

LAYOFF FREQUENTLY ASKED QUESTIONS

A question and answer guide to the laws and rules pertaining to layoff within the State of New Hampshire

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If I might be laid off:

Where can I find the Rules of the Division of Personnel?

They can be found on the State of New Hampshire website at the following web address:

http://www.gencourt.state.nh.us/rules/state_agencies/per.html

If you need a hard copy of the rules, please call the Division of Personnel at 271-3261 and a copy will be sent to your attention.

What is bumping and does it apply to me?

Bumping is a process whereby a more senior classified employee who is notified of layoff may displace a less senior employee in the same division of an agency.

In accordance with Per 1101.02(i) and the Collective Bargaining Agreements with the State Employee Association, New England Police Benevolent Association (NH Fish & Game Conservation Officer's Union, Local 40, NH Fish & Game Conservation Officer Supervisor's Union, Local 45, NH Liquor Investigator's Union, Local 260, Probation/Parole Officers I and Probation Officers II, Local 265, Probation/Parole Officers III's, Local 270), and Teamsters Local 633:

An employee with ten (10) or more years of continuous full-time service who receives a notice of layoff shall be entitled to displace (bump) another employee within the same division of the under the following conditions:

1. The employee receiving the notice of layoff notifies the Employer of the intent to bump an employee within the same division within five (5) working days of receipt of the notice of layoff.
2. The employee who is to be bumped has less than ten (10) years of continuous full-time state service and is in a position with a lower salary grade.
3. The employee receiving the notice of layoff and wishing to bump an employee within the same division is certified by the Employer as qualified for the position of the employee who is to be displaced.
4. An employee who receives a notice of lay off and fails to notify the Employer of intent to bump another employee within the same division within the five (5) working days shall lose the right to bump.

How are layoffs determined?

According to the Rules of the Division of Personnel, Per 1101.01, an appointing authority may lay off an employee only when such layoff becomes necessary because of one or more of the following reasons:

- (a) Abolition of a position;
- (b) Change in organization;
- (c) Decline in agency work load;
- (d) Insufficient funding;
- (e) Change in state law; or
- (f) Change in federal requirements.

What is the layoff procedure?

In accordance with Per 1101.02, Procedure for Layoff:

- (a) An appointing authority shall first determine, by division, the class or classes to be affected within the agency.
- (b) Each employee whose position is in an affected class shall be considered with other employees in the same class within a division of an agency in accordance with seniority, whether the employee is on duty or leave status, or receiving workers' compensation.
- (c) Seniority for the purpose of layoff shall be the length of continuous full-time service with the state from the last date of hire to full-time service on the basis of years, months, and days of service including military leave pursuant to Per 701.02 except that any days, months, or years of leave without pay for educational or personal reasons shall not be counted.
- (d) No permanent employee shall be laid off from any position while there are temporary fill-in, part time or probationary employees serving in the same class of position within the same division of the agency.
- (e) Except in instances of an individual possessing unique credentials that are necessary for the agency to carry out a legislated mandate, seniority shall govern the order of layoff.
- (f) Prior to layoff, appointing authorities, with the assistance of the division of personnel, shall attempt to reassign an employee into a vacant position under the following conditions:
 - (1) The reassignment does not result in a promotion; and
 - (2) The employee being reassigned qualifies for the vacant position.
- (g) If there is no vacancy into which an employee can be reassigned as provided in Per 1101.02(f), an appointing authority shall attempt to demote an employee in lieu of layoff as long as the employee can be certified for the lower classification pursuant to Per 405.
- (h) When demoting an employee in lieu of layoff, the appointing authority may take such action when:
 - (1) Such demotion serves to protect the efficiency of the agency; and
 - (2) The order of demotion occurs in a similar progression as that through which the employee was promoted.

Can I be laid off if I am out on Workers' Compensation, FMLA, Military or as part of an ADA accommodation?

Yes. In accordance with Personnel Rule 1101.02 (b):

Each employee whose position is in an affected class shall be considered with other employees in the same class within a division of an agency, as that term is defined in RSA 21-G:5, VII, in accordance with seniority, whether the employee is on duty or leave status, or receiving workers' compensation.

