



**Department of
Civil Service**

Guidelines for the Administration of Reductions in Force

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GLOSSARY OF COMMON LAYOFF TERMS

Below are some of the terms commonly used in reduction in force situations (RIFs). These definitions are necessarily simplified. Some of these terms may have one or more pages devoted to their explanation elsewhere in the Guidelines.

ABOLITION OF POSITIONS - the abolition of positions for reasons of economy, consolidation or abolition of functions, or curtailment of activities is a prerequisite to the layoff of permanent employees in the classified service. Agencies may not lay off employees without abolishing positions.

ADVERSE IMPACT ANALYSIS – a determination as to the projected impact of a reduction in force on protected class members.

AGENCY REDUCTION TRANSFER LIST (ARTL) - a mandatory list established pursuant to Civil Service Law section 78 prior to the date of layoff containing the names of employees in impacted titles at impacted locations who are eligible for transfer to positions in other agencies or within their current agency, in their current title, direct line lower level titles, and comparable titles. Title-for-title and direct line lower-level eligibles are ranked in seniority order. Comparable title eligibles are not ranked.

"BUMP" - vertical displacement within the competitive class from a higher level title to a lower level title in a direct line of promotion. (Although commonly used, the term itself does not appear in section 80(7) of the Civil Service Law governing displacement.)

CLASSIFIED SERVICE - all offices and positions in the civil service not included in the unclassified service. The classified service includes four jurisdictional classes: competitive, non-competitive, labor and exempt.

HORIZONTAL REASSIGNMENT - in a layoff situation involving layoff units with multiple geographic locations, the displacement of an employee in one location by a more senior employee in the same title who is affected by the abolition of a position in other location.

LAYOFF - another term not specifically found in the law, refers to the separation (suspension) or loss of status (demotion) of an employee as a result of the abolition or reduction of positions. For example, employees whose own positions are not abolished but who are “bumped” out of their position are considered laid off.

LAYOFF UNIT - separate units for suspension or demotion within which layoffs occur. Agencies may be all one layoff unit, or may be subdivided into a number of units based on organization, geographic area, or negotiating unit. (President’s Regulation 72.1 lists the approved layoff units for all State agencies.)

PLACEMENT ROSTER - A placement roster is a mandatory list established prior to the date of layoff containing the names of employees identified for actual layoff who will have preferred and reemployment roster list rights as of the date of layoff if not reemployed from the placement roster at their same status and salary grade level. Placement roster eligibles

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will be certified for filling vacancies in the same title or any comparable titles. These eligibles are certified in random order without regard to seniority, probationary status or layoff unit.

PREFERRED LIST (PL) - a mandatory list established as of the date of layoff containing the names of laid off employees by layoff unit ranked by seniority.

REDUCTION IN FORCE (RIF) – a synonym for layoffs.

REEMPLOYMENT ELIGIBLE CARDS - Form S-295.6 (commonly known as the “blue” card) and Form S-295.5 (“green” card). Both cards are used to collect reemployment-related data from employees for submission to the Career Mobility Office which enters/activates the employees in the Reemployment System. Form S-295.6 is used for employees who are serving in titles targeted for abolition and who elect to participate in the ARTL process. Form S-295.5 is used for employees who have been laid off and have reemployment rights pursuant to §§ 81 and 81-a of the Civil Service Law. Both forms may be submitted either in paper format or electronically.

REEMPLOYMENT ROSTER (RR) - a mandatory list established as of the date of layoff containing the names of laid off employees for appointment to titles other than those for which they are eligible for reinstatement from a preferred list. These generally are titles in the employee’s former occupational field and determined to be appropriate by the Department of Civil Service. The names are certified in random order without regard to seniority, status as a probationer or layoff unit.

RETENTION RIGHTS - the rights of one employee as compared to another to retain a position in a layoff. There are two factors which affect any employee’s retention rights: appointment status in the title and seniority. Permanent employees have retention rights. Employees in the same title and layoff unit who are serving provisionally or temporarily do not. Among permanent employees, those who are not on probation have greater rights than those on probation. Permanent non-probationary employees are then ranked by seniority.

RETREAT - in a layoff situation, the displacement of the employee with the least retention rights in the layoff unit in a lower level title by an impacted employee in a higher level title who previously held that title on a permanent basis. Retreat is the only method of displacement available to employees in the non-competitive and labor classes. Only those competitive class employees who have no bumping rights may retreat.

SENIORITY - for purposes of layoff, seniority is defined as the date of original permanent appointment in the classified service with continuous service since that date, modified for veterans/blind preference, if any. Seniority dates may be reconstructed for breaks in service for individuals reinstated after October 1985 pursuant to §80.3 and §80-a.3.

SENIORITY ROSTERS - are computer generated reports produced by the Department of Civil Service at the request of an agency for those titles which may be affected by layoffs. Each roster lists the item number, name, Social Security number, appointment status, seniority and veterans status, of each employee serving in a title, or on leave from a title, in the layoff unit.

TENURE PROTECTION – whether an employee has tenure protection – protection against removal or other disciplinary action except for misconduct or incompetency shown after a hearing upon stated charges – is defined by Civil Service Law section 75 or the applicable collective bargaining agreement. Such employees must have tenure protection to have retention rights under section 80-a. Employees in the non-competitive or labor class who are covered by such collective bargaining agreement, who have at least one year of continuous service in such jurisdictional class since last entry into service, and who are permanent/contingent permanent with tenure protection, provided their position is not “confidential” or “policy influencing” position. Non-competitive employees not covered by a collective bargaining agreement – management/confidential employees – must have completed five years of continuous service since last entry in a position not designated as policy-influencing or confidential to have tenure protection and retention rights.

THE LEGAL CONTEXT

Some of the more significant laws and rules governing administration of RIFs include the following:

SECTION 78 CSL

Authorizes transfer in lieu of layoff (Agency Reduction Transfer List program)

SECTION 80 CSL and RULE 5.5 of the CLASSIFIED SERVICE RULES

Provide the authority for suspending and demoting **competitive** class employees when positions are abolished.

SECTION 80-a CSL and RULE 5.6 of the CLASSIFIED SERVICE RULES

Provide the authority for suspending and demoting **non-competitive** class employees when positions are abolished (By negotiated agreement, **labor** class employees are also covered).

SECTION 81 CSL

Provides the authority for certifying laid off/demoted employees to fill positions from a **preferred list**.

SECTION 81-a CSL

Provides the authority for certifying laid off/demoted employees to fill positions from a **reemployment roster**.

SECTION 81-b CSL

Provides the authority for the Department of Civil Service to establish **placement rosters**.

SECTION 75.1 (c) CSL

Provides tenure protection for **non-competitive** class employees (and **labor** class, by negotiated agreement) who meet certain criteria (See Glossary).

LAWS, RULES, REGULATIONS AND POLICIES GOVERNING LAYOFFS

LAWS:

- §70.2 Transfer of personnel upon transfer of functions
- §75.1(c) Tenure protection for non-competitive class employees
- §78 Transfer of personnel upon the abolition of positions in state civil service
- §79 Establishment of redeployment lists in the state service; general provisions
- §80 Layoffs in the competitive class
- §80-a. Layoffs in the non-competitive class
- §81 Preferred lists; certification and reinstatement
- §81-a Reemployment rosters in the state service; certification and reinstatement
- §81-b Placement rosters in the state service
- §85.1(a) Preference for veterans
- §85.7 Preference in retention upon the abolition of positions for blind employees, disabled and non-disabled veterans
- §86 Transfer of veterans or exempt volunteer firefighters upon abolition of positions.

RULES and REGULATIONS:

- Rule 4.11 Permanent appointment to encumbered positions
- Rule 5.5 Layoff of competitive class employees
- Rule 5.6 Layoff of non-competitive class employees
- Rule 5.7 Refusal or failure to accept reinstatement from competitive and non-competitive preferred lists
- Rule 5.8 Placement rosters
- President's Regulation 72.1 Separate units for suspension, demotion or displacement

SEE ALSO

State Personnel Management Manual sections

- 1450 - Preferred Lists
- 1460 - Reemployment Rosters
- 1470 - Placement Rosters
- 2300 - Reductions in Force

Other Department of Civil Service publications:

- "Information for State Employees Affected by Layoff"
- "Employee Guide for Agency Reduction Transfer List"
- "Reductions in Force – A Manager's Guide"
- "Reemployment System User's Manual"
- "Separation from State Service: Information for Exempt Class Employees"

USING THESE GUIDELINES

These Guidelines are intended to provide information to those who must administer a reduction in force in New York State government. They focus primarily on the procedures, policies and issues which apply to permanent employees in the competitive, non-competitive and labor jurisdictional classes who are affected by layoffs pursuant to §80 or §80-a of the Civil Service Law.

Briefly, the sections of the Guidelines are:

“An Introduction To Layoffs” provides a general discussion of the context within which layoffs occur, and the effects a layoff can have on an agency.

“Layoff Timeline” outlines the major components of a layoff and the respective responsibilities of agency and DCS staff, and suggests a time frame for each component.

“Layoff Planning” provides advice and information for agencies about the initial stages in a work force reduction including the Agency Reduction Transfer List (ARTL) program.

“Organizing for Layoffs” provides information about retainment strategies, preparing information packages for employees, and scheduling layoff meetings.

“Layoff Methods and Procedures” provides information about vertical displacement and horizontal reassignment, and describes the layoff processes for reductions in both single and multiple geographic locations.

“Employee Choices” discusses the issues of verification of personnel information, and communications with employees about their reassignment and displacement opportunities.

“Notifications and Payroll Transactions” describes the formal layoff notification process, the S-295.5 "Layoff Card" process, and NYSTEP code information.

“Appendix A: -- Flow Chart of the Layoff Process” provides a quick and broad overview of the major steps in the layoff process.

“Appendix B: -- Critical Concepts and Definitions” contains detailed discussions of some of the more complex issues which sometimes arise in layoff situations. Over time, a number of policy decisions have defined the rights of various groups of employees who may be affected by a layoff. These decisions are summarized by topic.

AN INTRODUCTION TO LAYOFFS

The procedures for conducting a layoff are extremely complex, and we have attempted to be as detailed and comprehensive as possible in these Guidelines. What follows has been written, generally, from the perspective of managing a fairly large/complex layoff in a geographically diverse agency. However, new issues and questions will arise in many layoffs which may not be anticipated here. Agencies should contact their Staffing Services Representative with any questions.

Layoff administration is the responsibility of the affected agency; however, the Department of Civil Service is committed to guiding agency management in conducting a layoff whenever necessary.

It is important to understand the larger context within which any significant reduction in force takes place. This introductory chapter briefly discusses some considerations which should be kept in mind by those responsible for managing a layoff.

THE LEGAL CONTEXT OF LAYOFFS

Most employees have been hired through the merit system and have tenure protection. The laws, rules, regulations, and policies concerning layoffs define the rights of employees in layoff situations. Retention rights and seniority are the governing principles which dictate both the precise steps which must be carried out, and the sequence and timing of those steps. It is recommended that those who administer a layoff be familiar with the laws, rules, regulations and policies which address layoffs, and the critical concepts and definitions of the terms which are used.

Employees who are laid off pursuant to §80 or §80-a may ONLY be impacted as a result of the abolition of positions. A longstanding (May 21, 1976) Attorney General's Opinion states in part:

"In view of the fact that the Civil Service Law makes express provisions for those cases in which tenured employees may be suspended (e.g., §§ 72, 75[3]) and makes no provision for suspension for economy reasons except in the context of abolition (i.e., §80) I must conclude that abolition of positions is a necessary prerequisite. I find nothing to support a contrary view. Nor do I find any basis for drawing different conclusions based on whether suspensions are the result of legislative or executive action."

Layoffs can and do occur for a number of reasons. Positions may be abolished for fiscal reasons, as part of agency reorganizations, or due to the realignment of functions within and among agencies, (e.g. "cover-ins" and transfers of functions). Although the majority of layoffs involve only a limited number of employees, times of major fiscal constraint can result in significant numbers being affected by layoff, which can interrupt the on-going business of agencies and disrupt the lives of employees.

Management must often reevaluate the agency mission, and consider how to carry it out during and after a layoff. To ensure that the work continues, management must keep the trust of employees so that employees can continue to be productive despite the layoff.

Management must also assemble the resources required to administer a layoff. This may mean realigning the duties of the human resources and affirmative action staff of the agency and setting up emergency mechanisms to ensure active coordination among all those involved.

THE EMPLOYEES' PERSPECTIVE

At the first hint of layoffs, employees begin to worry. This is a time when the relationship between management and employees will be tested. Distrust may grow and all too easily lead to a "them" versus "us" reaction by employees. Worry can quickly turn to panic; morale may go down while absenteeism goes up; some valuable employees may leave and work all but stop. Management must communicate early and often with employees to prevent this from happening. Even in the early stages of a potential layoff, when nothing definite is known, a statement of concern from management and a commitment to provide information as it becomes available is reassuring.

THE ROLE PLAYED BY OTHERS OUTSIDE THE ORGANIZATION

Layoffs usually involve several organizations outside the affected agency. The Division of the Budget, the Department of Civil Service, and the Governor's Office of Employee Relations play vital roles in significant layoff situations. Agency management will find it necessary to maintain contacts with these agencies throughout the layoff process.

The negotiated agreements with the unions usually contain one or more articles about layoffs. By agreement, the Department of Civil Service provides the unions with copies of seniority rosters. Union staff will monitor agency decisions, and will ask for an explanation when any specific situation appears to have an unexpected or unfair outcome. Not surprisingly, employees typically turn to their union representatives in layoff situations when they believe that management is not providing them with accurate or timely information, or because they hope that the union can prevent a layoff from taking place. Like agency management, the unions can find themselves caught between competing groups of employees who stand to win or lose depending on which way a particular layoff decision is made.

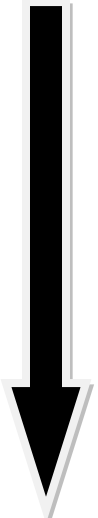
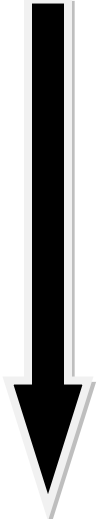
Significant layoffs often bring media attention, and may arouse the interest of a number of special interest groups. Public relations staff should be thoroughly briefed on the layoff. It is necessary that they understand the underlying concepts of layoffs, since misstatements will only contribute to the rumors and fears. In addition, Legislative staff will sometimes call with questions on behalf of their constituents, or attorneys representing employees may contact the agency. Accuracy and consistency of information is of foremost importance.

EACH LAYOFF IS UNIQUE

Despite the specificity of the law and the detailed information which follows in these Guidelines, each layoff will have its unique aspects which will require unique responses. As the times and the politics of the moment change, it is necessary for each agency to adopt a layoff plan that meets the needs of the agency's particular structure and mission. The plan must be equitable, must meet legal and contractual requirements, and must be one that can be administered. However, what works well for one agency may not work for another, or even for the same agency in a different layoff situation.

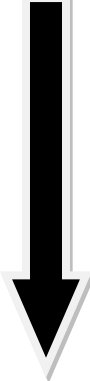
It is very important that agency management develop a layoff plan based on the time constraints and the procedures imposed by the layoff process.

THE LAYOFF TIMELINE

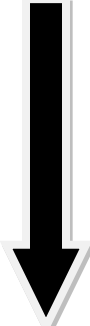
LAYOFF PLANNING		
	THE AGENCY:	DEPARTMENT OF CIVIL SERVICE:
16 WEEKS BEFORE		
	<ul style="list-style-type: none"> • Notifies Civil Service, GOER, unions of potential layoffs • Requests Seniority Roster; begins update of personnel records • Makes preliminary decisions on programs, titles & numbers of positions and layoff date • Reviews potential adverse impact • Begins Appropriate Titles decision process with Civil Service • Confers with Civil Service about setting up ARTLs • Assigns specific staff to deal with RIF • Distributes blue cards to employees in affected titles 	<ul style="list-style-type: none"> • Receives tentative list of affected titles from agency • Coordinates delivery of seniority roster to agency • Reviews PL/RR database for recency and appropriateness of determinations for affected titles • Inquires as to training needs of agency staff – depends on agency's experience with RIF • Ensures agency has sufficient materials (RIF Guidelines, Blue books/cards, Green books/cards)
LAYOFF ORGANIZING		
	THE AGENCY:	DEPARTMENT OF CIVIL SERVICE:
13 WEEKS BEFORE		
	<ul style="list-style-type: none"> • Establishes specific channels for layoff communications with Civil Service, unions, media & employees • May request updated Seniority Roster through SS Rep • Schedules layoff meetings with employees; prepares information packages • Determines "freeze date" on discretionary personnel transactions • Sends completed blue cards to Career Mobility Office (CMO) in Civil Service within 7-10 days of receipt 	<ul style="list-style-type: none"> • Determines how agency will handle the layoff process. Identifies who in the agency will be handling specific types of problems/questions regarding: reassignment, bump/retreat, continuity and placement • On behalf of agency, requests Seniority Roster and coordinates delivery to agency • Solicits information about employee layoff meetings and plans to attend; advises CMO of date, time and location (Remember these are agency-run meetings; CMO is an advisor) • Prepares for meetings by reviewing RIF Guidelines • Reminds agency that blue cards require OHRM signature and are due to CMO within 7-10 days of receipt

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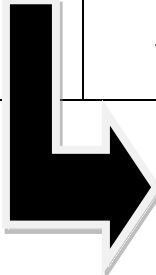
LAYOFF METHODS AND PROCEDURES

	THE AGENCY:	DEPARTMENT OF CIVIL SERVICE:
9 WEEKS BEFORE		
	<ul style="list-style-type: none"> • If necessary, determines horizontal reassignment rights of affected employees • Determines displacement rights of affected employees • Mails out information packages with preliminary notices of layoff, description of reassignment & displacement choices, and forms for employees to indicate choices OR holds layoff information meetings with affected employees. 	<ul style="list-style-type: none"> • Responds to technical questions, as needed • Reviews sample letters of reassignment/displacement for appropriateness, as needed • Advises agencies to stipulate a specific response date for employee choices • Advises agencies to keep accurate records of employee responses

FINAL DATE FOR EMPLOYEE CHOICES

	THE AGENCY:	DEPARTMENT OF CIVIL SERVICE:
6 WEEKS BEFORE		
	<ul style="list-style-type: none"> • Based on choices, confirms employee acceptances in seniority order • Makes final determinations of which employees will be affected by reassignment, displacement & layoff • Drafts layoff letters/notices of reassignment for all affected employees 	<ul style="list-style-type: none"> • Provides technical assistance • Reviews sample of final layoff letters, as needed (20 day notice required) • Reminds agencies that "green cards" (S-295.5) and a listing of all affected employees, must be submitted to CMO at least 20 days prior to layoff

NOTIFICATIONS

	THE AGENCY:	DEPARTMENT OF CIVIL SERVICE:
20 DAYS NOTICE		
	<ul style="list-style-type: none"> • Sends official notices of layoff, displacement, reassignment to employees 20 days prior to layoff • Forwards completed green cards (S-295.5) and a listing of affected titles, locations, and employee names to CMO (copy to SS Rep) 	<ul style="list-style-type: none"> • Continues to provide technical advice and information to agency staff and affected employees • Establishes placement rosters

THE DATE OF THE LAYOFF

THE STAGES OF LAYOFF ADMINISTRATION

One of the most important facts about layoffs is that adequate time must be provided to plan and administer them effectively, equitably and legally. The steps in the layoff process must be carried out in a logical sequence to meet legal mandates and practical requirements and to provide for 20 days notice prior to the layoff date.

Before employees can be notified, they must be informed of their rights, understand how they will be affected, and be given adequate time to make choices given the options that may be available to them. Before this can be done, the employees who will be affected must be identified, and their rights determined. While this may be a relatively simple process in a small layoff situation, in a large scale situation where a number of employees may be affected in a variety of titles and positions existing in several geographic locations this can be a very complex process involving a number of steps. Furthermore, layoffs very often uncover a variety of problems: hold items that have expired, claims for veterans status that must be documented, changes in an employee's status or location that have not been correctly recorded, etc. These may even require that new seniority rosters be prepared.

The Layoff Timeline presented earlier is a guide only and not a requirement. The following synopsis highlights the major steps required for carrying out a large layoff in multiple geographic locations and correlates to the Layoff Timeline. Under each stage, the required actions are bulleted and briefly stated; fuller descriptions of each stage are presented in succeeding chapters.

LAYOFF PLANNING

- Agency notifies Civil Service, GOER and unions of the potential for layoffs
- Requests Seniority Roster; updates personnel records
- Management makes preliminary decisions on programs, titles and numbers of positions; conducts analysis of impact on protected classes and makes appropriate adjustments to minimize adverse impact
- Confers with Civil Service about setting up ARTLs
- Begins "appropriate titles" decision process
- Assigns and trains human resource and affirmative action staff

LAYOFF ORGANIZING

- Establishes specific channels for layoff communications with Civil Service, unions, media and employees
- Schedules layoff meetings with employees; prepares information packages
- Determines "freeze date" on discretionary personnel transactions
- Sends completed "blue cards" to Career Mobility Office to establish ARTL eligibility

While a small scale layoff allows this stage to be handled easily as part of the previous stage, in a large scale layoff the meetings have to be arranged, employees notified and scheduled to attend usually in shifts over a period of several days, agency staff briefed to be able to conduct the meetings, Department of Civil Service, Department of Labor and union representatives invited, various informational packages prepared, etc. In large complex layoffs, this stage can take several weeks and should be initiated at least 13 weeks prior to the date of layoff.

