

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL

TRANSMITTAL MEMORANDUM NO. 76

February 2021

PAGES ATTACHED

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2300 Reductions in
Force

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2300 Reductions in
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2300 REDUCTIONS IN FORCE

Also refer to the [Guidelines in the Administration of Reduction in Force](#)

2350 LAYOFFS IN THE COMPETITIVE CLASS

.2 POLICY/PROCEDURE

.210 Suspension of Employees

.211 Suspension means the layoff or reduction in status of an employee due to abolition of positions in the competitive, non-competitive or labor classes.

.212 When positions in a title in the competitive class are abolished, only employees in the layoff unit within which the abolition occurs are considered for retention and suspension. Employees in other titles, in the same title in other jurisdictional classes, or in the same title in other layoff units are not considered. Suspension of employees in the affected titles in the layoff unit must occur in the following order:

- A. **Temporary, provisional and certain contingent permanent employees** - All temporary and provisional employees are suspended before suspending permanent employees. Even though no set order of suspension is provided in the law for temporary and provisional employees, we recommend suspension be made beginning with the least senior.
- B. **Probationary employees** - Probationers must be suspended before other permanent employees who have completed probation. Probationers have greater retention rights than temporary and provisional employees. Suspension among probationers is made beginning with the least senior.
- C. **Permanent [employees]** - Suspension should be made among permanent non-probationary employees only after all temporary, provisional and probationary employees in the effected title have been suspended. Such employees are suspended beginning with the least senior.
- D. **Contingent permanent employees** - Employees appointed contingent permanent prior to 12/18/80 are combined with temporary and provisional employees (A. above) for suspension. Employees appointed on or after 12/18/80 (when Rule 4.11 was revised) are combined with permanent probationers (B. above) or with permanent employees (C. above) as appropriate.

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NOTE: When a contingent permanent employee is affected by the return of the permanent incumbent and that return is NOT necessitated by an abolition of positions, this is not considered a suspension or demotion as described in CSL §80 or CSL §80-a and the retention rights and seniority of the contingent permanent employee are NOT considered.

.220 Determining Seniority

.221 Generally a permanent employee's seniority date for layoff is the date of original permanent appointment to the classified service provided the employee has "continuous service" since that date. There are, however, several reasons why that date would be adjusted.

.222 Adjustment based on status as a veteran, disabled veteran, or for certain spouses of disabled veterans.

A. The specific definitions of veteran and disabled veteran are contained in §85 of the CSL. Briefly, they are as follows:

1. Veteran - An individual afforded status as a veteran must have served in the armed forces in time of war, and received an honorable discharge or release under honorable circumstances or is in possession of a letter from the New York State Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. The date of original permanent appointment is adjusted to 30 months earlier.
2. Disabled veteran - In addition to the above, to qualify as a disabled veteran an individual must be certified by the Veteran's Administration as entitled to receive disability payments for a disability incurred in time of war. The date of original permanent appointment is adjusted to 60 months earlier.
3. Certain spouses of disabled veterans - The head of household spouse of a disabled veteran with a 100 percent service-connected disability has the date of original permanent appointment adjusted to 60 months earlier.

.223 The Blind

A person is considered to be legally blind if he or she is certified as such by the Commission for the Blind and Visually Handicapped and registered with the Library of Congress. A blind individual must be retained over all non-blind individuals having the same appointment status in the same title. That is to say, all permanent non-blind individuals would have to be laid off before a permanent blind

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individual in the same title. However, permanent non-blind individuals would not be laid off before a probationary or temporary blind individual.

.224 Breaks in Service and Determination of Seniority Date

- A. Permanent employees who were separated and permanently reemployed in State service up to one year later are deemed to have continuous service and retain their original seniority date.
- B. Permanent employees who were separated and permanently reemployed on or after October 17, 1985 with an absence of more than one year and up to three years have the full amount of their previous service credited in determining their seniority date.
- C. Permanent employees who were separated and permanently reemployed on or after October 17, 1985 with an absence of more than three years have their previous service credited on a pro-rated basis to determine their seniority.
- D. See General Information Bulletin No. 86-01, April 10, 1986 - "Reconstructed Seniority Dates - Sections 80.3 and 80-a.3 of the Civil Service Law" for examples illustrating reconstruction of seniority dates.

