



Department of Human Resource Management

POLICY 1.30 LAYOFF

APPLICATION: Full-time, Quasi Full-time, and Part-time classified employees. Restricted classified employees in certain circumstances.

PURPOSE:

It is the policy of the Commonwealth to ensure non-discriminatory implementation of reductions in the workforce that result in the elimination or reduction of positions and employee layoffs. Layoffs may occur when work functions are eliminated, reduced, or reassigned to meet budgetary or other business needs.

POLICY SUMMARY:

This policy provides uniform criteria to apply to ensure consistent implementation of layoffs and the provision of layoff privileges to eligible employees.

AUTHORITY & INTERPRETATION:

Title 2.2 of the Code of Virginia

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the Code of Virginia. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

RELATED POLICIES:

- Policy 1.40, Performance Planning
- Policy 1.57, Severance Benefits
- Policy 1.60, Standards of Conduct
- Policy 2.10, Hiring
- Policy 3.05, Compensation
- Policy 4.10, Annual Leave
- Policy 4.20, Family and Medical Leave
- Policy 4.45, Leave Without Pay-Conditional/Unconditional
- Policy 4.55, Sick Leave
- Policy 4.57, Sickness and Disability Program
- Policy 4.60, Workers' Compensation

POLICY HISTORY:

EFFECTIVE DATE	DESCRIPTION
09-25-00	Policy published.
05-16-06	Policy revised.
10-01-14	Re-op pool eliminated.
09-16-20	Re-format of policy, inclusion of substitution options, Workforce Transition Act (WTA) Exemption Waiver, and Tie-Breaker rules.



DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

POLICY 1.30 LAYOFF

ADMINISTRATIVE PROCEDURES

PROCEDURES

Documenting the Business Case and Layoff Decisions

General Provisions	Application
Agency Responsibilities	<p>Agency management should assess and document the business need to reduce the number of employees or to reconfigure the work prior to implementing a Layoff. Each agency is responsible for identifying employees for layoff consistent with their business needs and the provisions of this policy. Additional factors to address prior to implementing a layoff are noted:</p> <ul style="list-style-type: none">• Determine whether the entire agency or only designated work units will be impacted<ul style="list-style-type: none">○ Designate which units will be impacted• Identify position(s)/duties/functions to be eliminated, reduced, or reassigned• Identify employees affected by the decision to reduce or reconfigure the work force by applying the prescribed layoff sequence• Determine if a substitution option will be used for placement and which option will be used• Review all vacant positions to identify valid vacancies that may be used as placement options; defer filling the vacancies until it is determined that they will not provide appropriate placement options for those impacted by layoff• Determine how much notice will be provided to employees being impacted by layoff• Determine if pre-layoff leave will be provided and how much (up to 80 hours)• Determine if they will use the Workforce Transition Act (WTA) Exemption Waiver to request an exemption from paying the full costs of enhanced retirement benefits. The WTA Exemption Waiver is authorized by the Virginia Acts of Assembly. Approval must be obtained from both the Department of Planning and Budget and the Department of Human Resource Management. Refer to the Policy Guide – Use of the WTA Exemption Waiver.

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	NOTE: Valid vacancies may be filled after the agency has determined that no employees to be affected by layoff are eligible for or interested in the positions.

Implementing Layoff

General Provisions	Application
Determining Seniority	<p>When determining which employees will be impacted by layoff, the employees' seniority must be considered.</p> <ul style="list-style-type: none"> • Seniority is calculated based on total continuous salaried state service, computed from the last employment or re-employment date into a classified position, including approved leaves without pay and periods of Short Term Disability and Long-term Working Disability under the Virginia Sickness and Disability Program (VSDP). • Seniority must be used by agencies when determining (1) who will be affected by layoff, (2) who is eligible for placement options within the agency before layoff, and (3) who is eligible for recall opportunities
Layoff Sequence	<p>After identifying the work that is no longer needed or that must be reassigned, agencies must identify employees for layoff within the same work unit, geographic area, and Role, who are performing <u>substantially the same work</u>, according to the following layoff sequence:</p> <ol style="list-style-type: none"> 1. wage employee(s) performing the same work (<i>wage employees are not covered by the provisions of this policy or Policy 1.57, Severance Benefits</i>); then, 2. the least senior through the most senior part-time restricted employee; then, 3. the least senior through the most senior part-time classified employee; then, 4. the least senior through the most senior full-time restricted employee (if the position is anticipated to be funded for longer than 12 months); then, 5. the least senior through the most senior full-time classified employee.
Substantially the Same Work	<p>The following are indicators to assist agencies in making the determination of "substantially the same work":</p> <ul style="list-style-type: none"> • positions have similar job duties, KSAs, and other job requirements, based on the position description or Employee Work Profile; • Positions are in the same work unit; positions are in the same Role; • positions have the same work title; • positions are at the same reporting level in the organizational structure; and