LAYOFF METHODS AND PROCEDURES

- For layoff units with multiple geographic locations, determines horizontal reassignment rights of affected employees
- Determines vertical displacement rights of affected employees
- Mails out information packages with preliminary notices of layoff, description of reassignment and displacement choices, and forms for employees to indicate choices OR holds layoff information meetings with affected employees

In small layoffs, employees can be informed of their choices, if any, by phone or in person and a confirming letter sent once they have decided. However, in large layoffs, meetings must be held as a preliminary step serving several important functions: they make the fact of the layoffs “real” to many employees for the first time and they are the primary means for them to obtain the basic information they need to begin thinking realistically about their displacement and relocation choices. Employees then need a reasonable amount of time to consult with their families, assess their options for reemployment, etc. in order to make their “life” decisions.

The “cascade effect” may necessitate other previously unaffected employees being displaced and they will also need information about their rights and choices.

This stage should be entered no later than 9 weeks prior to the layoff date.

FINAL DATE FOR EMPLOYEE CHOICES

- Based on choices, confirms employee acceptances in seniority order
- Makes final determinations of which employees will be affected by reassignment, displacement and layoff
- Drafts layoff letters/notices of reassignment for all affected employees

Since all choices must be made and confirmed before the final notices can be prepared, this stage must be initiated no later than 6 weeks prior to the date of layoff.

NOTIFICATIONS

- Sends official notices of layoff, displacement, reassignment to employees 20 days prior to layoff
- Forwards completed green cards (S-295.5) and a listing of affected titles, locations, and employee names to CMO

The Department of Civil Service recommends that agencies deliver notices of layoff in person whenever possible. Where this is impracticable, every effort should be taken to

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ensure that employees are provided notice in a timely manner (e.g. email/phone call followed by letter notification).

NYSTEP transactions for all separations, layoffs, transfers in lieu of layoff, returns to hold items, displacements and relocation must be submitted in accordance with the pay period cut-off schedule based on the effective date of the action. Agencies have the capability to do their own abolitions of positions and DOB will generate a report to verify this has occurred.

LAYOFF PLANNING

PRELIMINARY DECISIONS

For the human resource manager perhaps the most difficult and important phase of the layoff process is when the first serious discussions about layoffs take place. Layoffs may be mandated by political, fiscal or programmatic decisions which do not take into account the complexity of the layoff process or the disruptive impact that even a small layoff can have on an agency's programs, organization and staff. As an administrator responsible for carrying out the layoffs, it is essential during these preliminary discussions that you be able to provide feedback on the actual effects any decisions will have, including adverse impact on protected class groups. As the layoff proceeds, the preliminary decisions about which programs, which titles, and how many positions may have to be modified.

AFFIRMATIVE ACTION IMPLICATIONS

Seniority is a governing principle in all parts of the layoff process. Minorities and other protected classes may be among the more recently recruited and hired and, therefore, may be the individuals affected if layoffs are targeted for titles or program areas in which affirmative action efforts have been successful. It is important that the impact of any potential layoff be carefully and fully examined to determine whether there is an adverse impact on any protected class. The agency affirmative action officer should be a member of the team planning the layoffs.

The agency affirmative action officer can help identify the titles with high protected class representation, and once the preliminary layoff plan is developed, conduct an adverse impact analysis, and help identify alternative plans with less impact which still meet budgetary and programmatic needs. (See Appendix B, ADVERSE IMPACT ANALYSIS)

AGENCY REDUCTION TRANSFER LISTS (ARTL)

Section 78 of Civil Service Law offers state employees who might be affected by abolition of positions the opportunity to transfer to other agencies or within their current agency prior to layoff. This program is commonly known as the ARTL program.

In planning for a reduction, agencies will identify all titles for which an abolition of positions is anticipated. Permanent and contingent permanent competitive class employees serving in the titles in the location where the reduction in force will occur may choose to participate in the program. Permanent non-competitive and labor class employees in impacted titles may also be eligible if they have completed at least five years of permanent unbroken service. For some permanent non-competitive and labor class employees the requirement of section 75(1)(c) has been reduced to one year of unbroken service by negotiated agreement with certain employee organizations. Exempt class and non-competitive class employees who are serving in policy-influencing or confidential positions are not eligible. **(Although the ARTL program is intended for those employees who are most likely to be affected by the reduction, it is open to all eligible employees in the targeted titles in those locations.)**

The ARTL program may be initiated up to 6 months prior to the target date for the RIF. Agencies should consult with the Career Mobility Office (CMO) prior to initiating this process.

After consulting with the CMO, agencies should notify eligible employees in titles and locations expected to be targeted that they may volunteer for ARTL transfers. We recommend that agency HR representatives arrange with the CMO to meet with the eligible employees, explain the ARTL transfer process, and assist the employees in completing "blue cards", Form S-295.6 (See Appendix B – REEMPLOYMENT ELIGIBLE CARDS). CMO and Staffing Services Representatives should attend this meeting which should be separate from and subsequent to the initial employee notification meeting hosted by the agency.

Completed blue cards must be verified and signed by the agency's HR designee before being submitted to CMO. Along with the cards, the agency must submit a cover letter listing how many cards are included, and stipulating the expected date of the reduction. Submissions to CMO may be either hardcopy or electronic format.

Eligible employees will have their names certified on transfer lists to fill vacant positions in their current titles or in lower-level direct line titles, and/or in titles declared comparable by the Department of Civil Service. Title comparability decisions for ARTL are based on similarities in duties, minimum requirements, salary grades and examination plans, and are generally the same as Reemployment Roster determinations. To view the appropriate titles, check the reemployment determinations in the Title Transfer Reference System (TTRS), which is part of the Department of Civil Service Applications System.

For additional information regarding Agency Reduction Transfer Lists, refer to Policy Bulletin #04-01 in Section 2200 of the State Personnel Management Manual (SPMM).

SENIORITY ROSTERS AND PERSONNEL INFORMATION

Seniority rosters are listings of the positions and employees in a specific title or titles in a layoff unit of an agency. In simple terms, all the employees who are serving in, or who have rights to return to, the title in that layoff unit are ranked, with those having the least retention rights at the top, and the employee with the most rights (status and seniority) to retain a position in the title at the bottom. The purpose of this listing, which is generated by the Department of Civil Service from the records in the NYSTEP system, is to verify that critical employee records are correct, and to serve as the basis for agency management to determine the relative retention rights of the employees in each layoff title in the layoff unit. After the layoff, the seniority roster also serves as the official record. It is essential that a seniority roster be requested through your Staffing Services Representative as early as possible. It may be ordered for all titles in the layoff unit, all titles in all layoff units in the agency, or by single title code. Seniority rosters are available in PDF format (official copy) and in Excel format (working copy) with a one-day turnaround time. Seniority rosters will be sorted in title code order unless the agency specifies alphabetic order. For additional information on seniority rosters, refer to Division of Staffing Services, General Information Bulletin #09-04, Procedures for Requesting and Receiving Seniority Rosters.

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Seniority rosters reflect all NYSTEP information submitted as of the payroll dates at the top of each page. Because of the lag payroll, agencies must manually update the seniority roster to change or add/delete information on employees whose status has changed or who have been hired, separated or placed on leave since the payroll dates indicated. If there is a discrepancy regarding veteran status, the agency should make the correction and notify the Employment Records Section in this Department so that any appropriate adjustment to eligible list scores may be made.

Finally, the seniority roster ranking of any employee currently on probation who will complete probation prior to the date of layoff must be manually changed to reflect the correct rank as of the layoff date.

Layoffs frequently bring to light errors in personnel records or incorrect personnel transactions that have occurred in the past. Because the responsibility for identifying which employees will be laid off lies with the agency, it is incumbent on the agency to ensure that personnel records accurately reflect the layoff rights of each employee. To confirm information regarding position attributes (e.g., specialty, NC Φ , 55(b) or (c) designation), refer to the Position Availability panel in NYSTEP. In addition there are three NYSTEP Reports that will help with data verification: CSPA Positions Characteristics, the Employee Listing Report and the Employee Information Verification Report. The latter form can be sent to employees in titles *potentially identified* for layoff. When employees return the printed forms, personnel office and NYSTEP records can be adjusted as required and new seniority rosters can be requested as necessary.

SENIORITY ROSTER REPORT

NYS DEPARTMENT OF CIVIL SERVICE SENIORITY REPORT

DATA CURRENT AS OF INSTITUTIONAL PAY PERIOD 20, ENDING 12/29/2010
AND ADMINISTRATIVE PAY PERIOD 20, ENDING 1/5/2011

Agency: 10160 - DEPARTMENT OF XXXXXXXXXXXX

Layoff Unit: XXXXX

Title: Food Service Worker 3

Title Code: 3124400

Jurisdictional Class: 0 - COMPETITIVE

Rank	Agy	Line	Employee	SSN	NU	Grade	Apt	Vet	Adj Sen	Date	Prob End	Date	Sch	Wk	P/T	Pos	Wk Pct	Type	Appt End	Date	Pos Exp	Date	Location	Employee		Name	During Leave of Absence		
																								Encumbers	Item		Agcy	SSN	Agcy
1	10160	21411	Rose, Alfred	XXXXXXXXXX	4	13	PM/P		03/30/2007		4/21/2011	F	100	F	100	P	100	P					Albany	10160	13132				
2	10160	21319	Lew, Mona (LV)	XXXXXXXXXX	4	13	VA		07/10/2006			F	100	F	100	P	100	P					Albany	10160	21319	Lew, Mona	XXXXXXXXXX	10160	
3	10160	21422	Aaron, Henry	XXXXXXXXXX	4	13	PM		10/03/2005			F	100	F	100	P	100	P					Albany						
4	10160	21416	Pawlik, Carole	XXXXXXXXXX	4	13	PM		07/05/2005			F	100	F	100	P	100	P					Albany						
5	10160	21418	Alcindor, Louis	XXXXXXXXXX	4	13	PM		06/23/2005			F	100	F	100	P	100	P					Albany						
6	10160	45435	Frost, Robert	XXXXXXXXXX	4	13	PM		04/19/2004			F	100	F	100	P	100	P					Albany						
7	10160	21415	Smith, Rex	XXXXXXXXXX	4	13	PM		06/21/2001			F	100	F	100	P	100	P					Albany						
8	10160	21426	Finn, H. Barry	XXXXXXXXXX	4	13	PM		01/13/2000			F	100	F	100	P	100	P					Albany						
9	10160	40610	Powers, Allen	XXXXXXXXXX	4	13	PM		11/16/1998			F	100	F	100	P	100	P					Albany						
10	10160	21407	Malone, Joan	XXXXXXXXXX	4	13	PM		03/05/1998			P	50	P	50	P	100	P					Albany						
11	10160	21410	Craig, Jay	XXXXXXXXXX	4	13	CO		12/27/1994			F	100	F	100	P	100	P					Albany	10240	11278	Paine, Thomas	XXXXXXXXXX	55555	
12	10160	21407	Zachary, Thomas	XXXXXXXXXX	4	13	PM	V	10/27/1994			P	50	P	50	P	100	P					Albany						
13	10160	21424	Starr, Bartley	XXXXXXXXXX	4	13	PM		12/09/1993			F	100	F	100	P	100	P					Albany						
14	10160	21417	Yattaw, Manila	XXXXXXXXXX	4	13	PM		04/22/1993			F	100	F	100	P	100	P					Albany						
15	10160	21450	Burt, Michael	XXXXXXXXXX	4	13	PM		11/16/1989			F	100	F	100	P	100	P					Albany						
16	10160	21451	Caruso, Enrico	XXXXXXXXXX	4	13	PM		01/26/1984			F	100	F	100	P	100	P					Albany						
17	10160	21410	Paine, Thomas (LV)	XXXXXXXXXX	4	13	VA		09/27/1982			F	100	F	100	P	100	P					Albany	10160	21410	Paine, Thomas	XXXXXXXXXX	10160	
18	10160	40103	Yatsen, Sue (LV)	XXXXXXXXXX	4	13	VA		09/11/1980			F	100	F	100	P	100	P					Albany	10160	40103	Yatsen, Sue	XXXXXXXXXX	10160	
19	10160	21420	Angelo, Michael	XXXXXXXXXX	4	13	PM		06/30/1977			F	100	F	100	P	100	P					Albany						
20	10160	45434	Rogers, Fred	XXXXXXXXXX	4	13	PM	DV	06/27/1977			F	100	F	100	P	100	P					Albany						

READING SENIORITY ROSTERS

The header of a seniority roster is fairly straightforward and includes the data used to generate the requested report: Agency and Agency Code, Layoff Unit, Title, Title Code, Jurisdictional Class and "Data Current As Of" Date.

The column headings are fairly straightforward as well; however, because of the limited space on the roster, some "presentation liberty" was required. The following notes should clarify the data presented in a seniority roster:

- **Rank** – Data is displayed in retention rights order, from least to most. For traineeships, trainees are interfiled with journey-level employees. Trainees may be identified by looking at the Rank column, where the title code (and "NS") of the Appoint-Level-Change level will appear. (See Appendix B – TRAINEES AND PUBLIC MANAGEMENT INTERNS).
- **Agy** – In most cases, the agency code will be the same for all entries on the roster. Only where the layoff unit crosses agency lines (e.g. the CSEA layoff unit in OMH/OPWDD) will more than one agency code appear in this column.
- **Line** – Item number
- **Employee** – This column includes vacancies, incumbering employees, and employees on leave, the latter designated by (LV) following their name. A blind employee's name will be italicized.
- **SSN** – On seniority rosters for Office of Human Resource Management and Division of Staffing Services staff, this will be displayed in full.
- **NU** – The negotiating unit of the budgeted position.
- **Grade** – The salary grade of the budgeted position.
- **Apt** – This column indicates the appointment status. Note that the codes used here differ from those in NYSTEP: VA=Vacant; PV=Provisional; TP=Temporary; PM=Permanent, not on probation; PMP=Permanent probationer; CO=Contingent Permanent, not on probation; COP=Contingent Permanent probationer

All contingent permanent employees have the same layoff rights as permanent employees. Contingent permanent employees being laid off who are not on probation have no rights to return to the items that are being held for them for the purposes of return of incumbent. (See Appendix B - CONTINGENT PERMANENT EMPLOYEES)

Blind employees will appear as the most senior employees among all employees with equal retention rights in the title in that layoff unit. For example, a blind probationer is the most senior of all probationers in that title regardless of date of original permanent appointment, but still has less retention rights than non-blind permanent employees in the title who are not on probation. (See Appendix B - SENIORITY)

Note that under Civil Service Law and in our recommended layoff procedures all non-permanent employees in a title are equally at risk in layoff situations since they have no retention rights or seniority. (See Appendix B - PROCEDURES FOR EMPLOYEES WITHOUT RIGHTS). Therefore, the rank of non-permanent employees on a seniority roster may be ignored when such employees are terminated. However, this does not preclude an agency from using date of appointment to the classified service as an equitable mechanism for determining which non-permanent employees will be terminated when some will be retained.

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- **Vet** – This column indicates the NYSTEP information on veteran status: V=Non Disabled Vet; DV=Disabled Vet; S=Spouse of 100% disabled vet. (See Appendix B – VETERANS, SPOUSES OF DISABLED VETERANS AND BLIND EMPLOYEES)
- **Adj Sen Date** – This column displays adjusted seniority date (classified seniority date adjusted for veteran’s credit, where appropriate). Non-disabled veterans get 2.5 years added to their classified seniority date; disabled veterans get 5 years.

NOTE: The Apt, Vet and Adj Sen Date columns are the keys to determining **retention status**. Based on these factors, the seniority roster ranks employees within four clusters: Vacancies, Non-permanents, Probationers and Non-probationers.

- **Prob End Date** – This column indicates the probation end date, where applicable.
- **Pos Type** – The type of position will be indicated as: P=Perm; T=Temp; S=Seasonal
- **Appt End Date** – This field will populate when there is a cutoff date associated with the appointment.
- **Pos Exp Date** – This field will populate for temporary service positions only.
- **Location** – This column displays the City/Town.
- **Employee Encumbers** – Under this heading there are two columns indicating the agency code and item number where an encumbering employee holds a position. Employees who are not serving in the title for which the roster was drawn but who are on (LV) will have their Agency and Line column data repeated under Employee Encumbers.
- **Position is Encumbered by** – There are three columns displayed indicating the Name, SSN and Agency of the employee who is holding the position. Data is repeated for those designated on (LV) under the Employee column.

NOTE: Employees in positions designated as 55(b) or (c) or NC Φ will appear on a separate roster because they are in a different jurisdictional class.

NOTE: *Same or Similar Positions* - Civil Service law §80 states "...suspension or demotion... [shall occur] ...among incumbents holding the same or similar positions..." In the vast majority of cases we have always defined this to mean *positions in the same title*, and therefore the programming that produces seniority rosters uses title code as one of the 'delimiters' when creating one. However, there are exceptions. In some cases employees in different titles must be considered together. See, for example, Appendix B - TRAINEES AND PUBLIC MANAGEMENT INTERNS. In other cases employees in the same title must be considered separately. See, for example, Appendix B - PART TIME EMPLOYEES.

All questions on seniority rosters should be directed to your Staffing Services Representative.

ORGANIZING FOR LAYOFFS

Early in this stage agency management should designate specific staff to provide layoff information to employees, unions, Department of Civil Service, GOER and the media. Meetings should be held regularly to coordinate information.

Specific individuals should be freed from other duties and assigned full-time to administer the layoffs. These individuals should be trained as required, and if possible, provided with a separate work space in order to minimize disruption of other on-going human resource functions.

It is essential that management continue to deal openly with employees. Memos or bulletins should be provided to affected employees as soon as any information is available and meetings should be held with the management staff of the programs being affected. A telephone hot-line for employee questions is suggested.

RETAINMENT STRATEGIES

While the layoff planning and organizing stages continue, agencies should make every effort to retain employees to prevent layoffs. Retainment is an effort to mitigate the possible layoff of valuable employees by moving them to positions in the State service where their experience is needed. Retainment efforts may include transfers, reassignments, retraining, funding source changes, special exam holdings, as well as the creation of Agency Reduction Transfer Lists.

The Department of Civil Service will permit certain transfers and reassignments within the agency facing reductions in force in the face of pre-existing reemployment lists. The intent of this policy is to permit the retainment of agency staff serving in positions identified for abolition by moving those staff into positions which the agency needs to fill in order to maintain or improve services. (See Policy Bulletin #98-01 in Sections 1825 and 1840 of the State Personnel Management Manual).

Agencies seeking to place employees who are in positions expected to be affected by abolition should contact the CMO who may have information about other agencies seeking to hire. The CMO and the local Department of Labor Community Services Center may also be able to assist in identifying other job possibilities for affected employees.

UPDATED SENIORITY ROSTER

During the planning stage, the agency uses the seniority roster to play out various layoff scenarios in order to determine the best alternative. Once any corrections are made in NYSTEP and any new hires/separations are reported, the agency may choose to request an updated seniority roster. Both the procedure for requesting and the number and type of reports produced are the same as the original request. The only difference is that the updated roster will reflect the more current data.

LAYOFF MEETINGS

In large scale layoffs it is usually necessary and appropriate to schedule group, rather than individual, layoff meetings with employees in order to communicate management's

intent, to provide employees with information they need to make intelligent choices, and to explain the administration of the layoffs.

These meetings usually include:

- Agency representatives who explain the "who" and "why" of the layoff
- Civil Service Representatives who explain the technical aspects of layoffs, the various reemployment lists, and describe the impact on health insurance benefits, etc.
- Union representatives who describe any impact on negotiated benefits
- Department of Labor representatives who provide information on unemployment benefits.

LAYOFF INFORMATION PACKAGES

It may be necessary to present two or more informational packages to employees as the layoff progresses depending upon what is known, and on the stage of the layoff (See Appendix B – PRELIMINARY LAYOFF NOTICE SAMPLES). The following information will need to be included in these packages at some point:

- An explanation of why the layoffs are necessary.
- A statement of which titles/locations are expected to be affected.
- A form confirming each employee's current title and status and any other relevant personnel information (See the discussion of Employee Personnel Information Verification and Location Preference Sheets under the topic EMPLOYEE CHOICES).
- An explanation of horizontal reassignment.
- An explanation of vertical displacement (i.e., bumping and retreat).
- An explanation of the process which will be used to ascertain the choices (if any) employees may have to be reassigned or to accept displacement to a lower level position.
- Information about the locations (actual or potential) to which employees will (or may) have an opportunity to horizontally reassign and/or vertically displace.
- A form to be completed and signed by each employee indicating those locations (in rank order) he/she would accept (separately for reassignment and displacement).
- A deadline date by which the employees' choices must be received in the agency, and an explanation of what will happen if employees are late or if they refuse to return their choices.
- Names and phone numbers of individuals in the agency who will answer questions. (We do not recommend using e-mail for this as the questions and situations will usually require full, in person, explanations).
- Publications on reemployment list rights, health insurance, unemployment insurance, and post employment restrictions.
- S-295.6 (Agency Reduction Transfer Card) and an explanation of its use, and advice about indicating grade levels and counties acceptable for transfer opportunities prior to layoff.