If I am demoted in lieu of layoff, what happens to my salary?

In accordance with Personnel Rule 901.07, Adjustment Due to Demotion:

If an employee is voluntarily demoted, demoted in lieu of layoff or demoted for cause, the employee shall be placed at a step in the lower salary range as follows:

- (a) If an employee is voluntarily demoted or demoted in lieu of layoff, the employee shall be placed at the new grade and step closest to, but not exceeding, the employee's salary prior to the demotion.

How much notice do I receive if I am going to be laid off?

In accordance with Personnel Rule 1101.03, Notice of Layoff:

- (a) With the exception of (b), an appointing authority shall give written notice of the proposed layoff and the reasons therefore to the affected employee(s) and to the director at least 14 calendar days before the date the layoff becomes effective.
- (b) In the case of temporary fill-in, seasonal part-time, part-time, or intermittent employees, advance written notice of layoff shall not be required.

How is seniority determined?

In accordance with Personnel Rule 701.01, Seniority Based on Full-time Employment:

- (a) Seniority shall be based on the length of continuous full-time employment with the state from the most recent date of hire.
- (b) Full-time employment shall be calculated on the basis of years, months, and days of service, except that any days, months, or years of leave without pay for personal or educational purposes shall not be counted toward seniority.
- (c) The length of seniority calculated under paragraph (b) shall include adjustments for prior military service as provided under Per 701.02 and 701.03, except that any permanent employee who voluntarily leaves state service shall not be entitled to receive an additional seniority adjustment for the same prior military service upon rehire.

If you have had prior military service and believe it is not reflected in your seniority date, please contact your agency human resource representative.

What if I don't agree with my seniority date determination?

In accordance with Personnel Rule 1101.04, Requests for Director's Review of Layoff:

- (a) With the exception of (c), requests for director's review of layoff shall be limited to the correct determination of an employee's seniority date.

- (b) Requests for director's review shall be filed with the director within 5 working days after the date of the notice of layoff.
- (c) Employees working less than 37 1/2 or 40 hours shall not be entitled to request the director's review of any layoff determination.

If I am laid off, how will it be reflected in my personnel file?

In accordance with Personnel Rule 1101.05, Employee's Personnel Record, when an appointing authority lays off an employee, the appointing authority shall note the following in the employee's permanent record or file:

- (a) That the employee left state service because of a layoff; and
- (b) That the reason for leaving reflects no discredit on the service of the employee.

If I am laid off:

If the reasons for layoff no longer exist within my agency, can I be recalled to work?

In accordance with Personnel Rule 1101.06 and 1101.07:

Per 1101.06 Recall Following Layoff or Demotion in Lieu of Layoff.

- (a) When the reason(s) for a layoff or a demotion in lieu of layoff no longer apply, and the appointing authority chooses to fill a vacant position, the appointing authority shall first attempt to fill the vacancy in accordance with this section by using one of the following methods:
 - (1) Recalling an employee demoted in lieu of layoff; or
 - (2) Recalling a laid off employee.
- (b) An appointing authority shall not fill a vacant position in accordance with this section unless the laid off employee or employee demoted in lieu of layoff meets the minimum qualifications of the vacant position classification and supplemental job description for that position.
- (c) Laid off employees and employees demoted in lieu of layoff shall be recalled to the same classification within the same agency from which the employees were laid off or demoted in lieu of layoff according to the same order of seniority which the appointing authority applied to layoff the employees or to demote the employees in lieu of layoff, provided recall occurs within 3 years from the original layoff date.
- (d) If an employee who is recalled refuses to accept the position to which the employee has been recalled, the employee shall not be recalled to any subsequent vacancy within that classification within that agency.

Per 1101.07 Reemployment Following Layoff or Demotion in Lieu of Layoff.