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Tie-Breaker Rules	<ul style="list-style-type: none"> • positions have the same SOC Code. <p>The layoff sequence outlined above is normally sufficient, but when a significant number of layoffs occur in the same location, multiple employees may have the same state begin date. If faced with a tie when implementing the above layoff sequence, the guidelines below should be followed:</p> <ul style="list-style-type: none"> • Define seniority as <u>all</u> periods of salaried state service in all branches of state government, consistent with Policy 4.10, Annual Leave, not just the last period of continuous service. This includes all salaried state service in positions covered and not covered by the Virginia Personnel Act, and full or part-time salaried positions, and salaried state service that is broken or consecutive. • If total salaried state service is still identical, apply the court-tested and widely accepted lottery approach: <ul style="list-style-type: none"> ○ Because Employee Identification numbers are generated and assigned randomly upon an employee's date of hire, and no two numbers can be alike, use the last four digits of the numbers, from lowest (first laid off, last recalled) to highest (last laid off, first recalled). ○ If there is still a tie, proceed to the fifth digit and so on until the tie is broken.
Reduction to Part-Time	<ul style="list-style-type: none"> • To achieve the required savings, or to respond to changed workload patterns, agencies may reduce a full-time classified position to part-time classified status (minimum of 20 hours per week). • If the employee chooses to remain in the part-time position, the employee is eligible for recall rights and continuation of health and life insurance benefits for up to twelve months. • If an eligible employee declines to remain, the employee may be eligible for layoff and severance benefits.
Layoff Benefits for Certain Restricted and Part-Time Employees	<ul style="list-style-type: none"> • An employee who holds a full or part-time restricted position or a part-time classified position that is discontinued is eligible for placement consideration provided by this policy only if: <ul style="list-style-type: none"> ○ the position held immediately prior to the position being discontinued was a full-time, non-restricted classified position, and ○ there was no break in service between the full-time non-restricted, classified position and the restricted or part-time classified position. • If part-time classified or restricted employees are eligible for placement options under this policy, they will be considered in order of seniority with all other employees being considered for placement. <p>NOTE: Restricted employees whose positions are contingent</p>

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	upon project grants as defined in the Catalog of Federal Domestic Assistance are not eligible to receive severance benefits unless the funding source has agreed to assume all financial responsibility in its written contract with the Commonwealth. (Also see Policy 1.57, Severance Benefits.)

Placement Opportunities before Layoff

General Provisions	Application
Placement within the Agency	<ul style="list-style-type: none"> • After an agency has identified all employees eligible for placement, an attempt must be made to place them by seniority to any valid vacancies agency-wide in the current or a lower Pay Band. • Such placement shall be in the highest position available for which the employee is <u>minimally qualified</u> at the same or lower level in the same or lower Pay Band, regardless of work hours or shift. • Once such a position has been offered and declined by the employee, the agency has no obligation to consider additional placement options for the employee. • Agencies should use the Compensable Factors to determine if positions are at the same or lower level.
Substitutions	<p>Agencies may choose to place on LWOP-Layoff employees who agree to accept layoff instead of those employees identified by the above process. These substitution options:</p> <ul style="list-style-type: none"> • provide placement options for employees who would otherwise be laid off; • permit those willing/able to leave the organization to do so; • provide greater workforce flexibility and continuity by allowing the placement of impacted employees in the same or different roles for which they are minimally qualified; and • allow eligible employees placed on LWOP-layoff to receive severance benefits if applicable. <p>Before this can occur agencies must:</p> <ul style="list-style-type: none"> • determine which substitution option they want to use; • notify other employees who are eligible to use the substitution option; and • ensure that these decisions support agency operational needs, are fair and consistent, and are in compliance with the other provisions of this policy. <p>Substitution Option 1:</p> <ul style="list-style-type: none"> • Any organizational unit, geographic area, same pay band. • Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes.