- S-295.5 (Preferred List/Reemployment Roster Eligible Card) and an explanation of its use, and advice about indicating counties acceptable for reemployment in the event of layoff.
- A letter signed by the agency head explaining the reasons for the layoff, and date on which they are expected to occur. (This is not the official individual notice which must be sent 20 days before the layoff.)

IMPOSING A “FREEZE” ON DISCRETIONARY PERSONNEL TRANSACTIONS

To ensure that employees are treated equitably and consistently, and to be able to effectively administer the layoffs, at some point it will be necessary to announce a "freeze" on all discretionary personnel transactions in the titles being affected. This means that from the freeze date until the date of layoff, the agency will not reassign potentially affected individual employees to different geographic locations, promote or appoint individuals in affected titles, end probationary periods early, or reclassify affected titles.

LAYOFF METHODS AND PROCEDURES

Once the decisions on programs, titles and positions are made, and in order to determine which employees will be affected, who will have retention and/or horizontal reassignment rights, and who will be laid off and will have vertical displacement rights (bumping or retreat), a layoff plan should be created listing all the titles in each affected title series, and up-dated seniority rosters should be requested.

Permanent competitive class, non-competitive class and labor class employees who have tenure protection pursuant to §75.1(c) of the Civil Service Law or negotiated agreement, have their retention rights, displacement rights and reemployment list rights determined by either §80 or §80-a of the Civil Service Law. When all positions in a title are abolished, all employees in the title are laid off. But when only some of the positions in a title are abolished, and some of the positions will remain, which employees have rights to retain a position and which must be laid off is determined by the relative retention rights of all employees in the title as specified in the appropriate section of these laws.

NOTE: Employees do not have rights to retain a specific position; rather, they have rights under the law to retain their status in a title.

Some employees may be serving in positions in which they do not have tenure protection as the result of the reclassification of their former titles, and may have tenure protection and/or layoff and reemployment list rights which accrue to them in their former titles. (See Appendix B- RECLASSIFICATIONS - THE RIGHTS OF EMPLOYEES WHOSE POSITIONS HAVE BEEN RECLASSIFIED) Further, some employees who are veterans or exempt volunteer firefighters may have rights to transfer. (See Appendix B - TRANSFER OF VETERANS AND EXEMPT VOLUNTEER FIREFIGHTERS (CSL§86))

By law, all layoffs occur within a distinct and defined layoff unit. Most agencies are encompassed by one layoff unit; some agencies are subdivided into a number of units which are organizational, or geographic, or differentiated by negotiating unit. The Civil Service President's Regulation 72.1 lists the approved layoff units. **A reduction in one layoff unit of an agency has no effect on employees in another layoff unit of the same agency.**

In most layoff situations, the geographic location of the employees to be laid off and the geographic location of the positions to be abolished are the same. (Those administering a layoff should understand the principles in the following before reading the material on REDUCTIONS IN FORCE IN LAYOFF UNITS WITH MULTIPLE GEOGRAPHIC LOCATIONS which is presented later.)

For clarity, the following discussion is limited to reductions in force among employees in the competitive class. These steps, with the exception of bumping, also apply to permanent non-competitive class and labor class employees if they meet the tenure protection provisions of CSL§75.1(c) or negotiated agreement. (See Appendix B - TENURE PROTECTION).

OUTLINE OF THE LAYOFF PROCESS IN LAYOFF UNITS IN A SINGLE GEOGRAPHIC LOCATION

Start the process with the highest level titles which will be affected. Decisions to abolish one or more positions at the highest level are likely to affect, through returns to hold items, vertical bumping, or retreat, employees at the next lower level. These employees will, in turn, affect those employees in the next lower level title, etc.

1. Referring to your agency layoff plan, identify the highest level title in which positions will be abolished, and the number of positions to be abolished in that title.
2. Use the updated seniority roster to identify employees' retention rights. Up to three categories of employees may be identified in each title:
 - Non-permanent** [temporary (TP) and provisional (PV)]
 - Probationary** [permanent (PMP) and contingent permanent (COP)]
 - Permanent/Contingent Permanent** [(PM) and (CO) employees who are not on probation]
3. Suspend non-permanent employees equal to the number of positions being abolished in the highest level title.

These employees have no retention rights, no rights to preferred list status, and they must be suspended before permanent or permanent probationary employees serving in the same title.

- a. If any of these non-permanent employees are on leave from other permanent positions, restore them to their hold items.
- b. If any of these employees are on leave from other agencies, notify the agency personnel officer that the employees will be laid off and may be returning.
- c. If employees have no hold items, prepare a notice of separation (to be sent 20 days prior to actual termination date).

(See Appendix B - PROCEDURES FOR EMPLOYEES WITHOUT RIGHTS)

If the number of non-permanent employees is equal to or greater than the total number of positions to be abolished in the layoff title, no further action for the title is necessary. If the number of non-permanent employees is fewer than the total number of positions to be abolished, proceed to the next step.

4. Suspend as many probationary employees as necessary (beginning with the least senior) to make the total number of suspensions (non-permanent and probationary) equal to the number of positions being abolished in the highest level title.

Probationary employees have less right to retain a position than permanent employees who are not on probation. They are, however, entitled to reemployment list status if laid off, and may also be entitled to exercise vertical displacement rights if they are not on leave from a hold item, and have had 5 years of continuous service. If any of these employees will complete probation before the date of layoff, they must be considered as part of the permanent/contingent permanent category. (See Appendix B - PROCEDURES FOR PROBATIONERS)

- a. Restore the suspended probationers to their hold items.
- b. If these employees are on leave from other agencies, notify the agency personnel officer that the employee will be laid off and may be returning.
- c. Complete Form S-295.5 for each employee and indicate the title and salary grade of the hold item to which they are restored (if any).
- d. Probationers with hold items have no displacement opportunities; probationers without hold items may have displacement opportunities but only if they have 5 years of continuous service.

If the number of positions to be abolished is greater than the number of employees laid-off in Steps 3 and 4 above, proceed to the next step.

5. Suspend as many non-probationary permanent and contingent employees as necessary (beginning with the least senior) to make the total number of suspensions (non-permanent, probationary and non-probationary permanent/contingent) equal to the number of positions being abolished in the title.
6. Beginning with the most senior of the permanent/contingent employees to be laid off, determine vertical displacement rights (See below). Note that if the employee is contingent permanent and on leave from a position as provided for in Rule 4.11, the employee does **not** have a right to return to that position as a result of the abolition of the position, or displacement (See Appendix B - CONTINGENT PERMANENT EMPLOYEES.)

VERTICAL DISPLACEMENT

In a RIF situation, certain employees may displace other employees by either bumping or retreat. The vertical displacement process occurs after any appropriate horizontal reassignment (in layoff units with multiple geographic locations only) for all titles in the title series and it must be administered from the highest level down.

Bumping means to displace an employee with lesser retention standing in the next lower level direct line title in the layoff unit (See Appendix B - DIRECT LINE FOR VERTICAL DISPLACEMENT). Only competitive class employees can bump since, by definition, direct lines of promotion exist only in the competitive class.

- Beginning with the most senior employee to be laid off (who is not on probation), determine if there are positions in the layoff unit in the next lower level title in direct line of promotion. Where positions are also being abolished at the lower level, consider only those positions which will exist after the date of layoff.
- If all positions in the lower level title are vacant or are being abolished, or if such positions do not exist, determine if there are positions in the next lower level title in the layoff unit. If no lower level titles exist in the direct promotion line in the layoff unit, or if all are vacant*, the employees have no rights to bump. Determine if these employees have rights to **retreat** (See later discussion).

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* **NOTE:** Where all the positions are vacant, the agency may offer reinstatement to those positions. Employees who accept such a discretionary reinstatement must waive their rights to bump or retreat. However, agencies should develop a consistent policy on whether such reinstatements will be offered to all employees.

- If lower level direct line positions do exist, determine if they are occupied (including positions in which non-permanent employees are serving). Bumping must be to an occupied position.
- The most senior employee who is not a probationer may bump any non-permanent employee. If there are none, then the most senior non-probationer bumps the least senior probationer. If there are no probationers, the most senior bumps the least senior employee in the lower level title provided the displacing employee has an earlier seniority date. If the bumping employee has the same or later seniority date, bumping cannot occur, nor is the employee eligible to retreat.
- If additional positions are being abolished after all non-probationary employees have been considered for bumping, the agency must determine bumping rights for probationers. Employees who are on probation may not bump or retreat if they have hold items; probationers without hold items who have 5 years of continuous, satisfactory service may bump any non-permanent employee. If there are none, the bumping probationer bumps the least senior probationer provided the displacing employee has an earlier seniority date.

A probationer may never bump an employee who has completed probation.

NOTE: An employee need not have ever held a lower level position in the title series to be eligible to bump.

NOTE: The earmark status of an item is irrelevant to the horizontal reassignment, suspension and vertical displacement processes and to the rights of employees to retain a position.

Complete the above steps for all employees in retention rights order in all competitive class titles being affected by layoff. Whether or not an employee has rights to bump, or accepts or refuses an opportunity to bump, his/her name will be placed on a preferred list and reemployment roster. Complete Form S-295.5 for each employee indicating the title and salary grade of any lower position to which bumping will occur in the COMMENTS section. (See also the discussion under Appendix B - BUMPING RIGHTS AND OPPORTUNITIES.)

Retreat means to displace an employee serving in a position in the layoff unit in the last lower level title to which the displacing employee was appointed on a permanent basis. **For competitive class employees, retreat can occur only when no lower level positions exist in a direct line of promotion in the layoff unit, or when the lower level positions**

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exist but are unoccupied. Competitive class employees who had a right to bump but were unable to do so because they lacked sufficient retention rights are **not** eligible to retreat.

In order to determine retreat rights you will need to refer to each employee's employment history, and to seniority rosters for the titles the retreating employees were last appointed to on a permanent basis at a lower level. (*Disregard any intervening titles which are at an employee's current level or higher, or any titles in which the employee served on a non-permanent basis*). Whether an employee has had continuous service since this appointment is not relevant.

- Beginning with the most senior employee being suspended or displaced, determine if the title to which the employee was last permanently appointed at a lower level (in either the competitive, non-competitive or labor class) exists in the layoff unit, and if it is currently occupied. The employee need not have *actually served* in a position in the title to be eligible to retreat. "Occupied" includes positions in which non-permanent employees are serving. If the title does not exist, is not occupied or is being abolished, the employee has no right to retreat.
- If the title is occupied, identify the least retention rights employee in the lower level title.
- If the most senior retreating employee is not a probationer, he/she may displace first any non-permanent employee, secondly the least senior probationer even if that probationer has an earlier seniority date, and third the least senior non-probationer in the title provided he/she has an earlier seniority date. If his/her seniority date is the same or later, retreat cannot occur for that employee.
- A probationer without a hold but with 5 years of continuous service may displace first any non-permanent employee, and second the least senior probationer. He/she may never displace an employee who has completed probation.
- Repeat this process for all employees in seniority order until all employees in the layoff title have been accounted for.

Whether or not an employee has a right to retreat, or accepts a retreat opportunity, his/her name will be placed on a preferred list and reemployment roster. Complete form S-295.5 for each employee indicating the title and salary grade of any lower position to which retreat will occur in the COMMENTS section.

NOTE: Where the retreating employee's last permanently held lower level position has been reclassified, the employee may only retreat if there have been no substantial changes in the duties of the position.

NOTE: See also the discussion under Appendix B - RETREAT RIGHTS AND OPPORTUNITIES.

Repeat these steps (bumping and retreat) for each succeeding lower level competitive title using your agency layoff plan. Note the seniority roster as each title is completed. Develop listings, categorizing the employees who have been affected and how they have been affected, (i.e., restoration to hold items, whether they exercised displacement rights, whether they were or were not entitled to reemployment list status). This will assist in

developing the subsequent separation letters and ensuring that all employees are accounted for.

Employees who are on leave but have had their hold items abolished may be eligible to have their holds reassigned to other positions. Where lower level employees are serving permanently in positions affected by the assignment of such hold item rights, they do not lose their jobs, but have their status changed from "permanent" to "contingent permanent." These employees have no rights to displace to a lower level (since there has been no loss of salary or permanency); however, they will have their names placed on reemployment lists in inactive status in order to "document" that their change in status came about as the result of an abolition of a position. If the incumbent subsequently returns, the contingent permanent employee is then given full preferred list and reemployment roster rights. (See Appendix B - RIGHTS OF EMPLOYEES ON LEAVE).

Finally, on the seniority roster note when the layoff information was transmitted to this Department and what payroll transactions need to be prepared. These listings serve as documentation for the actions taken.

OUTLINE OF THE LAYOFF PROCESS IN LAYOFF UNITS WITH MULTIPLE GEOGRAPHIC LOCATIONS

Reductions in force which occur in layoff units covering multiple geographic locations are inevitably more complex than those which affect only a single location.

When there are multiple geographic locations within the same layoff unit, employees with the greatest retention rights who cannot retain a position in their current location must be offered the opportunity to reassign to another location where they will displace employees with lesser retention standing in the same title. This **HORIZONTAL REASSIGNMENT** mandate must be administered before any vertical displacement.

In all but a very few situations involving OMH and OPWDD, agencies must apply the basic concept of retention rights to all employees in the affected title **in the county first**, then to all employees in the title **within the layoff unit** to determine which employees will retain their current positions, who must be offered horizontal reassignment to a position elsewhere in the layoff unit and who will be suspended.

Although there are several methods which agencies have used to horizontally reassign employees, the Department of Civil Service recommends the **Equal Numbers Method**, based on the experience and insights gained in the administration of previous layoffs. This method is based on the concept that the number of choices available for reassignment must be at least equal to the number of employees who must be offered reassignment; if five employees must be reassigned, then the employees with the most rights get to choose from among the locations of the positions held by the five least rights employees whose positions are not being abolished. For a description of other methods, refer to Appendix B – HORIZONTAL REASSIGNMENT METHODS.

Below is the specific procedure to be used in carrying out a layoff for a title which exists in more than one geographic location and using the Equal Numbers Method. For clarity, this

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is the simplest case in which no vacancies are available, and all employees are permanent non-probationers:

1. Begin with the highest level layoff title, since the effects of horizontal reassignments may lead to other employees exercising vertical displacement rights or their rights to return to a hold item.
2. Determine the total number of positions to be abolished in the title, the geographic locations of the positions to be abolished, and the specific number of positions to be abolished in each geographic location of the layoff unit.
3. On the seniority roster, draw a line under the employee's name which corresponds with the **total number** of positions to be abolished in the title.
4. Create a sub-roster for each geographic location, using employee names and ranks from the seniority roster (See Illustration A).
5. On each geographic sub-roster, draw a line under the employee's name which corresponds with the number of positions to be abolished in that location. (In locations where no positions will be abolished, draw the line above the first name on the sub-roster).
6. Identify three groups of employees:
 - **Group 1** – Employees whose names appear **above the line on both** the seniority roster and the geographic sub-roster.
 - **Group 2** – Employees whose names appear **above** the line on the seniority roster but **below** the line on the geographic sub-roster.
 - **Group 3** – Employees whose names appear **below** the line on the seniority roster but **above** the line on the geographic sub-roster.
7. Suspend all Group 1 employees since they have least retention rights and their positions are being abolished. Determine their rights to return to a hold item, or to bump or retreat and prepare forms S-295.5 for each employee who will have reemployment list rights.
8. Beginning with the employee identified in Group 3 above who has the most retention rights, offer horizontal reassignment to any other geographic location where a Group 2 employee is serving.

If the most rights Group 3 employee accepts horizontal reassignment, the least rights Group 2 employee is now identified for layoff. Determine that employee's rights to return to a hold item or to bump or retreat and prepare Form S-295.5.

If the most rights Group 3 employee refuses to accept horizontal reassignment, then the Group 3 employee is laid off. Any employee who refuses horizontal reassignment is **not** entitled to exercise vertical displacement (bump or retreat) rights. However, employees who refuse horizontal reassignment to a different **county** will have their names placed on reemployment lists. Complete Form S-295.5 for each of these employees and indicate in the comments section the county to which they refused horizontal reassignment.

9. Continue to offer each Group 3 employee horizontal reassignment to positions held by the Group 2 employees.

NOTE: If one or more Group 3 employees refuse horizontal reassignment, further steps may be necessary. Compare the retention rights of the Group 2 employees

who will be "displaced" with the retention rights of those Group 2 employees who will not be "displaced" due to refusals. If the Group 2 employees who will be displaced have superior retention rights, they must now be offered horizontal reassignment to positions held by those Group 2 employees who were not displaced.

NOTE: Conceivably in the above steps, **all** Group 3 employees with horizontal reassignment rights could refuse to relocate. In this unlikely event, you must now compare the rights of Group 1 employees against Group 2 employees. If any Group 1 employees have superior rights, instead of being laid off, they must be offered reassignment to positions held by Group 2 employees.

Illustration (A) of the Equal Numbers Method for Horizontal Reassignment

Assume an agency has 16 non-probationary permanent employees in a title which will be affected by layoffs. There are three locations (counties) in the layoff unit (Albany, Saratoga and Erie). Program needs require that the Erie and Albany offices be reduced by four positions each. Therefore, a total of eight positions in the title will be abolished.

To provide employees with the most retention rights an opportunity to retain a job, and to lay off those with the least retention rights, the agency compares the layoff unit seniority roster with geographic sub-rosters of all the employees in the title at each location (see next page). On the seniority roster and on the sub-roster for each location, a line is drawn indicating the number of positions to be abolished.

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ILLUSTRATION A LAYOFF UNIT	GEOGRAPHIC SUB-ROSTERS		
	ALBANY COUNTY	SARATOGA COUNTY	ERIE COUNTY
SENIORITY ROSTER			
1. ALBANY	1	_____	
2. SARATOGA		2	
3. SARATOGA		3	
4. ERIE			4
5. ERIE			5
6. ALBANY	6		
7. ALBANY	7		
8. ALBANY	8		
9. ALBANY	9		
10. ALBANY	10		
11. ALBANY	11		
12. SARATOGA		12	
13. ALBANY	13		
14. ERIE			14
15. ERIE			15
16. SARATOGA		16	
8 EMPLOYEES TO BE LAID OFF	4 POSITIONS TO BE ABOLISHED	0 POSITIONS TO BE ABOLISHED	4 POSITIONS TO BE ABOLISHED

Three groups of employees can now be identified. They are:

Group 1 – Employees who appear **above the line on both** the layoff unit seniority roster and on the geographic sub-roster. In this example, these employees are #1, #6, #7 and #8 in Albany and #4 and #5 in Erie.

Group 2 – Employees who appear **above** the line on the layoff unit seniority roster but **below** the line on the geographic sub-roster. In this example, these employees are #2 and #3 in Saratoga.

Group 3 – Employees who appear **below** the line on the layoff unit seniority roster but **above** the line on the geographic sub-roster. In this example, these employees are #14 and #15 located in Erie.

1. Employees in Group 1 are identified for layoff.
2. Employees in Group 3 are now compared with employees in Group 2 and are offered the opportunity for horizontal reassignment.
3. Employee #15 is offered the opportunity to be horizontally reassigned to Saratoga, displacing #2. Assume that #15 accepts Saratoga.
4. Employee #14 is offered the opportunity to reassign to Saratoga, displacing #3. Assume that #14 also accepts Saratoga.

The final outcome of this horizontal reassignment process is summarized below:

- Employees 1, 2, 3, 4, 5, 6, 7 and 8 are laid off, have their bumping or retreat rights determined, and their names put on reemployment lists.
- Employees 14 and 15 are reassigned to Saratoga as of the date of layoff.
- Employees 9 – 13 and #16 are not affected by the layoff.

It is important to realize that the sample problem is illustrative only, and that in most real layoff situations there are more complexities than are shown here.

Reductions In A Title Series In Multiple Geographic Locations

When positions are being abolished at **more than one level** in a title series, all abolitions and their consequent horizontal reassignments should be done first "on paper" before determining which employees have vertical displacement rights. This is the only way to determine who may be eligible for vertical displacement in the first place; and since the purpose of vertical displacement is to provide lower level jobs for higher-level, more senior employees, all bumps and retreats must be carried out against the staffing pattern as it will exist immediately after the date of layoff.

While this preserves the principle of seniority which is basic to the layoff process, it may appear that lower-level employees are being subjected to "double jeopardy" because some who accept a horizontal reassignment to another location may then be vertically displaced. To mitigate this, agencies should caution employees who are making horizontal reassignment choices that ultimately their opportunity to relocate depends on the displacement rights of employees at higher levels.