(a) Before initiating recruitment as described in Per 400, when an appointing authority chooses to fill a vacant full-time position, the appointing authority shall attempt to fill that position by reemployment of an employee as set forth in (b) below, provided such reemployment does not result in a promotion, if the vacant position cannot be filled by recall or promotion of an employee who was either:

- (1) Laid off from a position within the agency with the same class specification and supplemental job description; or
- (2) Demoted in lieu of layoff from a position within the agency with the same class specification and supplemental job description.

(b) If the appointing authority cannot fill a vacant position in accordance with (a) above, the appointing authority shall fill the vacant position by reemployment of:

- (1) A current agency employee who was demoted in lieu of lay off from a position with a classification that, at the time of demotion, was different from that of the vacant position; or
- (2) A laid off former agency employee who held a position at the time of layoff that was in a different classification from that of the vacant position.

(c) An appointing authority shall not fill a vacant position in accordance with this section unless the laid off employee or employee demoted in lieu of layoff meets the minimum qualifications of the vacant position classification and the supplemental job description for that position.

If I am recalled to or reemployed by my agency, how will it affect my salary level?

In accordance with Personnel Rule 901.06, Adjustment Due to Reemployment:

(a) When a former permanent employee is reemployed within a period of one year in a class in which the employee was previously employed at the same agency and work unit, the appointing authority may make an appointment at the same grade and step the employee had been receiving at the termination of service, provided:

- (1) The class has not been reallocated or reclassified; and
- (2) The employee was not terminated for cause.

(b) If the class has been reallocated or reclassified, the appointing authority shall set the beginning salary in accordance with the requirements of Per 901.02.

Can I be rehired into other State positions if I have been laid off?

In accordance with Chapter 276, Laws of 2015, Rehiring of Laid Off State Employees:

- I. For purposes of this section, "laid off" means any person in a classified position as described in RSA 21-I:49 who receives written notice of the state's intent to lay him or her off or who is laid off between July 1, 2015 and June 30, 2017, as a result of reorganization or downsizing of state government.
- II. It is the intent of the general court that any classified position which becomes available in a department or establishment, as defined in RSA 9:1, shall be filled, if possible, by a state employee laid off, as defined in paragraph I, if such person is not currently employed by the state of New Hampshire, if he or she meets the minimum qualifications for the position, and if he or she does not receive a promotion as a result of the rehire.

If I am laid off and rehired at another agency but assigned to a classification title with a lower labor grade, will I maintain the rate of pay I was receiving prior to lay off?

Upon rehire, an employee will receive the rate of pay associated with the position's specific classification title and corresponding labor grade.

If I am either recalled under Personnel Rule 1101.06, reemployed under 1101.07 or rehired under Chapter 276, Laws of 2015, what is the status of my seniority date, sick leave and increment date?

In accordance with Personnel Rule 1101.06 (e), (f) and (g):

- (e) Whenever a former employee who has been laid off from state service is recalled within 3 years, the previously accumulated and unused balance of sick leave allowance shall be restored and credited to the employee.
- (f) When an employee who has been laid off is recalled, the employee's seniority date shall be adjusted by adding each year, month, and day of prior seniority credit to the effective date of return to service as provided in Per 1101.02(c).
- (g) When an employee who has been laid off is recalled, the employee's new increment date shall be established in accordance with Per 901.04.

In accordance with Personnel Rule 1101.07 (d), (e) and (f):

- (d) Whenever a former employee who has been laid off from state service is reemployed or rehired within 3 years, the previously accumulated and unused balance of sick leave allowance shall be restored and credited to the employee.
- (e) When an employee who has been laid off is reemployed or rehired, the employee's seniority date shall be adjusted by adding each year, month, and day of prior seniority credit to the effective date of return to service as provided in Per 1101.02(c).
- (f) When an employee who has been laid off is reemployed or rehired, the employee's new increment date shall be established in accordance with Per 901.04.

If I am laid off, how will accumulated sick, annual, compensatory and floating holiday time be paid?

Annual leave payout for initial period probationary employees:

No payment for accrued but unused annual leave will be made upon separation from employment within the first 12 months of employment.

