

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

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 8, Layoffs, expires on December 23, 2015. See: 43 N.J.R. 1203(a).

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) In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band.

1. All references to titles in this chapter shall mean the job band in the case of those titles approved for inclusion in job bands.

2. All references to class codes in this chapter shall mean the class code of the lowest title level in the band in the case of those titles approved for inclusion in a job band.

(c) The Chairperson of the Civil Service Commission or designee 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.

(d) 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.
Amended by R.2014 d.099, effective June 2, 2014.
See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In the introductory paragraph of (a) and of (a)1, inserted a comma following "efficiency"; added new (b); recodified former (b) through (c) as (c) through (d); and in (c), deleted "or authorized representative" following "Chairperson", and inserted "or designee", and a comma following "demotional".

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).

Filing, by an employee who had appealed her layoff as a systems analyst by a county department of administration, of an application to PERS to retire with a service pension constituted a resignation that mooted her layoff appeal and justified an order affirming the departmental action and dismissing the layoff appeal. *In re Batra, Morris Cty. Dep't of Admin., OAL DKT. NO. CSV 00532-15 (Slip Opinion)*, Initial Decision (May 13, 2015).

Fire department officials who were laid off by a township following a change in administration did not carry their burden per N.J.A.C. 4A:2-1.4(c) to show that the layoff was actuated by a bad faith motivation within the meaning of N.J.A.C. 4A:8-2.6(c) because while the proper layoff proceedings were not initially followed, those errors were corrected. Moreover, neither of the officials adduced any bona fide evidence of bad faith, and the fact that one of the officials indicated that the township's business administrator was rude to him, that fact alone was insufficient to constitute bad faith on the part of the township. To the contrary, the preponderance of credible evidence demonstrates that the township laid off the officials for purposes of efficiency and economy per N.J.A.C. 4A:8-1.1(a) based on changes in administration and the form of government. *In re Hendrickson, Jr., et al, Vernon Twp., Dep't of Public Safety, OAL DKT. NO. CSV 4683-13, OAL DKT. NO. CSV 4684-13 (Consolidated)*, 2014 N.J. AGEN LEXIS 474, Initial Decision (August 5, 2014).

An Administrative Law Judge concluded that a worker who had been laid off from her position as Senior Clerk Typist for a township did not prove that her layoff was effectuated for an improper motive such as ill will or other improper reason. Specifically, though the worker claimed that she was targeted for layoff because an interim township manager had animus towards her, the township showed that that manager was not even in the management position when the layoff plan was conceived and approved. Nor did the worker establish that there was any nexus between grievances that she had filed a year earlier and the layoff. Moreover, the township adduced ample evidence that the layoffs were necessary due to reasons of economy within the meaning of N.J.A.C.

4A:8-1.1(a) and N.J.A.C. 4A:1-1.3 including that the township had experienced a decrease of \$ 725,000 in tax revenues and its surplus had dropped to below \$ 1 million. *Twp. of Sparta, Layoffs 2010 (Lehman), v. Twp. of Sparta, Dep't of Pub. Works, OAL Dkt. No. CSV 00239-11, AGENCY Dkt. No. 2009-529, 2014 N.J. AGEN LEXIS 170, Initial Decision (April 8, 2014)*.

Appeals of permanent employees who were laid off by the City of Newark pursuant to N.J.A.C. 4A:8-1.1 were dismissed. A preponderance of the evidence did not exist that Newark intended to replace permanent custodians or aides with per diem custodians or aides on a permanent basis, and Newark did contend that its layoff was part of a plan to reduce payroll costs. *In re Elijah Arce, Sandra Currias, Wilma Austin, Thomasina Anderson, Corey Adams, June George, Ruthie Bray, Newark Public Schools 2012 Layoffs, OAL DKT. No. CSV 14873-12, CSV 14876-12, CSV 16647-12, CSV 16648-12 1, CSV 16649-12, and CSV 16655-12 (Consolidated)*, 2014 N.J. AGEN LEXIS 142, Initial Decision (March 31, 2014).

Layoffs of Skilled Trades Association, Inc. (STA) members were done for reasons of economy and efficiency pursuant to N.J.S.A. 11A:8-1a and N.J.A.C. 4A:8-1.1(a). STA members were considered for layoff because they were not producing sufficient revenues from referrals to cover their costs, there was less maintenance work mainly due to changes in the Newark Housing Authority's housing stock, and the STA had not had any prior layoffs. Moreover, the STA's contentions that they were laid off due to anti-union animus were unpersuasive. *In re Newark Housing Authority Layoff—2010, OAL DKT. Nos. CSV 09080-10 and PRC 012872-11, 2014 N.J. AGEN Lexis 31, Initial Decision (February 25, 2014)*.

City employee did not establish a right to compensation on her claim that her layoff from her position of director and coordinator of the city's Office of Aging, which layoff occurred as part of a general layoff undertaken for fiscal purposes. Because N.J.A.C. 4A:8-1.1(a) authorized a civil service municipality to lay off employees for "economy, efficiency or other related reasons," an employee who is challenging a layoff cannot satisfy the onerous burden in a good-faith appeal per N.J.A.C. 4A:8-2.6(a) by offering evidence that the challenged layoff was partially motivated by an unlawful motive where, as here, there was evidence that the layoff was also designed to effect economies. *In re City of Trenton Layoffs, Dep't of Admin. & Fin., OAL Dkt. No. CSV 876-11, AGENCY Dkt. Nos. 2011-2141 et al., 2014 N.J. AGEN LEXIS 70, Initial Decision (February 10, 2014)*.

City Code enforcement officers did not carry their burden of proof per N.J.A.C. 4A:8-2.6(c) to show by a preponderance of evidence that their employer's action in laying them off was taken in bad faith in that it was made for reasons other than economy or efficiency or other like reasons. While the officers showed that the city had made other hires and had increased the salaries of other employees since the date of the layoff, this in and of itself did not support a showing of bad faith as the record clearly reflected that the city was facing a significant deficit, a decrease in revenue and an increase in appropriations in the pre-layoff period. The city's efforts to address its fiscal situation involved a comprehensive plan including layoffs in positions that the city thought were non-essential, furloughs, payroll lags, and alternative healthcare coverage. Moreover, some of the hiring related to positions addressing critical operational needs and were funded at least in part by grants. Also relevant was the fact that the majority of the hires were both provisional and seasonal, which have a lighter financial impact for the city's taxpayers. That being so, the layoff action was properly found to have been instituted for reasons of economy and/or efficiency within the meaning of N.J.A.C. 4A:8-1.1(a) and that the officers were not entitled to relief from that action. *In re Murray, et al., City of Jersey City Layoffs, CSC DKT. NO. 2011-4941, 2011-4945, 2011-4981 (Consolidated), OAL DKT. NO. CSV 7877-11 REMAND, 2013 N.J. CSC LEXIS 1203, Final Administrative Action (December 4, 2013)*.

Action of Jersey City to lay off certain employees was sustained on remand pursuant to N.J.S.A. 11A:8-1 and N.J.A.C. 4A:8-1.1(a). While there were hires and salary increases since the subject layoff, this in and of itself did not support a showing of bad faith, as the record soundly reflects that Jersey City was facing a significant deficit, decrease in