.225 Reinstatement Following Disability Termination Pursuant to CSL §71

An individual terminated because of a disability resulting from occupational injury or disease as defined in the Workers' Compensation Law who is reinstated or reappointed is deemed to have continuous service.

.226 Temporary or Provisional Service Following a Break in Service

Temporary or provisional service which precedes the original permanent appointment does not count. However, if a permanent employee resigns or otherwise leaves State service and is reemployed on a temporary or provisional basis within one year and then, without a further break in service, is reemployed on a permanent basis, there is no break in continuous service. This applies even when the subsequent permanent appointment occurs more than one year after separation.

.227 Transfer of Function

Employees transferred to State service upon transfer of functions from another governmental jurisdiction pursuant to §70.2 of the CSL have continuous service beginning with their original permanent

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appointment date in the classified service in the other governmental jurisdiction.

.228 Cover-ins

Employees covered into a State classified service position pursuant to CSL §45 will have a seniority date which is the same date as the cover-in. To break ties in this group, use the date of original appointment prior to cover-in.

.229 Preferred List Status

Employees who have been laid off and had their names placed on preferred lists shall not be considered to have a break in service for the time spent on a preferred list.

.2210 Breaking Ties

When several employees have the same layoff seniority date, the appointing authority can use any reasonable and consistent basis for breaking such ties.

.230 Displacement Rights

.231 The displacement rights of permanent employees are considered once the least senior permanent employees occupying positions to be abolished have been identified. It is important to note that probationers who are on leave may not displace but may return to their hold item. Probationers without a hold item may displace provided they have five years of continuous and satisfactory service. Permanent non-probationers must be offered displacement opportunities before probationers.¹ Probationers may not displace permanent employees who have completed their probation.²

¹ CSR §5.5(d)

² CSR §80.7

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.232 Vertical Bumping

Employees who are to be suspended and are serving in a title which has a direct line of promotion may displace employees in the next lower occupied title in that series within the layoff unit. This is called vertical bumping. The procedure for vertical bumping is outlined below:

- A. First identify the most senior employee to be suspended from the highest-level title affected by layoff. Compare that incumbent with the least senior incumbent in the next lower occupied title in direct line of promotion.
 1. "Direct line of promotion" is a narrow concept. For example, Office Assistant 1, Office Assistant 2, Office Assistant 3, Head Clerk, Chief Clerk is the direct line of promotion for that series. An Office Assistant 1 Stores/Mail would NOT be considered a title in direct line of promotion. Agencies should work closely with their staffing representative to determine which titles are indirect line of promotion for displacement purposes.
 2. Employees may only vertically bump into occupied positions. Positions held by incumbents on a temporary, provisional, contingent-permanent, probationary, or permanent basis are considered to be occupied. Positions encumbered by employees on leave are considered to be occupied. While employees may not vertically bump to a vacant position, a reinstatement may be possible at the agency's discretion.
 3. A lower level title in which all positions have also been abolished, or in which all positions are vacant is not available for vertical bumping. Displacing employees would then be compared to the incumbents in the next lower level in direct line of promotion.
- B. Next, lay off the employee with the lesser "retention standing" of the two.
 1. If an employee refuses to displace a junior incumbent, then that employee is laid off, and the junior incumbent remains in place.
 2. The junior incumbent is still compared in retention standing with other incumbents if additional positions at the higher level are being abolished.
- C. Repeat steps A and B until all individuals in an affected title series have been compared for vertical bumping.

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.233 Retreat

Retreat is only possible when there is no lower level occupied title in direct line of promotion within the layoff unit. Basically, retreat means a return to the title in a lower salary grade last held on a permanent basis. For retreat to occur, the following criteria must be met:

- A. The employee who is retreating cannot have had an opportunity to displace through vertical bumping. An employee who had the opportunity to vertically bump and declined the opportunity, or who lacked sufficient seniority to vertically bump, cannot now be considered for retreat.
- B. The formerly held title must be in the competitive, non-competitive or labor class.
- C. The formerly held title must be occupied. As with vertical bumping, an employee cannot retreat to a vacant position. However, a reinstatement may be possible at the agency's discretion.
- D. The formerly held title must exist in the layoff unit and be at a lower salary grade. Prior service in the retreat title need NOT have been in the layoff unit.
- E. The retreating employee must have more seniority than the least senior employee in the layoff unit in the title to which retreat is sought. A probationer cannot displace an employee who has completed probation regardless of seniority.
- F. The retreating employee's service in the former title must have been satisfactory.
- G. Outlined below are some additional concerns to keep in mind when determining retreat rights:
 1. Title change - If an employee's retreat title has changed, but the duties have remained the same, the retreat will still be allowed to the new title.
 2. Intervening Service - An employee with service in other intervening titles may still retreat as long as service in the intervening titles was on other than a permanent basis or was not at a lower salary level.
 3. Break in service - An employee may retreat to the formerly held title even if there was a break in service of more than one year, as long as all other conditions are met.

