

**CHAPTER 8****LAYOFFS****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.

**Source and Effective Date**

R.2009 d.41, effective December 23, 2008.  
See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

**Chapter Expiration Date**

Chapter 8, Layoffs, expires on December 23, 2013.

**Chapter Historical Note**

Chapter 8, Layoffs, was adopted as R.1990 d.49, effective January 16, 1990. See: 21 N.J.R. 3340(a), 22 N.J.R. 169(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.55, effective December 30, 1994. See: 26 N.J.R. 3518(a), 27 N.J.R. 482(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.251, effective April 21, 1995. See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.2000 d.12, effective December 9, 1999. See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

Chapter 8, Layoffs, was readopted as R.2003 d.304, effective June 30, 2003. See 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Chapter 8, Layoffs, was readopted as R.2009 d.41, effective December 23, 2008. See: Source and Effective Date. See, also, section annotations.

**Cross References**

Applicability of this chapter to SES members and positions, see N.J.A.C. 4A:3-2.3 and N.J.A.C. 4A:3-2.9.

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**SUBCHAPTER 1. PROCEDURES****4A:8-1.1 General**

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Chairperson or authorized representative of the Civil Service Commission shall determine seniority (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

(c) At no time shall any employee be subject to any layoff action if the employee is on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency.

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (b), substituted "and merit points (see N.J.A.C. 4A:8-2.4), and shall" for "and" following "seniority"; and added (c).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

In (b), deleted "and merit points" following "shall determine seniority"; deleted (c).

Emergency amendment, R.2009 d.133, effective March 25, 2009 (to expire May 24, 2009).

See: 41 N.J.R. 1535(a).

In (b), substituted "Chairperson" for "Commissioner" and "Civil Service Commission" for "Department of Personnel"; and added (c).

Adopted concurrent amendment, R.2009 d.206, effective May 24, 2009.

See: 41 N.J.R. 1535(a), 41 N.J.R. 2459(a).

Provisions of R.2009 d.133 adopted without change.

**Case Notes**

Negotiations with union concerning Department of Environmental Protection's reduction of employees' workweek were preempted by statute and regulations that created comprehensive demotional layoff scheme. *State v. Communications Workers of America, AFL-CIO*, 285 N.J.Super. 541, 667 A.2d 1070 (A.D.1995), certification denied.

Reduction in plumbing subcode official's work hours and compensation was motivated only by budgetary concerns and was done in good faith and did not violate Uniform Construction Code Act. *Voges v. Borough of Tinton Falls*, 268 N.J.Super. 279, 633 A.2d 566 (A.D.1993), certification denied 135 N.J. 466, 640 A.2d 848.

Statute which permitted lay off of permanent public employee superseded statute providing that an injured public employee receiving workers' compensation benefits was to continue on the payroll. *Novak v. Camden County Health Services Center Bd. of Managers*, 255 N.J.Super. 93, 604 A.2d 649 (A.D.1992).

Authority to regulate causes of removal and suspension. *State v. Local 195, IFPTE*, 179 N.J.Super. 146, 430 A.2d 966 (App.Div.1981), certification denied, 89 N.J. 433, 446 A.2d 158.

Employee improperly removed after suspension for same infraction. *Newark v. Copeland*, 171 N.J.Super. 571, 410 A.2d 274 (App.Div. 1980).

Employees of a housing authority who were laid off from their positions and certified on common special reemployment lists were entitled to replace city employees in comparable positions who had not been permanently appointed in the classified service. *Department of Civil Service v. Newark*, 131 N.J. Super. 275, 329 A.2d 572, 1974 N.J. Super. LEXIS 468 (App.Div. 1974).

Dismissal of veterans protected by Veteran's Tenure Act in non-civil service county. *Cooper v. Imbriani*, 122 N.J. Super. 469, 300 A.2d 863 (App. Div. 1973), affirmed, 63 N.J. 535, 310 A.2d 457 (1973).

Employee with permanent title of Children's Supervisor who accepted a position as a Human Services Specialist I with the county appointing authority when the county privatized its Children's Shelter was never laid off; the county rescinded its planned layoff, as all affected employees had accepted alternate employment within the county, and thus the employee's new position was a provisional appointment within current continuous service, pending promotional examination procedures. Therefore, when his provisional appointment was terminated for unsatisfactory performance, the employee was entitled to be returned to his permanent title; if the permanent title was no longer utilized, the county was required to implement layoff procedures, including giving 45 days' notice to the employee. In re *Garcia*, OAL Dkt. No. CSV 11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 711) adopted, in which a housing authority manager who was laid off was found to have failed to prove that his layoff was in bad faith. The layoffs were HUD mandated due to a funding reduction and the manager had been given bumping rights that he had not exercised. In re *Cotton*, OAL Dkt. No. CSV 10458-06, 2007 N.J. AGEN LEXIS 1034, Final Decision (December 19, 2007).

Politically motivated layoffs reversed, while layoff due to reasons of economy upheld. In re *City of Orange Layoffs Appeal*, 97 N.J.A.R.2d (CSV) 639.

Layoff of clerk typist due to economy affirmed. *DiMarco v. Borough of Highlands*, Department of Building and Grounds, 97 N.J.A.R.2d (CSV) 599.