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	<ul style="list-style-type: none"> • Substitutes do not need to be in the same work unit, geographic area, and role. • Substitutes are typically identified as those employees with the most seniority. • The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee. • Substitutes are not eligible for placement or recall rights. • Substitutes are eligible for severance benefits. <p>Substitution Option 2:</p> <ul style="list-style-type: none"> • Any organizational unit, geographic area, same role. • Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes. • Substitutes do not need to be in the same work unit, or geographic area, but must be in the same role. • Substitutes are typically identified as those employees with the most seniority. • The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee. • Substitutes are not eligible for placement or recall rights. • Substitutes are eligible for severance benefits. <p>Substitution Option 3</p> <ul style="list-style-type: none"> • Same work unit, same role, and performing substantially the same duties. • Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes. • Substitutes are typically identified as those employees with the most seniority. • The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee. • Substitutes are not eligible for placement or recall rights. • Substitutes are eligible for severance benefits.
Waive Placement and Recall Rights	<p>In order to assist impacted employees to better able plan for their futures and in conjunction with the substitution options, agencies may allow employees to waive their placement and recall rights.</p> <ul style="list-style-type: none"> • Allows the agency to focus on placing only those employees who wish to retain employment with the agency. • Provides placement options for employees who would otherwise be laid off.

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	<ul style="list-style-type: none"> • Benefits employees who choose layoff by allowing them to move forward immediately without concern of last-minute placement option superseding layoff. <p><u>Waive Placement and Recall</u></p> <ul style="list-style-type: none"> • Employees whose positions have been identified to be abolished and have been notified of their pending layoff may choose to waive their placement and recall rights. • These employees retain severance benefit eligibility. • The agency does not need to attempt to identify placement positions for the employee prior to their layoff date. • The agency does not need to attempt to identify recall positions for the employee in LWOP-Layoff. • Employees who choose to waive their placement and recall rights should be given a reasonable period of time during which they may revoke this decision. • If an employee chooses to revoke their decision to waive their placement rights the agency will attempt to place them into another position during the pre-layoff period, and/or recall them during the LWOP-Layoff period using the guidance set forth in policy.
Decline Vacancy	<ul style="list-style-type: none"> • <u>Reduction in salary:</u> An employee may decline a position that results in a salary reduction including loss of a differential (regardless of the location of the position) and be placed on leave without pay-layoff status, retaining layoff benefits and severance benefits (if eligible). • <u>Relocation:</u> An employee may decline a position that would require relocation (regardless of salary) and be placed in leave without pay-layoff status, retaining layoff benefits and severance benefits (if eligible).
Pre-Layoff Leave	<p>Agencies should grant pre-layoff leave to employees who will be impacted by layoff unless agency business needs preclude approval.</p> <ul style="list-style-type: none"> • Pre-layoff leave may be granted for a maximum of two weeks (up to 80 hours) prior to the effective date of layoff (during the layoff notification period). • This period is intended to provide time for the employee who will be placed on leave without pay-layoff to seek employment in other state agencies or with other employers or to consult with the benefits administrator or the Virginia Retirement System. • The time may be granted in a block or intermittently, at the agency's discretion. • Pre-layoff leave granted on an intermittent basis, should be scheduled and approved with the supervisor before it is used.
Placement of Employees on Leave With Pay, Unconditional Leave Without	<p>Eligible employees identified for layoff while on</p> <ul style="list-style-type: none"> • leave with pay, • unconditional leave without pay for illness or disability,