PROCEDURES FOR NON-COMPETITIVE AND LABOR CLASS POSITIONS

The procedures used to administer reductions in force which affect non-competitive and labor class employees are similar to those for competitive class employees.

However, in order for non-competitive class employees to have rights under §80-a of the Civil Service Law they must first meet the provisions for tenure protection in §75.1(c) or as modified by negotiated agreements. (See Appendix B - TENURE PROTECTION) Although labor class employees are treated similarly, there is no statute which provides them with retention rights.

Briefly, to obtain tenure protection under §75.1(c), non-competitive class and labor class employees must meet four criteria:

1. They must not be serving in positions designated by the Civil Service Commission as confidential or requiring the performance of functions influencing policy. Non-competitive class positions are listed in Appendix 2 of the Civil Service Law. Policy influencing or confidential positions are annotated with the Greek letter "Ø" (phi) in the listing. Do not confuse "confidential" with the bargaining unit designation of "managerial confidential"; they are not necessarily related.

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NOTE: Some non-competitive class employees who are in positions designated as policy influencing or confidential may, nevertheless, have tenure protection or layoff/reemployment list rights if they are serving in their current position as a result of the reclassification of their former position which was either not so designated, or was in the competitive class. (See Appendix B - RECLASSIFICATIONS - THE RIGHTS OF EMPLOYEES WHOSE POSITIONS HAVE BEEN RECLASSIFIED). Further, some non-competitive and labor class employees who do not have tenure protection but who are veterans or exempt volunteer firemen may have the right to request transfer under §86. (See Appendix B - TRANSFER OF VETERANS AND EXEMPT VOLUNTEER FIREMEN (§86).)

2. Employees not designated as policy influencing or confidential must have at least five years of continuous service in the non-competitive class since their last entry into service and immediately prior to the date of layoff. This service need not be permanent to be qualifying for tenure protection under §75.1(c) or an applicable negotiated agreement. Employees covered under such agreement need only have one year of continuous service since last entry to attain tenure protection.
3. This service must be **continuous**; that is, there cannot be a break from the payroll of even one day. (See Appendix B - CONTINUOUS SERVICE.)
4. The employees must be permanent at the time of layoff.

Non-competitive class (and labor class) employees who meet these four criteria are afforded retention rights, horizontal reassignment opportunities or retreat rights, and if laid off, will have their names placed on reemployment lists.

EMPLOYEE CHOICES

PRELIMINARY NOTICE

It is important to notify employees of the potential for layoff as soon as determinations have been made as to which titles and locations will likely be affected. In order for employees to make realistic choices about their future, they must first accept the fact that they may be laid off. Acceptance is difficult for most employees and it requires time as well as repetition. An early preliminary notice and meetings with employees are suggested as a means of helping them to deal with the fact that they may have to make choices concerning their reassignment or vertical displacement.

CHOICES FOR HORIZONTAL REASSIGNMENT OR VERTICAL DISPLACEMENT

Throughout the layoff process, it will be necessary to communicate with employees to determine their willingness to accept horizontal reassignment or vertical displacement opportunities. This information is necessary for the administration of the layoff since, for example, the acceptance of a horizontal reassignment by a more senior employee (A) may mean a less senior employee (B) is laid-off. If (B) accepts a lower level position through vertical displacement, then employee (C) is laid off and may have a retreat opportunity which affects employee (D). It is obvious from this example that information on whether employee (A) will or will not accept a horizontal reassignment must be sought first so the layoff process can be carried out.

Furthermore, it may be necessary to provide affected employees who have disabilities and who are eligible for reassignment or displacement reasonable accommodations in their new assignments. (See Appendix B - REASONABLE ACCOMMODATIONS.) In small scale layoffs involving only a few employees, and where opportunities for horizontal reassignment and vertical displacement will be limited, the contacts can be made in person or by telephone and then followed up with a confirming letter.

From the employees' standpoint, it is obviously preferable to be able to make choices from those options which will actually be available. This requires that final horizontal reassignment and vertical displacement rights be determined for each employee and that this be included in an informational package tailored for each individual. However, in large scale layoff situations, especially where a variety of geographic locations are included within the layoff unit, this may not be possible. Instead, it may be necessary to

1. provide all potentially affected employees with a list of all the possible locations to which horizontal reassignment or vertical displacement could occur,
2. ask them to rank those locations to which they would accept:
 - a. horizontal reassignment and, separately,
 - b. a lower level position, if available, through vertical displacement (bumping or retreat).

If this latter method is required in order to administer the layoffs, the informational packages showing the locations available should be sent to employees prior to informational meetings, and explained to the employees at these meetings so they can understand the consequences of their choices. If this information is inadequately explained, employees will not be able to make reasoned choices, and agencies may face the prospect

of potential grievances and litigation brought by employees who believe they were not treated fairly. Additionally, the layoff process may be further disrupted if significant numbers of employees at the last minute refuse the appointments they have "agreed to" in haste or without sufficient information. (See Appendix B – PRELIMINARY LAYOFF NOTICE SAMPLE).

EMPLOYEE INFORMATION VERIFICATION and LOCATION PREFERENCE SHEETS

Agency users can generate employee personnel verification forms using two reports found in NYSTEP On-Request Reports – the Employee Information Verification Form and the Employee Location Preference Sheet. These forms can be requested by layoff unit, or by title, or by SSN.

The report titled "EMPLOYEE INFORMATION VERIFICATION FORM" can be sent to employees in titles *potentially identified* for layoff. When employees return the printed forms, personnel office and NYSTEP records can be adjusted as required, and new seniority rosters can be requested if necessary.

The report titled "EMPLOYEE LOCATION PREFERENCE SHEET" can be sent to affected employees who have been *specifically identified* for layoff and whose names will be placed on reemployment lists. This form lets affected employees identify geographic locations where they will consider employment. In addition, agencies can use this form to allow employees to indicate locations in which they would accept horizontal reassignment or vertical displacement.

Agencies should provide a cover letter explaining why the employee was sent the form, and when and to whom it must be returned.

NOTE: If a report is requested for the entire layoff unit, employees who are in two items (i.e., on leave from one item while serving in another in the same layoff unit) would have two forms generated by this report.

NOTE: The employee Home Address information found on these reports comes from the data entered in the NYSTEP Personal Data panel and users can make changes or corrections directly using that panel. See the NYSTEP User Manual for more information on how to correct records in NYSTEP. Some corrections (for example, changes to appointment date) may require intervention by the Department of Civil Service Special Transactions Unit (STU) and should be discussed with your Staffing Services Representative.

NOTIFICATIONS AND PAYROLL TRANSACTIONS

NOTICES TO EMPLOYEES

Final notices to all employees affected by the layoff must be sent to the employees **20 days** before the date of layoff.

We recommend that agencies prepare standard notification letters (See samples in Appendix B – FINAL LAYOFF NOTICE SAMPLES) for each group of employees who have been affected. The contents of each of these letters for each group will vary according to the effect that the layoff has had. For example, any or all of the following layoff situations may occur:

- Employees will be reassigned in title to another location
- Employees will be offered reassignment in title to a location in another county, but refuse and therefore do not have bumping or retreat rights, but will have their names placed on reemployment lists
- Employees will be laid off and have their names placed on reemployment lists and either:
 - accept a bump or retreat to a lower level, or
 - refuse a bump or retreat to a lower level, or
 - are not eligible to bump or retreat
- Employees will be laid off and have their names placed on reemployment lists and may either:
 - return to their hold item, or
 - refuse to return to their hold item
- Employees do not have layoff rights and will be terminated

The layoff notification should state precisely what will happen to the employee, and where and when the employee is supposed to report to work (if applicable). The notification must be accompanied by the publication regarding Post Employment Restrictions as well as the *Information for State Employees Affected by Layoff* booklet if the employee's name will be placed on reemployment lists. All notices must also contain a statement about cash payments for accumulated credits, and a phone number in the agency for employees to contact.

INFORMATION TO CIVIL SERVICE

CSL §§81a and 81b **require** agencies to provide this Department's Career Mobility Office (CMO), **no later than 20 days prior to the date of layoff**, the names of all employees who will be laid off and who have reemployment rights. This listing must include the names and Social Security numbers of all such employees, and, if any are being displaced to lower level positions, their title, grade level and status in those positions.

At the time that the final notices are sent to employees, agencies should include layoff cards (S-295.5 Preferred List/Reemployment Roster Eligible Card) for those employees who are eligible to have their names placed on reemployment lists. Once completed and signed by the employees, layoff cards must be signed by the agency and submitted to CMO. When submitting layoff cards, agencies must include a cover memo detailing whose cards are enclosed and how they were impacted (why they are eligible). This is required each time layoff cards are submitted.

It is anticipated that there will be changes in the status of some employees between the time the 20-day listing is submitted and the layoff date (due to ARTL appointments, employees reversing their decisions, etc). Therefore it is crucial that agencies communicate regularly with CMO to keep them abreast of any such changes that could affect an employee's reemployment rights.

Finally, to ensure that the final status of all employees is accurately reflected in the record, agencies should submit a final listing, similar to the 20-day listing in format and content, to CMO no later than one week following the layoff date.

NYSTEP PAYROLL TRANSACTIONS

The following reason codes should be used for NYSTEP transactions when reductions in force occur. For complete information on how to submit NYSTEP transactions refer to the NYSTEP User's Manual

Appointment Transactions (Effective date must be prior to date of layoff)

TRL -- Agency Reduction Transfer List appointment (ARTL)

Appointment Transactions (Beginning of business, effective day after the date of layoff) *

DPD -- Displacement direct (through bumping) of an employee from a higher permanent title to a lower level title, in a direct line.

DPR -- Displacement (through retreat) of an employee from a higher permanent title to the last lower title previously held permanently.

PRF -- Preferred list appointment.

RDY -- Redeployment list appointment.

RER -- Reemployment Roster appointment.

RLV -- Reinstatement from an encumbering leave - use this code to restore a probationary employee to his/her permanent hold item.

RNL -- Horizontal reassignment, in the same title and grade to a different location (i.e., county) within a layoff unit.

Separation and Termination Transactions (Beginning of business, effective day after the date of layoff) *

LAD -- Layoff of a permanent employee displaced through bumping by a higher level employee in the direct promotion line.

LAF -- Layoff of an employee pursuant to §80 or §80-a.

LAR -- Layoff of a permanent employee displaced by a higher level employee through retreat.

RFR -- Remove a permanent/contingent permanent employee who refuses geographic reassignment necessitated by agency program needs or the abolition of positions.

RFT -- Remove a non-permanent employee or other employee without §80 or §80-a rights.

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ROT – Use to report a separation as a result of horizontal reassignment between payroll agencies under the same appointing authority.

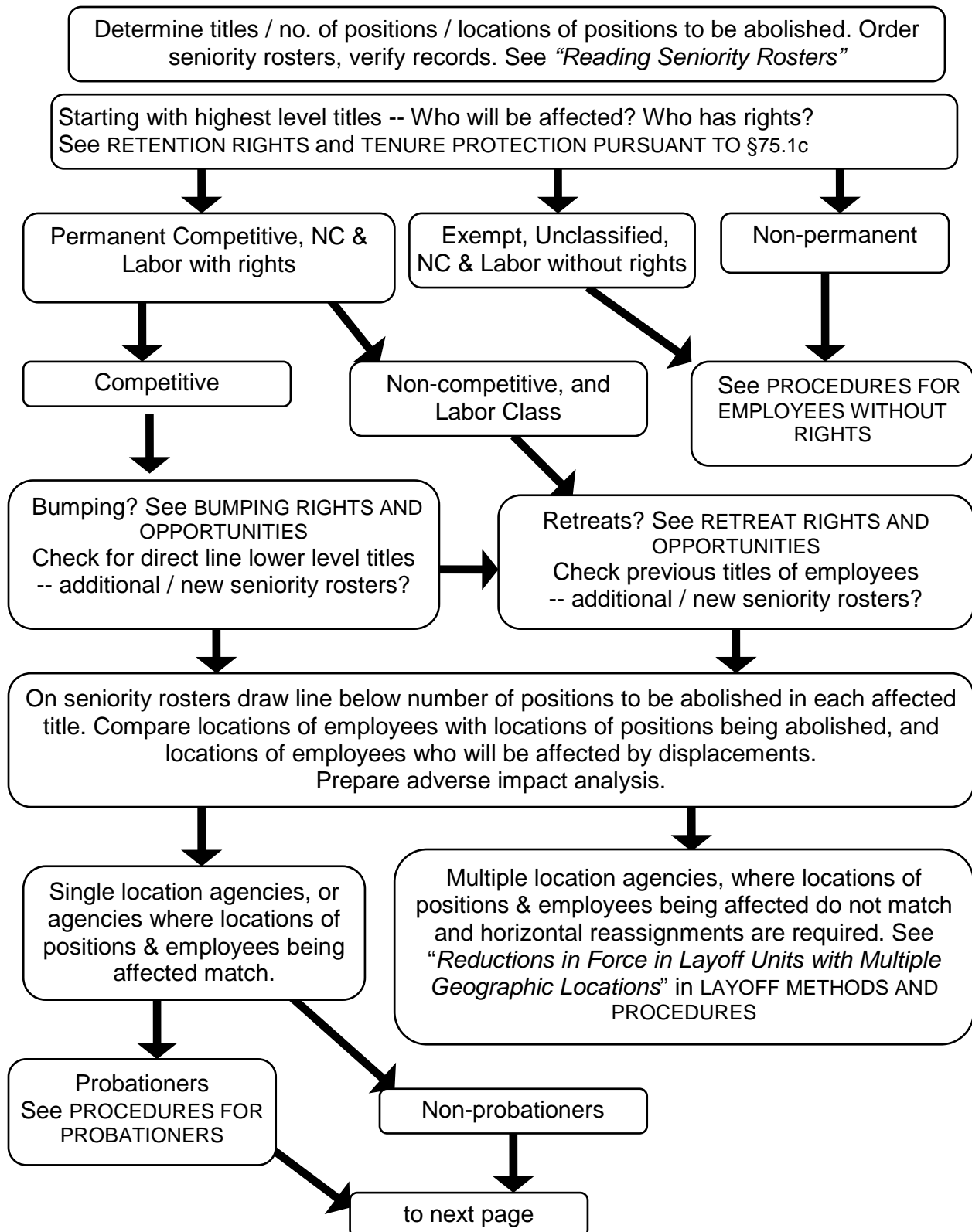
RPT – Remove a nonpermanent employee as a result of a reemployment list.

* **NOTE:** In NYSTEP all appointments and separation/terminations are BOB. Therefore the effective dates should be reported as the day after the date of layoff.

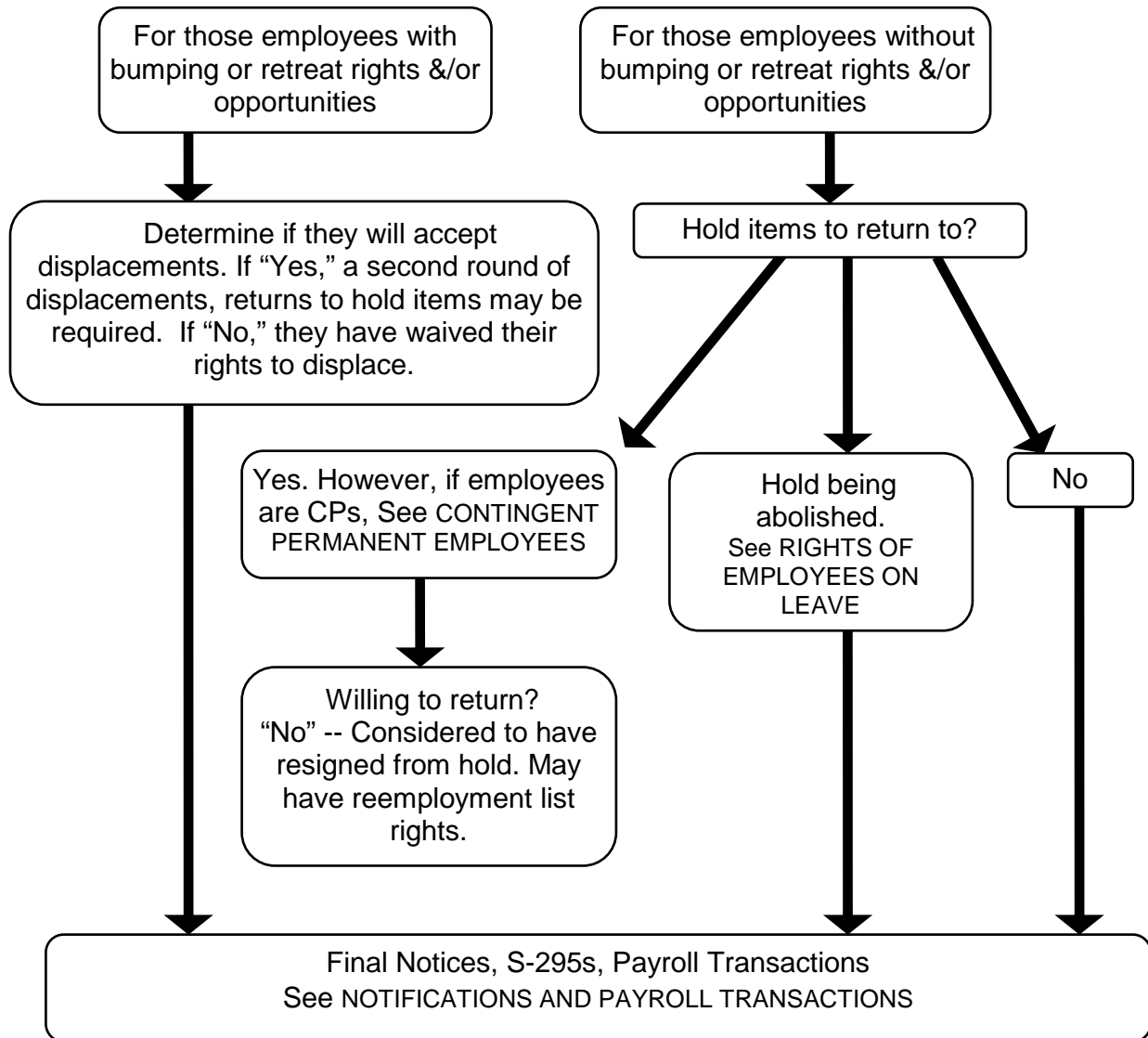
NOTE: For an employee whose status is diminished (i.e., from permanent to contingent) as the result of a RIF, two transactions must be submitted:

1. Perm Layoff (LAD, LAF, LAR) and,
 2. Cont Pref (PRF).
-

**APPENDIX A:
A FLOW CHART OF THE LAYOFF PROCESS**



FLOW CHART OF THE LAYOFF PROCESS (CONTINUED)



APPENDIX B: CRITICAL CONCEPTS AND DEFINITIONS

The law, rules and regulations governing layoffs and reemployment often make specific distinctions and provide specific definitions. Furthermore, a number of policy decisions and legal interpretations have been made over time which define important distinctions among the rights of a variety of employees who may be affected by a layoff.

The following sections provide definitions, and discuss concepts and issues which must be clearly understood in order to equitably and legally administer a work force reduction:

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ADVERSE IMPACT ANALYSIS

In accordance with federal requirements, agencies must analyze the impact of personnel actions, such as reductions in force, on protected class members. In New York State (See Executive Order 6), where adverse impact is found, agencies must revise the action to modify or remove the impact, validate the adverse personnel action or justify the action because of business necessity.

Adverse impact generally exists with a reduction in force when the termination rate (or vertical displacement rate) for employees in a particular protected class group is greater than eighty percent of the termination rate for the majority group within the layoff unit. To determine the impact, you must identify the termination rate for each group, identify the group with the lowest termination rate and compare the termination rates for other groups to that group. (Adverse impact should still be calculated when the majority group is not the least affected.) See the example below for an explanation of the RIF adverse impact analysis formula.

For example:

Out of 100 male employees, 6 are laid off.

Out of 50 female employees, 5 are laid off.

- a. Determine the termination rate for male employees: $(6 / 100 = 6\%)$
- b. Determine the termination rate for female employees: $(5 / 50 = 10\%)$
- c. Use the two termination rates to get the termination *ratio*: $(6\% / 10\% = 60\%)$
- d. Compare termination *ratio* to 80 percent. If the termination ratio is less than 80 percent, there is generally adverse impact. In this example, adverse impact exists as 60 percent is less than 80 percent.

NOTE: When determining the impact ratios, termination rates for each protected class group should be compared to rates for the majority group, [male and female termination rates should be compared to each other, disabled employee termination rates should be compared to rates for all other employees and Vietnam Era Veterans' termination rates should be compared to termination rates for all other employees.]

MINIMIZING ADVERSE IMPACT

The process for analyzing and trying to minimize impact is outlined in the Model Affirmative Action Plan, approved by the President of the Civil Service Commission, and maintained in your Affirmative Action office. This plan includes model forms to report your impact analysis on the various protected classes affected by an abolition of positions and require the following:

1. The affirmative action officer should be included as part of the management team developing the layoff plan.
2. The affirmative action officer will help identify titles with high protected class representation so that the agency can try to minimize the impact of the layoff on those titles.

