



LAYOFF

Policy 1.30

Frequently Asked Questions

1. *Who can be affected by layoff?*

All employees may be affected by layoff. Policy 1.30 describes the layoff process and layoff benefits that are available to full-time classified employees. In some cases, restricted and part-time classified employees also have access to those benefits. Refer to Policy 1.30 for specific information.

2. *How are positions identified for layoff?*

Before implementing a layoff, agencies normally conduct certain workforce planning processes. As managers consider their agency's mission and objectives, they assess the units and staff that are performing various aspects of the agency's work. They identify functions that can be eliminated or reassigned. Guided by their agency priorities, managers evaluate their resources and staffing, and determine where reductions should be made. Positions must be selected on the basis of duties performed and business need, and without regard to the employees' race, color, religion, gender, age, national origin, disability, or political affiliation.

3. *Who determines whether a layoff will affect employees throughout the agency, or only employees within certain units?*

Agency management develops plans including the extent of a layoff after deciding the functions to be eliminated or reassigned. For example, after reviewing the agency's mission, objectives, and proposed changes in work functions, agency management could determine that reorganization of the entire agency is needed.

4. *Within a unit, how are employees identified for layoff?*

After determining the work and jobs to be eliminated or reassigned, managers identify employees for layoff according to their Role, employment status, and seniority. Employees within the same work unit, geographic area, and Role, and performing substantially the same work are affected by layoff according to the sequence detailed in Policy 1.30, Layoff.

5. ***In an agency or work unit to be affected by layoffs, does the agency have any options concerning which employees will be laid off?***

Employees to be affected by layoff are identified according to steps in the policy. If no placement options are available for those originally identified, agencies may offer employees within the same work unit, geographic area, and Role, and performing substantially the same work the option of accepting layoff in place of employees originally identified. If the agency has decided to allow that option, it must notify the employees described above. Agencies must ensure that their decision to place an employee on leave Without Pay-Layoff is consistent with their agency operational needs.

6. ***How is state service calculated for layoff?***

For layoff purposes, service means continuous salaried state service calculated from the last date the person was employed or re-employed into a classified position.

7. ***How are part-time employees covered? Restricted employees?***

An employee in a part-time classified or a full-time or part-time restricted position has access to the layoff policy only if his or her position immediately prior to the current position was a full-time non-restricted classified position, and the employee moved into his or her current status without a break in service.

8. ***What are layoff benefits?***

Layoff benefits as outlined in Policy 1.30, Layoff, include:

- the opportunity for placement within the agency,
- the opportunity for preferential placement into other executive branch agencies prior to layoff using the “yellow form” or after layoff using the “blue card,”
- recall, and
- access to the Re-Op Pool.

9. ***What happens if an employee identified for layoff declines placement options?***

A full-time employee who declines pre-layoff **placement** to a full-time classified position in the same or lower Pay Band that would not require relocation and would not result in a reduction in salary loses his or her right to further layoff and severance benefits.

An employee who declines pre-layoff **placement** to a part-time or restricted position retains layoff rights and, if eligible, severance benefits.

Policy 1.30 further explains the choices an employee may make without losing these rights.

10. *When agencies have to impose layoffs, they are often facing severe budget constraints. Can these agencies make placement offers at salaries lower than the employees' original pre-layoff salaries?*

Placement in lieu of layoff is intended to allow the employee to continue at the same salary. However, if an agency can document that budget constraints do not permit them to offer the same salary, the agency may offer placement at a lower salary.

If the employee accepts such a placement, he or she would retain recall rights for up to one year following the effective date of layoff.

If the employee declines the lower-salary placement, he or she retains recall rights for up to one year following the effective date of layoff and, if otherwise eligible, could receive severance benefits.

11. *Is loss of differential considered loss of salary for purposes of retaining layoff and severance benefits?*

Yes. If an employee declines placement or recall to a position that results in a lower salary because of loss of differential, the employee retains any layoff and severance benefits for which he or she is otherwise eligible.

12. *How is the "yellow form" used?*

The "yellow form" provides preferential hiring rights at other executive branch agencies before the effective date of the employee's layoff. The employee receives the form along with first notification of upcoming layoff. When presented with a yellow form, executive branch agencies must hire the person if minimally qualified unless they hire an internal applicant, including current wage employees. They may hire the minimally qualified yellow form holder without interview, or they may consider him or her along with their internal applicants. See Policy 1.30 for details.

13. *What benefits do employees receive if they are not placed in other positions and are put on LWOP-Layoff?*

Different groups of employees are eligible for different layoff benefits based on their employment status as indicated in the chart below:

STATE-PROVIDED BENEFIT	ELIGIBLE EMPLOYEES	DURATION OF BENEFIT
Preferential Employment (“blue card”) to positions of former Role	Full-time classified employees and part-time and restricted employees who have access to layoff benefits. Must be minimally qualified.	One year from effective date of layoff.
Recall Opportunities – to job in the same Role in their agency	Employees who are on LWOP-Layoff, who accepted a position that resulted in a salary reduction, or who were demoted in lieu of layoff.	One year from: *effective date of layoff, *placement in a position that resulted in salary reduction, or *demotion in lieu of layoff.
Reemployment Opportunity Pool (Re-Op)	Employees on LWOP-Layoff may choose to participate.	One year from effective date of layoff

14. How is the “blue card” used?

When the employee is placed on Leave Without Pay – Layoff, he or she receives a “blue card” for preferential employment rights for a position in another executive branch agency in his or her original Role. If minimally qualified, the laid-off employee must be hired unless the agency selects an internal applicant (not including wage employees). See Policy 1.30 for details.