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Pay for Illness or Disability, and VSDP	<ul style="list-style-type: none"> • STD, or • LTD-working, must be afforded placement options provided by this policy. • For employees in this status, agencies must hold positions identified as placement options for the period of time that an employee is eligible for FMLA.
Effective Date of Placement	Placement within the agency should take place on the date layoff would have become effective; however, agencies may determine that it is in the best interest of the employee and/or the agency to make placement effective prior to that date.
Notice of Placement	<ul style="list-style-type: none"> • If a placement option is identified within the employee's agency, the agency must give the employee a final layoff notice using the L-1 Form Notice of Layoff or Placement (request form from DHRM) indicating that the employee is being offered placement and the employee's acceptance or decline of the placement. • This notice must be given prior to the effective date of layoff.
Use of Part-Time or Restricted Positions as Placement Options	<p>Part-time positions may be offered to full-time classified employees as placement options if there are no full-time positions available for placement.</p> <ul style="list-style-type: none"> • Employees who accept such placement will be eligible for recall rights and the continuation of health benefits in accordance with this policy for one year following the effective date of placement. • Eligible employees who decline placement to part-time positions will be placed on leave without pay-layoff and will be eligible for layoff benefits and severance benefits (if applicable) as described in Policy 1.57, Severance Benefits. • Restricted positions that are expected to continue for longer than 12 months must be offered by agencies as placement options if there are no other classified positions available for placement. • Agencies must inform employees of the effects of accepting a restricted position. • Eligible employees who decline placement to restricted positions will be placed on leave without pay-layoff and will be eligible for layoff benefits and severance benefits (if applicable) as described in Policy 1.57, Severance Benefits.
Minimally Qualified	<p>Minimally qualified employees are those who are determined by agency management to:</p> <ul style="list-style-type: none"> • possess the necessary knowledge, skills, abilities (KSAs) and other bona fide job requirements as outlined in the Employee Work Profile (or other document used by the agency to describe the nature of the position and the position's qualifications) and

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	<ul style="list-style-type: none"> • be able to satisfactorily perform the duties of the position after a six-month period of orientation in the new position. <p>Agency management and human resources must determine whether an employee is minimally qualified for the position being considered as a placement option. The Employee Work Profile and employee's work experience should be used as guides in making this determination.</p>
Compensation	<p>It is the intent of this policy to maintain employees' salaries where possible; however, when that is not feasible due to budget constraints, agencies may offer lower salaries to employees who are placed in lieu of layoff.</p> <ul style="list-style-type: none"> • <u>Placement within the Pay Band</u>: Normally, placement within the Pay Band, whether to the same or a different Role, does not result in a change in the employee's base salary. However, if funding constraints exist, the agency may offer a lower salary upon placement. Employees who accept placement within their same Pay Band that results in a salary reduction will retain recall rights for 12 months from placement. • <u>Demotion in lieu of layoff</u>: Employees who are placed in positions that are in lower Pay Bands normally will retain their salaries if the salaries are within the employee's new Pay Band. If an employee's salary is above the Pay Band's maximum, the agency may freeze the employee's current salary for a maximum of six months from the placement date, before reducing it to the maximum of the Pay Band. However, if funding constraints exist, the agency may reduce the salary to the maximum immediately or offer a lower salary upon placement. Employees that accept placement to a lower Pay Band in lieu of layoff will retain recall rights for 12 months from demotion. • <u>Loss of Differential</u>: If the position offered as a placement option is not assigned a differential similar to the employee's former position, the agency may remove the differential at placement, resulting in a salary reduction unless internal alignment data supports the higher salary rate. Employees who accept placement to a position that results in loss of differential (salary reduction) will retain recall rights for 12 months from placement. • <u>Performance increases</u>: An employee who is placed within the agency will be eligible for performance increases in accordance with Policy 1.40, Performance Planning and Evaluation.

