

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN -

Date: April 9, 2009

Subject: Layoff of Represented Employees

Locator No: OSER-0236-CLR/LR

I. INTRODUCTION

This bulletin updates and replaces DER Bulletin CLR/BLR-120 (dated February 27, 2003), which should be discarded. DER Bulletin CLR/BLR-120 addendum (dated May 9, 2003) has been revised and incorporated into this new bulletin and the old addendum should be discarded.

The purpose of this bulletin is to provide guidance and assistance to agency human resources staff in developing and implementing layoff plans and procedures for represented employees. This bulletin contains a reference to the appropriate layoff provisions in each of the collective bargaining agreements, information on mandatory restoration rights of laid-off employees, a brief description of OSER web based resources including the State of Wisconsin Employee Referral Service (WISCERS) as well as information on exemptions from layoff and sample documents. Please remember this bulletin only provides guidelines and recommendations regarding layoff notices and letters. Individual agreements need to be consulted for specific language relevant to each unit.

Most of the provision references contained in this bulletin are from the 2007-2009 collective bargaining agreements. Provision references for ASP, SEA, and PERSA are from the 2005-2007 agreements because those bargaining units have not settled their 2007-2009 agreements as of the date this bulletin was reissued. When issuing notices and letters, agencies should cite the provisions of the agreement in effect at the time of layoff.

Finally, layoff plans or summaries of layoff plans for represented employees must be completed and forwarded to the OSER until agencies are notified otherwise. Plans do not need to be approved by OSER. Forward signed plans or summaries to Kathy Kopp, Labor Relations Manager at OSER after the layoff decision has been made. (See Attachment 5, Sample Layoff Plan.)

II. RELEVANT CONTRACT PROVISIONS

<u>Contract</u>	<u>Layoff Procedure</u>	<u>Article and Section</u> <u>Notice</u>	<u>Employee Options</u>
ASP	10/2/1-10/2/3	10/2/2	10/3; 10/5; 10/6
Crafts	8/2/1	8/3/1	8/6/1-8/9/1
PERSA	8/2/1-8/2/2	8/2/1; 8/2/2	8/3/1-8/5/1
SEA	8/2/1-8/2/2	8/2/1; 8/2/2	8/3/1-8/4/3
SEIU	10/2/1	10/2/1	10/3/1-10/5/1
WEAC	8/2/1	8/2/1	8/3/1-8/5/3
WLEA	8/2/1-8/2/2	8/3/1; 8/3/2	8/5/1-8/6/4
WPDA	8/2/1-8/2/2	8/2/1; 8/2/2	8/3/1-8/5/1
WPEC	8/2/1-8/2/2	8/2/1; 8/2/2	8/3/1-8/5/1
WSAA	9/2/1-9/2/2	9/2/1; 9/2/2	9/3/1-9/6/1
WSEU	8/2/1-8/2/2	8/3/1-8/3/3	8/5/1-8/6/1
WSP	8/2/1-8/2/2	8/2/1; 8/2/2	8/3/1-8/5/1
WSPDA	10/1/2-10/1/3	10/1/2; 10/1/3	10/2/1-10/2/4

III. ESTABLISHING AN AGENCY POLICY AND PROCEDURE FOR LAYOFFS

OSER recommends agencies establish an internal policy and procedure to standardize and facilitate the layoff process. See Attachment 1, Sample Layoff Policy and Procedure for a complete list of items to be included in the layoff policy. The sample also includes several references to attachments accompanying this bulletin.

IV. PROCEDURES FOR SUBMITTING A LAYOFF PLAN

If an agency must lay off employees after all other means to reduce costs or redeploy staff while maintaining critical missions have been implemented, the appointing authority will prepare a written layoff plan to determine the layoff group by classification or as specifically stated in the applicable collective bargaining agreement(s). (See each individual agreement for details.) The layoff plan should explain the alternatives to layoff already implemented and/or why the layoff is necessary to preserve the agency's mission. It is important for employees who will be laid off or reassigned to know that all other solutions have been considered.

