

# Wisconsin Human Resources Handbook

## Chapter 232

### Layoff of Permanent Classified Employees

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#### Sec. 232.010 Introduction

When the workforce must be reduced due to a stoppage or lack of work or funds or owing to material changes in duties or organization, appointing authorities may be required to permanently lay off employees.

This handbook chapter provides layoff procedures for classified employees only and is not applicable to the following groups of employees:

- (1) employees in certified bargaining units under s. 111.825(1)(g), Wis. Stats. (WLEA only);
- (2) seasonal layoff of seasonal employees or school year employees at institutions or schools during recesses in the academic year or the summer, except as provided in s. ER-MRS 22.12, Wis. Adm. Code (permanent layoff of seasonal employees) and s. ER-MRS 22.13, Wis. Adm. Code (permanent layoff of school year employees);
- (3) layoff (dismissal) of project appointment (05) employees; or
- (4) dismissal of limited term employees.

This handbook chapter also provides information and guidance related to temporary options prior to or in lieu of permanent layoff for classified employees, including Temporary Layoff. These options will address a temporary reduction in the workforce due to a stoppage or lack of work or funds or owing to material changes in duties or organization. These actions may be appropriate where the need is temporary or where the scope and severity of need is unknown but where some immediate action is required until a permanent plan is implemented.

#### Sec. 232.020 Statutory and Rule Authority

Section 230.31(3), Wis. Stats., provides that any person with permanent status who is laid off on or after July 1, 2016 is eligible for reinstatement to a position at a comparable or lower pay range for which the person is qualified for a period of 3 years following the date of layoff.

Section 230.34(2), Wis. Stats., provides that employees with permanent status in class in permanent or seasonal positions in the classified service and employees serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization.

Section 230.34(2)(a), Wis. Stats., provides that an appointing authority shall determine the order of layoff of such employees primarily based upon job performance, and thereafter, in accordance with the rules of the director, on disciplinary records, seniority and ability.

Section 230.34(2)(b), Wis. Stats., provides that the director shall promulgate rules governing layoffs, appeals resulting from layoffs, and alternative procedures in lieu of layoff, including voluntary and involuntary demotion, as well as subsequent employee eligibility for reinstatement. This function related to layoffs includes temporary layoffs.

Section 230.34(2m), Wis. Stats., provides that employees in positions funded by non-state funds made available contingent on special employee eligibility requirements, such as length of prior unemployment, specific occupational disadvantages or need for remedial work experience, are exempt from inclusion with the employees whose positions are in classes considered for layoff. In the case of reduction in force in such non-state funded positions, layoffs and layoff procedures established in the rules of the director may be limited to employees whose positions are dependent upon specific funding contingencies.

Section 230.34(3), Wis. Stats., requires that appointing authorities confer with the director relative to a proposed layoff a reasonable time before the effective date in order to ensure compliance with the administrative rules.

Chapter ER-MRS 22, Wis. Adm. Code, was promulgated to provide the layoff procedures which must be followed by state agencies in developing and implementing layoff plans for classified employees. Layoff of permanent, classified employees will occur only after all original appointment probationary employees in the classes used for layoff are terminated, unless authorized by the director. This code chapter also authorizes the BMRS director to administer agencies' layoff plans and to authorize exceptions to the procedures outlined in the administrative code for temporary layoffs not to exceed 20 working days.

## Sec. 232.030 Definitions

The following are definitions of terms used in this chapter:

1. **Classification series:** A grouping of related class titles, usually designated by a multiple number of levels, such as denoted by 1, 2, 3, 4, etc., or entry, developmental, journey, senior, etc. A classification series can be non-progression or progression or a combination of both. Also see **Progression series** below.
2. **Continuous service:** All the time in continuous employment status in the unclassified service or as a permanent employee in the classified service. Continuous service does not include time served in limited term employment and in those positions under s. 230.08(2)(k), 2013 Wis. Stats., regarding youth camps and students, respectively. See Attachment #3 on computing continuous service.
3. **Counterpart pay range:** A pay range or groupings of pay ranges in different pay schedules which are designated by the Administrator to be at the same level for the purposes of determining personnel transactions.
4. **Customary Orientation:** An individual is considered qualified to perform the work with "customary orientation" if the individual possesses, upon appointment, the basic knowledge, training or experience to successfully perform the work after a short introduction to work unit policies and procedures. This orientation period may take approximately six weeks.
5. **Demotion:** The permanent appointment of an employee with permanent status in one class to a position in a class lower than the highest position currently held in which the employee has permanent status in class, unless excluded under s. ER-MRS 17.02, Wis. Adm. Code (Exclusions).
6. **Director:** The director of the Bureau of Merit Recruitment and Selection in the Division of Personnel Management, Department of Administration.