Layoff for Employees on Leave of Absence

General Provisions	Application
Leave with Pay, Family and Medical Leave, or Unconditional LWOP	<ul style="list-style-type: none"> • Employees who are on any paid leave, Family and Medical Leave (see Policy 4.20, Family and Medical Leave) or on Unconditional Leave Without Pay, where the employee's position is held, (see Policy 4.45, Leave Without Pay-Conditional/ Unconditional) are considered active employees and shall be treated as if they were in their positions. • If their positions are to be abolished and they are otherwise qualified to receive the benefits outlined herein, they must be provided placement options and the appropriate benefits. • If their positions are not being abolished, their positions may not be used as placement options for other employees impacted by layoff.
Military Leave Without Pay	<ul style="list-style-type: none"> • Employees on Military Leave Without Pay generally are eligible for placement or recall rights under this policy and for severance benefits under Policy 1.57, Severance Benefits. • Employees on leave without pay-military retain employment rights for five years as stated in the Uniformed Services Employment and Reemployment Rights Act (USERRA). See Policy 4.50, Military Leave, for information on reemployment rights. • Layoff benefits will be made available to eligible employees on Military Leave Without Pay upon their return if their position was abolished during their absence and no other placement option is available upon their return.
VSDP - Short-Term Disability (STD) and LTD-Working (LTD – W) Disability	<ul style="list-style-type: none"> • Employees on STD and LTD-working under the Virginia Sickness and Disability Program (see Policy 4.57, Virginia Sickness and Disability Program) may receive notice of layoff. • Eligible employees may be on leave without pay-layoff and VSDP short-term or LTD-working status concurrently. • Eligible employees who move from STD to LTD during leave without pay-layoff retain eligibility for benefits under the Layoff and Severance Benefits policies for the duration of their LWOP-layoff status. • The effective date of layoff for these employees will be the date designated by the agency regardless of their VSDP status. • Positions occupied by employees on STD and LTD-working are not vacant and may not be used as placement options for other employees impacted by layoff.
LTD and Conditional LWOP	<ul style="list-style-type: none"> • Employees who are on LTD under the VSDP (see Policy 4.57, Virginia Sickness and Disability Program) or who are on Conditional Leave Without Pay where the employee's position is not held (see Policy 4.45, Leave Without Pay-

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	<p>Conditional/Unconditional) generally are not eligible for placement or recall rights under this policy, or for severance benefits under Policy 1.57, Severance Benefits.</p> <ul style="list-style-type: none"> • Positions of employees on LTD or on Conditional LWOP may be considered valid vacancies and used as placement options for employees impacted by layoff.
Workers' Compensation	<ul style="list-style-type: none"> • Employees receiving Workers' Compensation benefits can be notified of layoff. • The layoff effective date for these employees will be the date designated by the agency regardless of their Workers' Compensation status. <p>NOTE: Agencies must contact the Department of Human Resources' Workers' Compensation Office at least two weeks prior to affecting an employee on Workers' Compensation (WC) with Layoff in order to insure that WC benefits and layoff are coordinated accurately.</p>

***Preferential Employment in other Executive Branch Agencies
Issuance of Yellow Card and Blue Card***

General Provisions	Application
<p>Agency Responsibilities – <u>Issuance of Interagency Placement Screening Form (Yellow Card)</u></p>	<p>During the time between Initial Notice and Final Notice of Layoff, the agency shall use the procedures outlined below to help employees locate positions in other agencies.</p> <p>If no placement options are available within the employee's agency, then the agency must:</p> <ul style="list-style-type: none"> • issue the Interagency Placement Screening Form (Yellow Card); • ensure that employees have access to the state job listing; • inform employees that they may use the Yellow Card to gain preferential consideration for valid vacancies in any Executive Branch agency¹ from the date of issuance until they are placed on leave without pay-layoff.
Use of Yellow Card	<ul style="list-style-type: none"> • The Interagency Placement Screening Form (Yellow Card) may be used to apply for valid vacancies in any Executive Branch agency, even if it is an agency only recruitment. Employees may use the Yellow Card for positions that are in a Pay Band equal to or lower than the Pay Band of the employee's current position and for which they are minimally qualified. • To be considered, the Yellow Card must be received by the other agency prior to the application deadline. • Hiring agencies have the option of hiring a minimally qualified applicant who presents an Interagency

¹ Agencies having positions covered by the Va. Personnel Act or Tier III universities