3. The affirmative action officer will conduct an adverse impact analysis to determine the impact of proposed layoff plans on protected class groups.
4. Where adverse impact will occur against a protected class group, your RIF management team will try to develop a layoff scenario with less adverse impact.

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Agency: _____

Title: _____

Prepared by: _____

Date: _____

	White	Black	Hispanic	Asian/Pac Is.	Amer. Ind./Alaska Native	Females	Males	Vietnam Era Vets	All other Employees	Disabled	All other Employees
Total Employees											
Number to be Terminated											
Termination Rate											
Termination Ratio											

Total Number of Employees in Workforce: _____

NOTE: Adverse impact analysis should be conducted on a layoff unit basis. If, however, the AAO wants to consider other breakdowns (by FOC, facility/region), he/she may conduct such analyses.

BUMPING RIGHTS AND OPPORTUNITIES

The distinction made here and elsewhere in these Guidelines between **rights** and **opportunities** is a conceptual rather than a legal one. It is used to break the determination process into two discrete procedural steps:

Step 1 - To determine whether any competitive class employee has bumping **rights**, ask the following questions:

1. Are there direct-line lower level positions in the title? **Direct-line means having the same generic root**, and does not include collateral line titles.

EXAMPLE: The direct-line for Principal Accountant, G-27 is Associate Accountant, G-23; Senior Accountant, G-18; Accountant Trainee 2, NS; Accountant Trainee 1, NS.

In this example, the title Senior State Accounts Auditor is **not** considered direct-line for bumping from Associate Accountant.

2. Are the direct-line lower level positions occupied by either permanent or non-permanent employees? If the positions are vacant, temporarily vacant or being abolished, they are not available for bumping. (Vacancies not being abolished, however, are available for reinstatement at the discretion of the agency). Where a middle level title in a series is absent or simultaneously abolished, determine if positions in the next lower level in the series are occupied.

If the answer to both these questions is "Yes," the employee has bumping **rights**; if the answer to either question is "No," the employee has no bumping rights.

NOTE: The employee need not have ever held a lower level position in the title series to be eligible for bumping rights.

Step 2 - After establishing that an employee has bumping **rights**, determine if he/she has a bumping **opportunity** by comparing the higher level employee with the most retention rights to the lower level direct-line employee with the least retention rights. If the bumping employee has equal or higher appointment status **and** greater seniority than the least senior employee at the next lower level, he/she has the opportunity to bump.

NOTE: A non-probationer can bump another non-probationer or a probationer, but a probationer can only bump another probationer. An employee who is not on probation can bump a probationer regardless of their relative seniority dates.

NOTE: The employee has only **one** opportunity to bump the **least retention rights/least senior** employee. The employee cannot choose to bump **any** permanent employee with less seniority. However, all **non-permanent** employees must be considered to have the least retention rights in the title, and therefore, where there are several non-permanent employees in the lower level at different work locations, the employee has the right to choose to displace to any such work location. Where two or more non-permanent employees are serving in the same work location, the agency determines the position to which the employee will bump.

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NOTE: Probationers who are on leave from a hold item in which they were permanent cannot bump at all. They must return to their hold items. Probationers without a hold item may bump if they have 5 years of continuous service (Rule 5.5(d)). They then complete the remainder of their probation in that position.

CONTINGENT PERMANENT EMPLOYEES

An important principle underlying any discussion of the rights of contingent permanent employees is that Rule 4.11 is intended to give them as much as possible the **same** rights as permanent employees, but in no case can they obtain **greater** rights than permanent employees.

It is also important to distinguish between cases where there is a **displacement** and cases where there is a **return of incumbent**. Displacement means an employee taking the position occupied by the least retention rights individual at either the next lower level in direct line of promotion ("bumping") or in the individual's last held lower level title (retreat). Return of incumbent means a permanent employee returning from a leave granted while serving as a provisional, or in a different jurisdictional class, or on probation.

Rights of Contingent Permanent Employees in Layoff Situations (§80 or §80-a)

The fact that employees are contingent permanent in a position that is being affected by reduction is NOT relevant. Contingent permanent employees, along with all other employees in the title in the layoff unit, may be affected in one of the following ways:

- abolition of the positions in which they are serving, or
- horizontal reassignment by employees in the same title, or
- vertical displacement by employees from higher level titles through "bumping" or retreat.

When contingent permanent employees are so affected they, like permanent employees, may displace in turn and have their names placed on appropriate reemployment lists. However, they **may not** return to any hold item that they have been given pursuant to Rule 4.11 because:

1. these hold items are only for purposes of return of incumbent, and
2. to do so would give them greater rights than those available to permanent employees.

Rights in Return of Incumbent Situations (Rule 4.11)

Unlike permanent employees, contingent permanent employees face the additional "jeopardy" of being affected by the return of the prior permanent incumbents of their positions. Therefore Rule 4.11 provides certain (but not all) contingent permanent employees with rights to retain a hold item after they have completed any required probationary period.

However, it is important to note that this Rule (and Rules 4.5 and 4.10, as well) does **not** contemplate more than one permanent and one contingent permanent appointment to the same position, and that the primary intent of these rules is to guarantee the rights of the **one prior permanent incumbent** when he or she is given a leave of absence and must return to a hold item that has been filled on a contingent permanent basis.

Pursuant to Rule 4.11, when a prior permanent incumbent returns to their position, and there are no non-permanent employees serving, the most recently appointed contingent permanent is affected.

Rule 4.11 does permit contingent permanent employees to be given leaves as well, and in some cases agencies have made multiple contingent permanent appointments to one position. Where this has occurred, and a former contingent permanent employee must return to a position which is now filled behind him or her by a contingent permanent appointment, it is this Department's policy that the relative **seniority** (not relative retention

rights) of the two (or more) contingent permanent employees determines which employee can serve in the position. (The definition of seniority is the same as the definition used in layoff situations, but otherwise the situations are not related.)

Detailed discussions of the rights, policies and procedures governing contingent permanent employees may be found in the State Personnel Management Manual (See 1800 Appointments).

SUMMARY STATEMENTS

Given the above discussion of their rights, certain summary statements may be made concerning contingent permanent employees. The following are not meant to be all-inclusive, but to contemplate some of the more common situations which can occur:

- Employees appointed on a contingent permanent basis and given a leave of absence may **not** have the same rights to return as a permanent employee.
- Contingent permanent employees **who have completed probation**:
 - ◆ May **NOT** voluntarily return to their hold items;
 - ◆ May **NOT** return to their hold items if affected by the abolition of their position, or displacement;
 - ◆ **MAY ONLY** return to their hold items upon the return of the prior permanent incumbent, or a contingent permanent incumbent with greater seniority;
 - ◆ **MAY** displace to a lower level position only if affected by abolition of their position or displacement.
- Contingent permanent employees **who are on probation and have a hold item** pursuant to Rule 4.5:
 - ◆ **MAY** return to their hold items if affected by the abolition of their position, or displacement;
 - ◆ **MAY** return to their hold items upon the return of the prior permanent incumbent, or a contingent permanent incumbent with greater seniority;
 - ◆ May **NOT** displace to a lower level position if affected by abolition of their position or displacement.
- Any contingent permanent employee affected by **return of incumbent**, continues to be governed by **Rule 4.11** even if the return of the prior permanent incumbent (who is for example, serving provisionally, or as a probationer at a higher level) is necessitated by a layoff.
- Any contingent permanent employee affected by **displacement** (bumping or retreat), is governed by §80 or §80-a, and has their rights to **displace** pursuant to those sections.

NOTE: See Appendix B - LEAVES - THE RIGHTS OF EMPLOYEES ON LEAVE for information on the effect of abolishing an employee's hold item, or the effect of an employee losing a hold item due to displacement.

NOTE: When a contingent permanent employee is laid off, agencies should check to see if this releases the "4.11" hold, and if so, whether a contingent permanent appointed to a position in that title can be converted to permanent.

CONTINUOUS SERVICE

Continuous Service for Seniority

For purposes of layoff, continuous service for determining seniority under §80 and §80-a, is defined as permanent classified service unbroken by periods out of service of one year or more. For example, a permanent competitive class non-veteran employee's NYSTEP history reads:

OC Perm 1/1/80
RSN 6/1/81
Perm R54 5/1/82

The employee's classified seniority date is 1/1/80.

There are some situations, specified in §80.2 and §80-a.2, which do not constitute a break in service for purposes of determining seniority dates. They are:

- Periods of authorized leaves of absence
- Periods out of service in which the employee's name was on a preferred list
- Periods out of service in which an employee was terminated and reinstated pursuant to §71
- Provisional and temporary service, or service in the unclassified service, immediately preceded and followed by permanent classified service

In addition, some employees may have had their seniority dates recalculated after a period of interrupted service (§80.3 and §80-a.3). In these cases, this recalculated date becomes the date from which determinations of continuous service are made (See Appendix B - SENIORITY).

Continuous Service for Determining Tenure Protection Under §75.1(c)

Continuous service for determining whether non-competitive and labor class employees have layoff rights is defined by Civil Service Law section 75 or the applicable collective bargaining agreement. Such employees must have tenure protection to have retention rights under section 80-a. Employees in the non-competitive or labor class who are covered by such collective bargaining agreement, who have at least one year of continuous service in such jurisdictional class since last entry into service, and who are permanent/contingent permanent with tenure protection, provided their position is not "confidential" or "policy influencing" position. Non-competitive employees not covered by a collective bargaining agreement – management/confidential employees – must have completed five years of continuous service since last entry in a position not designated as policy-influencing or confidential to have tenure protection and retention rights.

DIRECT LINE FOR VERTICAL DISPLACEMENT

"Direct line" for the purpose of bumping in the competitive class is based on Civil Service Law §80.7 and is interpreted narrowly. Direct line means the one title at the next lower level which has the same generic root. In other words, the titles are the same except for level designation (e.g., Senior, Principal, Chief). For example, the generic root of Principal Accountant is Accountant; therefore, the next lower level title in "direct line" is Associate Accountant. Similar titles with other generic roots, such as Associate Accountant (State Accounts and Systems), etc., are not considered "direct line" from Principal Accountant for the purpose of vertical displacement, even though Associate Accountant (State Accounts and Systems) may be included in the promotion field for Principal Accountant.

In rare cases, direct line titles do not have the same generic root (an example is the Secretary and Keyboard Specialist series). Agencies should contact their Staffing Services Representative to discuss these situations.

FINAL LAYOFF NOTICE SAMPLES

The following sample letters are offered as a guide to the type of information that should be provided to employees who are affected by a reduction-in-force. These specific layoff situations are addressed:

- Horizontal Reassignment
- Refused Bump
- Return to Hold
- Termination

Although this is not an inclusive list of layoff scenarios, the content of a layoff notice for any other situation is substantially similar to that furnished in the letters which follow.

FINAL LAYOFF NOTICE - HORIZONTAL REASSIGNMENT

Dear XXXXX:

As you were previously advised, the enacted New York State budget authorizes the Commissioner to close offices as deemed appropriate based upon agency needs. As a result, the Department will be closing offices in _____, _____, and _____ effective _____ COB. The positions associated with these offices will be abolished and the affected employees will be subject to a reduction in force in accordance with Civil Service Law Sections 80 and 80a.

Please be advised that based on your retention standing among the employees in your title, you have been displaced via horizontal reassignment to _____, as a _____ TITLE, Item # _____, on a PERM/CONT PERM/TEMP basis. You should report to your new assignment on DATE, at TIME.

IF STATUS IS DIMINISHED INCLUDE NEXT PARAGRAPH

Due to the fact that your status has been changed from PERM/CONT PERM to CONT PERM/TEMP, you are eligible to have your name placed on appropriate reemployment lists in accordance with Civil Service Law Section 81. However, you must first complete the enclosed form S-295.5 or "Green Card". Once the card is completed, please return it to my office so that I may forward to the New York State Department of Civil Service on your behalf.

If you have any questions regarding the information provided to you throughout this process, please feel free to contact either _____ at _____ or me at _____.

Sincerely,

Director of Human Resources

FINAL LAYOFF NOTICE - REFUSED BUMP

Dear XXXXX:

Due to the serious fiscal problems now facing New York State, it is necessary to administer a reduction in force within this Department. As a result, you are being displaced in your current position effective _____ BOB by an individual with more retention rights.

As we discussed previously, you had the following option pursuant to Civil Service Law, Rules, and Regulations: Vertically displace into _____, salary grade _____. This will confirm that you have declined to accept this option. As a result of your declination, you will be laid off effective _____ BOB. Arrangements have been made for prompt payment of any accumulated vacation and overtime credits. You are eligible for reemployment list rights for the title you are vacating and possibly for other titles deemed appropriate by the Department of Civil Service. A personnel representative will provide you with further information and materials regarding your rights and benefits under Civil Service Law.

A booklet prepared by the Department of Civil Service entitled "Information for State Employees Affected by Layoff" and a fact sheet entitled "How to File an Unemployment Insurance Claim" have been provided for your reference.

Please contact the Department of Labor to discuss unemployment insurance benefits and finding new employment. You may contact the Department of Labor at 1-888-4NYSDOL; by e-mail at nysdol@labor.state.ny.us; or you may view their website at <http://www.labor.ny.us>.

The Department of Civil Service Career Mobility Office (CMO) is available to provide re-employment assistance to State employees who are affected by reductions-in-force. You may contact the CMO by phone at 518-485-6199 or 1-800-553-1322 or by e-mail at careermobility@cs.state.ny.us.

Thank you for your service to this Department.

Sincerely,

Director of Human Resources

FINAL LAYOFF NOTICE - RETURN TO HOLD

Dear XXXXX:

Due to the serious fiscal problems now facing New York State, it is necessary to administer a reduction in force within this Department. As a result, you are being displaced in your current position effective _____ BOB by an individual with more retention rights.

As we discussed previously, you had the following option pursuant to Civil Service Law, Rules, and Regulations:

Return to your hold: TITLE and LOCATION/AGENCY. This will confirm that you have agreed to accept this option effective _____ BOB. You are eligible for reemployment list rights for the title you are vacating and possibly for other titles deemed appropriate by the Department of Civil Service. A personnel representative will provide you with further information and materials regarding your rights and benefits under Civil Service law.

We deeply regret the need for this reduction in force and its impact on you. Please be assured that our Personnel Office remains available to provide you with assistance in this matter.

Sincerely,

Director of Human Resources

FINAL LAYOFF NOTICE - TERMINATION

Dear XXXXX:

Due to the serious fiscal problems now facing New York State, it is necessary to administer a reduction in force within this Department. As was discussed with you, a thorough review of your status pursuant to Civil Service Law, Rules, and Regulations reveals that you have insufficient retention rights. As a result, you are being displaced in your current position by an individual with more retention rights and your services will be terminated effective _____ BOB.

Arrangements have been made for the prompt payment of any accumulated vacation and overtime credits.

You are eligible for reemployment list rights for the title you are vacating and possibly for other titles deemed appropriate by the Department of Civil Service. A personnel representative will provide you with further information and materials regarding your rights and benefits under Civil Service Law.

A booklet prepared by the Department of Civil Service entitled "Information for State Employees Affected by Layoff" and a fact sheet entitled "How to File an Unemployment Insurance Claim" have been provided for your reference.

Please contact the Department of Labor to discuss unemployment insurance benefits and finding new employment. You may contact the Department of Labor at 1-888-4NYSDOL; by email at nysdol@labor.state.ny.us; or you may view their website at <http://www.labor.ny.us>.

The Department of Civil Service Career Mobility Office (CMO) is available to provide re-employment assistance to State employees who are affected by reductions in force. You may contact the CMO by phone at 518-485-6199 or 1-800-553-1322 or by e-mail at careermobility@cs.state.ny.us.

I deeply regret the need for this reduction in force and its impact on you. Please be assured that our Personnel Office remains available to provide you with assistance in this matter.

Sincerely,

Director of Human Resources

HORIZONTAL REASSIGNMENT EXCEPTION

Ordinarily, agencies must apply the “county first, layoff unit second” principle in the horizontal reassignment process (See LAYOFF METHODS AND PROCEDURES). In exceptional cases, however, when a RIF occurs in a layoff unit of either Office of Mental Health (OMH) or Office for People With Developmental Disabilities (OPWDD) and one of the counties in the layoff unit includes two separate facilities, retention rights must be applied to all employees in the affected title in the facility first, then to all employees in the title in the county, and finally to all employees in the title within the layoff unit (See Illustration B of the Equal Numbers Method below).

ILLUSTRATION B

LAYOFF UNIT	GEOGRAPHIC SUB-ROSTERS			
	ALBANY FACILITY A	ALBANY FACILITY B	SARATOGA	ERIE
SENIORITY ROSTER				
1. ALBANY FACILITY B		1	_____	
2. SARATOGA			2	
3. SARATOGA			3	
4. ERIE				4
5. ERIE				5
6. ALBANY FACILITY A	6			
7. ALBANY FACILITY A	7			
<u>8. ALBANY FACILITY B</u>		8		
9. ALBANY FACILITY B		9		
10. ALBANY FACILITY A	10			
11. ALBANY FACILITY A	<u>11</u>			
12. SARATOGA			12	
13. ALBANY FACILITY A	13			
14. ERIE				14
15. ERIE				<u>15</u>
16. SARATOGA			16	
8 EMPLOYEES TO BE LAID OFF	4 POSITIONS TO BE ABOLISHED	0 POSITIONS TO BE ABOLISHED	0 POSITIONS TO BE ABOLISHED	4 POSITIONS TO BE ABOLISHED

Illustration B outlines a RIF scenario in either OMH or OPWDD where there exists two separate facilities in Albany County. Unlike the illustration detailed earlier which conforms to the standard principle of “county first, layoff unit second”, in this example the retention rights of the employees in Albany Facility A and Albany Facility B must be compared separately to the rights of other employees in the county and the layoff unit.

Again using the Equal Numbers Method, the three groups of employees would be:

- Group 1 - Employees # 4, 5, 6 and 7.
- Group 2 - Employees # 1, 2, 3 and 8.
- Group 3 – Employees # 10, 11, 14 and 15.

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In this scenario, Employees # 4, 5, 6 and 7 are identified for layoff. Then the Group 3 employees would be offered reassignment in retention rights order to the positions held by Group 2 employees. Employee #15 would have the choice of Facility B or Saratoga; employee #14 would have the same choices since there are two Group 2 employees in each location; employees # 11 and 10 would have choices determined by the locations chosen before them.

HORIZONTAL REASSIGNMENT METHODS

Based on the experience and insights gained in the administration of previous layoffs, the Department of Civil Service recommends the **Equal Numbers Method** of horizontal reassignment be used. A full discussion of this method is found under LAYOFF METHODS AND PROCEDURES.

Historically, some agencies have used methods ranging from offering each employee only **one** choice – the position held by the least retention rights employee, to offering each employee the opportunity to be reassigned to **any** position held by any employee with lesser rights. Since there are important advantages, disadvantages and implications to each method, before determining which method to use, contact your Staffing Services Representative. Bear in mind, as well, that once a method has been selected it must be applied consistently to all employees in all titles.

Equal Numbers Method

The Equal Numbers Method is based on the concept that the number of choices available for reassignment must be at least equal to the number of employees who must be offered reassignment.

One Choice Method (“Most to Least”)

The One Choice Method uses the same procedure as the Equal Numbers Method except that it offers Group 3 employees only the **one** position held by the least rights employee. This "most-to-least" method, while simple to administer, usually has the following results:

1. Employees have severely limited choices.
2. If the location of the least rights employee is undesirable, all employees may decline, resulting in greater rights employees being laid off and less rights employees being retained.
3. The location of the employee with least rights may change as employees accept the one position being offered, resulting in less senior employees being offered more desirable choices than more senior employees, and greater dislocations for those with the most rights.

More Senior to Any Less Senior Method

This method allows any greater retention rights employee to choose a position held by **any** lesser retention rights employee. This method requires that all employees submit their ranked choices of locations they would accept with their current location as their required first choice. Where they cannot stay at their current location, their remaining choices are matched against the positions which will not be abolished at their next ranked location. This method can have the following results:

1. Employees may have a great many choices, and they will need complete and accurate information well in advance in order to make their decisions.
2. In large layoffs, the administrative complexity increases, and this method requires a large staff commitment, and sufficient time to successfully complete the horizontal reassignment phase of the layoff.
3. This may result in many more employees being relocated than the number of positions being abolished.

If the **More to Any Less Senior** method were applied to the situation described in Illustration A, Employee 16 would remain in Saratoga. Employees 15 and 14 could choose either Saratoga or Albany (displacing the employees with the least retention rights). Employees 13 and 12 would get their first choice, Albany and Saratoga respectively. This process would continue in retention rights order until there are no available positions remaining and eight employees have been displaced or suspended.

