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[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#)

Title 4A, Chapter 8 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 11A:2-6.d, 11A:2-11.h, 11A:2-28, 11A:6-28, and 11A:8-1 through 11A:8-4.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: August 25, 2022.

See: 54 N.J.R. 1911(b).

CHAPTER HISTORICAL NOTE:

Chapter 8, Layoffs, was adopted as R.1990 d.49, effective January 16, 1990. See: 21 N.J.R. 3340(a), 22 N.J.R. 169(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.55, effective December 30, 1994. See: 26 N.J.R. 3518(a), 27 N.J.R. 482(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.251, effective April 21, 1995. See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.2000 d.12, effective December 9, 1999. See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

Chapter 8, Layoffs, was readopted as R.2003 d.304, effective June 30, 2003. See 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Chapter 8, Layoffs, was readopted as R.2009 d.41, effective December 23, 2008. See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 8, Layoffs, was scheduled to expire on December 23, 2015. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 8, Layoffs, was scheduled to expire on June 20, 2016. See: 48 N.J.R. 12(a).

In accordance with N.J.S.A. 52:14B-5.1.d, the expiration date of Chapter 8, Layoffs, was extended by gubernatorial directive from June 20, 2016, to June 20, 2017. See: 48 N.J.R. 1445(a).

Chapter 8, Layoffs, was readopted as R.2016 d.174, effective November 15, 2016. See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Chapter 8, Layoffs, was readopted, effective August 25, 2022. See: Source and Effective Date.

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency, or other related reasons.

1. Demotions for economy, efficiency, or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Chairperson of the Civil Service Commission or designee shall determine seniority (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional, and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

(c) At no time shall any employee be subject to any layoff action if the employee is on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (b), substituted "and merit points (see N.J.A.C. 4A:8-2.4), and shall" for "and" following "seniority"; and added (c).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

In (b), deleted "and merit points" following "shall determine seniority"; deleted (c).

Emergency amendment, R.2009 d.133, effective March 25, 2009 (to expire May 24, 2009).

See: 41 N.J.R. 1535(a).

In (b), substituted "Chairperson" for "Commissioner" and "Civil Service Commission" for "Department of Personnel"; and added (c).

Adopted concurrent amendment, R.2009 d.206, effective May 24, 2009.

See: 41 N.J.R. 1535(a), 41 N.J.R. 2459(a).

Provisions of R.2009 d.133 adopted without change.

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In the introductory paragraph of (a) and of (a)1, inserted a comma following "efficiency"; added new (b); recodified former (b) through (c) as (c) through (d); and in (c), deleted "or authorized representative" following "Chairperson", and inserted "or designee", and a comma following "demotional".

Amended by R.2019 d.072, effective July 1, 2019.

See: 51 N.J.R. 191(b), 51 N.J.R. 1115(a).

Deleted former (b); and recodified former (c) and (d) as (b) and (c).

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.1A (Reserved)

History

HISTORY:

Emergency New Rule, R.2009 d.133, effective March 25, 2009 (to expire May 24, 2009).

See: 41 N.J.R. 1535(a).

Adopted concurrent new rule, R.2009 d.206, effective May 24, 2009, with changes effective June 15, 2009.

See: 41 N.J.R. 1535(a), 41 N.J.R. 2459(a).

In (b), substituted ", safety and welfare," for "and safety" and "protection, law enforcement, fire safety" for "welfare, law enforcement"; and in (e), substituted "Leave an employee takes under the State Family Leave Act (see N.J.S.A. 34:11B-1 et seq.) or the Federal Family and Medical Leave Act (see 42 U.S.C. §§ 12101 et seq.)" for "A Federal Family and Medical Leave Act leave or other leave for medical or family reasons".

Repealed by R.2009 d.382, effective December 21, 2009.

See: 41 N.J.R. 3139(a), 41 N.J.R. 4701(a).

Section was "Temporary layoffs".