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	<p>Placement Screening Form without conducting recruitment or interviewing other applicants unless they also are considering internal applicants for the position.</p> <ul style="list-style-type: none"> • Employees may refuse employment offers with other agencies and retain placement options within their agency, if any are available. • Agencies offering placement options to employees simultaneously on leave without pay-layoff and VSDP should provide a copy of the Employee Work Profile to the employee so that their physician can determine their ability to return to full-time/full-duty in the position. • Once an employee has accepted a position using the Yellow Card, it may not be used to obtain another position.
Minimally Qualified	<ul style="list-style-type: none"> • To be offered a position, the applicant presenting the Yellow Card must be minimally qualified for the vacancy. • If more than one minimally qualified applicant presents a Yellow Form, the position must be filled competitively from among these applicants. If the agency desires to consider internal applicants, they should be included in this competitive selection process.
Hiring Agency Responsibilities	<ul style="list-style-type: none"> • An agency must hire an applicant who is determined by agency management to be minimally qualified when presented with a Yellow Card, unless the agency chooses to hire through the competitive recruitment process an applicant who currently is an agency employee (including wage employees who work for the hiring agency). • The agency must consider applicants who have submitted the Yellow Card prior to their layoff effective dates even if the application deadline extends beyond the applicants' layoff dates.
Compensation	<ul style="list-style-type: none"> • Employees who are placed as a result of using the Yellow Card are considered non-competitive transfers or non-competitive demotions. • The intent of this policy is to maintain employee salaries, if possible. • Employees accepting placement under these provisions are not eligible to receive severance benefits.
<u>Agency Responsibilities – Issuance of the Preferential Hiring Card (Blue Card)</u>	<p>If no placement options are available within the employee's agency or other Executive Branch agencies, the agency must:</p> <ul style="list-style-type: none"> • Give the employee a final layoff notice using the L-1 Form Notice of Layoff or Placement and indicating that the employee will be placed on Leave Without Pay-Layoff status on the layoff effective date. • This notice can be given as a final notice after the agency has reviewed all placement options and determined there are none available. • Give the employee the Blue Card with the final notice on the last day of work, or immediately prior to the last day of work.

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	<ul style="list-style-type: none"> • Notify affected employees of their rights during the layoff period, including severance benefits, if applicable, and provide them with several copies of the Preferential Hiring Card (Blue Card). • For employees not entitled to severance benefits, the agency must provide information on continuance of life insurance and health insurance (COBRA).
Preferential Hiring Card (Blue Card)	<p>When employees are notified that they will be impacted by layoff, agencies must:</p> <ul style="list-style-type: none"> • issue the Preferential Hiring Card (Blue Card); • ensure that employees have access to the state job listing; and • inform employees that they may use the Blue Card to gain preferential consideration for valid vacancies (see below) in any Executive Branch agency from the date of the LWOP-Layoff through the end of their leave without pay-layoff.
Use by Employees	<ul style="list-style-type: none"> • The Preferential Hiring Card (Blue Card) may be used by an employee on leave without pay-layoff to exercise preferential employment rights to a vacant classified position in another agency that is in the same Role as the employee's former position. • To be considered for preferential hiring rights, the Blue Card must be submitted to agencies along with a completed state application form before the position's closing date. • Agencies must consider these applicants before any others except salaried applicants from inside the hiring agency. <p>NOTE: A wage employee of the hiring agency may not be hired over a minimally qualified applicant who presents a Blue Card as described herein.</p>
Minimally Qualified	<ul style="list-style-type: none"> • To be offered a position, the applicant presenting the Blue Card must be minimally qualified for the vacancy. • If more than one applicant presents the Preferential Hiring Card, the position must be filled competitively from among these applicants.
Hiring Agency Responsibilities	<ul style="list-style-type: none"> • Hiring agencies have the option of hiring a minimally qualified applicant who presents a Blue Card without conducting recruitment or interviewing other applicants unless they also are considering internal applicants for the position (see Policy 2.10, Hiring). • An agency must hire an applicant who is determined by agency management to be minimally qualified when presented with a Blue Card, unless the agency chooses to hire through the competitive recruitment process an applicant who currently is a salaried agency employee.