7. **Employing Unit:** An agency or a portion of an agency defined by functional, organizational or geographic attributes which has been approved by the director for the agency to use for any one or combination of the following: promotion, demotion, transfer, reinstatement, layoff, and other related personnel transactions.
8. **Layoff (Permanent):** The termination of the services or permanent reduction of hours of an employee with permanent status in class from a position in a layoff group approved by the director, in which a reduction in force is to be accomplished.
9. **Layoff group:** An aggregation of related positions comprising the group of employees from which the layoff will be made. See Section 232.070 of this handbook chapter (Establishing a Layoff Group) for a discussion of layoff groups.
10. **Permanent status in class:** The rights and privileges attained upon successful completion of a probationary period required upon an appointment to permanent, seasonal, or sessional employment.
11. **Progression series:** A multiple-level classification series where employees are expected to progress via reclassification to the objective level as long as they can satisfactorily perform the full range of duties assigned to the objective level classification. The class specifications or position standards specifically identify the entry and “full-performance objective level.” The full performance objective level within a progression series means the classification level which any employee could reasonably be expected to achieve with satisfactory performance of increasingly complex duties or the attainment of specified training, education, or experience.
12. **Recruitment option:** A grouping of job duties and responsibilities common to one or more positions assigned to a classification or classifications, used by the Director to establish layoff groups, selectively certify eligible applicants or establish registers. See Section 232.070 of this handbook chapter (Establishing a Layoff Group) for a discussion on recruitment option.
13. **Subtitle:** A secondary explanatory title which is used to identify positions whose duties distinguish them from other positions in the same class in terms of the qualifications required for successful performance in the position. Designation of a subtitle is subject to the approval of the administrator, and personnel processes such as layoff may be based on both the class title and subtitle. See Section 232.070 of this handbook chapter (Establishing a Layoff Group) for a discussion on subtitle.
14. **Transfer:** The permanent appointment of an employee to a different position assigned to a class having the same or counterpart pay rate or pay range as the class to which any of the employee’s current positions is assigned.
15. **Vacancy:** A classified position to which a permanent appointment may be made after the appointing authority has initiated an action to fill that position.

#### **Sec. 232.040 Temporary Options Prior to or in Lieu of Permanent Layoff**

After considering the needs of the agency to maintain service levels, appointing authorities should consider the option of temporary layoffs, which may include a temporary reduction of hours.

Section ER-MRS 22.14, Wis. Adm. Code, permits temporary layoffs for some or all of the classified employees (including career executives) in an employing unit for 20 working days or less (160 hours for full time employees). The “working days” need not be consecutive and need not be taken in full day increments.

Example: A temporary layoff could include 40 half-days; one day a week for no more than 20 weeks; two days a week for 10 weeks; one day every other week; or similar variations not to exceed 20 days.

Management has the right to establish and adjust work hours which may involve scheduling overtime (time worked in excess of 40 hours per week) or reduction in hours (time worked that is less than 40 hours per week). Substantial

reduction in work hours changes the nature of a position such that it would be considered a “different” position. This conclusion is supported by the language contained in s. ER-MRS 22.09(2)(c), Wis. Adm. Code, related to determining what is a reasonable offer of employment relating to alternatives to layoff. This rule establishes a standard that the “offered position” is reasonable if the “. . . number of work hours required does not vary substantially from the number of work hours previously worked . . .” This concept is important because a substantial reduction in work hours is sufficient to invoke the layoff process. The director has determined that any permanent reduction in work hours is substantial. If the reduction of hours is temporary, the temporary layoff procedures would be invoked.

Consecutive temporary layoffs in the same employing unit due to the same reason which caused the initial temporary layoff will not be authorized unless a plan for subsequent permanent layoff in that employing unit has been submitted. If it is determined that the temporary layoff will last beyond the 20-working day maximum, the agency must submit a permanent layoff plan for approval and may then request an additional 20 days of temporary layoff. After the second 20 days, the agency must then proceed with the permanent layoff.

Temporary layoff plans require approval by the director, regardless of staffing delegation. Agencies may request delegation from the director for the responsibility and authority to approve and implement classified employee temporary layoffs.

If it is determined that temporary layoffs will be utilized, agencies are required to prepare a written temporary layoff plan for submission and approval of the director prior to the preferred effective date and before taking an action toward implementation of the plan. The temporary layoff plan will include each of the following:

1. Reason(s) for the temporary layoff (e.g., loss of funding, etc.).
2. Name and classification of employee(s) to be temporarily laid off.
3. Specific number of days that the affected employee(s) will be laid off.
4. Effective date(s) of the temporary layoff.

FLSA implications must be considered when an exempt employee is subject to temporary layoff. Title 29 C.F.R. 541, s. 541.710, allows for “budget required furloughs.” Under that code, when an exempt employee has deductions taken from his/her pay because of a budget required furlough, the employee will be considered to be non-exempt during the work week in which the furlough occurs. Once the furlough is completed and the employee’s pay is no longer reduced, the employee resumes his/her exempt status.

### **Benefit Implications:**

Temporary layoffs may have implications on employee benefits, excluding seniority, for both represented and nonrepresented employees.