The layoff plan should include the following (see Attachment 5, Sample Layoff Plan):

- A. The employing unit(s) affected;
- B. The layoff group (classification title), number of positions to be eliminated, names of employees, seniority date, gender, racial/ethnic code, disability status, percentage of positions and employment status;
- C. Exemptions to layoff and reasons for exemptions;
- D. Names of employees to be laid off and date of layoff;
- E. Order of release of employees;
- F. Alternatives in lieu of termination as a result of layoff;
- G. Approval of agency affirmative action officer; and
- H. The name, phone number and email address of person to contact regarding questions about the layoff plan.

V. ESTABLISHING A LAYOFF GROUP

Please refer to each individual collective bargaining agreement for specifics on determining the layoff group. A majority of the agreements identify a layoff group to be determined by classification.

VI. EXEMPTIONS TO ESTABLISHED LAYOFF GROUP

Many of the collective bargaining agreements permit exemptions to the layoff process to retain employees in positions requiring special skills and to maintain a reasonable affirmative action program, as well as a management exemption available to the employer without any defined conditions. Agencies are encouraged to use the special skill and the management exemption as provided in the agreements. The affirmative action consideration is for the purpose of preventing discrimination and may be one of several factors supporting an exemption.

If an agency wants to use the affirmative action exemption for the purpose of preventing discrimination as the sole basis for its decision, the agency should (1) do so only if the layoff projections or actual layoff experience reveals that a disproportionate number of employees in the protected categories will be or have been adversely affected; and (2) do so only after first consulting with agency legal counsel and/or OSER legal counsel regarding the specific facts of the situation.

Additionally, it is very important that documentation be maintained for each decision to exercise the exemption. This documentation must support the agency's decision and cite the specific exemption provision in the collective bargaining agreement. This is especially important when exercising the management exemption available under some of the agreements. The agency must have records or other evidence that the decision was not arbitrary and capricious. For example, at a past arbitration hearing an agency stated that it had exempted an employee based on performance considerations, however, the most recent performance evaluation was several years old and there was no documentation that performance differences between the two employees existed at the time of the layoff decision. While the burden on management to demonstrate that its exemption is not arbitrary and capricious is certainly not a heavy one, it is necessary that documentation of the reasons for management's decision be recorded and maintained in the event of litigation.

VII. MANDATORY RESTORATION RIGHT OF LAID OFF REPRESENTED EMPLOYEES BETWEEN DEPARTMENTS

Presently, the following collective bargaining agreements include provisions for mandatory restoration between departments: WSEU (8/6/4), WLEA (8/6/3), SEA (8/4/1/C) and SEIU (10/4/1/E and F). To exercise this mandatory restoration right between departments, the following procedure must be followed:

- A. At the time the employer provides the employee with formal written notification of layoff as required under the agreement, the employer will also provide a copy of form OSER-DMRS-77, Restoration from Layoff (See OSER website, <http://oser.state.wi.us/docview.asp?docid=1230>). The layoff letter must include a paragraph explaining that if the employee wishes to notify other agencies of the employee's right of mandatory restoration to any department, the employee must complete the form and return it to the Human Resources (HR) Manager of the department initiating the layoff. The HR Manager will certify the information is correct, then sign and return the completed form to the employee.
- B. The employee is responsible for notifying any other department of the employee's interest in mandatory restoration to that department using a copy of the completed OSER-DMRS-77.