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

- 1.** Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Chairperson or designee;
- 2.** Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);
- 3.** Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;
- 4.** Providing employees with optional temporary demotional title changes; and
- 5.** Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Chairperson or designee prior to implementation. The plan shall include time periods for all alternatives,

a statement of the employees' right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

Petition for Rulemaking.

See: 42 N.J.R. 1911(a).

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

In (c)1 and (f), substituted "Chairperson or designee" for "Department of Personnel" twice.

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

- 1.** Initiating a temporary hiring and/or promotion freeze;
- 2.** Separating non-permanent employees;
- 3.** Returning provisional employees to their permanent titles;
- 4.** Reassigning employees; and
- 5.** Assisting potentially affected employees in securing transfers or other employment.

(b) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by first placing employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

(c) Appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section.

(d) Upon request by an appointing authority, assistance may be provided by Civil Service Commission staff in implementing pre-layoff measures.

History

HISTORY:

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

Rewrote (d).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Rewrote (b) through (d).

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

Petition for Rulemaking.

See: 42 N.J.R. 1911(a).

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

In (d), substituted "Civil Service Commission staff" for "the Department of Personnel".

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.4 Review by the Civil Service Commission

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Chairperson or designee, the following information shall be submitted by an appointing authority to the Chairperson or designee:

1. The reason for the layoff;
2. The projected effective date of layoff;
3. Sample copies of the layoff notice and the projected date for issuance;
4. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;
5. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;
6. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;
7. A summary of consultations with affected negotiations representatives; and
8. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In local jurisdictions having a performance evaluation program approved by the Civil Service Commission, the appointing authority shall also submit the names of permanent employees who have received a rating of Unsatisfactory or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)5 above shall be filled, except under exceptional circumstances with the approval of the Chairperson or designee, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Chairperson or designee may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;
2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or pre-layoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the a representative of the Civil Service Commission shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (a), deleted a former 4, and recodified former 5 through 9 as 4 through 8; in (b), substituted "below Commendable" for "of Marginally Below Standards or Significantly Below Standards" following "rating"; and in (c), made an internal reference change.

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

Petition for Rulemaking.

See: 42 N.J.R. 1911(a).

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Section was "Review by Department of Personnel". Rewrote the section.

Petition for Rulemaking.

See: 57 N.J.R. 205(c).

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department.

(b) In the Judiciary, the layoff unit shall be a vicinage or the Central Office and include all programs administered by that vicinage or Central Office.

(c) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Civil Service Commission, a different layoff unit consisting of one or more departments may be approved by the Chairperson under the following procedures:

1. A request may be submitted by an appointing authority to the Chairperson or the matter may be initiated by the Chairperson.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Chairperson.

3. After receipt of the request, the Chairperson shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Chairperson shall issue a determination approving, modifying, or rejecting the proposed layoff unit, after considering:

i. The need for a unit larger than a department;

- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;
- iv. The effect upon employee layoff rights; and
- v. The impact upon service to departmental clientele and the public.

(d) In State service, the Chairperson or designee shall determine job locations within each department or autonomous agency.

- 1. Each job location shall consist of a county.
- 2. The Chairperson or designee shall assign a job location to every facility and office within a department or autonomous agency.
- 3. In the Judiciary, each vicinage, and the Central Office, shall be considered a separate job location.
- 4. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(e) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

Rewrote (a).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Rewrote (a).

Petition for Rulemaking.

See: 41 N.J.R. 4833(b).

Petition for Rulemaking.

See: 42 N.J.R. 1085(a).

Amended by R.2010 d.221, effective October 18, 2010.

See: 42 N.J.R. 1278(a), 42 N.J.R. 2406(a).

Added new (b); recodified former (b) through (d) as (d) through (e); in the introductory paragraph of (c), substituted "Civil Service Commission" for "Department of Personnel" and "Chair/CEO of the Civil Service Commission" for "Commission"; in (c)1 through (c)4, substituted "Chair/CEO" for "Commissioner" throughout; in the introductory paragraph of (d) and in (d)2, substituted "Chair/CEO" for "Commissioner of Personnel"; added new (d)3; and recodified former (d)3 as (d)4.