As a general rule, most benefits will not be affected. Sick leave credits continue to be earned (s. ER 18.03(2)(b), Wis. Adm. Code), annual leave credits are not lost (s. 18.02(4)(a), Wis. Adm. Code), and continuous service is not adjusted. The employer will continue to pay its share of the health insurance premium during a temporary layoff. WRS retirement earnings would be lower and any other benefits that are tied to annual income could be affected as a result of a temporary layoff including Life Insurance, Income Continuation, etc.

### **Sec. 232.050 Procedures for Making Layoffs**

When an agency must lay off classified permanent employees after all other means to reduce costs or re-deploy staff have been implemented, the appointing authority will prepare a comprehensive, written layoff plan and submit it to the director for review and approval before the layoff plan is implemented.

The layoff plan must include the following information.

1. A detailed explanation of why the layoff is necessary and the alternatives, if any, that were considered in order to avoid the layoff.
2. The employing unit(s) affected. See Section 232.060 of this handbook chapter (Employing Units) for a discussion on employing units.
3. The layoff group, number of positions to be eliminated, names and classifications of employees, and their performance category, seniority date, indication of discipline and/or ability exemptions requested, gender, racial/ethnic code, date of birth, disability status, and percentage of FTE. See Section 234.070 of this handbook chapter (Establishing a Layoff Group) for a discussion on layoff groups.

<p><b>Note:</b> Employee demographic information should not be used as a factor in determining the order a layoff. A statement will be included in the layoff plan indicating this data is used for information and reporting purposes only.</p>
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4. Name and release date of any employees who are currently serving an original probation or detailed justification requesting to maintain such employees.
5. A detailed explanation of the factors considered and methods used to determine order of layoff. See Section 232.080 of this handbook chapter (Order of Layoff Determination) for a discussion on how to determine the order of layoff.
6. Names of employees to be laid off, listed in order of layoff, and anticipated date of layoff.
7. Date that written notice of layoff will be provided to affected employees.
8. Draft of layoff letter(s) which includes alternatives in lieu of termination as a result of layoff. See Section 232.100 of this handbook chapter (Alternatives to Layoff) for a discussion on these layoff alternatives.
9. Signature of appointing authority or designee.
10. The name, phone number, and e-mail address of the person to contact regarding questions about the layoff plan.

The director will review the layoff plan(s) and respond to the appointing authority, in writing, in advance of the agency's layoff actions. The layoff plan will also be reviewed by the DPM Affirmative Action Officer. See Attachment #1 to this chapter, "Sample Layoff Plan."

### **Sec. 232.060    Employing Units**

An employing unit is an agency or a functional organizational or geographic unit within an agency which has been approved by the director for the agency to use for any one or combination of the following: promotion, demotion, transfer, reinstatement, restoration, layoff and other related personnel transactions. Changes in existing employing units are not delegated to any agency. Proposed changes will not be approved immediately preceding or as part of an agency's layoff plan. This means agency reorganizations which occur as a result of or part of a restructuring and layoff process normally will continue to use existing employing unit structures to implement the layoff. After all layoffs relating to the restructuring have been implemented, the director will consider changes in employing unit structure to reflect the new organizational structure of the agency or sub-unit of the agency. Employing unit changes that do not adversely affect the creation and implementation of layoff groups will be reviewed and implemented as appropriate.

### Sec. 232.070 Establishing a Layoff Group

Layoff groups are established by employing unit. Full-time and part-time positions may constitute different layoff groups. (See s. ER-MRS 22.06(1), Wis. Adm. Code.) Layoff groups are identified by, but not limited to, the following:

1. A classification.
2. A classification subtitle. See Section 232.030 of this handbook chapter (Definitions) and the discussion below.
3. A progression series which has been approved by DPM for use by the agency. See Section 232.030 of this handbook chapter (Definitions).
4. A recruitment option. See Section 232.030 of this handbook chapter (Definitions) and the discussion below.
5. A clearly definable set of qualifications within a classification established through job analysis.

The terms “subtitle” and “recruitment option” are similar in definition but there are important differences. A subtitle is an official designation of a position that identifies the distinct specialty of the position. The subtitle must be approved by the DPM administrator through a formal review process similar to the creation of a new classification. A subtitle reflects a substantial and distinct set of duties, responsibilities and authorities of a position that distinguishes it from other positions in the same classification title.

Creation of and changes to classification titles and subtitles are not delegated to agencies. Proposed changes to classification titles or subtitles that affect a layoff group will generally not be approved immediately preceding or during a layoff process. After all layoffs have occurred, if changes are appropriate, they will be reviewed and approved according to the standard review process.

A recruitment option also may be assigned to a classification title or subtitle in an effort to more adequately describe specialized knowledge, skills and abilities for the position. A recruitment option is not a “working title.” It is a term that is used to more specifically identify a position for recruitment, assessment, certification or layoff when job analysis has shown that the special character and qualifications of the position so necessitate. Because a recruitment option relates to the required qualifications of the person for a position, it falls under the authority of the director.