- C. Agencies receiving completed and signed OSER-DMRS-77 forms from laid-off employees shall include the employee's name on their Mandatory Restoration from Layoff list, maintained separately by collective bargaining agreement. Prior to filling a vacancy covered by the respective agreement, the agency must offer the position to interested bargaining unit employees eligible for mandatory restoration, in accordance with par. E. and F., below.
- D. WSEU, WLEA, and SEIU limit restoration between departments to the same class. SEA limits restoration between departments to the same or lower pay range. SEIU limits restoration between departments to the same class (10/4/1/E) or any bargaining unit class (10/4/1/F).
- E. The agency will contact and interview interested employees in seniority order. The agency will offer the job to the most senior interested employee who meets the special requirements or qualifications for the position specified in the notice to the Union under the provisions of the appropriate collective bargaining agreement. If the most senior employee is not offered the position, the agency shall notify the employee in writing of the reason(s) if the employee or the Union requests.
- F. When an employee accepts or rejects a reasonable offer, as defined in the relevant paragraph of the agreement, the hiring agency must notify the HR Manager in the agency from which the employee was laid off. One of the following actions will be taken:
 - 1. The agency that laid off the employee will remove the name of the employee who accepts an offer of restoration from the mandatory restoration list; or
 - 2. The agency that laid off the employee will convey the information regarding a person who rejects a reasonable offer of restoration under the appropriate agreement to OSER's Bureau of Labor Relations (BLR). If an employee turns down an offer, of course the selection process can proceed. BLR will make the determination whether the offer was reasonable and will notify the agency from which the employee was laid off whether the person's name is to be removed from the mandatory restoration list maintained by the agency. Removing the person's name from further mandatory restoration eligibility will not affect the employee's reinstatement eligibility under the applicable agreement.

VIII. WSEU TEMPORARY TRANSACTION RATE (TTR)

Temporary Transaction Rate (TTR)

Questions have been raised regarding application of the Temporary Transaction Rate (TTR) under the WSEU collective bargaining agreement Appendix 5., E., Appendix 7., E, Pay on Downward Movements, and 12/11/11. Pay for employees who have received a layoff letter and for employees designated "at-risk" who demote to a WSEU position will be as follows:

Employees who have received a layoff letter: All represented and nonrepresented employees who have received a layoff letter and are demoting to a WSEU position are eligible for the TTR under E.2. of Appendix 5, D., 2 of Appendix 7, All Other Downward Movements, and 12/11/11.

Employees designated as “at risk”: Only employees in a WSEU position who have been designated “at-risk” under 8/2/1 of the collective bargaining agreement and are demoting to another WSEU position are eligible to receive the TTR. Nonrepresented employees and employees represented by an agreement other than WSEU who are designated “at risk” and demote to a WSEU position are not eligible to receive the TTR. Pay for these employees will be set in accordance with E.1. of Appendix 5, D., 1 of Appendix 7, Voluntary Demotions Other Than Demotion in Lieu of Layoff, and 12/11/10.

Note: Appendix 5 applies to all Blue Collar Classifications. Appendix 7 applies to all Classifications listed in 12/11/4/B-C. 12/11/10 and 11 applies to all other WSEU classifications.

Priority Rights When Filling a Vacancy Under the WSEU Collective Bargaining Agreement

Based on a Memorandum of Understanding between WSEU and DER (now OSER) effective May 2, 2003, the parties agree that when filling a permanent vacancy and more than one employee is eligible, the vacancy will be filled in the following order:

1. Transfer within the employing unit (7/1).
2. Restoration within employing unit by seniority (8/6/1) and bumping to a vacancy (8/5/3/A). Within this category, the most senior employee will fill the vacancy.
3. Transfer between employing units of the department (7/3/A).
4. Employees who seek voluntary demotion in lieu of layoff under 8/5/3/B.
5. Restoration within Employing Unit (8/6/2)
6. Restoration within the department by seniority (8/6/3).
7. Restoration between departments by seniority (8/6/4).
8. Reinstatement within the department (8/8/2) with equal consideration along with the other certified candidates for the vacancy provided they meet the qualifications.
9. Reinstatement between departments (8/8/2) with equal consideration along with other certified candidates for the vacancy provided they meet the qualifications.
10. In accordance with other provisions of the Agreement and Wisconsin Statutes.