For all other employees outside of the initial probationary period, accumulated annual leave, up to the maximum allowable, and compensatory, fiscal year floating holiday time and bonus leave up to 64 hours will be paid out and included in the employee's final paycheck.

Sick leave payouts:

Bargaining unit employees: upon retirement under RSA 100-A:5 or 6 or termination as a result of a reduction in force, bargaining unit employees will receive payment in a sum equal to 50% the number of sick leave days remaining to the employees credit. However, the number of days eligible for payment shall not exceed sixty (60) days.

For all non-bargaining unit employees, in accordance with Personnel Rule 1204.04, Termination of Service, upon retirement under the provisions of RSA 100-A:5 and RSA 100-A:6 only, or upon eligibility under RSA 100-A:5 but electing to receive a lump sum in lieu of an annuity, an employee shall receive payment in a sum equal to 41.7 percent of the number of sick leave days remaining to the employee's credit, provided that the total number of days eligible for payment shall not exceed 50 days. With regard to confidential employees, the terms of Per 1204.04(a) and (b) shall apply, except that, in place of 41.7 percent of the number of sick leave days remaining to the employee's credit, confidential employees shall receive 50 percent, and the total number of days eligible for payment shall not exceed 60 days.

What happens to my group medical, dental and life insurance plan benefit coverage if I am laid off?

Following the employee's last day of work, a COBRA continuation package will be sent to the employee's home address on file, advising them of their health and dental insurance continuation provisions under COBRA. Coverage under COBRA will be available for 18 months. Employees will be responsible for paying fees in full, which will be at a higher rate. The 2018 COBRA rates can be found on the following website:

<http://das.nh.gov/hr/cobrarates.asp>

Terminated employees have 31 days from their date of termination to complete forms to continue any life insurance coverage on any individual basis either through a Conversion application or a Portability application. Information on eligibility and the differences between the Conversion application or a Portability options are available, along with the applicable application forms, by toing to the following webpage:

https://das.nh.gov/hr/life_insurance.html

If I am laid off, am I eligible for unemployment benefits?

Employees who have been laid off may be eligible for weekly unemployment benefits. Contact your local NHES Call Center for details. You can access the Department of Employment Security's web site at the following link:

<http://www.nhes.nh.gov/>

Below is the information for each local area office – links to information for each site can be accessed at the following

web location: <http://www.nh.gov/nhes/locations/index.htm>

Berlin

151 Pleasant Street

Berlin, NH 03570-0159

Phone: (603) 752-5500

Laconia

426 Union Avenue, Ste 3
Laconia, New Hampshire 03246-2894
Phone: (603) 524-3960

Portsmouth

2000 Lafayette Road
Portsmouth, New Hampshire 03801-5673
Phone: (603) 436-3702

Claremont

404 Washington
Claremont, New Hampshire 03743-0180
Phone: (603) 543-3111

Lebanon

85 Mechanic Street, Suite D2-1
Lebanon, New Hampshire 03766-1523
Phone: (603) 543-3111

Salem

29 South Broadway
Salem, New Hampshire 03079
Phone: (603) 893-9185

Concord

45 South Fruit Street
Concord, NH 03301
Phone: (603) 228-4100

Littleton

646 Union Street, Ste. 100
Littleton, New Hampshire 03561-5314
Phone: (603) 444-2971

Somersworth

6 Marsh Brook Road
Somersworth, New Hampshire 03878
Phone: (603) 742-3600

Conway

518 White Mountain Hwy.
Conway, New Hampshire 03818-4205
Phone: (603) 447-5924

Manchester

300 Hanover Street
Manchester, New Hampshire 03104-4957
Phone: (603) 627-7841

Administration Office

45 South Fruit Street
Concord, NH 03301
Telephone: (603) 224-3311 or 1-(800)852-3400

Keene

109 Key Road
Keene, New Hampshire 03431-3926
Phone: (603) 352-1904

Nashua

6 Townsend West
Nashua, New Hampshire 03063-1217
Phone: (603) 882-5177

What should I do about the money in the NH Retirement System?

Questions about your retirement and your various options should be addressed by officials at the NHRS office.

