

## 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 (except N.J.A.C. 4A:8-1.1A, which expires June 30, 2010).

#### 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).

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).

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.

Layoff of long-time employee was not in bad faith. *Acchitelli v. Department of Environmental Protection and Energy*, 93 N.J.A.R.2d (CSV) 716.

Employees failed to prove that township acted in bad faith in laying them off. *Winslow Township Police Department Communications Operators v. Winslow Township*, 93 N.J.A.R.2d (CSV) 713.

County department acted for reasons of economy and efficiency in layoff. *LaMorte v. Ocean County Department of Consumer Protection*, 93 N.J.A.R.2d (CSV) 669.

Good faith elimination of position. *Vida v. Jersey City State College*, 93 N.J.A.R.2d (CSV) 594.

Elimination of former job title; not bad faith. *Barcheski v. Perth Amboy Department of Public Works*, 93 N.J.A.R.2d (CSV) 565.

City acted in good faith. In the Matter of Atlantic City Layoffs, 93 N.J.A.R.2d (CSV) 533.

Demotion in lieu of layoff; good faith. *Murphy v. Lacey Township Police Department*, 93 N.J.A.R.2d (CSV) 487.

Layoff was for economic reasons. *Wright v. Department of Human Services*, 93 N.J.A.R.2d (CSV) 374.

Department-wide temporary layoffs done in good faith. *Department of Personnel Employees v. Department of Personnel*, 93 N.J.A.R.2d (CSV) 328.

Excessive absenteeism and lateness warranted removal. *Thomas v. Bergen Pines County Hospital*, 93 N.J.A.R.2d (CSV) 316.

City utility department eliminated position in good faith. *Rudolph v. Egg Harbor City Utility Department*, 93 N.J.A.R.2d (CSV) 313.

Good faith lay off. *Dobiles v. Union County*, 93 N.J.A.R.2d (CSV) 274.

Elimination of code enforcement officer position was in bad faith. *Sholty v. Bloomfield Township Department of Community Development and Inspections*, 93 N.J.A.R.2d (CSV) 221.

Layoff of borough engineering aid was in "good faith". *Wudecki v. Fair Lawn Department of Engineering*, 93 N.J.A.R.2d (CSV) 164.

Division of Motor Vehicles acted in "good faith". *Field Monitors v. Division of Motor Vehicles*, 93 N.J.A.R.2d (CSV) 103.

Layoff was result of compliance with environmental protection laws; laid off workers lacked necessary skills. *Towns v. Carteret Borough Sewage Disposal Plant*, 93 N.J.A.R.2d (CSV) 99.

Layoff of city employee was in good faith. *Chadwick v. Township of Lakewood*, 93 N.J.A.R.2d (CSV) 61.

Layoff was for reasons of economy. *Cope v. Township of Parsippany-Troy Hills*, 93 N.J.A.R.2d (CSV) 6.

Layoff; good-faith necessity to achieve economy. In the Matter of Bergen County Layoffs, 92 N.J.A.R.2d (CSV) 761.

Layoff was in good faith. *Jones v. New Jersey Board of Regulatory Commissioners*, 92 N.J.A.R.2d (CSV) 743.

Layoff of employees done in good faith. *Boker v. City of Long Branch*, 92 N.J.A.R.2d (CSV) 661.

Layoff was for political reason. *Johnston v. Camden County*, 92 N.J.A.R.2d (CSV) 617.

Layoff of director of occupational therapy was in good faith for reasons of economy. *Gaines et al. v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 516.

Layoff of administrative analyst was in good faith for reasons of economy. *Exter v. Dept. of Commerce & Economic Development*, 92 N.J.A.R.2d (CSV) 514.

Department of Human Services employee failed to establish that Department's decision to eliminate position was taken in bad faith. *Frizino v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 428.

Laying off of parking enforcement officer was based in good faith. *Moore v. Township of Middletown*, 92 N.J.A.R.2d (CSV) 420.

School employee's layoff was for reasons of economy, efficiency, or other related reasons. *Sparany v. Brick Township School District*, 92 N.J.A.R.2d (CSV) 396.

Layoff of former assistant violations clerk of borough's department of revenue and finance was not taken in good faith for reason of economy, efficiency. *Glab v. Borough of Belmar*, 92 N.J.A.R.2d (CSV) 377.

City acted in good faith when data processing manager was laid off. *Baldwin v. Department of Financial Management, Ocean City*, 92 N.J.A.R.2d (CSV) 367.