When a recruitment option has been used in the certification process or in establishing selective certifications, it may be appropriate to also use the recruitment option when establishing layoff groups. An example of a recruitment option might be an announcement/register for a Bilingual (Spanish) position. If the register established for the appointment to this position was limited to only those applicants who met the minimum requirements for the classification and met the recruitment option of bilingual (Spanish), then it may be appropriate (not required) to develop a layoff group limited to those positions filled by using that specialized register. Use of a recruitment option in establishing a layoff group requires extensive supporting documentation that the recruitment option was declared and used in filling the position(s).

### Sec. 232.080 Order of Layoff Determination

Once the layoff group has been identified, the appointing authority will rank the employees according to job performance and thereafter seniority. Special abilities and disciplinary records will then be reviewed and considered for potential exemptions from the ranking.

#### Job Performance

The appointing authority shall evaluate annual performance evaluations of all employees in the layoff group, under the following conditions:

1. The appointing authority will ensure the formal evaluation program and documentation meets the guidelines established by the administrator as outlined in Chapter 460 – Establishing the Performance Evaluation Program, of the *Wisconsin Human Resources Handbook*, and were consistently administered across the entire layoff group (e.g. the same supervisor conducted the performance evaluations, the evaluations were calibrated across the group, the evaluations followed agency processes, evaluations were reviewed by Human Resources, etc.).

**NOTE:** If the agency performance evaluation program or administration of such for the layoff group is not reliable and uniform, the agency may not use performance as a factor in determining the layoff and will proceed to ranking employees by seniority.

2. Evaluations will be limited to the employees' current positions or classification series.
3. Evaluations will include current year and the previous four years. Neutral ratings (satisfactory or meets expectations) will be given to employees, who have less than four previous evaluations, for the missing years.
4. Employees will be ranked from highest performing to lowest performing using the agency's evaluation categories (e.g. outstanding, satisfactory, needs improvement, unsatisfactory, etc.).
5. More weight may be given to recent evaluations.
6. Documented evidence of performance used during annual evaluations may be included in the review and includes, but is not limited to, Performance Enhancement or Improvement Plans (PIPs/PEPs), documentation of corrective action taken to correct performance, job-related metrics known to the employee (e.g. calls per hour for call center position, etc.), commendations, and performance-based awards.
7. When "metric-based" performance results are utilized, the appointing authority will ensure that employees are not disadvantaged in comparison to others in the layoff group due to reasons such as less than full-time employment, FMLA absences, work accommodations, etc.
8. Within each performance category, the employees shall be ranked by seniority.

### **Seniority**

Seniority of the employees is computed on the basis of continuous service with employees having more continuous service receiving a higher ranking. Only the most recent period of continuous employment status in either the unclassified service or as a permanent employee in the classified service, or both, will be counted in determining an employee's length of continuous service. This excludes time served as a limited term employee or in those positions in youth camps and students respectively. See Attachment #3 or s. ER 18.02(2), Wis. Adm. Code, for questions on calculating continuous service. Any resulting tied cases will be ranked, relative to each other, according to their total continuous service in the approved layoff group (for example time in classification). If, after completing this ranking, a tie still exists between two or more employees, continuous service of the tied employees is determined by age, with the oldest employee deemed to have the greatest continuous service.

### **Disciplinary Record**

The appointing authority will review disciplinary records for all employees in the layoff group and may request an exemption from the seniority order based on the results of the disciplinary record review, under the following conditions:

1. The review will consist of records from current and previous four years.
2. Formal discipline will be considered along with supplemental information such as the nature of the violation, level of discipline, pattern of behavior, mitigating factors, subsequent behavior, etc. Identification of any form of discipline does not automatically or singularly mean the employee moves into the layoff group.

3. Letters of expectation shall not be considered.

The appointing authority must balance findings from this review with an employee's performance ratings, seniority, and abilities when deciding whether to request to affect the employee's layoff ranking.

### **Ability**

An appointing authority may request to retain up to 20% of the employees in the layoff group who have special or superior skills, under the following conditions:

1. The abilities must be specific, having been consistently applied by the employee, and verifiable.
2. The abilities must be related to the duties and responsibilities of the work performed by the layoff group and the operational objectives from which the layoff action is occurring.
3. If the reason for the layoff, or the layoff action itself, results in new or different job standards, work activities, technologies, etc., a different skill set may emerge as critical to operations. In these instances, and where the appointing authority chooses to apply ability as a factor, the following conditions must be met:
  - a. All employees in the layoff group will be given an opportunity to demonstrate possession of the skill set, which has been identified based on the new or different job requirements.
  - b. The assessment process will occur after the skill set has been identified and reflect a valid methodology that takes job content into account under the supervision and administration of human resources officials, as assigned by the director.