HOURLY EMPLOYEES AND SEASONAL EMPLOYEES

In most cases, hourly employees work less than full-time; seasonal employees may work full-time but not year round. Therefore, for purposes of retention and reemployment, permanent hourly employees and seasonal employees are treated the same as part-time employees (See Appendix B – PART TIME EMPLOYEES).

LAYOFF

The term "layoff" is commonly used whenever an employee is separated from state service. However, only when certain conditions are met do employees have rights under §80 or §80-a:

- * The separation or displacement must be a result of the abolition of one or more positions.
- * The employee must have permanent or contingent permanent status at the time of layoff.
- * The position must be in either the competitive class or non-competitive class. Employees in the labor class are granted the same rights as non-competitive class employees by negotiated agreements.
- * Non-competitive class and labor class employees must have tenure protection pursuant to §75.1(c) or negotiated agreements.

Note that employees need not have been separated from service in order to have rights pursuant to these sections. Employees who have had to bump or retreat to a lower level, and those who have lost their permanent hold items have all been "laid off" and, assuming they meet the criteria above, have layoff rights.

LAYOFF UNITS

Civil Service Law (See §80.5 and §80-a.5) provides that layoffs shall be made from among the employees of the affected department as a whole except where separate (i.e., smaller) units for layoff have been designated. These separate units for suspension, demotion or displacement are listed in President's Regulation §72.1, and are called layoff units. It is within these defined layoff units, which may be organizational or geographic portions of an agency, that employees are suspended or demoted, exercise their rights to be retained or horizontally reassigned, and within which they vertically displace ("bump" or retreat). The impact of any layoffs are always confined to layoff units and to the titles and positions identified in these units.

Formal definitions of layoff units exist for every State department and agency, and may reflect agreements made through collective bargaining.

Since the layoff unit structure can have a significant effect on the rights and opportunities of employees both to retain a position, and to be reemployed if laid-off, this Department must approve any proposed changes in an agency's layoff unit structure (See Advisory Memorandum #94-03 in Section 2300 of the SPMM).

LEAVES – THE RIGHTS OF EMPLOYEES ON LEAVE

The rules, regulations, policies, procedures and contractual agreements which govern leaves remain in effect during layoffs. Generally these are:

- A. Employees with rights to return to a hold item generally have a right to return to the positions from which they are on leave. This is not to say that agencies cannot reassign hold items and employees based on program need, or when required by layoffs. In these cases employees do not have rights to be restored to any one specific item. Employees are considered to be on leave from a title, and have rights to their former status and location. When restoration to a hold occurs the agency may designate the specific item. Agencies may change designated hold items and may reassign hold items to different locations at any time.
- B. Employees who refuse to return to a hold item which was moved to a different location (i.e., different county) are considered to have declined a reassignment, and are eligible for reemployment list status, but they are not eligible for bumping or retreat.
- C. Some types of leaves are mandatory, i.e., required to be granted by an agency, by Civil Service Law or rule, or by negotiated agreement. Other types of leaves are discretionary on the part of the agency. Granting a leave constitutes an agreement between the agency and employee which generally cannot be broken except by mutual agreement. However, there are several exceptions to this:
 1. Probationers may request restoration to a hold item prior to end of their leave, and the agency must restore them. (Rule 4.5)
 2. Employees who have been temporarily or provisionally appointed to another competitive class position in their agency must be restored upon request (Rule 4.10).
 3. Contingent permanent* employees who are affected by return of a prior permanent incumbent must be offered restoration with permanent status to the hold items provided for this purpose (Rule 4.11). Contingent permanent employees who have completed their probation **may not voluntarily** return to these hold items in the absence of return of incumbent.

***NOTE:** However, where employees were **originally appointed contingent permanent** in their hold items and given a leave (Rule 4.11 (c)), and agencies have made **subsequent** contingent permanent appointments to the same position, a comparison of the seniority dates of the two (or more if several are returning and sufficient positions are not available) contingent permanent appointees is required. Although these are **not** layoff situations, only if the returning contingent permanent employee has an **earlier seniority date** (use the “layoff” definition of seniority), may he/she return and “replace” the contingent permanent who is serving. (See Appendix B - CONTINGENT PERMANENT EMPLOYEES).

NOTE: Where the returning employees were **originally appointed permanently** (i.e., **not** pursuant to Rule 4.11) then as the prior permanent incumbents they have a right to return pursuant to these Rules (4.5, 4.10, or 4.11, as the case may be) without regard to seniority.

NOTE: Employees who have a right to return must give their agency at least 2 weeks notice of their intent to do so.

In layoff situations employees who have hold items may be affected in their current positions, or have their hold items affected, or both. The above provide the framework for the discussions of the three layoff situations which follow.

Layoffs affecting the current positions of employees who are on leave.

Generally, employees who are on leave do not have displacement rights. (See Appendix B - BUMPING RIGHTS AND OPPORTUNITIES, and RETREAT RIGHTS AND OPPORTUNITIES)

- Provisional and temporary employees have no layoff rights and must be allowed to return to their hold items.
- Probationers -- permanent and contingent permanent competitive and non-competitive employees, and permanent labor class employees who have been granted a leave to serve a probationary period in their current positions have no rights to displace through bumping or retreat (Rule 5.5 and 5.6). Only probationers without a hold item are eligible for such displacement, provided they have five years of continuous satisfactory service.
- Employees who elect to return to a hold item prior to the date of layoff have, in effect, resigned. They accrue no rights pursuant to §80, §80-a, or §81 if their former positions are subsequently abolished.
- Contingent permanent employees who are not on probation may **not** return to the positions being held for them pursuant to Rule 4.11. (See Appendix B - CONTINGENT PERMANENT EMPLOYEES)

Layoffs affecting the hold items of employees who are on leave.

Employees on leave from positions being affected by layoffs must be treated for layoff purposes as if they were actually serving in those positions. Employees whose permanent competitive, non-competitive or labor class* **hold** items are abolished must be given new hold items through horizontal reassignment or if not, through bumping or retreat to a lower level. They exercise these rights just as if they were serving, except that they do not actually displace any incumbents who are serving.

NOTE: this applies only to those non-competitive and labor class employees who meet the tenure requirements of §75.1 (c) or negotiated agreements.

Where employees are serving permanently in positions affected by having their “permanency displaced” by the assignment of these holds, their status is changed from permanent to contingent permanent. They have no rights to displace themselves to a lower level since there has been no loss of salary or permanency. However, they will have their names placed on reemployment lists in inactive status in order to “document” that their change in status came about as the result of an abolition of a position. If the prior permanent incumbent subsequently returns, the contingent permanent employee is then given **full** preferred list and reemployment roster rights, even if they were given a lower level hold at the time of this “conversion.”

Layoffs affecting both the current positions of employees on leave and their hold items.

When layoffs require employees to return to hold items in titles which are **also** being affected by abolition, they must be afforded the appropriate retention rights due them as if they were actually serving in both positions.

In both positions, determine their rights to retain a position (or hold item), or displace, applying the principles above: first to their current position and second to their hold item.

Note that contingent permanent probationers returning and becoming permanent releases the holds required by Rule 4.11 and this may allow other contingent permanent employees at that level to be converted to permanent.

PART-TIME EMPLOYEES

All arrangements for part-time employment are at the discretion of agency management and can be changed at any time unless the work schedule was specifically guaranteed as a condition of employment at the time of appointment, or unless such schedules are included in negotiated agreements. When schedules are changed by an agency, employees are not entitled to rights to displace or to have their names placed on preferred lists if they refuse to work the altered schedule.

NOTE: This is not to say that permanent full-time employees may have their hours reduced at the discretion of the agency. The necessity for, and the process governing such situations must be discussed beforehand with this Department.

In layoff situations, to preserve the rights of employees and to ensure equity, it may be necessary to distinguish among the various types of part-time employees based on whether the positions being affected are available to be filled on a full-time basis by one employee. Where a position in a title cannot be filled by a full-time employee, that position cannot be considered the "same or similar" within the meaning of Civil Service Law §80.

The following definitions of three types of "part-time" employment **must** be applied by an agency when such employees are affected by layoffs:

SHARED-ITEMS

These are defined as situations in which two or more employees are paid from one full-time budgeted item and also share the same "work station" or work location. A typical shared-item situation would exist when an office position is filled by one employee working mornings and a second employee working afternoons. Shared-item employees are considered interchangeable in terms of duties and working hours. Items previously filled on a shared basis can subsequently be filled by one full-time employee.

SPLIT-ITEMS

These are defined as situations which two or more employees are paid from one full-time budgeted item but agency program needs require that the employees work in different locations or do different jobs at different times, or at the same time.

A typical example might be that three employees all work one-third time at three locations simultaneously to cover a peak workload situation. Such items cannot be filled full-time by one employee.

PART-TIME ITEMS

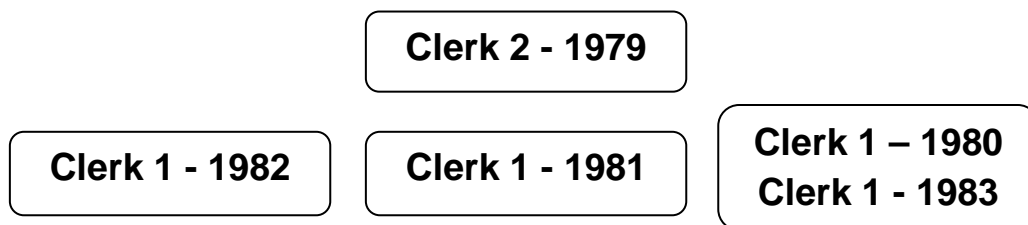
Some items are budgeted and/or classified for filling at less than full-time. By definition, such items cannot be filled full-time.

The rights of permanent employees to be retained in these three types of positions or to displace into these positions will vary depending on which type of part-time employment situation is involved. The following guidelines are intended to promote fair and equitable treatment of employees.

SHARED-ITEM SITUATIONS

Employees in shared items must be considered along with full-time employees in layoff situations. Where a shared-item is abolished, the employees should be considered as if they were serving full-time in determining their retention, reassignment and displacement rights. Agencies may reassign such employees to work full-time or less than full-time at their discretion. Permanent employees in shared-items must be offered the same horizontal reassignment or vertical displacement as full-time employees in the same title in the same layoff unit. Similarly, such shared-item employees may be displaced by full-time employees at a higher-level.

The following situation illustrates the principles involved and provides a guide to agencies in managing shared-item reductions. In this example, all employees are permanent and the shared-item is depicted by the box with two employees.



Assume the Clerk 2 item is being abolished.

The Clerk 2 has bumping rights and must be compared against all of the incumbents of the three items of Clerk I.

Clerk I - 1983 is the least senior employee and must be laid off.

Clerk I - 1980 has more seniority than the other employees and must be offered a Clerk I position full-time.

- If Clerk I - 1980 **refuses to work full time**, he is terminated without reemployment list rights, and the Clerk 2 bumps to the previously shared-item as a full-time employee.
- If Clerk I - 1980 **agrees to work full time**, he continues in the previously shared-item as a full-time employee. The Clerk 2 then bumps Clerk I - 1982, who is laid off.

Suppose however that both the shared-item Clerks I had greater seniority than the Clerk 2. Then the Clerk 2 would bump the least senior full-time Clerk I and the shared-item employees would not be affected.

SPLIT-ITEMS AND PART-TIME BUDGETED AND/OR CLASSIFIED ITEM SITUATIONS

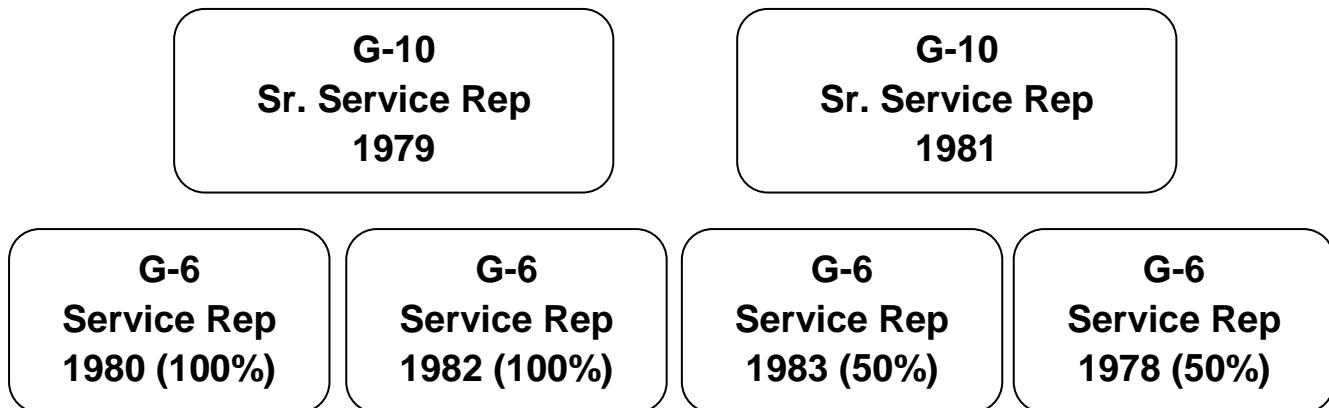
Split-items and items budgeted and/or classified as part-time must be considered separately from full-time items in the same title in all initial layoff and displacement situations. Full-time employees having horizontal reassignment rights should be compared first against other full-time employees in the title; full-time employees having vertical displacement rights should be compared first against other full-time employees in the lower-level positions.

Only when there are no full-time positions available for horizontal reassignment and vertical displacement can agencies compare the seniority of such remaining full-time employees against employees in split-item or part-time budgeted and/or classified positions for possible horizontal reassignment or displacement.

Similarly, employees in split-items and part-time items must be considered for horizontal reassignment and vertical displacement first against other employees in split-items or part-time items. Only when there are no split-items or part-time items available for horizontal reassignment and displacement, can agencies compare their seniority against employees in full-time items.

The following situation illustrates the principles involved and provides a guide to agencies in managing such situations. All employees depicted are permanent competitive, non-probationers; the 1978 and 1983 Service Rep positions are budgeted part-time (50%).

Assume the two Grade 10 positions (both full-time) are abolished.



The Sr. Service Rep with the most seniority (1979) bumps the least senior **full-time** Service Rep (1982).

Sr. Service Rep (1981) lacks sufficient seniority to bump Service Rep (1980), the only other full-time employee in the title so he should be offered the 50% item held by (1983). If Sr. Service Rep (1981) **refuses the part-time position**, he is terminated without reemployment list rights, and then Service Rep (1982) should be offered the 50% position held by (1983).

This situation would be exactly the same if the two 50% items above were instead one split-item. (e.g., both employees worked half-time mornings because of workload.)

Now assume in the above sample that the two G-10 items are also budgeted 50% items. In that case:

The Sr. Service Rep (1979) would bump the least senior **part-time** Service Rep (1983).

Sr. Service Rep (1981) lacks sufficient seniority to bump the only other part-time employee, so he should then be offered the full-time item held by (1982).

REEMPLOYMENT LIST RIGHTS

Regardless of the type of position from which a permanent employee is laid off, they will have their name entered on reemployment lists. Part-time employees will be certified for both full-time and part-time vacancies if one of the following conditions is met:

- The employee had permanent full-time service in the layoff title prior to accepting part-time employment, or
- The employee completed at least one year of permanent part-time service in the layoff title prior to the effective date of the layoff.

If neither of these conditions is met, the employee's name will only be certified for part-time employment.

Employees unable to accept full-time employment should be advised to write to the Career Mobility Office and request that they be made inactive for full-time employment.

PRACTICAL SUGGESTIONS FOR LAYOFF ADMINISTRATION

The following is a compilation of some of the practical advice that has been offered by agency representatives who have administered reductions in force:

- As early as possible, establish and maintain an open and ongoing communication process with the unions, program managers and employees. The more good information people have, the better they will understand the process and the fewer disruptive rumors there will be.
- Spend time making sure you have really good seniority data. Every hour you spend here will prevent days of wasted time later.
- Make sure you have up-to-date direct line title determinations for all titles to be impacted in the RIF. You can ask DCS to make the determinations for you, but we found it easier on everyone to make the determinations ourselves and then send the list to Civil Service to be verified.
- Develop consistent policy in areas where agencies have discretion, such as tie-breaking, discretionary reinstatements, etc.
- When setting the "freeze date" for discretionary transactions, inform **everyone** who might have an interest. Make sure you have a system for coordinating layoff activities with personnel processing activities.
- If possible, do automated record-keeping on layoff impacts, using a computer spreadsheet package. This lets you sort data in various ways to produce summary statistics, and also provides a relatively convenient way of looking up what happened to a particular individual.

The following cautions are also offered:

- Before you take any action that isn't specifically detailed in Civil Service Law, think about how you will explain it to employees, unions, legislators and the public because we guarantee you will be asked to do so. This applies to discretionary policy decisions and is particularly true of exceptions you make such as ending probation early.
- Be careful with retreats. It seems to be a widely misunderstood area and it's easy to make mistakes. People have difficulty accepting that they only get only one opportunity for retreat (if at all), and that they can't skip over titles that don't exist in the layoff unit until they find something to their liking.
- Be careful about any moves that change an employee's bargaining unit. It can seriously affect the person's benefits.
- Pay special attention to the complexities of part-time employment; titles with specialties (teachers, research scientists, etc); jurisdictional reclassifications; title consolidations and title structure changes.

PRELIMINARY LAYOFF NOTICE - SAMPLE

XXXXXXX
XXXXXXX
XXXXXXX

Dear XXXXXXX:

As you are aware from Commissioner _____'s letter dated _____, the enacted New York State budget authorizes the Commissioner to close certain offices as deemed appropriate based upon agency needs.

As a result, the department will be closing the offices in _____, _____, and _____ effective _____. The positions associated with these offices will be abolished, and as such, you have been identified as an employee who will be affected by the reduction-in-force in accordance with Civil Service Law Sections 80 and 80a.

For the purposes of a reduction-in-force, this Department is considered a statewide layoff unit. This means that more senior employees who are affected by the closure may be placed into fillable vacancies, horizontally displace temporary or provisional employees or less senior employees in the same title statewide, or displace to lower levels.

As such, based on the number of staff that are currently working in your title and will be affected by the office closures, you have been identified as an employee who could be potentially impacted via horizontal reassignment. Accordingly, I am enclosing several documents, some of which are informational, and others requiring formal action by a specific date. The following is a list of the enclosed documents, a description of what each document is and what action will be required for you to take:

- Booklet entitled "Information for State Employees Affected by Layoff", published by the New York State Department of Civil Service, which provides you with a general overview of the reduction-in-force process and defines key terms that are utilized during the process.
- An S-295.5 card or "Green Card" (as it is commonly referred to), which is defined in the above-referenced publication. At the present time, this is being provided to you for informational purposes; however, it may become necessary for you to fill out and submit to my office at a later date.
- An "Employee Personnel Information Verification Form", which provides information regarding your current position, as well as personal information such as your name, social security number, adjusted seniority date, date of original permanent appointment, whether probation has been completed or not, veteran status, blind status, home address and phone numbers. Please review this form carefully to ensure that the information presented is accurate. If there is any inaccurate information or information that needs to be updated, please make the appropriate changes, **sign and date the form, and return it to my office by COB, _____**. If the form indicates that you are a veteran or disabled veteran, we have already verified this by obtaining a copy of your DD-214. If the form indicates that you are a non-veteran and you are changing it to indicate that you are a veteran, you must provide us with a copy of your DD-214. Also, please refer to the bottom

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
GUIDELINES FOR THE ADMINISTRATION OF REDUCTIONS IN FORCE

of the page for the definition of your Date of Original Permanent Appointment and Adjusted Seniority Date or by referencing the booklet entitled "Information for State Employees Affected by Layoff".

NOTE: Failure to submit the signed "Employee Personnel Information Verification Form" to my office by COB, _____ will signify your agreement of its content.

- A "Location Preference Sheet" which is a listing of each office. You are requested to rank each location, in preference order, with number 1 being most desirable and number 10 as least desirable, where you would accept horizontal reassignment, and **return the signed, completed form to my office by COB, _____**, along with the previous referenced "Employee Personnel Information Verification Form". The "Location Preference Sheet" will be utilized in placing staff affected by the office closures. You will be notified of your placement no later than 20 calendar days prior to _____.

While the ranking of acceptable locations is a personal decision only you can make based on your individual situation, I strongly recommend that you rank as many locations as you think at all feasible. If you decide to limit the number of locations as acceptable, it may result in a loss of employment.

NOTE: Failure to submit the signed "Location Preference Sheet" to my office by COB, _____, will represent an unwillingness to accept appointment at any location in this Department and will result in the termination of your employment with this Department on _____, Bob.

In the coming weeks a member of my staff and I will be coming to each of the affected offices to hold information meetings on the reduction-in-force process. Any questions that arise prior to the date of this meeting may be submitted to me in advance to ensure that the question is answered during my presentation.

Please return all required documents to my office at _____.

If you have any questions throughout this process, please feel free to contact my office at (518) XXX-XXXX.