IX. SERVICES AVAILABLE TO EMPLOYEES AT RISK OF LAYOFF: RESOURCES ON THE OSER WEB PAGE, STATE OF WISCONSIN EMPLOYEE REFERRAL SERVICE (WISCERS) AND STATE AGENCY AFFIRMATIVE ACTION OFFICERS.

Several services are available to employees identified as at risk of being laid off. An “at-risk” employee is any one of the following:

- A. An employee whose position has been identified for deletion (i.e. in the agency’s budget);
- B. An employee who has received written notice that he or she may be laid off;
- C. An employee who is in the layoff group;
- D. An employee who may be displaced as a result of layoff; or
- E. An employee who is laid off and who needs to be returned to a position closer to or at the level from which the employee was previously laid off.

Resources on the OSER Web Page

There are two resources available to employees, supervisors and managers to assist with layoff on the OSER web page: Workforce Reduction Resources for State Employees, and Workforce Reduction Resources for Management. The web page also includes links to the Employee Assistance Program (EAP). EAP is a free, voluntary, confidential program available to employees and employee's family members with a personal concern such as comprehensive assessment, information, crisis intervention, referral for treatment and follow-up are among the services provided.

State of Wisconsin Employee Referral Service

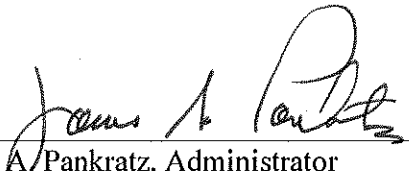
OSER also offers the State of Wisconsin Employee Referral Service (WISCERS), an online service dedicated to finding new opportunities for at-risk or laid off state employees. Information on how to use WISCERS is available at <http://ers.state.wi.us/public/indexers.asp> WISCERS allows users to search for jobs, create a personal account and find information on classifications and pay ranges. Additionally, WISCERS provides users with application materials, information on restoration rights and reinstatement eligibility as well as links to the Department of Workforce Development. For complete details, see Wisconsin Human Resources Handbook Chapter 236, Employee Referral Service for Employees on Layoff or "At-Risk" of Layoff.

State Agency Affirmative Action Officers

Affirmative Action Officers maintain many useful resources such as community-based organizations' lists, professional employment networks and counseling services for at-risk target group employees. They also help members of at-risk target group employees with interviewing techniques, resume writing and special educational/training opportunities.

X. GENERAL INFORMATION AND CONTACTS

The attached sample documents are only recommendations and need to be tailored to meet the needs of each agency. Questions regarding contract provisions for represented employees should be directed to Wil Mickelson, Bureau of Labor Relations, at phone: 608-267-5169; e-mail: Wil.Mickelson@wisconsin.gov; fax: 608-267-1020 or contact Kathy Kopp, Bureau of Labor Relations, at phone: 608-266-0711; email: Kathy.Kopp@wisconsin.gov; fax: 608-267-1020.


James A. Pankratz, Administrator
Division of Compensation and Labor Relations

JAP:WAM

Attachments

ATTACHMENT INDEX

Number	Subject
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2	Sample Notification Letter for Union
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5	Sample Layoff Plan
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Sample Layoff Policy and Procedure

Department of _____
Human Resources

INTERNAL POLICY AND PROCEDURE

Subject: Layoff Plan and Implementation

Background

Layoff policy and procedure with employee rights and options emanate from Wis. Stat. ss. 230.34(2) & (3). For represented employees, layoff provisions are prescribed in the collective bargaining agreements. For non-represented and career executive employees, layoff provisions are found in Wis. Admin Code ER-MRS 22 and 30.105.

Purpose

The purpose of this policy is to outline the layoff procedures to standardize and facilitate the layoff process.