### **Sec. 232.090 Notice to Employees**

Employees affected by layoff will be given written notice of the action not fewer than 60 calendar days prior to the effective date. Upon agency request, the director may reduce the notice requirement due to loss of funding, or unique and exceptional circumstances, but in no case will notice be less than 30 calendar days. The written notice must include specific alternatives to layoff, if available, within the agency and inform the employees that alternatives to layoff will be monitored throughout the notice period and through to layoff. (See Attachment #2 to this chapter, "Sample Layoff Letter.").

In the event of an enterprise-wide reduction in workforce or significant reduction in a particular agency, the director may provide for additional procedures and notice to employees.

If alternatives to layoff do not become available prior to the effective date of the layoff and the employee must be terminated from the service due to layoff, the employee must be provided with written notice at least 7 calendar days prior to the effective date. This notice shall include the employee's right to grieve the layoff decision.

### **Sec. 232.100 Alternatives to Termination from Service as a Result of Layoff**

Wisconsin statutes and administrative codes require appointing authorities to provide alternatives to termination from service as a result of layoff. Following are those provisions and procedures:

1. The alternatives identified must meet the definition of "vacancy" or "vacant position", in accordance with s. ER-MRS 22.02(5), Wis. Adm. Code.
2. The alternatives are within the agency. Employing units shall NOT be used to narrow the available alternatives.

3. The alternatives must meet the criteria for a reasonable offer under s. ER-MRS 22.09, Wis. Adm. Code. (See Sec. 232.120)
4. The alternatives are available to the employees in the layoff group beginning with the employees' receipt of formal notice of layoff, ending upon the effective date of the layoff or hire to an alternative position.
5. All employees in the layoff group who have been identified for layoff and are minimally qualified, with a customary orientation provided to newly hired workers, have a right to compete for the vacancies.
6. The most qualified employee will be offered the position first, as determined by the appointing authority, using a process which reflects a competitive selection procedure (e.g., job interview, using job related selection criteria for hiring decisions, etc.). Oversight and maintenance of records in this process by Human Resources are required.
7. The appointing authority will first identify and present vacancies at the same or counterpart level as the layoff group and will offer transfer opportunities in an effort to maintain employee levels.
8. If there are no transfer opportunities available, the appointing authority is required to identify and present alternatives for demotion.
9. Alternatives for demotion must be offered in a manner which allows employees to remain at the level closest to that of layoff. Therefore, at each level below the layoff level, each vacancy will be evaluated and if no option is available, then repeat the process at the next lower level ending when reasonable offers no longer exist.
10. At the discretion of the appointing authority, opportunities for demotions and vacancies that do not meet reasonable offer criteria may be offered, with the following stipulations:
  - a. All employees in the layoff group are notified of the opportunities.
  - b. If higher level alternatives were made available to the employees and they did not compete or accept an offer, pay will be subject to s. ER 29.03(8)(d), Wis. Adm. Code or the compensation plan.
  - c. Payment for relocation is at the discretion of the appointing authority as this is a voluntary option on the part of the employee.
  - d. The employees must be notified of these conditions, in writing, to ensure each employee is able to exercise informed decision making about the options made available.
11. Employees who transfer within an agency, in lieu of termination from service as a result of layoff, immediately obtain permanent status in class, except for:
  - a. An employee who was serving a promotional probationary period at the time of transfer must finish that probation in the new position.
  - b. The appointing authority may require continuation/completion of a permissive probationary period in accordance with s. ER-MRS 22.08(1)(b)2., Wis. Adm. Code. However, at least 6 months of that probation must be served in accordance with s. ER-MRS 13.04(3), Wis. Adm. Code.
12. Employees who demote within an agency, in lieu of termination from service as a result of layoff, immediately obtain permanent status in class, except those serving a promotional probationary period when demoting to a level higher than the level from which they promoted must complete that probation in the new position.

### **Voluntary Actions by Employees Within the Layoff Group**

With the agreement of the appointing authority, an employee with more continuous service may volunteer to be terminated from employment in lieu of the layoff of an employee with less continuous service, with the guarantee that the appointing authority will not challenge the volunteering employee's eligibility for unemployment compensation. An employee who is separated from service under this type of voluntary termination agreement is granted all rights and privileges of a laid-off employee including reinstatement privileges and other such benefits as may be granted to laid-off employees. An employee granted voluntary termination in lieu of layoff of another employee forfeits privileges associated with alternatives in lieu of layoff as discussed in section 232.100 of this handbook chapter (i.e., transfer in lieu of layoff or demotion in lieu of layoff).

### **Sec. 232.110 Reasonable Offer of Employment**

As determined by the appointing authority, an offer of employment is considered reasonable if it meets all of the following five conditions as of the date of the offer.

1. The position is one that the employee would be qualified to perform after customary orientation provided to new workers in the position.
2. The position is the highest-level position available within the agency to which the employee could either transfer or demote.
3. The assigned shift or work hours required are the same as those previously worked, both in number and shift.