Sincerely,

Director of Human Resources

PROCEDURES FOR EMPLOYEES WITHOUT RIGHTS

NON-PERMANENT EMPLOYEES

Non-permanent employees, employees in the unclassified service or exempt class employees, and employees in positions in the non-competitive class designated as policy influencing or confidential have **no** layoff retention rights, nor do they have rights to have their names placed on preferred lists and reemployment rosters. Such employees whose positions are abolished should be terminated and returned to any available hold items. In locations where their positions will not be abolished, their positions **MUST** be made available for the horizontal reassignment of those permanent employees in the same title at other locations whose positions are identified for abolition.

EXEMPT CLASS, UNCLASSIFIED SERVICE, AND NON-COMPETITIVE/LABOR CLASS EMPLOYEES WITHOUT TENURE PROTECTION

Before terminating such employees, determine that they are not serving in their current position as a result of the reclassification of a former position the abolition of which provides them with rights. (See Appendix B - RECLASSIFICATIONS - THE RIGHTS OF EMPLOYEES WHOSE POSITIONS HAVE BEEN RECLASSIFIED). Such employees may be on leave from positions to which they can return if affected by layoff.

Non-competitive and labor class employees may have the right to request transfer pursuant to §86 of the Civil Service Law (See Appendix B - TRANSFER OF VETERANS AND EXEMPT VOLUNTEER FIREMEN (§86)).

PROCEDURES FOR PROBATIONERS

Employees who are on probation must be laid off before permanent employees who are not on probation in the same title, in the same layoff unit, regardless of their relative seniority.

- Probationers who are on leave from a hold item are not eligible to bump or retreat; they must be restored to their hold item.
- Probationers who do not have a hold item to which they can return are eligible to bump or retreat but ONLY if they have 5 years of **continuous, satisfactory service**. Those who are eligible must have their opportunities to bump or retreat determined only after employees who are not on probation have exercised their opportunities.
- Probationers cannot displace through bump or retreat any permanent employees who are not on probation regardless of their greater seniority.

The steps required to return probationers to their hold items are similar to those required for non-permanent employees.

NOTE: Employees who are on probation as a result of disciplinary procedures are not probationers within the meaning or intent of §80 and §80-a, and must be treated with employees who are permanent non-probationers.

REASONABLE ACCOMMODATIONS

The New York State Human Rights Law and the Americans with Disabilities Act require that employers provide reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. Reasonable accommodation refers to the modifications or adjustments to a job application process which enables a qualified individual with a disability to be considered for the position sought and to modifications or adjustments to the work environment or the manner or circumstances under which a job is performed which permit an employee to perform their job in a reasonable manner. An accommodation is reasonable if it removes or mitigates the barriers to performance caused by the individual's impairment, and does not cause undue hardship to the employer.

Reasonable accommodations must be considered in all employment decisions including decisions made during and after a reduction in force. The employer may not deny any employment opportunity to a qualified employee or applicant with a disability, thus attempting to avoid the need to make a reasonable accommodation, unless the accommodation would impose an undue hardship. This protects the disabled individual's right to equal job opportunity.

REASSIGNMENTS

The term "reassignment" is commonly used in reference to a variety of personnel changes. However, Classified Service Rule 1.2 defines reassignment as "*...the change, without further examination, of a permanent employee from one position to a position in the same title under the jurisdiction of the same appointing authority.*"

Reassignment is a management prerogative, and the majority of reassignments are "line changes" in which the employee is moved from one item number to another in the same title and location, with no change in the employee's appointment status.

There are however, several situations in which the reassignment of employees is governed by Civil Service Law, Rule or policy:

- 1. Geographic reassignments necessitated by agency program needs** - When no positions will be abolished but agency program and organizational needs require the relocation of employees, permanent employees may sometimes refuse to relocate. Rule 5.8 requires that the names of such employees be provided to this Department so they may be placed on mandatory lists provided:
 - a. the new location is in a different county, and
 - b. the employees meet the same criteria they would have had to meet to be eligible for preferred list status pursuant to §80 or §80-a.
- 2. Horizontal reassignments necessitated by layoffs** -This term has been coined to describe those reassignments required by layoff situations. In these situations management does not enjoy all of the prerogatives associated with the reassignments defined by Rule 1.2.

When positions are being abolished, §80 and §80-a require that the least retention rights employees be laid off while those with greatest retention rights be retained. Where positions in a title affected by abolitions exist in a number of geographic locations, it may be necessary to offer greater retention rights employees whose positions will be abolished "horizontal reassignments" to other locations where positions will remain after the abolitions occur, and which are currently held by employees with lesser retention rights.

Employees who accept horizontal reassignment are retained pursuant to §80 or §80-a; therefore they have no legal right to vertical displacement under these sections, nor do they have a legal right to have their names placed on preferred lists under §81. However, Rule 5.8 provides that the names of permanent employees who refuse horizontal reassignment to a different county be placed on reemployment lists.
- 3. Reassignments necessitated by return of incumbent** - When contingent permanent employees are affected by the return of prior permanent incumbents, management's right to assign and reassign staff is defined by the requirements of Rule 4.11. When the particular contingent permanent employee who is affected by the return of the prior permanent incumbent is not the most recently appointed in the title in the work location, and/or there are non-permanent employees serving in the title in the work location, the contingent permanent employee affected must be reassigned to another item within the work location. (See SPMM, 1810 Contingent Permanent Appointments, and also Appendix B – CONTINGENT PERMANENT EMPLOYEES).

RECLASSIFICATION

(The rights of employees whose positions have been reclassified.)

Permanent employees who have had their positions reclassified are treated for purposes of layoff in their "new" title provided the reclassification has not changed their jurisdictional class or their status. However, where reclassification has resulted in such a change, the following apply:

Competitive Class Position to a Non-competitive Class Position (other than phi-designated)

The following descriptions of the rights of non-competitive employees whose positions are subsequently abolished are based on §5.6 of the Rules for the Classified Service.

Tenure Protection

All such employees have tenure protection pursuant to §75.1(c) of Civil Service Law, regardless of length of service in the non-competitive class.

Retention Rights

All such employees have retention rights under §80-a in layoff situations.

Displacement Rights

Such employees must first displace by retreat as specified under §80-a. Such displacement would occur where a title and salary level change has occurred as part of the reclassification to the non-competitive title.

Where, and only where, such retreat rights do not afford a displacement opportunity because the previous competitive title no longer exists, or exists at the same level, the affected employee would be provided an opportunity to vertically "bump" or retreat as if they had remained in their former competitive class position.

Reemployment List Rights

Such employees will have their names placed on appropriate reemployment lists for their non-competitive title and their former competitive class title.

Competitive Class Position to an Exempt Class Position or Non-Competitive, Phi-Designated

Tenure Protection

Such employees have tenure protection pursuant to §75 of the Civil Service Law.
Note: While exempt employees generally do not have tenure, those who were tenured in their former competitive class positions and have had their positions reclassified, and who do not have a position to which they may be returned, may not be terminated or otherwise removed without the due process required by §75 and/or §80 or §80-a.

Retention Rights

Such employees do **not** have retention rights in the event of the abolition of their positions.

NOTE: "...their positions..." refers to their exempt class positions. However, if their current exempt class positions are abolished, they must be accorded retention rights in their former competitive class positions.

Displacement Rights

Such employees do **not** have rights to displace through vertical "bumping" or retreat in the event of the abolition of their positions.

NOTE: Again the term "...their positions..." refers to their current exempt class positions from which they would not have displacement rights. However, they must be accorded displacement rights (assuming they cannot be retained) from their former competitive class position/title.

Reemployment List Rights

Such employees do **not** have statutory rights to preferred list status, but by policy, will have their names placed on reemployment lists for their former competitive class titles.

**Competitive Class Position to Another Competitive Class Position
with the Incumbent Serving Provisionally or Temporarily**

Tenure Protection

Such employees do **not** have tenure protection pursuant to §75 of the Civil Service Law in their reclassified position. However, where such employees are not performing satisfactorily in the reclassified position, the agency may **not** terminate their services, but must restore them to permanent status in their former competitive title either through reinstatement to a vacant position or through appropriate classification action.

Retention Rights

At the time of abolition of, or displacement from, their reclassified positions, such employees shall be compared for retention rights in their former competitive class positions. The time spent in non-permanent service in a reclassified item shall not be considered as a break in service for computation of seniority for layoff.

Displacement

At the time of abolition of, or displacement from, their reclassified positions, such employees shall have their vertical "bumping" or retreat rights determined as if they were in their former competitive class positions.

Reemployment List Rights

Such employees with insufficient retention rights in their former title, who are laid-off or who refuse a reassignment in their former title to a different county, will have their names placed on reemployment lists for their former title.

**Non-Competitive Class Position to a Non-Competitive Class Position
Which is Confidential / Policy Influencing**

Tenure Protection

All such employees who had tenure protection pursuant to §75.1(c) of the Civil Service Law prior to the reclassification would have such protection in their new title subsequent to the reclassification.

Retention, Displacement and Reemployment List Rights

All such employees who had tenure protection pursuant to §75.1(c) of the Civil Service Law prior to the reclassification would have retention, displacement and preferred list rights pursuant to §80-a in their new title in layoff situations. Their names will also be placed on reemployment lists.

Non-Competitive Position to an Exempt Class Position.

Tenure Protection

All such employees who had tenure protection pursuant to §75.1(c) of the Civil Service Law prior to the reclassification would have such protection in their new title subsequent to the reclassification.

Retention and Displacement Rights

Such employees do **not** have retention rights or displacement rights in the event of the abolition of their exempt class positions.

Reemployment List Rights

Such employees do **not** have statutory rights to be placed on preferred lists, however all such employees who had tenure protection pursuant to §75.1(c) prior to the reclassification will, by policy, have their names placed on reemployment lists for their former non-competitive class title.

Non-competitive Class Position to a Labor Class Position

Tenure Protection

All such employees who had tenure protection pursuant to §75.1(c) of Civil Service Law shall have the tenure protection as provided by their contractual agreement.

Retention and Displacement Rights

All such employees who had tenure protection pursuant to §75.1(c) of Civil Service Law shall have their retention and displacement rights as provided by their contractual agreement in layoff situations.

Reemployment List Rights

All such employees who had tenure protection pursuant to §75.1(c) of Civil Service Law shall have their names placed on reemployment lists for their former non-competitive title and appropriate titles. In addition, they will have their names placed on reemployment lists for their labor class title.

**Effect of Reclassification of a Permanently Encumbered Position
to a Title Allocated to a Lower Salary Grade**

When the duties of positions have changed such that they must be reclassified to a title allocated to a lower salary grade, permanently encumbered positions are usually earmarked and reclassified only when they become vacant.

Only rarely are such positions reclassified when still permanently encumbered. When, however, such permanently encumbered positions are so reclassified, it constitutes a reduction in rank or salary grade as stated in §80 and §80-a of the Civil Service Law. When this happens, the retention rights and seniority dates of **ALL** employees in the title, within the layoff unit, **MUST** be considered in determining which specific employees will be affected by such reclassification. When permanent employees having layoff rights are affected, they shall be entitled to exercise their displacement rights, and their names shall be placed on reemployment lists at the time of the reclassification. If their positions are subsequently abolished their layoff rights accrue based upon their reclassified titles/salaries and positions.

REEMPLOYMENT ELIGIBLE CARDS

The forms reproduced on the following pages (S-295.6 and S-295.5) are used to collect data from employees who are either eligible to participate in the ARTL Program or who have been laid off. Although these forms will continue to be available in hard copy, this Department has developed an on-line system which enables State agencies to electronically submit necessary information related to layoffs or potential layoffs. Because the electronic system will use information from NYSTEP, it will reduce the amount of data entry and verification required by both the agencies and CMO.

Alpha Title					Title Code	JC	Agy. Red. Date (MM/DD/YY) 01/01/2011		
Name	Last	First	M.I.	Soc. Sec. No.	Vet Status <input type="checkbox"/> Disabled Vet <input type="checkbox"/> Spouse of Dis Vet <input type="checkbox"/> Veteran <input type="checkbox"/> Non-Vet		Blind Yes <input type="checkbox"/> No <input type="checkbox"/>	Grade	NS-SG
Street			City or Post Office		State	Zip Code	Work Phone (Include Area Code)		Home Phone (Include Area Code)
Senr. Adj for Vets.	Dept./Div.			Dept ID	County of Employment		Code	BU	
Probation Completed <input type="checkbox"/> Yes <input type="checkbox"/> No	Class. Service Senr. Date		<input type="checkbox"/> Eligible for Part-Time ONLY			Employee Signature and Date			
Accepted Grade Level:	ARTL Status Due to: <input checked="" type="checkbox"/> Abol of Pos/Disp (§78) <input type="checkbox"/> Ref. Reassign to:		Accepted Position Type: <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Shift <input type="checkbox"/> Temp			Agency Signature and Date			
Mark (✓) Counties Acceptable for Employment									
AREA 0 <input type="checkbox"/> 01 Albany <input type="checkbox"/> 11 Columbia <input type="checkbox"/> 18 Fulton <input type="checkbox"/> 20 Greene <input type="checkbox"/> 29 Montgomery <input type="checkbox"/> 42 Rensselaer <input type="checkbox"/> 46 Saratoga <input type="checkbox"/> 47 Schenectady <input type="checkbox"/> 48 Schoharie <input type="checkbox"/> 57 Warren <input type="checkbox"/> 58 Washington	AREA 2 <input type="checkbox"/> 22 Herkimer <input type="checkbox"/> 23 Jefferson <input type="checkbox"/> 25 Lewis <input type="checkbox"/> 33 Oneida <input type="checkbox"/> 38 Oswego <input type="checkbox"/> 45 St. Lawrence	AREA 4 <input type="checkbox"/> 08 Chemung <input type="checkbox"/> 26 Livingston <input type="checkbox"/> 28 Monroe <input type="checkbox"/> 35 Ontario <input type="checkbox"/> 49 Schuyler <input type="checkbox"/> 50 Seneca <input type="checkbox"/> 51 Steuben <input type="checkbox"/> 59 Wayne <input type="checkbox"/> 62 Yates	AREA 5 <input type="checkbox"/> 02 Allegheny <input type="checkbox"/> 05 Cattaraugus <input type="checkbox"/> 07 Chautauqua <input type="checkbox"/> 15 Erie <input type="checkbox"/> 19 Genesee <input type="checkbox"/> 32 Niagara <input type="checkbox"/> 37 Orleans <input type="checkbox"/> 61 Wyoming	AREA 7 <input type="checkbox"/> 44 Rockland <input type="checkbox"/> 60 Westchester	Area 10 <input type="checkbox"/> 63 Chicago, IL	Area 11 <input type="checkbox"/> 64 Washington, DC	AREA 8 <input type="checkbox"/> 30 Nassau <input type="checkbox"/> 62 Suffolk	AREA 9 <input type="checkbox"/> 03 Bronx <input type="checkbox"/> 24 Kings (Brooklyn) <input type="checkbox"/> 31 New York (Manhattan) <input type="checkbox"/> 41 Queens <input type="checkbox"/> 43 Richmond	AREA 6 <input type="checkbox"/> 13 Delaware <input type="checkbox"/> 14 Dutchess <input type="checkbox"/> 36 Orange <input type="checkbox"/> 40 Putnam <input type="checkbox"/> 53 Sullivan <input type="checkbox"/> 56 Ulster
<div style="border: 1px solid black; padding: 10px; display: inline-block;">SEE BELOW</div>									

INSTRUCTIONS FOR AGENCY

1. Use this card to notify the Department of Civil Service of individuals who should be placed on Agency Reduction Transfer Lists. This card should be used only for employees eligible for placement on Agency Reduction Transfer Lists.
2. For titles with specialties (i.e., Teacher, Research Scientist, etc.) include the employee's specialty in the "Alpha Title" box.
3. BU - Bargaining Unit. Use the standard codes (i.e., 01-Sec Servs.; 02-Admin. Servs.; 03-Oper. Servs.; 04-Inst. Servs.; 05-Prof., Sci. & Tech; 06-M/C, etc.).
4. *Class. Service Senr. Date* - Seniority date based on date of original permanent appointment in the classified service (non-competitive, labor, exempt or competitive class) and continuous service (unbroken by a period of one year or more) since that date. This date may have been adjusted if employee left state service for more than one year and reentered on or after October 17, 1985.
5. *Senr. Adj. For Vets.* - Seniority date which is adjusted 2 ½ years for qualified wartime veterans or 5 years or qualified wartime disabled veterans.
6. Complete "Agency Sign" box and give card to employee for verification, county choices, and signature.
7. Send completed card to the Career Mobility Office within the Department of Civil Service.

INSTRUCTIONS FOR EMPLOYEE

1. If you are an eligible employee, this card will be used to place your name on Agency Reduction Transfer Lists. Verify the correctness of your name, address, telephone number, title, social security number, veteran/blind status and all other information.
2. If you are placed on an Agency Reduction Transfer List, your Seniority Date is important (*Class. Service Senr. Date*). Seniority for Agency Reduction Transfer is your original date of permanent appointment in the classified service and continuous service since that date. In addition, 2 ½ years are added if you are a veteran or 5 years if you are a disabled veteran (this is your "Senr. Adj. For Vets").
3. Check those counties where you are willing to accept employment. You may add counties later.
4. Check the type of position you are willing to accept. Check "shift" only if you are willing to work other than a normal day shift.
5. Note the lowest grade level you are willing to accept.
6. Sign the card and return it to your Personnel Office. Notify your Personnel Office of any changes required in the information on the card.

PERSONAL PRIVACY LAW NOTIFICATION

This information is being requested for the principal purpose of identifying individuals eligible to be selected for employment opportunities. This information will be used in accordance with Section 96 (1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e), and (f). Failure to provide this information may result in ineligibility for Preferred List/Reemployment Roster Status. This information will be maintained by the Director, Division of Staffing Services, Department of Civil Service, Alfred E. Smith State Office Building, Albany, New York 12239. For further information, relating only to the Personal Privacy Protection Law, call (518) 457-9375. For more information about Agency Reduction Transfers, call 1 (800) 553-1322.

Alpha Title					Title Code	JC	Layoff Date (MM/DD/YY) 01/ 1/2011						
Name Last	First	M.I.	Soc. Sec. No.	Vet Status <input type="checkbox"/> Disabled Vet <input type="checkbox"/> Spouse of Dis Vet <input type="checkbox"/> Veteran <input type="checkbox"/> Non-Vet		Blind Yes <input type="checkbox"/> No <input type="checkbox"/>	Grade	NS-SG					
Street			City or Post Office	State	Zip Code	Home Phone (Include Area Code)		Other Phone (Include Area Code)					
Senr. Adj for Vets.	Dept./Div.		Dept ID	Layoff Unit	Layoff County		Code	BU					
Probation Completed <input type="checkbox"/> Yes <input type="checkbox"/> No		Class. Service. Senr. Date		<input type="checkbox"/> Eligible for Part-Time ONLY		Employee Signature and Date							
Acceptable Grade Level:			Acceptable Position Type: <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Shift <input type="checkbox"/> Temp			Agency Signature and Date							
PL/RR Status due to: <input checked="" type="checkbox"/> Abol of Pos/Disp (§80 or 80a) <input type="checkbox"/> Ret of Incum (R4.11)(Hold) <input type="checkbox"/> Ret of Incum (R4.11)(No Hold) <input type="checkbox"/> Wkrs Comp Disabl (§71) <input type="checkbox"/> Ordinary Disabl (§73) <input type="checkbox"/> Retire & Soc. Sec. Law <input type="checkbox"/> Ref. Reassign to <input type="checkbox"/> Trans Funcl (§70.2)(Comp) <input type="checkbox"/> Reclassl (§121.4)		Mark (✓) Counties Acceptable for Employment <table style="width:100%; border: none;"> <tr> <td style="vertical-align: top;"> AREA 0 <input type="checkbox"/> 01 Albany <input type="checkbox"/> 11 Columbia <input type="checkbox"/> 18 Fulton <input type="checkbox"/> 20 Greene <input type="checkbox"/> 29 Montgomery <input type="checkbox"/> 42 Rensselaer <input type="checkbox"/> 46 Saratoga <input type="checkbox"/> 47 Schenectady <input type="checkbox"/> 48 Schoharie <input type="checkbox"/> 57 Warren <input type="checkbox"/> 58 Washington AREA 1 <input type="checkbox"/> 10 Clinton <input type="checkbox"/> 16 Essex <input type="checkbox"/> 17 Franklin <input type="checkbox"/> 21 Hamilton </td> <td style="vertical-align: top;"> AREA 2 <input type="checkbox"/> 22 Herkimer <input type="checkbox"/> 23 Jefferson <input type="checkbox"/> 25 Lewis <input type="checkbox"/> 33 Oneida <input type="checkbox"/> 38 Oswego <input type="checkbox"/> 45 St. Lawrence AREA 3 <input type="checkbox"/> 04 Broome <input type="checkbox"/> 06 Cayuga <input type="checkbox"/> 09 Chenango <input type="checkbox"/> 12 Cortland <input type="checkbox"/> 27 Madison <input type="checkbox"/> 34 Onondaga <input type="checkbox"/> 39 Otsego <input type="checkbox"/> 54 Tioga <input type="checkbox"/> 55 Tompkins </td> <td style="vertical-align: top;"> AREA 4 <input type="checkbox"/> 08 Chemung <input type="checkbox"/> 26 Livingston <input type="checkbox"/> 28 Monroe <input type="checkbox"/> 35 Ontario <input type="checkbox"/> 49 Schuyler <input type="checkbox"/> 50 Seneca <input type="checkbox"/> 51 Steuben <input type="checkbox"/> 59 Wayne <input type="checkbox"/> 62 Yates <div style="border: 1px solid black; 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INSTRUCTIONS FOR AGENCY

1. Use this card to notify the Department of Civil Service of the layoff or separation of a permanent or contingent permanent employee. This card should be used only for employees eligible for Preferred List/Reemployment Roster status.
2. Prior to employee's layoff, complete each card, but do not fill in "Coded PL/RR" box.
3. For titles with specialties (i.e., Teacher, Research Scientist, etc.) include the employee's specialty in the "Alpha Title" Box.
4. BU - Bargaining Unit. Use the standard codes (i.e., 01-Sec Servs.; 02-Admin. Servs.; 03-Oper. Servs.; 04-Inst. Servs.; 05-Prof., Sci. & Tech; 06-M/C, etc.).
5. *Class. Service Senr. Date* - Seniority date based on date of original permanent appointment in the classified service (non-competitive, labor, exempt or competitive class) and continuous service (unbroken by a period of one year or more) since that date. This date may have been adjusted if employee left state service for more than one year and reentered on or after October 17, 1985.
6. *Senr. Adj. For Vets.* - Seniority date which is adjusted 2 ½ years for qualified wartime veterans or 5 years or qualified wartime disabled veterans.
7. Check "PL,RR Status Due To:" box, showing reason for Preferred List status of individual.
8. Complete "Agency Sign" box and provide a copy to employee for verification, county choices, and signature.
9. Send completed card to the Career Mobility Office within the Department of Civil Service.