Demotion in good faith if position not necessary for agency's operation. *Henry, Kennedy and Wise v. Cape May County*, 97 N.J.A.R.2d (CSV) 147.

Municipality's decision to lay off and replace public employees with private contractors was done in good faith where private contract's savings were rationally related to legitimate governmental purpose. *Conklin and Ollearo v. Township of Milford*, 96 N.J.A.R.2d (CSV) 755.

Decision to lay off and demote Division of Developmental Disabilities employees was made in good faith for reasons of economy. *Orsati, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 743.

Department of Human Services acted in good faith when it imposed department-wide layoffs and demotions of its employees. *Cable, et al. v. Department of Human Services, Central Office*, 96 N.J.A.R.2d (CSV) 713.

Layoffs and demotions of Division of Family Development employees was done in good faith for reasons of economy. *Ambrass, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 696.

Employee layoff determinations which were made in good faith for economic and efficiency reasons were upheld. In the Matter of the Layoffs of *Guzman, et al.*, 96 N.J.A.R.2d (CSV) 625.

Department of Human Services 1992 layoffs were not motivated by bad faith. In the Matter of *Donna Marrinan, et al.*, 96 N.J.A.R.2d (CSV) 557.

Department of Human Services acted in good faith when laying off employees due to reduction in its salary account for fiscal 1993. *Cully, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 547.

Department of Human Services 1992 layoffs were not motivated by bad faith. *Barker, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 539.

City's bona fide reduction of budget deficit supported large-scale layoffs. In the Matter of the City of Newark Layoffs, 96 N.J.A.R.2d (CSV) 361.

Good-faith layoff action supported by cut in federal salary funding and diminished need for position. *Billings v. City of Perth Amboy*, 96 N.J.A.R.2d (CSV) 314.

City's otherwise well-motivated layoff decision was not undermined by particularized ill will. *Peters v. City of Orange*, 96 N.J.A.R.2d (CSV) 227.

Government employer demonstrated good faith in lay-off action by showing necessity for reasons of economy. *Stagliano v. Camden County*, 96 N.J.A.R.2d (CSV) 215.

Administrative analyst's layoff in good faith when taken pursuant to departmental reorganization plan. *Bowring v. State Department of the Public Advocate*, 96 N.J.A.R.2d (CSV) 44.

Failure to show bad faith or discrimination defeats state agency personnel specialist's challenge to removal pursuant to reduction in force. *Bhanja v. Department of Personnel*, 96 N.J.A.R.2d (CSV) 41.

Evidence failed to establish bad faith cause of action in connection with layoffs and demotions in question. *Chepiga v. Mental Health and Hospitals*, 95 N.J.A.R.2d (CSV) 630.

Demotion of personnel assistants pursuant to reorganization of district under newly formed state operated school system was not in bad faith. *Dowling v. State Operated School District*, 95 N.J.A.R.2d (CSV) 603.

Demotions for reasons of economy were not arbitrary even though employees performed same tasks in lower positions. *Sowa v. Commerce and Economic Development*, 95 N.J.A.R.2d (CSV) 589.

Termination of handicapped offset machine operator was not discriminatory, but was in good faith for reasons of economy and efficiency. *Hansell v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 575.

Layoff of messenger by county clerk's office was in good faith when messenger's functions were performed by a fax machine and other employees. *Barnes v. Camden County*, 95 N.J.A.R.2d (CSV) 471.

Proof was lacking that reassignment of public defender office investigator was made in bad faith. *Jacobson v. New Jersey Public Defender*, 95 N.J.A.R.2d (CSV) 342.

Elimination of five water repairer positions to enable two electronic repairmen positions was in good faith for reasons of economy and efficiency. *Caggiano v. Township of Sparta*, 95 N.J.A.R.2d (CSV) 211.

Animosities towards public employee by others did not preclude layoff for economic reasons when those others had no role in layoff. *Matter of State Department of Corrections 1992 Layoffs*, 95 N.J.A.R.2d (CSV) 63.

Layoffs and demotions made in good faith. In the Matter of State Dept. Of Corrections 1992 Employee Layoffs, 95 N.J.A.R.2d (CSV) 63.

Employees failed to prove that layoffs and demotions were made in bad faith. In the Matter of the State Dept. Of Health 1993 F.Y. Layoffs, 95 N.J.A.R.2d (CSV) 45.

Reasonable, logical, and good faith efforts to accommodate budgetary reductions meant that layoffs were made in good faith for economic reasons. *Matter of State Department of Health 1993 Layoffs*, 95 N.J.A.R.2d (CSV) 45.

Layoffs of public employees were not motivated by bad faith, but by economic considerations and were justified. *Edwards v. Department of Community Affairs*, 95 N.J.A.R.2d (CSV) 29.

Act of councilmen in eliminating public employee's position was not for reasons of animosity, but was for reasons of economy and was justified. *De Prima v. Department of Administration and Finance*, 95 N.J.A.R.2d (CSV) 20.

Layoff of Director of Planning was in good faith in effort to achieve government economy. *DePrima v. Department of Administration and Finance*, 95 N.J.A.R.2d (CSV) 20.