<p><b>NOTE:</b> A shift is considered the same when it falls within the standard understanding of shift work. The "first shift" begins in the morning, the "second shift" begins in the afternoon or evening and the "third shift" is overnight. A shift does not change due to slight modifications of the start and stop times of the employee.</p>
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4. The position is located at a work site that is within reasonable proximity of the original work site. Reasonable proximity is defined as an assigned headquarters located less than 40 miles from the employee's home unless the employee's work site prior to his/her layoff was at a greater distance from his/her home, in which case a job offer will be reasonable if the headquarters of the position offered is no farther from the employee's home than was the distance of the previous work site.
5. The pay range of the position offered is no more than three pay ranges/counterpart pay ranges or one broadband pay range lower than the pay range of the position from which the employee was laid off.

### **Declining a Reasonable Offer**

An employee who has been **formally notified of layoff** and fails to accept a reasonable offer of permanent appointment within the agency within two work days of receiving the offer or who, upon acceptance, fails to be available for work within five work days after acceptance, forfeits any further rights to an appointment under alternatives to layoff (transfer in lieu of layoff and demotion in lieu of layoff).

### **Offers of Employment Other Than Reasonable**

An appointing authority is not required to offer an employee a position that does not meet the definition of reasonable offer. An appointing authority also is not precluded from offering the employee a position that does not meet the test of reasonable offer. In some circumstances, an employee may wish to accept (or even request) a position notwithstanding its "unreasonableness." It should be noted that acceptance of an unreasonable offer may affect the pay options available to an employee. An employee who declines an "unreasonable offer" does not forfeit any future rights to an appointment.

**Note:** For information regarding restoration and reinstatement following layoff see Chapter ER-MRS 16, Wis. Adm. Code.

### **Sec. 232.120 Pay on Transfer or Demotion**

Pay options on transfer or demotion in lieu of layoff for classified employees may be affected by applicable compensation provisions. To determine the appropriate pay, see the current State of Wisconsin Compensation Plan.

**Note:** In rare situations, a non-represented employee may move to position in a certified bargaining unit under s. 111.825(1)(g), Wis. Stats. (WLEA only). To determine the appropriate pay, refer to the WLEA labor agreement.

### **Sec. 232.130 Appeal Rights**

An employee may appeal an adverse employment decision, including a layoff decision, under s. 230.445, Wis. Stats. The employee must follow the grievance procedures as set out in Chapter 430—Employee Grievance Procedure, of the *Wisconsin Human Resources Handbook*. These appeal rights must be included in the notice of layoff that is given to the employee.

### **Sec. 232.140 Administrative Information**

This chapter was originally published by the Department of Administration, State Bureau of Personnel as Chapter 752, *Wisconsin Personnel Manual—Administration, Classification and Compensation*. With the creation of the Department of Employment Relations, the responsibility for the administration of layoff plans was assumed by the Division of Personnel. A subsequent reorganization split the Division of Personnel into the Division of Classification and Compensation and Division of Merit Recruitment and Selection. This reorganization transferred statutory responsibility for layoffs from the (then) DER secretary to the DMRS Administrator. On March 1, 1983, Ch. ER-MRS 22, Wis. Adm. Code (Layoff Procedure) was promulgated. In December 1983, the *Wisconsin Personnel Manual* Chapter on Layoffs was updated to reflect policy changes contained in Ch. ER-MRS 22, Wis. Adm. Code, and was reissued as Chapter 252, *Wisconsin Personnel Manual—Staffing*. In January 2002, the *Manual* Chapter was updated and reissued as Chapter 232 of the *Wisconsin Human Resources Handbook* (new format).

In February 2003, the chapter was updated and expanded to include information and clarification regarding definitions and procedures.

This handbook chapter was updated in July 2003 to: (1) clarify information on the role of the Affirmative Action Officer in layoffs; (2) recommend documentation on use of exemptions; (3) provide clarification of the at-risk process; (4) clarify “reasonable offer” options; and (5) note the availability of the optional Layoff Referral Information form OSER-DAS-81, located on our web site at <http://oser.state.wi.us/docview.asp?docid=1205>.

In March 2009, the example classification series name used in the definition for “Classification series” was changed to Payroll and Benefits because the previous example classification is no longer used, and other, minor, editions and formatting changes were made.

The chapter was updated in August 2009 with the removal of the form “Layoff Referral Information” and references within the chapter to the form.

The chapter was updated in March 2014 to address changes in the procedural guidance and provide policy clarification in the conduct of layoffs and to integrate the key content from *Wisconsin Human Resources Handbook* Chapter 234—Alternatives to Permanent Layoffs as section 232.040.

Subsequent sections of this handbook chapter have been renumbered. Clarification was made that reduction in a position’s FTE due to budgetary reductions or workforce reductions constitutes a layoff situation. Clarification was

made to explain the consequences of declining a reasonable offer. With the publication of this update, all layoff plans for classified employees must be submitted to the DMRS Administrator for approval, until the agency has been delegated authority specifically for implementing layoffs for classified employees. With the publication of this update, *Wisconsin Human Resources Handbook* Chapter 234 is obsolete.