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.240 Placement Rosters

Prior to the date of layoff, the names of permanent employees who are expected to be affected may be placed on placement rosters. (See 1470.)

.250 Preferred Lists and Reemployment Rosters

As of the date of layoff, the names of permanent employees who are laid off are placed on preferred lists and reemployment rosters. (See 1450 and 1460.)

.4 PROCEDURES

.410 Outlines of Agency Procedures for Layoffs

.411 The following outlines the major steps agencies should follow in reduction in force situations. A more complete and detailed discussion of procedures is described in the "Guidelines for Reductions In Force," Part II Methodologies and Procedures.

- A. Advise Department of Civil Service and the Office of Employee Relations of an impending layoff and indicate the expected effective date.
- B. Determine the titles and number of positions to be abolished and the titles likely to be affected due to displacement through vertical bumping and retreat.
- C. Provide the Department of Civil Service with information on positions which may be affected by layoff. This should include titles which may be affected by vertical bumping or retreat as well as any titles the agency feels may be comparable to be filled by a preferred list consisting of the layoff titles. The Department of Civil Service will determine which titles are comparable to be filled by reinstatement from a preferred list or reemployment roster established for the layoff title.
- D. Request and receive from the Department of Civil Service final direct line determinations for vertical bumping, and seniority rosters for all employees in titles which have positions being affected by abolition, vertical bumping and retreat.
- E. Determine the number and location of positions to be abolished in each title and tentatively identify employees who will be affected.
- F. Determine the potential vertical bumping or retreat possibilities for employees who will be affected in E. above.

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- G. Arrange informational meetings for employees potentially affected by abolition, reassignment and displacement. Meetings should include representatives from Civil Service, the Unions and Agency.
- H. Notify employees of their potential layoff and the scheduled informational meetings. This notice should include a completed copy of form S-295.5 Preferred List/ Reemployment Roster Eligible Card with instructions to employees to verify their seniority date, personnel information and indicate the locations where they will accept reemployment. Each employee must also receive a copy of "[Information for State Employees Affected by Layoff](#)." The booklet and form S-295.5 are available from the Department of Civil Service.
- I. Receive signed S-295.5's from employees and send to Department of Civil Service.
- J. No later than three weeks prior to the date of layoff send written notices to all employees being affected by the layoffs.
- K. Notify affected employees with accumulated vacation credits exceeding the 30 days for which lump sum payment is made. These employees will be permitted to use excess vacation credits up to the present maximum of 40 days (maximum of 10 days beyond the 30 compensated days) prior to the effective date of termination. Agency payrolls should be timely submitted to allow the Office of the State Comptroller to process lump sum payments payable in the employee's final check.
- L. A laid off employee who displaces another individual in a lower grade position should have this displacement information noted in the appointment portion of the S-295.5 card. Note the title, grade and location of the position to which the displacing employee is being appointed.

.420 Layoffs in Multiple Locations

In many agencies the layoff unit includes a number of locations in different counties. Where layoffs occur in these situations usually agencies must reassign staff among the positions and locations which will be left after the layoff. In carrying out the layoff process, the horizontal reassignment opportunities and the willingness of employees to relocate must be determined prior to vertical displacement and retreat. While 'several approaches may be taken to carry out horizontal reassignments, the essential legal requirements are that reassignments are in-title with no change in an employee's status; they occur within the confines of the layoff unit, and retention rights and seniority govern the reassignment opportunities

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offered to permanent employees. Permanent employees who decline reassignment to another county do not have rights to displace through bumping or retreat. However, the Department of Civil Service provides preferred list and reemployment roster status to such employees.

Agencies should discuss the layoff situation with the Department of Civil Service to determine the most equitable method of reassigning more senior employees. Whatever method is chosen must be applied consistently to all employees in the layoff unit.