

CHAPTER 8**LAYOFFS****Authority**

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

Source and Effective Date

R.2003 d.304, effective June 30, 2003
See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Chapter Expiration Date

Chapter 8, Layoffs, expires on June 30, 2008.

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: 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.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. PROCEDURES**

- 4A:8-1.1 General
- 4A:8-1.2 Alternatives to layoff
- 4A:8-1.3 Pre-layoff actions
- 4A:8-1.4 Review by Department of Personnel
- 4A:8-1.5 Layoff units and job locations
- 4A:8-1.6 Layoff notice

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

- 4A:8-2.1 Types of layoff rights
- 4A:8-2.2 Exercise of lateral and demotional rights
- 4A:8-2.3 Exercise of special reemployment rights
- 4A:8-2.4 Seniority
- 4A:8-2.5 Reassignments
- 4A:8-2.6 Appeals

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 Commissioner or authorized representative of the Department of Personnel 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.

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).

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).

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.

Animosity 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.

Layoffs of pharmacists were made in good faith. *Gordon v. Department of Military and Veterans' Affairs*, 95 N.J.A.R.2d (CSV) 6.

Layoffs of the pharmacists pursuant to decision of departments to use contractors for pharmaceutical substances rather than in-house pharmacists were justified for economic reasons. *Gordon v. Department of Military and Veterans Affairs*, 95 N.J.A.R.2d (CSV) 6.

Layoff of employee was proper. *Adewusi v. Atlantic County Department of Administration*, 95 N.J.A.R.2d (CSV) 5.

Layoff of landscape artist from county land office for reasons of efficiency and economy was not unjustified. *Adewusi v. Atlantic County*, 95 N.J.A.R.2d (CSV) 3.

Bad faith in eliminating jobs; proof. *Privitera v. Treasury Department*, 94 N.J.A.R.2d (CSV) 693.

Proof that layoff was instituted for reason other than economy, efficiency or other related reason. *Meybohm v. Treasury Department*, 94 N.J.A.R.2d (CSV) 665.

No bad faith was established; jobs abolished. In the Matter of the Essex County Layoffs, 94 N.J.A.R.2d (CSV) 601.

Township acted for reasons of efficiency and economy when it laid off employees. *Aiello v. Township of Brick*, 93 N.J.A.R.2d (CSV) 719.