In November 2018, the chapter was revised to update reference to Office of State Employment Relations as it was eliminated in July 2015 by 2015 Wisconsin Act 55 and the functions were transferred to the newly created Department of Administration, Division of Personnel Management. It was also updated to account for the implementation of 2015 Wisconsin Act 150 and updated Administrative Codes related to those changes. Major changes include the following:

- Removed reference to restoration and reinstatement
- Removed displacement as an alternative to layoff
- Removed section on Exemptions to Layoff
- Provided procedural guidance and policy clarification on determining the order of layoff based primarily on job performance and thereafter seniority, discipline, and ability.

**SAMPLE LAYOFF PLAN**

Date: *[Date of Request]*

To: Director  
Bureau of Merit Recruitment and Selection

From: *[Agency Head or Designee Initiating Request]*

Subject: Layoff Plan for *[Agency Name or Employing Unit]*

*[State specific reason for layoff; include agency or employing unit number, as appropriate.]*

To meet the reduction in spending imposed on state agencies for the next fiscal year, we find it necessary to vacate three classified positions in the *[Name of Agency or Employing Unit and Employing Unit Number, if any]*. *[Name of Agency]* has *[Explain any other measures taken to reduce costs]*. Therefore, we must initiate a layoff of three positions in the *[Classification Title]*.

The following employees occupy positions in this layoff group:

*[Identify the layoff group, names of employees, performance category, discipline, ability, seniority date, percent of position, and anticipated layoff date. Gender, Racial/Ethnic and Disability Status information should be included on the layoff plan but shall not be used as factor in determining the order of layoff. A statement will be included indicating this data is used for informational and reporting purposes only.]*

<i>[Classification Title (for example, Financial Specialist-Confidential)] – [Employing Unit #]</i>									
Name	Discipline	Ability	Seniority Date	*DOB	*Gender	*Race / Ethnicity	*Disability	% FTE	Anticipated Layoff Date
<b><u>Exceeds Expectations</u></b>									
Doe, Josephine J.			04-06-1979	09-25-1952	F	W	N	100	None
Jones, Ruthie B.			09-06-1985	01-31-1966	F	B	N	100	None
Smith, Samuel J.	X		01-04-1990	03-10-1957	M	W	N	100	MM/DD/YY
<b><u>Meets Expectations</u></b>									
Franklin, Ethel T.			07-02-1982	08-06-1964	F	W	N	100	MM/DD/YY
Wilbur, Fred M.		X	02-04-1990	05-09-1969	M	Hisp	N	100	Exempted
Smythe, Scott			07-08-2000	11-17-1979	M	B	N	100	MM/DD/YY
<b><u>Needs Improvement</u></b>									
N/A									

\*Note: Employee demographic data is provided for informational and reporting purposes only. It shall not be included as a factor in determining the order of layoff.

*[Discuss what was considered for Performance Rankings.]*

*[Discuss what was considered for Discipline Review.]*

*[Discuss what was considered for Ability Exemption.]*

*[Identify employees to be laid off and effective date of the layoff.]*

Employees in the layoff group who will be laid off effective *[Date]* are Scott Smythe, Ethel Franklin, and Samuel Smith.

*[Identify when written notice will be provided to affected employee.]*

Written notification of impending layoff will be given to each affected employee not less than 60 calendar days prior to the effective date of the layoff, upon receipt of approval from DPA/DPM to implement our agency's layoff plan.

*[Discuss alternatives to layoff.]*

All options and alternatives to avoid layoff will be pursued and explained to affected employees; that is, transfer in lieu of layoff and demotion in lieu of layoff.

Attached is a copy of the proposed letter notifying each employee of the intended layoff. Please contact *[Name, Title, Phone Number, and E-mail Address]* regarding information contained in the layoff plan.

Layoff plan reviewed by:

<b>AGENCY CONTACT NAME:</b>	<b>CONTACT PHONE NO:</b>
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<b>Appointing Authority or designee (signature):</b>	<b>DATE:</b>
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<b>DPM Affirmative Action Officer Review Completed:</b>	<b>DATE:</b>
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<b>BMRS DIRECTOR APPROVAL:</b>	<input type="checkbox"/> <b>APPROVED:</b> <input type="checkbox"/> <b>DENIED</b>	<b>DATE:</b>
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**SAMPLE LAYOFF LETTER TO EMPLOYEE**

[Date]

[Name of Employee]

1234 Main Street  
Smalltown, WI 53000

Dear [Name of Employee]:

State agency budget reductions have made it necessary for us to closely evaluate our agency's staffing level. As a result of this evaluation, we have determined that three [Classification Title (for example, Financial Specialist-Confidential)] positions in the [Name of Agency or Employing Unit and Employing Unit Number, if any] must be vacated effective [Date].