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

In the introductory paragraph of (c), substituted "Chairperson" for "Chair/CEO of the Civil Service Commission"; in (c)1 through the introductory paragraph of (c)4, substituted "Chairperson" for "Chair/CEO" throughout; in (c)4, inserted a comma following "modifying"; and in the introductory paragraph of (d) and (d)2, substituted "Chairperson or designee" for "Chair/CEO" twice.

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 1. PROCEDURES](#)

§ 4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. For positions that are not targeted by a layoff but may be impacted by employees exercising their lateral or demotional rights, a general written notice must be served by the appointing authority personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail, at least 45 days prior to the action. A copy of the notice served on employees shall be provided to a representative of the Civil Service Commission and affected negotiations representatives.

1. In State service, the Chairperson or designee may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

- 1.** The effective date of the layoff action; and
- 2.** The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Chairperson or designee for good cause. If a layoff has not taken place within 120

days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Chairperson or designee of employees who successfully complete their working test periods prior to displacement. The Chairperson or designee shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Civil Service Commission, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated a two (Successful) or above in a three-level rating scale or a three (Successful) or above in a five-level rating scale in the most recent final PAR rating (or equivalent), shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (e), inserted a reference to merit points determinations in the first sentence; and in (f), added 1.

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

In (e), deleted "and merit points" following "seniority".

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (f)1, inserted "(or equivalent)".

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Rewrote the section.

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Chairperson or designee based on the following criteria:

- 1.** The title(s) shall have substantially similar duties and responsibilities and the same class code;
- 2.** The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
- 3.** There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
- 4.** Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than, but related to the affected title of the employee. Demotional title rights shall be determined by the Chairperson or designee based on the following criteria:

- 1.** The title(s) shall have lower but substantially similar duties and responsibilities and, where applicable, a lower class code;

2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;

3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral, and lower related titles. Special reemployment rights shall be determined by the Chairperson or designee in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Chairperson or designee:

1. Licensure or certification;

2. Specialized education;

3. Specialized client-based or program experience; or

4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

(e) Affected negotiations representatives shall be given reasonable notice and permitted to be present at any meeting with individual employees where layoff rights are discussed.

(f) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

History

HISTORY:

Amended by R.1994 d.441, effective September 6, 1994.

See: 26 N.J.R. 2182(a), 26 N.J.R. 3705(b).

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (a)1, deleted ", in State service," following "responsibilities and"; and in (b)1, deleted "in State service," following "responsibilities and,".

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Substituted "Chairperson or designee" for "Department of Personnel" throughout; in (b), inserted a comma following "than"; and in the introductory paragraph of (c), inserted a comma following "lateral".

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.2 Exercise of lateral and demotional rights

(a) Employees shall be ranked, for purposes of exercise of layoff rights, in order of seniority.

(b) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the department or autonomous agency and indicate:

1. Job locations at which he or she will accept lateral title rights; and
2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(c) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(d) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;
2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;
3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be based on the level of the permanent title held and seniority;

- 4.** The position held by the employee serving in a working test period with the least seniority;
 - 5.** In State service, and in local jurisdictions having a performance evaluation program approved by the Chairperson of the Civil Service Commission or designee, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Unsatisfactory or equivalent rating;
 - 6.** The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4).
- (e)** Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (d)1 through 4 above.
- (f)** Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.
- 1.** Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.
- (g)** Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.
- (h)** When employees are granted demotional title rights, the employees shall be entitled to exercise these rights regardless of whether they have greater or less seniority than the employees against whom they are exercising such rights.

History

HISTORY:

Amended by R.1990 d.555, effective November 19, 1990.

See: 22 N.J.R. 2629(b), 22 N.J.R. 3482(c).

Reference to "State service" deleted; rule applies to both local and State service.

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Administrative change.

See: 27 N.J.R. 2384(b).

Administrative correction.

See: 27 N.J.R. 3156(a).

Amended by R.1996 d.259, effective June 3, 1996.

See: 28 N.J.R. 1334(a), 28 N.J.R. 2839(a).