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	<ul style="list-style-type: none"> • The agency must consider applicants who have submitted applications with a Blue Card prior to the application deadline. • If more than one minimally qualified applicant in the same Role presents a Blue Card the position must be filled competitively from among these applicants. If the agency desires to consider internal applicants, they will be included in this competitive selection process. <p>NOTE: Agencies offering placement options to employees simultaneously on leave without pay-layoff and VSDP should provide a copy of the Employee Work Profile to the employee for their physician to determine their ability to return to the position full-time/full-duty.</p>
Duration of Preferential Employment Rights	<ul style="list-style-type: none"> • Preferential employment rights may extend for up to one year from the date of layoff. • Preferential rights will cease before the end of the layoff year when an employee: <ul style="list-style-type: none"> ○ accepts recall to his/her former agency, ○ accepts a position through the use of the “Blue Card,” ○ resigns, or ○ retires, whichever occurs first.
Duration of Leave Without Pay-Layoff Status Refer to the Policy Guide – Withdrawing Retirement Account and Layoff for impact on layoff benefits.	Leave without pay-layoff status extends for one year from the layoff effective date or until the employee: <ul style="list-style-type: none"> • is recalled, • resigns, • retires, or • obtains employment in another classified position that is in a Pay Band that is equal to or higher than the Pay Band of the employee’s former position and salary that is equal to or higher than the salary held at the time of layoff.
Compensation	<ul style="list-style-type: none"> • Employees who use their preferential hiring rights are considered non-competitive transfers. • The intent of this policy is to maintain employee salaries.
Performance Increases	Employees who accept placements under these provisions will be entitled to performance increases in accordance with the provisions of Policy 1.40, Performance Planning and Evaluation.
Probationary Employees	If an employee is placed on Leave Without Pay – Layoff for more than 14 consecutive calendar days during his/her probationary period, and later returns to a classified position through preferential hiring or the competitive process, the probationary period is extended by the amount of time the employee was on Leave Without Pay – Layoff. EXAMPLE: Beth is a probationary employee who was placed on LWOP-Layoff. She used her preferential hiring card to obtain employment in another agency after being on LWOP-Layoff

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	for three months. Her probationary period will be extended by three months not to exceed a total of 18 months (see Policy 1.45, Probationary Period).
Only One Position	An employee may use the Preferential Hiring Card to apply for several positions; however, once an employee has accepted a position using the Blue Card, it may not be used to apply for other positions. EXAMPLE: Robert used the Blue Card to apply for two positions, one at agency A and another at agency B. Robert accepted the position at agency A; therefore, he cannot use the card to obtain the position at agency B.
Refuse Offers	<ul style="list-style-type: none"> • Employees who refuse employment offers from other agencies do not forfeit their preferential employment rights; and • Neither do they forfeit recall rights and any remaining severance benefits.

Recall Opportunities after Layoff

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Recall Rights to Former Agency	<p>Recall is intended to restore an employee to a position in his/her former agency and to the Role and salary held at layoff. Employees have recall rights to positions for which they are minimally qualified in their former Role, salary and agency.</p> <p>Eligible employees are those who:</p> <ul style="list-style-type: none"> • have been placed on leave without pay-layoff; • accepted a placement option with a reduced salary, or • have been demoted in lieu of layoff.
Duration of Recall Rights	<p>Recall rights are in effect for 12 consecutive months from the effective date of layoff, placement in a position that resulted in a reduction in salary, or demotion in lieu of layoff. However, recall rights cease if an employee:</p> <ul style="list-style-type: none"> • is employed in a position that is in the same or a higher Pay Band as the former position and the employee's salary meets or exceeds the pre-layoff salary; (this can be in the same agency or a different agency) • resigns; • is terminated under Policy 1.60, Standards of Conduct; or • retires.
Seniority	<p>Employees are recalled to positions in order of seniority. If more than one employee has recall rights to a position, the position will be awarded to the most senior, minimally qualified employee.</p>
Recall of Employees on Leave With Pay, Unconditional Leave Without	<ul style="list-style-type: none"> • Employees on leave of absence with pay or unconditional leave of absence without pay for illness or disability and

General Provisions	Application
Pay for Illness or Disability, or VSDP Short-Term Disability or LTD-Working	<p>employees on STD or LTD-working placed on LWOP-layoff must be afforded recall provided by this policy.</p> <ul style="list-style-type: none"> For employees in this status, agencies must hold positions identified as recall options for the period of time that an employee is eligible for FMLA.
Recall Declined	<ul style="list-style-type: none"> <u>Same Role-no salary reduction</u>: If an employee declines recall to a position in the same Role as his/her former position that does not require relocation or a salary reduction then severance benefits and recall rights cease. Employees on leave without pay-layoff who decline such a recall offer will be separated-layoff. <u>Relocation or salary reduction</u>: An employee may decline recall and retain recall rights for the original period of time and eligibility for any remaining severance if the offered position: <ul style="list-style-type: none"> requires the employee to relocate, or results in a salary lower than the salary of his/her former position. <u>Recall to Part-time Position</u>: An employee who was laid off from a full-time position may decline recall to a classified part-time position and retain recall rights for the original period of time and eligibility for any remaining severance benefits. <u>Recall to Restricted Position</u>: An employee may decline recall to a position that is restricted and retain recall rights for the original period of time and eligibility for any remaining severance benefits.
Recall Compensation	<ul style="list-style-type: none"> An employee who accepts recall normally will return to his/her pre-layoff salary. However, if offering the pre-layoff salary is not feasible due to budget constraints, agencies may offer lower salaries and employees accepting such offers will retain recall for the remainder of the period of time.
Performance Increases	<p>An employee who is recalled is eligible for performance increases in accordance with Policy 1.40, Performance Planning and Evaluation.</p>
Probationary Employee	<p>If an employee is placed on Leave Without Pay – Layoff for more than 14 consecutive calendar days during his/her probationary period, and later returns to a classified position through recall, preferential hiring, or the competitive process, the probationary period is extended by the amount of time the employee was on Leave Without Pay – Layoff. EXAMPLE: Joan is a probationary employee who was placed on LWOP-Layoff. She was recalled to her former agency after being on LWOP-Layoff for three months. Her probationary period will be extended by three months not to exceed a total of 18 months (see Policy 1.45, Probationary Period).</p>