As a result of this layoff in the Financial Specialist-Confidential classification, it has been determined that you will be laid off. This letter is your official notification of layoff from the Department of [State Agency]. Your last working day will be [Date].

Your current position is classified as Financial Specialist-Confidential, in pay range 81-05. Layoff procedures follow the provisions of s. 230.34, Wis. Stats. Section ER-MRS 22.08, Wis. Adm. Code, identifies alternatives to layoff that you must be offered, in the order listed below, until the effective date of your layoff. An offer in lieu of layoff shall be subject to the criteria for a reasonable offer if appointment is made under s. ER-MRS 22.09, Wis. Adm. Code. While we can make no reasonable offers of employment to you at this time, we will continue to keep you informed of other alternatives available up to the effective date of your layoff.

A. Transfer

You have the right to transfer to any vacancy within the agency in the same or counterpart pay range for which you are qualified to perform the work after being given customary orientation provided to newly hired workers in the position. *At this time, there are no vacancies available for transfer; therefore, this alternative is not available to you.*

B. Demotion as a result of layoff

You have the right to demote in lieu of layoff if no transfer is available and if there is a vacancy available for which you are qualified to perform the work (after the customary orientation provided to newly hired workers) which is in a same or lower level position than could be obtained through transfer. *At this time, there are no vacancies into which you could demote which would constitute a reasonable offer of employment according to s. ER-MRS 22.08(2), Wis. Adm. Code. Therefore, this alternative is not available to you.*

An employee or former employee who demotes in lieu of layoff or is laid off shall have reinstatement eligibility to vacancies anywhere in state service at, or closest to, the same or counterpart pay range level from which the employee was laid off for a 3-year period from the date of such action provided the employee is qualified to perform the work. You may be reinstated at the discretion of the appointing authority having the vacancy.

You are entitled to appeal this layoff action by following the grievance procedures set out in Chapter 430—Employee Grievance Procedure of the *Wisconsin Human Resources Handbook*.

We will give you as much assistance and information as possible. While we can make no reasonable offers of employment to you at this time, we will continue to keep you informed of other alternatives available up to the effective date of your layoff. If you have any questions regarding this layoff notice, the layoff process in general, or current vacancies in the agency, please contact [Name, Title, Phone Number, and E-mail Address] in the [Work Unit (for example, Bureau of Human Resource Services)]. Please direct any questions regarding the impact of this layoff action on your benefits to [Name, Title, Phone Number, and E-mail Address] in the [Work Unit (for example, Agency Payroll Office)].

I regret the need to give you this notification. Please contact [Name] or me if you need further information.

Sincerely,  
[Appointing Authority]

Attachment #3

**COMPUTING CONTINUOUS SERVICE**  
**[Reference s. ER 18.02(2), Wis. Adm. Code]**

1. Section ER 18.02, Wis. Adm. Code provides only the most recent period in continuous employment status in the unclassified service, employment in the University of Wisconsin System as provided in s. 230.15 (4), Wis. Stats., or as a permanent employee in the classified service or any combination will be counted in determining an employee's length of continuous service. This excludes time served as a limited term employee or in those positions in youth camps and students respectively. Refer to s. ER 18.05 (3) and (4), Wis. Adm. Code for time served in a project appointment.
2. The continuous employment status of an employee eligible for annual leave will not be considered interrupted if the employee:
  - a. Was on an approved leave of absence.
  - b. Left the service and is reemployed within five years, subject to the following:
    - (1) Employment prior to leaving the service and upon returning to the service within five years must be as a permanent, classified employee or as an unclassified employee other than a limited term employee.
    - (2) Any return to service following termination for misconduct or delinquency is deemed to not be a qualifying reemployment under this provision, even though the return is within the five-year period.
  - c. Was serving a project appointment and was eligible to transfer continuous service credits under s. ER 18.05 (3), Wis. Adm. Code regarding transfer of credits by project employees who were permanent employees.
  - d. Was absent on military leave.
  - e. Was absent due to injury or illness arising from state employment and covered by the worker's compensation act or hazardous employment injuries under s. 230.36, Wis. Stats. and pay continuation.
  - f. Was an employee who left the service with exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 302 and returned to state employment on or after July 1, 2003, and immediately attained FLSA exempt status regardless of the duration of absence as provided under s. 230.35 (1m) (f), Wis. Stats. and s. ER 18.02 (2)(b)6., Wis. Adm. Code.
  - g. Was on temporary layoff in accordance with the provisions of s. ER-MRS 22.14, Wis. Adm. Code.
3. The length of time between an employee's resignation and reemployment under 2 above, shall not be counted in computing years of continuous service.
4. Persons in seasonal, school year and part-time employment shall be deemed to have completed one full year of service for each such seasonal or other part-time annual period of service in computing years of continuous service.
5. Credit for leaves of absence other than military leave, leave to serve in the unclassified service or leave of absence due to injury or illness arising out of state employment and covered by worker's compensation or hazardous employment injuries, shall apply only to persons who return from an approved leave of absence on or after April 9, 1976.