New Hampshire Retirement System

54 Regional Drive
Concord, NH 03301
Phone: (603) 410-3500
Toll Free: 1-877-600-0158
FAX: (603) 410-3501
Email: info@nhrs.org
Web site: www.nhrs.org

What will happen to any contributions I have made to deferred compensation?

You may have several options. However, the New Hampshire 457 Deferred Compensation Plan is administered by Empower Retirement Services. The local office is located at:

2 Capital Street, Suite 307
Concord, New Hampshire, 03301

Empower Retirement's toll free number is (877) 457-3535

Web address: <http://nhdcp.com/>

You should contact Empower Retirement directly for answers to your Deferred Compensation questions.

What happens to my Flexible Spending Account?

Medical Accounts – ASI Flex will send COBRA information to members who have funds available at date of termination. If there are no funds available at termination, COBRA is not an option. For example, if you had contributed \$500 as of the termination date, but had only used \$100, you may elect COBRA so you can submit claims for the remaining \$400 balance until the COBRA policy expires or at the end of the benefit period, whichever occurs first.

Dependent Care Accounts –COBRA is not an option for this type of account, however, there is a spend-down feature which allows a member to continue to submit claims until the accrued amount has been used. For example, if you had

contributed \$500 as of the termination date, but had only used \$100, you may continue to submit claims for the remaining \$400 balance (until the end of the benefit period).

Please visit the following web site for FSA plan information:

http://das.nh.gov/hr/flexible_spending.html

What happens to my Health Reimbursement Arrangement?

The HRA is only available to terminated employees who elect COBRA for their medical benefits. If you elect COBRA continuation coverage through the State's medical benefits administrator, you will continue to have access to this benefit for the length of time you remain enrolled in your medical benefits as a COBRA participant. *Please note: upon termination, you will need to pay co-payments, deductibles and co-insurance up front and submit a paper claim for reimbursement as the debit card will no longer be available to you during your COBRA period.*

If you do not elect COBRA for your medical benefits, the HRA benefit will terminate when the active coverage terminates (at the end of the month in which termination occurs) and any unused amounts are forfeited. You may need to submit manual claims for services that occur after termination but before coverage ends .

Please visit the following web site for information on the HRA as it relates to termination of employment:

http://das.nh.gov/hr/flexible_spending.html

Resources:

I've been laid off and need to look for work – how do I update my resume or prepare for interviewing?

NH Employment Security offers a wide-range of resources for job-seekers. Please visit their site at:

<http://www.nhes.nh.gov/services/job-seekers/index.htm>

What if I need to talk to someone about how to emotionally cope with how I feel about being laid off or if I know someone who has been laid off?

The State of NH Employee Assistance Program is a confidential and voluntary program to assist NH government employees and their families deal with problems that affect their overall well-being. EAP Specialists provide professional assessment and referral services to assist an employee to develop problem resolution strategies and links to community resources.

Contact EAP directly at:

Main Number
603-271-4336
7:30-4:30 M-F

Toll Free Number
800-852-3345 x4336
7:30-4:30 M-F

TDD Number
800-735-2964
8-4:30 M-F

Web Link: <http://www.dhhs.nh.gov/hr/eap/index.htm>

Address:

NH DHHS
Employee Assistance Program (EAP)
97 Pleasant Street
Concord, NH 03301

Who can I talk to if I have additional questions?

If you have specific questions about the layoff process within your agency, please first contact your agency Human Resource representative. A listing of HR representatives can be found at the following web link:
<http://admin.state.nh.us/hr/contacts.html>

Staff at the Division of Personnel is also available to answer process questions you have about the layoff language in the Rules of the Division of Personnel as well as benefit coverage if you are laid off.

State of New Hampshire, Division of Personnel

State House Annex – 28 School Street

Concord, NH 03301

Phone: (603) 271-3261

TDD: 1-800-735-2964

Fax: (603) 271-1422

For active employee benefit questions, call Tina Hussey at (603) 271-2839

For retiree benefit questions, call Judy Shevlin at (603) 271-1432