In (c)4 substituted "seniority" for "probationary time" and in (d) substituted "rights to their probationary

titles" for "lateral title rights".

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

Rewrote the section.

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Rewrote the section.

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (d)5, substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; and in (g), inserted "or job band".

Amended by R.2019 d.072, effective July 1, 2019.

See: 51 N.J.R. 191(b), 51 N.J.R. 1115(a).

In (g), deleted "or job band" following "series".

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[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted, or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

- 1.** In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.
- 2.** An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Chairperson or designee for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.
- 3.** An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Chairperson or designee for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c) 1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over noncompetitive appointments, transfers except appointments pursuant to N.J.A.C. 4A:8-1.6(f)1, and all lateral title changes except those resulting from position reclassification within a layoff unit.

(c) Employees shall be placed on a special reemployment list for an unlimited duration.

1. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list.

2. An employee who accepts an appointment to a position in another department or agency in lieu of separation at the time of layoff shall not be placed on a special reemployment list. See N.J.A.C. 4A:8-1.6(f)1.

3. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with the same or lower class code, except that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all previously held lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

(f) The name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within one year of the effective date of a layoff resulting in the employee's separation from service.

(g) In local service, the name of an employee laid off from the title of Police Assistant and placed on a special reemployment list shall be removed from the list if the employee is over the age of 35. See

N.J.A.C. 4A:4-2.3(b)2i.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (a), changed N.J.A.C. reference in the introductory paragraph; in (b), inserted an exception in 2; rewrote (c); and in (e), inserted "previously held" following "and all" in the first sentence of the introductory paragraph.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Added (f).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

In (a), amended the N.J.A.C. reference in the introductory paragraph; in (b)2, inserted "noncompetitive appointments," preceding "transfers"; rewrote (c).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Added (g).

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (c)3, deleted "(State service) or lower level (local service)" following "lower class code".

Administrative correction.

See: 44 N.J.R. 2057(a).

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

In the introductory paragraph of (a), substituted "he or" for "or he", and inserted a comma following "demoted"; and in (a)2 and (a)3, substituted "Chairperson or designee" for "Department of Personnel" twice.

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[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter, except for police and fire titles as set forth in (b) below, is the amount of continuous permanent service in the jurisdiction, regardless of title. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. Seniority shall be based on total calendar years, months, and days in continuous permanent service regardless of work week, work year, or part-time status.

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) For police and fire titles in State and local service, seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. A police officer's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, shall be considered as continuous permanent service in the jurisdiction unless the police officer waives all accumulated sick leave and seniority rights in effecting the transfer. Seniority shall be based on total calendar years, months, and days in title regardless of work week, work year, or part-time status.

1. A police title is any law enforcement rank or title where entry level employees are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course.

2. A fire title is any uniform fire department rank or title.

3. If two or more employees in a police or fire title have equal seniority, the tie shall be broken in the order of priority set forth in (h) below, except that the fifth tie-breaking factor shall give priority to the employee with greater continuous permanent service, regardless of title.

4. A county or municipal appointing authority may elect to provide, through adoption of an ordinance or resolution, as appropriate, that employees in police and fire titles may exercise previously held demotional rights, pursuant to N.J.A.C. 4A:8-2.2(f) against employees in any layoff unit in the jurisdiction. Such ordinance or resolution shall not be given effect during a layoff unless adopted at least 90 days prior to submission of the layoff plan (see N.J.A.C. 4A:8-1.4).

(c) Preferred status, which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred status.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred status. Records of preferred status shall be maintained by the appointing authority in a manner acceptable to the Chairperson of the Civil Service Commission or designee.

3. If more than one employee has preferred status, priority will be determined on the basis of the class code of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service (SES), provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay, and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence, and periods of layoff that began on or after March 1, 1987. In local service, deductions will be made only for such suspensions, leaves of absence, and periods of layoff that began on or after July 1, 1988.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(g) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a

provisional, temporary, or interim appointment shall continue to accrue seniority in their permanent titles.