15. What are the effects of layoff on the employee’s leave balances?

The employee will be paid for leave balances, as indicated below:

BENEFIT	PAYMENT
Annual Leave	To maximum per Policy 4.10. Employee’s option: paid at beginning of LWOP-layoff status or retained and paid at end of LWOP-LO.
“Traditional” Sick Leave	Paid per Policy 4.55. Employee’s option: paid at beginning of LWOP-layoff status or retained and paid at end of LWOP-LO.
VSDP Disability Credits	Paid per Policy 4.57 at end of LWOP-Layoff unless employee moves to LTD.
Compensatory Leave	Entire balance at LWOP-Layoff.
Overtime Leave	Entire balance at LWOP-Layoff.
Recruitment and Retention Leave	Entire balance at LWOP-Layoff.
Recognition and Employee Suggestion Program Leave	Entire balance at LWOP-Layoff.

VSDP Sick Leave and VSDP Family and Personal Leave may not be paid when the employee is placed on layoff status.

16. Can an employee receiving benefits through the Virginia Sickness and Disability Program be laid off? What about an employee on leave covered by the Family and Medical Leave Act? By Workers' Comp?

As described above, agencies should identify positions for layoff based on careful planning and business need. Agencies may not target employees for layoff for reasons that are not related to business need or for reasons that are protected by law, such as an employee's race, gender, color, national origin, religion, disability status, etc. Additionally, agencies must not target employees who are on any kind of leave with or without pay permitted by policy.

However, the fact that an employee is on leave through VSDP, FMLA, traditional sick leave, or another program does not provide that employee immunity against the effects of the agency's business decisions. Thus, an employee on leave may be placed in layoff status.

NOTE: Employees on leave as a result of an illness or injury covered by Workers' Compensation receive Workers' Comp benefits even if the layoff procedure is applied to their positions. Agencies should contact the Workers' Compensation Office of DHRM for specific information in time to coordinate benefits before the layoff effective date.

17. How are layoff benefits affected for employees receiving VSDP and/or Workers' Compensation benefits?

Employees receiving Short-Term Disability (STD) or Long-Term Disability (LTD)-Working benefits through the Virginia Sickness and Disability Program (VSDP) or receiving Workers' Compensation benefits continue receiving those benefits during layoff status. However, see Policy 1.57, Severance Benefits, for the effects of severance benefits for employees receiving VSDP and Workers' Compensation benefits.

18. What is the Re-Op Pool? What are the advantages of participating?

The Re-Op Pool is a voluntary program through which an employee can increase his or her opportunities to obtain a state position during the time of Leave Without Pay-Layoff. To take advantage of this program, the employee submits work credentials to a central database. Hiring officials in Executive Branch agencies may access that database to seek candidates for vacancies prior to advertising. Agencies may hire from the Re-Op Pool according to Policy 2.10, Hiring, without having to post the position. Thus, both employee and agency benefit from an expedited process.

19. How does layoff affect an employee's contract for pre-tax purchase of prior service for retirement credit?

- (1.) If the employee wishes to complete the purchase, he or she may claim a hardship. This allows for purchase of the service left on the contract in a lump sum with after-tax money. To do this, the member should submit a letter to the VRS claiming hardship and a copy of the VRS11 form.
- (2.) The employee may choose not to purchase the remaining service. If he or she later returns to covered employment, the purchase contract will resume where it left off.

An employee under contract for a pre-tax purchase of prior service should contact VRS or the agency Benefits Administrator for specific information.

20. *What happens if an employee on layoff declines recall?*

An employee on leave without pay-layoff status who declines **recall** to a position in his or her former Role and former agency that does not require relocation or salary reduction loses his or her right to further layoff and severance benefits.

An employee on leave without pay-layoff status who declines **recall** to a part-time or restricted position retains layoff rights.

Policy 1.30 further explains the choices an employee may make without losing these rights.

21. *What options are available if budget constraints make an agency unable to offer pre-layoff salary to the employee on recall?*

Agencies should try to maintain the employee's former salary when recalling an employee. However, if such a salary offer is not feasible due to budget constraints, the agency may offer the employee a position in the same Role at a salary lower than his or her pre-layoff salary. The agency must be able to document the budget-driven need to make a lower offer.

If the employee accepts recall to a position at a lower salary, he retains recall rights for up to one year following the layoff effective date.

If the employee declines recall to a position at a lower salary, he or she retains layoff for up to one year following the effective date of the layoff and (if eligible) could receive severance benefits.