Layoff; good faith. *Dimaria v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 238.

"Good faith" layoff. *Davis v. Department of Central Services, Camden County*, 92 N.J.A.R.2d (CSV) 190.

Layoff; purposes of economy and efficiency. *Wooten v. Hillside Police Dept.*, 92 N.J.A.R.2d (CSV) 176.

There was no bad faith on the part of the appointing authority with respect to layoff rights. *Loughrey v. McCorkle Training School*, 92 N.J.A.R.2d (CSV) 13.

Layoff was in good faith. N.J.S.A. 11A:8-1, 11A:8-4. *Freeman v. City of East Orange*, 91 N.J.A.R.2d (CSV) 7.

Municipal layoff of permanent employees improper; proper procedures not followed; burden of proof lies with employee (citing former N.J.A.C. 4:1-16.3 and 16.6). *Clark v. City of Paterson*, 6 N.J.A.R. 25 (1980).

Layoff in bad faith; employees may be laid off for purposes of economy; however, CETA employees may not replace permanent employees (citing former N.J.A.C. 4:1-16.1); emergency, temporary, provisional and probationary employees must be laid off prior to permanent employees (citing former N.J.A.C. 4:1-16.2); lay off for economic purposes not to be in bad faith (citing former N.J.A.C. 4:1-16.3). *Tyler et al. v. City of Paterson*, 2 N.J.A.R. 272 (1979).

#### 4A:8-1.1A Temporary layoffs

(a) An appointing authority in State or local service may institute a temporary layoff for economy, efficiency or other related reasons. A temporary layoff shall be defined as the closure of an entire layoff unit for one or more work days over a defined period or a staggered layoff of each employee

in a layoff unit for one or more work days over a defined period. A temporary layoff shall be considered a single layoff action even though the layoff of individual employees takes place on different days during the defined period. The defined period shall be set forth by the appointing authority in its temporary layoff plan; however, in a staggered layoff, the maximum period to stagger one day off shall not exceed 45 days.

(b) A temporary layoff pursuant to (a) above may, with the approval of the Chairperson or a designee, be subject to limited exceptions when necessary to ensure continued public health, safety and welfare, including, but not limited to, child protection, law enforcement, fire safety and care for prisoners, patients and other residents in the care or custody of the State.

(c) In a temporary layoff, no employee in the layoff unit, whether career, senior executive or unclassified, shall be paid for any work day that is designated as a temporary layoff day. Any employee who is designated as exempt from a temporary layoff day pursuant to (b) above shall be paid his or her regular wages for working on that day.

(d) A temporary layoff plan shall be submitted to the Chairperson of the Civil Service Commission or a designee in accordance with N.J.A.C. 4A:8-1.4 at least 15 days prior to the issuance of temporary layoff notices or such other period as permitted by the Chairperson or a designee. The temporary layoff plan shall describe the implementation of the temporary layoff, including the specific day(s) on which the layoff unit will be closed, any exceptions pursuant to (b) above and, if staggered, the reasons for not closing the entire layoff unit on a specific day and the staffing plan for implementing a staggered temporary layoff. Part-time employees shall be designated for a proportional amount of temporary layoff time, consistent with the ratio of hours worked to full-time employment. In a staggered temporary layoff, the appointing authority shall be permitted, in its sole discretion, to designate as unpaid temporary layoff time any planned or unplanned leave time taken by an employee during the defined layoff period, up to the maximum temporary layoff time for that defined layoff period. Employees shall not be permitted to substitute any paid leave for an unpaid temporary layoff day.

(e) For purposes of accrual of leave time, anniversary dates, paid holidays and seniority, temporary layoff time shall be treated as if the employee is in pay status. An employee serving a working test period shall have the working test period extended for the time equal to the temporary layoff time. Leave an employee takes under the State Family Leave Act (see N.J.S.A. 34:11B-1 et seq.) or the Federal Family and Medical Leave Act (see 42 U.S.C. §§12101 et seq.) shall not be affected by a temporary layoff. An alternate work week program may be suspended for pay periods in which a temporary layoff is implemented.

(f) This temporary layoff rule, N.J.A.C. 4A:8-1.1A, shall expire on June 30, 2010.

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

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

Adopted concurrent new rule, R.2009 d.206, effective May 24, 2009, with changes effective June 15, 2009.