INSTRUCTIONS FOR EMPLOYEE

1. If you are an eligible employee, this card will be used to place your name on Preferred Lists and/or Reemployment Rosters. Verify the correctness of your name, address, telephone number, title, social security number, veteran/blind status and all other information.
2. If you are placed on a Preferred List, your Seniority Date is important (*Class. Service Senr. Date*). Seniority for layoff is your original date of permanent appointment in the classified service and continuous service since that date. In addition, 2 ½ years are added if you are a veteran or 5 years if you are a disabled veteran (this is your "Senr. Adj. For Vets"). Reemployment Rosters are not ranked by seniority.
3. Check those counties where you are willing to accept employment. (See **Information for State Employees Affected by Layoff.**) You may add counties later.
4. Check the type of position you are willing to accept. Check "shift" only if you are willing to work other than a normal day shift.
5. Note the lowest grade you will accept at this time. You may change this grade later.
6. Sign the card and return it to your Personnel Office. Notify your Personnel Office of any changes required in the information on the card.
7. Your Preferred List and Reemployment Roster eligibility is limited to the four years following your date of layoff.

PERSONAL PRIVACY LAW NOTIFICATION

The information you provide on this application is being requested in accordance with sections 81 and 81-a of the Civil Service Law for the principal purpose of determining your availability for employment. The information will be used in accordance with section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f). Failure to provide the information requested may prevent this agency from contacting you concerning employment opportunities. This information will be maintained by the Director, Division of Staffing Services, Department of Civil Service, Alfred E. Smith State Office Building, Albany, NY 12239. For further information relating only to the Personal Privacy Protection Law, call (518) 457-9375. For more information about Preferred List/Reemployment Rosters, call 1-800-553-1322.

RETENTION RIGHTS

Throughout these Guidelines the term "retention rights" has been used whenever a comparison of the layoff rights of employees must be made. Retention rights shall mean the relative right of an employee to retain a position when compared with other employees in the same title in the same layoff unit.

Employees have different rights to be retained under §80 or §80-a according to jurisdictional classification, appointment status and classified seniority date. All employees who are appointed on a temporary or provisional basis have no right to be retained. Among permanent employees, those who are on probation have less right to be retained than those who are not on probation.

Where permanent employees have the same appointment status, their relative right to retain a position among themselves is then determined by their layoff seniority dates. In summary:

Without Retention Rights

- * Provisional and temporary employees,
- * Employees in exempt and unclassified service positions,
- * Non-competitive class (and labor class) employees who do not have tenure protection pursuant to §75.1(c) of the Civil Service Law or negotiated agreements.

With Retention Rights

- * Permanent competitive class employees, including probationers and contingent permanent employees appointed under Rule 4.11.
- * Permanent non-competitive (and labor class) employees having tenure protection pursuant to §75.1(c) or negotiated agreements.

NOTE: Some employees who have had their positions reclassified may have tenure protection, retention rights, displacement rights and reemployment list rights, which accrue to them as individuals, provided they had such rights in their positions prior to the reclassification. (See Appendix B - RECLASSIFICATIONS - THE RIGHTS OF EMPLOYEES WHOSE POSITIONS HAVE BEEN RECLASSIFIED)

NOTE: Labor class employees are not specifically covered by the law, but receive the same rights as non-competitive class employees through negotiated agreements.

RETIREMENT

Some employees who are eligible will consider retirement when layoffs are announced. Those who retire **prior** to the abolition of their positions **or prior** to their displacement from their positions are not eligible to displace or to have their names placed on reemployment lists.

Those who retire **on or after** the date of layoff and are eligible, will have their names placed on reemployment lists and certified just like any other laid-off employee. If reemployed, they may have their pensions affected unless they are reemployed pursuant to §211 or §212 of the Retirement and Social Security Law.

Retirees should be advised that they may request inactive status on reemployment lists. It is strongly recommended that agencies refer their employees considering retirement to the New York State Retirement System.

RETREAT RIGHTS AND OPPORTUNITIES

The distinction made here and elsewhere in these Guidelines between **rights** and **opportunities** is a conceptual rather than a legal one. It is used to break the determination process into two discrete procedural steps.

Step 1 - Non-competitive and labor class employees who have tenure protection under §75.1(c), and competitive class employees who have no bumping rights may have retreat **rights** as follows:

1. Based on the employee's employment history find the last position to which the employee was permanently appointed which is also at a lower salary grade level. Disregard intervening titles at the same or higher grade level, or titles at any level without permanent status, but stop at the first lower level position to which the employee was appointed on a permanent basis. The employee need not have actually served in the position. Whether an employee has had continuous service since this appointment is not relevant.
2. Determine whether this title now exists in the same layoff unit in which the employee is serving. Note that the employee need not have been appointed to the title as an employee of the layoff unit or even as an employee of the agency, as long as the title now exists in the layoff unit.
3. Determine whether the positions in this title are occupied by either permanent or non-permanent employees. If the positions are all vacant, or being abolished, they are not available for retreat.
4. Determine whether the service of the employee in the former lower level position was satisfactory.

If all these criteria are met, the employee has retreat **rights**; if any one of them is not met, the employee has no retreat **rights**.

NOTE: Retreat may occur to positions in a different jurisdictional class.

NOTE: Retreat may only occur to the last title to which the employee was permanently appointed at a lower level. Where the title does not exist, or is being simultaneously abolished, the employee has no right to retreat.

NOTE: Where the position has been reclassified, the employee may only retreat if there has been no substantial changes in duties.

NOTE: Service is deemed satisfactory if the employee was not terminated from the position during probation or by disciplinary removal.

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GUIDELINES FOR THE ADMINISTRATION OF REDUCTIONS IN FORCE

Step 2 - After determining that an employee has retreat **rights**, determine if a retreat **opportunity** exists by comparing the employee's retention rights with those of the least retention rights employee in the lower level title. (Equal seniority means the employee cannot displace through retreat).

NOTE: Probationers who are on leave from a hold item in which they were permanent cannot retreat at all. They may return to their hold item. Probationers without a hold item may retreat if they have **five** years of continuous service (Rule 5.5(d) and 5.6(d)). They then complete the remainder of their probation in that position.

The retreating employee has **only one** opportunity to displace by retreat; he/she cannot choose to displace any permanent employee with less seniority. However, all **non-permanent** employees must be considered to have the least retention rights in the title, and therefore, where there are several non-permanent employees in the lower level at different work locations, the employee has the right to choose to displace to any such work location. Where two or more non-permanent employees are serving in the same work location, the agency determines the position to which the employee will retreat.

SENIORITY

Seniority for purposes of layoff is not synonymous with seniority for other purposes such as retirement, anniversary dates, leave accrual, or for bidding for shift work or pass days. For purposes of layoff, an employee's seniority date is defined as **the date of original permanent appointment in the classified service and continuous service since that date.**

This date is adjusted however for:

- veterans - who get 2 1/2 years additional seniority
- disabled veterans and the spouses of disabled veterans - who get 5 years additional seniority
- individuals who are legally blind* (as certified by the NYS Commission for the Blind and Visually Handicapped), regardless of their original date of permanent appointment, are considered the most senior of all employees in their title in the same category of retention status.
- employees with interrupted service (see below)

* **NOTE:** Employees who are blind in one eye, for example, are not *legally* blind.

Interrupted Service

Employees who resigned and who were reinstated/reappointed on or after October 17, 1985 to the competitive or non-competitive class, or labor class by negotiated agreement, should have had their seniority dates recalculated pursuant to CSL §80.3 or §80-a.3, *Interrupted Service*.

Under these sections, employees permanently reinstated or reappointed retain full seniority credit for the period of service prior to their resignation if they returned within three years. If they returned after three years, their seniority date is determined at the time of reappointment by a pro-rata reduction of seniority credit for any time out of service exceeding three years. Example: 7 years previous service, 4 1/2 years absence, 5 1/2 years seniority credit upon return.

Their continuous service is then determined based upon this recalculated date. (See *General Information Bulletin #85-08, Reconstructed Seniority Date Request Procedures, in 2300 of the SPMM, and Advisory Memorandum #90-06, Reconstructed Seniority Dates, in 1800 of the SPMM*).

Breaking Ties

Agencies must use a **reasonable** and **consistent** method for breaking ties among employees with the same seniority dates. Some approved methods are:

- for recently appointed employees hired on the same date - the score on the eligible list from which they were appointed
- earlier date of appointment to the title, or to a position in the organizational unit

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NOTE: Employees who have been covered into the State service (CSL, Section 45) have their seniority date determined by the effective date of their first permanent appointment in the classified service (for most, this will be the date of cover-in); amongst themselves it is their relative seniority with their former employer.

TENURE PROTECTION PURSUANT TO §75.1(c)

Section 75(1)(c) grants tenure protection to those non-competitive employees holding positions other than those designated in Appendix 2 of the Rules of the Classified Service as confidential or requiring the performance of functions influencing policy. (Do not confuse “confidential” with the designation “management confidential”; they are not necessarily related.) Such non-competitive class employees must have also completed five years of continuous service in the non-competitive class his/her last entry into service. Continuous service for the purposes of section 75(1)(c) means unbroken service without a break from the payroll of even one day. Any break constitutes an interruption of continuous service for the purposes of attaining tenure protection. This section does not specify that the five years of continuous service be permanent; however, only those non-competitive employees who are permanent at the time of layoff have rights under section 80(a).

By negotiated agreement with certain employee organizations the five year continuous non-competitive class service requirement of section 75(1)(c) has been reduced to one year of continuous non-competitive class service .

Only after tenure protection pursuant to this section has been attained, do the continuous service provisions of section 80(a)(2) become relevant, since it is only then that such employees have rights under section 80(a).

Labor class employees are provided the same rights as non-competitive class employees by negotiated agreements

TRAINEES AND PUBLIC MANAGEMENT INTERNS

Traineeship titles

Where there are traineeship titles through which employees advance to reach a journey level title, employees in all trainee titles and the journey level must be considered as a group for purposes of retention and displacement.

For example, if a competitive class position of Senior Personnel Administrator is to be abolished, all employees in the following titles in the layoff unit in the Competitive class must be ranked for purposes of retention:

Personnel Administrator Trainee 1
Personnel Administrator Trainee 2
Senior Personnel Administrator

This will require the creation of a seniority roster under a single "dummy" title code. Agencies which are anticipating layoffs in positions which include traineeship titles should discuss this with their Staffing Services Representative.

Public Management Interns

The Public Management Intern Program is designed to provide for selection and placement of individuals with master's degrees in a variety of titles. During the first year, Interns serve in the title of Public Management Intern. At the end of the first year they may be advanced to the journey level of previously designated target titles.

Layoff

If a Public Management Intern (first year) position is abolished, the least senior Intern in the layoff unit would be laid off, regardless of track. The retention and displacement rights of "second year Interns" stem from their respective G-18 target title. They may be able to bump a Trainee 1 or 2 leading to the same target title or they may have a retreat against a first year Intern in the same layoff unit.

Reemployment

Laid off first-year Interns will have preferred list rights to new PMI positions (day 1) and reemployment roster rights to PCT blueprint titles (day 1 of Trainee 2 for two-year administrative trainee titles, and day 1 of entrance level for appropriate titles.)

Unlike most other RIF situations, the layoff of a second-year Intern removes the individual from more than his/her current title. In effect, the individuals, who are still within the two year construct of the program, will have reemployment rights derived from both their layoff title and the PMI transition title. The net effect of this is twofold:

- It provides preferred list eligibility to laid off second-year Interns for new PMI positions, and;
- It provides reemployment roster eligibility to second-year Interns (laid off from non-PCT titles) for PCT blueprint titles.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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Former Interns who are laid off after completing the two-year program are considered mainstreamed. The original commitment to them has run its term and they are no longer part of the PMI program. Such individuals have reemployment rights derived from their target title only.

In the event of a layoff in the title of Public Management Intern (first-year Intern), the PMI unit will manage-place against new internships and CMO will certify for all other appropriate titles.

Administration of the reemployment process for second-year Interns will require special handling by CMO and the PMI Unit. Affected Interns will be identifying their association with the PMI program by entering [PMI] immediately following the layoff title on their green card.

TRANSFER OF VETERANS AND EXEMPT VOLUNTEER FIREMEN (§86)

Civil Service Law §86 provides that non-competitive class or labor class employees whose positions are abolished and who do not have layoff rights under §80-a have, for one year from the date of layoff, rights to request a transfer to another similar vacant position at the same salary grade provided they are either:

- Honorably discharged veterans who served in time of war (as defined in Civil Service Law §85), or
- Exempt volunteer firefighters

NOTE: When used here, “exempt” refers to a volunteer firefighter who has met the requirements of General Municipal Law **SECTION** 200 and is eligible for an exemption certificate. It has nothing to do with the “Exempt” jurisdictional class.

As with tenure protection pursuant to CSL §75.1 (b), this right is not extended to "*private secretaries, cashiers or deputies of any official or department.*"

The exercise of a request for transfer under this section is a rare occurrence in layoff situations and no body of standard administrative policy or procedure has been developed for handling such cases. However, the law states that appointing authorities have a duty to effect such transfers. It is generally accepted that the employee is responsible for identifying the positions available for transfer pursuant to this section.

VETERANS, DISABLED VETERANS AND THEIR SPOUSES and BLIND EMPLOYEES (§85.7)

Additional seniority in layoff situations is provided to certain employees who are permanent in the competitive class, and those who have layoff rights under CSL §80-a (i.e., permanent employees in the non-competitive and labor class who have tenure protection under §75.1 (c)).

- **Disabled veterans'** seniority dates are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service followed by continuous service. Disabled veterans are those so defined by the Veterans Administration. This status must be established on or before the date of layoff, and cannot be retroactively applied.
- **Non-disabled veterans'** seniority dates are deemed to be 30 months (2 1/2 years) earlier than their date of original permanent appointment to the classified service followed by continuous service.
- **The spouses of disabled veterans** who have a 100% service-connected disability and who are also head of household have seniority dates which are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service followed by continuous service.
- **Blind employees** who have permanent status in the competitive, non-competitive or labor class are granted absolute preference in retention by §85.7. But since the wording of §85.7 requires it to be read in conjunction with §80 (or §80-a), and the provisions of these latter sections distinguish between the rights of probationers and non-probationers, blind employees are provided absolute preference in a title as a probationer, or as a non-probationer, as the case may be. Therefore, a blind probationer, while deemed to be the "most senior" of all probationers, would be laid off before any employee in the title in the layoff unit who was not a probationer.

The terms "veteran," "disabled veteran," and "spouse of disabled veteran" are defined in Civil Service Law §85, which also includes the definition of "time of war" during which the veteran or disabled veteran was required to serve to be eligible for additional seniority credits. See, generally, State Personnel Management Manual - Section 2300 and Advisory Memorandum #04-03, *Military Service Benefits and Veterans' Status and Definitions*.

"Blind employees" are those certified as legally blind by the NYS Commission for the Blind and Visually Handicapped.

WORK LOCATIONS AND LAYOFF UNIT DESIGNATIONS

Most employees work in the location which is their official work station. However, there are a variety of situations in which there may be a difference between the actual work location (where the employee reports to work each day) and the official work station (the location for payroll purposes as identified in Department of Civil Service and Division of the Budget records). In layoff situations these differences may critically affect an employee's rights. The policies and definitions below have been developed to provide a reasonable and equitable method for treating the various types of situations which may arise when such differences occur.

For All Departments and Agencies EXCEPT the Office of Mental Health and the Office for People with Developmental Disabilities

TEMPORARY DUTY OR TRAVEL SITUATIONS

Employees are assigned to work temporarily in various locations but their official work station is the Department of Civil Service/Division of the Budget designated location. These employees are treated for purposes of retention, horizontal reassignment, bumping and retreat, in accordance with their official work station location.

WORKING AT ANOTHER LOCATION IN THE SAME LAYOFF UNIT UNDER THE SAME APPOINTING AUTHORITY

These situations exist when the Department of Civil Service/Division of the Budget designated location is not the same as the employee's actual work location, but both locations are within the same layoff unit. Since both locations are in the same layoff unit, location is not a relevant factor in determining vertical bumping or retreat rights. However, such employees should be considered to be at their actual work location for purposes of horizontal reassignment.

WORKING AT ANOTHER LOCATION IN A DIFFERENT LAYOFF UNIT UNDER THE SAME APPOINTING AUTHORITY

These situations exist in agencies having multiple layoff units when the Department of Civil Service/Division of the Budget designated location is not the same as the employee's actual work location, and the two locations are not within the same layoff unit. The employee must be considered in the layoff unit encompassing his/her actual work location in exercising their retention and displacement rights. Official agency seniority rosters should be adjusted accordingly.

For The Office of Mental Health and the Office for People with Developmental Disabilities

Employees of these agencies work at various facilities, satellite units, or in a Central Office. Each facility is a separate appointing authority, while Central Office staff is under the appointing authority of the Commissioner. For these agencies, layoff units may include

more than one appointing authority. In addition, negotiated agreements further modify the layoff rights of some employees.

TEMPORARY DUTY OR TRAVEL SITUATIONS

Such situations are treated the same as in other agencies. (See above.)

CENTRAL OFFICE EMPLOYEES ASSIGNED TO A FACILITY WORK LOCATION

Such employees are grouped on a Central Office payroll solely for administrative purposes. They are to exercise their retention and displacement rights within the layoff unit encompassing their actual work location.

FACILITY EMPLOYEES

Collective bargaining agreements and §72.1 of the President's Regulations define the retention and displacement rights of employees relative to layoff unit designations. All facility employees exercise their rights first at their facility for purposes of retention. They then exercise horizontal reassignment, vertical bumping and retreat rights in the defined layoff unit encompassing that facility.

Employees working in "satellite" locations and employees working at a facility location other than their payroll facility are treated in the same way relative to layoff unit designation. That is, an employee whose position is officially designated to one facility and is either stationed in a satellite unit which may be located on the grounds of another facility, or an employee whose actual work location is at another facility, exercise retention and displacement rights as employees of their officially designated payroll facility.

WORKERS WITH DISABILITIES

The Governor's Programs to Hire Persons/Veterans with Disabilities place individuals with disabilities in entry-level State positions.

Civil Service Law §55-b provides the authority for employing persons with a physical or mental disability who are otherwise found qualified to satisfactorily perform the duties of certain positions. Section 55-c of such law authorizes similar authority for employing wartime veterans with disabilities. All such positions are classified in the non-competitive class.

Employees serving as 55b/c appointees are not compared for retention rights with competitive class employees serving in the same title, even though the title code is the same. Instead, 55b/c appointees in the same layoff unit are compared among themselves and other non-competitive employees by title, and their names will appear on a separate seniority roster.

Such employees must first meet the tenure requirements of CSL §75.1(c) to be eligible for the rights of §80-a (retention, retreat and reemployment).

During the layoff planning stage, agency management should give careful consideration to the impact of laying off 55b/c employees, who are by definition protected class individuals.

NOTE: For guidance on the reemployment of 55b/c employees, refer to Policy Bulletin #91-05 in Section 1450 of the SPMM.

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information to individuals with disabilities. If you need an auxiliary aid or service to make this information available to you, please contact the New York State Department of Civil Service Public Information Office at (518) 457-9375.

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