



JOB AIDS AND RESOURCES

Layoff and Layoff Avoidance Overview at a High Level

The process required by the Department of State Civil Service to implement a reduction in force of permanent classified employees is designed to achieve three outcomes:

- Agencies can adapt quickly and effectively to budget reductions that result in layoffs and restructuring
- Services to citizens are provided in the most cost effective way possible.
- Highly qualified and experienced employees with good performance are retained.

Implementation of a layoff is never a simple matter. Decisions that adversely affect the livelihood of valued employees are not easy. These decisions are made by the Appointing Authority of the affected agency. Once those decisions are made, the process is straightforward. The agency is required to submit a layoff plan to the Department of Civil Service (DSCS) for approval prior to the effective date and in keeping with established notice requirements and time frames. DSCS staff advises and assists at any step in the process, and early consultation can help to ensure a smooth transition and limit legal liability should the results of the layoff be challenged. The Office of Planning and Budget (OPB) at the Division of Administration also requires that certain information be submitted to them prior to notifying employees that a layoff is imminent.

Sometimes agency operations can be maintained and a layoff avoided by implementation of relatively short term measures. A layoff avoidance plan must be submitted to DSCS for approval prior to the effective date of the actions proposed. Typically a layoff avoidance plan is simply a letter outlining the nature and time frame of the layoff avoidance measure(s) to be implemented. These requests can be approved by the Civil Service Director and may be completed within one working day of receipt. The options currently available for layoff avoidance include:

- cancelling performance adjustments for 12 consecutive months or reducing performance adjustments to an amount less than 4%
- reducing regular work hours and corresponding salary by up to 16 hours per pay period
- implementing furloughs of one or more days over a specified time period (e.g., one day per month for 12 months)
- offering an incentive payment to employees who are eligible for regular retirement, not to exceed 50% of the cost saving to the agency over a specified period of time (e.g., fiscal year or other 12 consecutive month period)

When layoff avoidance is not a viable option, a comprehensive layoff strategy must be developed. Layoff avoidance measures may be used as a tool to realize immediate savings when costs must be cut but time is needed to plan and implement that comprehensive

strategy. Many variables may come into play, but the general process and purpose of each step of the layoff process is outlined below.

- Agency determines the programs and/or positions to be eliminated in order to achieve the stated goal. That goal may be to streamline business operations, save money or outsource a function. At this point, we are dealing with positions, not employees.
- Agency defines organizational unit for purposes of the layoff. The flexibility with which an organizational unit can be defined is perhaps the key component to effectively structuring the overall layoff process. The organizational unit may be defined broadly, or as narrowly as a specific program or work unit. Consultation with DSCS staff in making this determination is invaluable as this organizational unit draws the parameters within which the layoff will take place.

These two steps allow the agency to clearly communicate what the organization looks like prior to the layoff, and what it will look like when the layoff is completed. Again, up to this point we are dealing with the organizational structure and positions needed to most effectively deliver services. The following steps deal with the employees who occupy those positions.

- Agency identifies employees within the affected organizational unit who received “needs improvement/unsatisfactory” performance evaluations in the most recent performance year and no sooner than 60 days prior to the proposed effective date of the layoff. The plan submitted to DSCS will indicate that these employees are to be laid off. These position(s) may or may not still be needed.
- Agency determines which employees in the affected organizational unit (by career field of positions to be eliminated) have the least state service (last in, first out) and how many employees must be laid off to meet the stated goal. If any of these employees have specific competencies, qualifications, extraordinary performance or experience that should exempt them from layoff, they may be retained even though they have less state service. Exemptions can be made by the agency for up to 20% of the employees who will either be laid off, or who will move to another job in the post layoff structure. This number may be expanded if needed, but, any exceptions to that number or other aspects of the layoff process must be approved by the Civil Service Commission. Having agencies to make exemptions at a certain level and requiring the Commission to approve exceptions beyond that level ensures that the process provides flexibility to the agency, while remaining transparent.
- The proposed layoff plan will indicate which employees within each career field are targeted to actually be laid off, beginning with those with the least state service, and will document the business reasons for any exemptions made by the agency. The plan will further include the business reason for any exceptions to the layoff rules that an agency may wish for the Commission to consider. The plan will also list employees who are to be relocated to “vacancies” that have been created as the result of the layoff of

less senior employees or those with less than successful performance. These relocation decisions are made by the Appointing Authority based on employee skills and agency needs, not seniority.

All of the information discussed above is included in the proposed layoff plan. Agencies are encouraged to provide SCS with a draft of the plan prior to the formal submission for a review of the “blueprint” and provide any assistance and suggested changes prior to formalizing. This preview creates the opportunity for any concerns to be worked out so that the agency can be assured that the plan they formally submit will be approved as requested, in time to meet the target effective date of the layoff.

A number of notice requirements and minimum time frames are spelled out in the layoff rules. The administrative processes associated with these notifications are generally handled through the agency Human Resource Office. The purpose of these requirements is to ensure that all legal obligations to employees who may be adversely affected are met.

- A “general notice” that a layoff is being considered should be provided to all employees as soon as it is reasonable to do so, as long as it is 5 working days after the information required by OPB is delivered.
- When the proposed layoff plan is delivered to SCS, the agency delivers an “individual notice” and a copy of the proposed layoff plan to each affected employee. The comment period begins when the last affected employee receives his individual notice
- The comment period ends 5 calendar days after the last employee has received his individual notice. The Director or the Commission cannot approve any plan prior to the end of the comment period.
- Upon approval of the layoff plan, the agency sends a “final notice” to each employees who will be:
 - Laid off due to performance inadequacies
 - Laid off because their position no longer needed
 - Laid off due to implementation of “last in, first out” (where no exemptions were made or exceptions approved).
- The effective date of the layoff is 6 calendar days following the day that the last employee has been given final notice of the layoff or relocation action affecting him.

The final notice of layoff to employees includes information about their benefits options (e.g., COBRA for health insurance) and any payout of accrued leave to which they may be entitled. It also includes information about how to be placed on a Department Preferred Re-employment List (DPRL) that remains in effect for 2 years after the date of the layoff. Vacancies occurring at

the same or lower job level in the department where the layoff occurred, and within the employee's career field, must be offered to employees who elect to participate in the DPRL, unless an exception has been approved by the Commission. Often DPRL exceptions are included in the original layoff plan, or they may be requested after the fact. Typically these exceptions are necessary to fill positions that have specific licensure or skill sets that may not exist for every employee in a particular job title.

The agency Human Resource Office submits a post layoff report to DSCS within 15 days after the effective date of the layoff, to document the ultimate result of the layoff process