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

In (b), substituted “, safety and welfare,” for “and safety” and “protection, law enforcement, fire safety” for “welfare, law enforcement”; and in (e), substituted “Leave an employee takes under the State Family Leave Act (see N.J.S.A. 34:11B-1 et seq.) or the Federal Family and Medical Leave Act (see 42 U.S.C. §§12101 et seq.)” for “A Federal Family and Medical Leave Act leave or other leave for medical or family reasons”.

#### 4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

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

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Department of Personnel;
2. Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);
3. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;
4. Providing employees with optional temporary demotional title changes; and
5. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

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

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

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

**Case Notes**

Demotions of fire department personnel due to reasons of economy affirmed. Layoffs, City of East Orange Fire Department, 97 N.J.A.R.2d (CSV) 666.

Termination of security officer due to reasons of economy and efficiency affirmed. *Alexander v. Town of Boonton Housing Authority*, 97 N.J.A.R.2d (CSV) 579.

Reduction in hours of county's Cultural and Heritage Commission employees was done in good faith for reasons of economy and efficiency. *Bogutz, et al. v. Camden County*, 96 N.J.A.R.2d (CSV) 574.

Labor relations specialist failed to prove that demotion in lieu of lay-off was motivated by bad faith. *Crooms v. Newark School District*, 94 N.J.A.R.2d (CSV) 73.

Salary reductions; good faith. *Moynihan v. Borough of Belmar*, 92 N.J.A.R.2d (CSV) 172.

**4A:8-1.3 Pre-layoff actions**

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Reassigning employees; and
5. Assisting potentially affected employees in securing transfers or other employment.

(b) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by first placing employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

(c) Appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section.

(d) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

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

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

Rewrote (d).

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

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

Rewrote (b) through (d).

**Case Notes**

There was no bad faith in displacement of employee. *Snyder v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 709.

**4A:8-1.4 Review by Department of Personnel**

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

1. The reason for the layoff;
2. The projected effective date of layoff;
3. Sample copies of the layoff notice and the projected date for issuance;
4. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;
5. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;
6. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;
7. A summary of consultations with affected negotiations representatives; and
8. A list of affected negotiations representatives, including addresses and the units they represent.

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

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

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

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or pre-layoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

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 (a), deleted a former 4, and recodified former 5 through 9 as 4 through 8; in (b), substituted "below Commendable" for "of Marginally Below Standards or Significantly Below Standards" following "rating"; and in (c), made an internal reference change.

#### Case Notes

Municipal ordinance allocating to mayor authority to lay off subordinates of municipal clerk did not violate doctrine of separation of powers. *City Council, City of Orange Tp. v. Brown*, 249 N.J.Super. 185, 592 A.2d 260 (A.D.1991).

#### 4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department.

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

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.
2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.
3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.
4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

- i. The need for a unit larger than a department;
- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;
- iv. The effect upon employee layoff rights; and
- v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. Each job location shall consist of a county.
2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.
3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

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).

Rewrote (a).

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

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

Rewrote (a).

#### Case Notes

Commissioner of Personnel's failure to consider factors other than the effect on those adversely impacted at the Board of Public Utilities by the potential expansion of the Department of Environmental Protection layoff unit to include the Board of Public Utilities required remand for reconsideration by the Commissioner of her decision denying the Department of Environmental Protection rate analysts' petition to expand layoff unit to include the Board of Public Utilities. In re *Donohue*, 329 N.J.Super. 488, 748 A.2d 598 (N.J.Super.A.D. 2000).

#### 4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice serviced on employees shall be provided to

the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

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

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

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

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated Commendable or above in the most recent final PAR rating (or equivalent), shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

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 (e), inserted a reference to merit points determinations in the first sentence; and in (f), added 1.

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

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

In (e), deleted "and merit points" following "seniority".

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (f)1, inserted "(or equivalent)".

#### Case Notes

Insufficient notification of charges. Dept. of Law and Public Safety v. Miller, 115 N.J.Super. 122, 278 A.2d 495 (App.Div.1971).

Employer's lay off procedure triggers additional salary award to laid-off employees for failure to comply with state's notice requirements. Baylor, et al. v. Phillipsburg Municipal Utilities Authority, 97 N.J.A.R.2d (CSV) 78.

## SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

### 4A:8-2.1 Types of layoff rights

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

1. The title(s) shall have substantially similar duties and responsibilities and the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

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

1. The title(s) shall have lower but substantially similar duties and responsibilities and, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the