Layoff Procedure

- A. Notify Human Resources of impending layoff including position number, classification, reason for layoff, proposed effective date and names of employees.
- B. Notify union of impending layoff (see Attachment 2) and OSER Director (see Attachment 4). For WSEU, a copy of the notification should also be sent to the local union.
- C. Establish who will determine when to send out the "at-risk" letter notifying the employee of the impending layoff situation (division administrator/institution superintendent).
- D. Send an "at-risk" letter to the employee as official notification of an impending layoff situation (see Attachment 3).
- E. Identify "at-risk" employees in the Office of State Employment Relations' Employee Referral Service (WISCERS).
- F. Enter employee into agency "at risk" referral process for permissive referral and consideration for selected vacancies.
- G. Ensure layoff-affected employees are kept informed of any pre or post layoff rights and options.
- H. Prepare a layoff plan (see IV. of bulletin and Attachment 5). This should be completed approximately 40 days before proposed layoff effective date to ensure proper review and approvals are completed.

- I. Obtain review and approval of layoff plan from Affirmative Action/Civil Rights Compliance Office.
- J. Compare layoff plan with seniority list using most recent payroll/personnel report.
- K. Create a file with the following documentation: layoff plan, employee "at-risk" notification letter, completed layoff referral information form, OSER notification letter, union notification letter, official notice of layoff letter to employee, copy of Restoration from Layoff form OSER-DMRS-77 (WSEU, SEA, UPQHC only) and documentation of alternatives in lieu of layoff.
- L. Draft layoff letter (see Attachment 6).
- M. Deliver layoff letter to employee within appropriate timeframe.
- N. Revise layoff plan if employee invokes bumping or displacement rights.
- O. Work with affected employees. Educate employee on Employee Assistance Program and Employee Referral Service (see Wisconsin Human Resources Handbook Chapter 236).
- P. Obtain completed Restoration from Layoff form OSER-DMRS-77 from WSEU, SEA and UPQHC affected employees and certify.
- Q. Maintain a Mandatory Restoration from Layoff list. Review prior to filling any vacancies in the respective unit.

Note: WSEU and WLEA limit restoration between departments to the same class. SEA limits restoration between departments to the same or lower pay range. SEIU limits restoration between departments to the same or any bargaining unit class.
- R. Ensure affected employee's rights and options in lieu of layoff are implemented in a thorough and timely manner.
- S. Make appropriate mandatory and permissive referrals to vacancies.

Sample Notification Letter for Union

Date

Union President/Executive Director

Union

Address

City, State Zip

Dear _____ [Union President/Executive Director]:

In accordance with _____ [Article], _____ [Section], _____ [Paragraph] the labor agreement, the Department of _____ hereby notifies the _____ [union] of an impending layoff involving _____ [FTE] _____ [classification] position(s) in the _____, _____ [name of division/employing unit, location].

This action will affect _____ [number] member(s) of the _____ [union]. (This/These) employee(s) will be notified individually according to the provisions of the agreement.

The scheduled effective date of layoff is _____ [date].

Sincerely,

[Division Administrator/HR Manager]

cc: _____, Appointing Authority
_____, Employing Unit
_____, HR Specialist (copy to layoff file)

Sample “At-Risk” Letter for Employee-Official Notification

Date:

To: [Name and Title of “At-Risk” Employee]

From: [Division Administrator/Institution Superintendent]

Re: “At-Risk” Notice

[Statement of the cause of layoff.]

- 1. The Governor’s 2009-2011 budget...

[Indication of the employee’s situation]

- 1. Places your position “at- risk” of being eliminated;
- 2. Would eliminate a position in your classification in this division. If we need to proceed with a layoff action, you may be the affected employee; or
- 3. Would eliminate a position in your classification in this facility. If we need to proceed with a layoff action, you would be in the layoff group.

Therefore, you are eligible to be placed on the Department of _____ Pre-Layoff Referral System for vacancies within the department and have access to the state-wide vacancy notices as part of the Office of State Employment Relations, Division of Merit, Recruitment and Selection, Wisconsin Employee Referral Service (WISCERS). This process is designed to assist you in identifying and considering alternative employment options in the event you need to leave your current position.