(h) Tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, except for all firefighters, and except where a law enforcement officer, including a sheriff's officer and a county correction officer, waives all accumulated seniority rights in the intergovernmental transfer. If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

- 1.** A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);
- 2.** The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson of the Civil Service Commission or designee;
- 3.** The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes;
- 4.** The employee with the greater seniority in the title before a break in service shall have priority;
- 5.** The employee with greater non-continuous permanent service, regardless of title, shall have priority;
- 6.** The employee who ranked higher on the same eligible list for the title shall have priority;
- 7.** The employee with greater continuous service as a provisional, temporary, or interim appointee in the subject title shall have priority;
- 8.** The employee with greater total service, regardless of title or status, shall have priority;
- 9.** The employee with the higher performance rating during the 12-month period prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;
- 10.** The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;
- 11.** Other factors as may be determined by the Chairperson or designee.

History

HISTORY:

Amended by R.1990 d.387, effective August 6, 1990.

See: 22 N.J.R. 1300(b), 22 N.J.R. 2263(a).

In (c): added "family" to list of leaves with pay.

Amended by R.1994 d.620, effective December 19, 1994.

See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Administrative correction.

See: 27 N.J.R. 3156(a).

Petitions for Rulemaking: Layoffs, Seniority.

See: 27 N.J.R. 4916(a).

Amended by R.1996 d.259, effective June 3, 1996.

See: 28 N.J.R. 1334(a), 28 N.J.R. 2839(a).

In (d) added provision relating to local service.

Amended by R.1996 d.260, effective June 3, 1996.

See: 28 N.J.R. 1441(a), 28 N.J.R. 2841(a).

In (a) excepted police and fire titles, added (b) and recodified former (b)-(g) as (c)-(h).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (b)4, changed N.J.A.C. reference; rewrote (c); and added (i) and (j).

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (a) and (b), added second sentences in the introductory paragraphs; in (h) rewrote the introductory paragraph.

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Amended N.J.A.C. references throughout; rewrote (c)3; deleted (i) and (j).

Administrative correction.

See: 38 N.J.R. 2686(a).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In the introductory paragraph of (b), inserted the second sentence; in (b)4 and (h)3, updated the N.J.A.C. references; and rewrote the introductory paragraph of (h).

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (c)1, updated the N.J.A.C. reference; and in (c)3, deleted "in State service, or the class level in local

service," following "class code".

Amended by R.2014 d.045, effective March 17, 2014.

See: 45 N.J.R. 525(a), 46 N.J.R. 497(a).

In the introductory paragraph of (a) and of (b), inserted a comma following "months" and following "year"; in (c)2, substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; in (d)3, inserted a comma following "extension"; in (d)4, inserted "(SES)"; in (e), inserted a comma following "pay" and following "absence" twice, and substituted "that" for "which" twice; in (g) and (h)7, inserted a comma following "temporary"; and rewrote (h)2 and (h)9 through (h)11.

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May 18, 2026

[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the Chairperson or designee for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;
2. In State service, if employed in the original municipality, reassignment to a different municipality; and
3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) Specific justification for such involuntary reassignments must be shown by the appointing authority.

(c) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request. Appointing authorities shall conspicuously post notices of opportunities for voluntary reassignment for a period of 10 working days at all work locations.

History

HISTORY:

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Administrative correction.

See: 27 N.J.R. 3156(a).

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Substituted "Chairperson or designee" for "Commissioner".

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[NJ - New Jersey Administrative Code PAW ET Table of Contents](#) > [TITLE 4A. CIVIL SERVICE](#) > [CHAPTER 8. LAYOFFS](#) > [SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS](#)

§ 4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

- 1.** Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency, or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Civil Service Commission (see N.J.A.C. 4A:2-2.9); and/or
- 2.** Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Civil Service Commission (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested. Appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information.

(c) The burden of proof is on the appellant.

History

HISTORY:

Amended by R.2016 d.174, effective December 19, 2016.

See: 48 N.J.R. 12(a), 48 N.J.R. 2780(a).

Rewrote the section.

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