §86 Transfer of veterans or exempt volunteer firefighters upon abolition or positions

Municipal Civil Service Rules

Layoff Rule

Refusal or failure to accept reinstatement from Preferred list.

Manuals

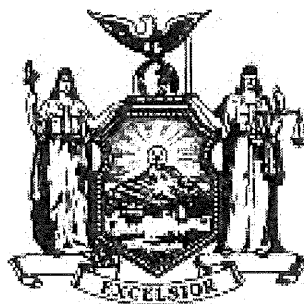
Manual on Layoff Procedures

Other Civil Service Publications

Information for Municipal Employees Affected by Layoff

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information to individuals with disabilities. If you need an auxiliary aid or service to make this information available to you, please contact the New York State Department of Civil Service Public Information Office at (518) 457-9375.

**Visit the New York State
Department of Civil Service web site
www.cs.state.ny.us**



**Issued by:
New York State
Department of Civil Service
Albany, NY 12239**

April 2008