At this time, these processes are permissive for you as well as the unit filling a vacancy. The intent is to give you and other “at-risk” staff as many options as possible to find the best fit before reaching the point of mandatory, less flexible employment options.

[Modify this paragraph to reflect your agency’s applicable form.] Enclosed is the Layoff Referral Information form. I encourage you to complete as much of this form as you can, and then contact _____, [employing unit HR] at _____[telephone number] to finish the form for submittal to _____[HR designee]. [S/He] is ready to assist you with any questions you may have about your situation, the process and possible vacancies within our own [division/institution].

WISCERS, located at <http://ers.state.wi.us/public/indexers.asp> is designed to give all State of Wisconsin “at-risk” employees first access to all jobs available around the state. Follow the specific instructions in each announcement (found in the “How to Apply”) to notify the appropriate Human Resources Office of your interest in the position.

- cc: _____, [Union]
- _____, [Employing Unit HR Designee]
- _____, [Employee’s Supervisor and Others in Supervisory Chain]
- _____, [Division of HR Representative (institutions)]
- _____, [Dept. HR Specialist]

Personnel file

Sample Notification Letter for OSER Director

Date

Ms. Jennifer Donnelly, Director
Office of State Employment Relations
101 E. Wilson Street
P.O. Box 7855
Madison WI 53707-7855

Dear Director Donnelly:

This letter is to notify the Office of State Employment Relations of the impending layoff of _____[number] member(s) of the _____[union] bargaining unit. This involves _____FTE _____[classification] position(s) located at/in _____, _____ [division/employing unit, location].

The scheduled effective date of the layoff is _____[date].

Sincerely,

[HR Manager]

Sample Layoff Plan for Represented Employees

I. Reason.

II. Items to be identified.

- A. Employing unit and number
- B. Classification affected. (List class code and use one layoff plan per affected classification.)
- C. Bargaining unit
- D. Number of positions to be vacated. (Positions and FTE)
- E. Effective date of layoff. (Use last work day of pay period whenever possible.)
- F. Employee(s) in layoff group. Include employees on leave of absence and list employees in seniority order starting with the most senior. Under Status, state whether employee is LTE, original probation, permanent or project 05. Complete the following for each affected employee:

<u>Name</u>	<u>Seniority</u>	<u>Ethnicity</u>	<u>Sex</u>	<u>Handicap</u>	<u>FTE</u>	<u>Status</u>
<hr/>						

- G. Employee(s) exempted. (Attach justification.)
- H. Employee(s) who are scheduled to be laid off.
- I. Employee(s) separated from employment in lieu of a less senior employee.
- J. Employee(s) who will be sent a layoff notice.

III. Copy of Proposed Layoff Letter (Attach)

<hr/>	<hr/>
Appointing Authority	Date

<hr/>	<hr/>
Affirmative Action Officer/Designee	Date

<hr/>	<hr/>
HR Specialist	Date

<hr/>	<hr/>
ER Specialist	Date

<hr/>	<hr/>
HR Director (Final Approval)	Date

cc: Kathy Kopp, Office of State Employment Relations

Checklist for Employee Layoff Letter

Because each contract has varying mandatory and permissive rights afforded to employees at the time of layoff, it is difficult to comprise one letter, which would cover the varying contract provisions. Therefore, the following is a checklist of things that may need to be referenced in the layoff letter. Please check each individual contract for the appropriate contract rights and provision references.

Effective Date of Layoff- Ensure proper notice is given per union contract.

Bumping Rights

Transfer Rights in Lieu of Layoff

Demotion in Lieu of Layoff

Permissive Transfer

Voluntary Demotion

Reinstatement Eligibility/Rights

Restoration Rights

Recall Rights

Last Day of Work

Date Final Paycheck will be Available

Inclusion or Exclusion of Earned/Used Vacation and Holiday

Eligibility for Promotional Opportunities

Information on Fringe Benefits

Information on the Employee Referral Service