Effects of Layoff on Leave Accruals and Service Credit

General Provisions	Application
Annual Leave	<ul style="list-style-type: none"> • No annual leave is accrued while an employee is in leave without pay-layoff status. • An employee may request payment of his/her accrued annual leave, or be allowed to retain this balance when placed on leave without pay-layoff.
LWOP-Layoff	<p>An employee who retains his/her annual leave balance while on leave without pay-layoff status will be paid upon:</p> <ul style="list-style-type: none"> • expiration of the period of leave without pay-layoff; • resignation, or • transition from STD to LTD, whichever occurs first; and • payment of annual leave will be up to the maximum allowed in accordance with Policy 4.10, Annual Leave. <p>NOTE: Employees on STD or LTD-working who are placed on leave without pay-layoff may not use annual leave to supplement the VSDP benefit to receive 100% replacement income.</p>
Separated-Layoff	<p>An employee who is placed in separated-layoff status will be paid for his/her unused annual leave up to the maximum allowed in accordance with Policy 4.10, Annual Leave.</p>
Traditional Sick Leave	<ul style="list-style-type: none"> • No "traditional" sick leave is accrued while an employee is in leave without pay-layoff status. • An employee who has five or more years of continuous state service may be: <ul style="list-style-type: none"> ○ paid for his/her "traditional" sick leave in accordance with Policy 4.55, Sick Leave; or ○ allowed to retain this balance when placed on leave without pay-layoff. • An employee with five or more years of consecutive state service who retains his/her "traditional" sick leave balance while on leave without pay-layoff will be paid in accordance with policy 4.55, Sick Leave: <ul style="list-style-type: none"> ○ at the expiration of the period of leave without pay-layoff, ○ at resignation, or ○ when placed in separated-layoff status, whichever occurs first. • An eligible full-time employee will be paid for 25% of his/her "traditional" sick leave balance up to a maximum of \$5,000 in accordance with Policy 4.55, Sick Leave.
VSDP Sick, Family, and Personal Leave Balances	<ul style="list-style-type: none"> • VSDP leave balances will lapse when an employee is placed on leave without pay-layoff. • If the employee is recalled or secures placement in another agency through preferential employment rights prior to the end of the layoff year (and prior to the beginning of the January 10 leave year), the leave balances held at layoff will be reinstated.

General Provisions	Application
	<ul style="list-style-type: none"> • If the employee is recalled or secures placement in another agency within the layoff year but after the January 10 beginning of the leave year, the employee will receive the appropriate VSDP sick and family/personal leave credits in accordance with Policy 4.57, Virginia Sickness and Disability Program. <p>NOTE: Employees on STD or LTD-working who are placed on leave without pay-layoff may not supplement with family and personal leave to receive 100% income replacement.</p>
VSDP Disability Credits	<ul style="list-style-type: none"> • An eligible employee's Disability Credit balance must be held while the employee is on leave without pay-layoff. • At the expiration of leave without pay-layoff, or if the employee resigns or retires before the expiration of leave without pay-layoff, Disability Credits will be paid in accordance with Policy 4.57, Virginia Sickness and Disability Program. • Employees also may choose to elect to convert unused disability credits to service credits to increase their VRS benefit according to the Virginia Retirement System. • Employees on STD or LTD-working who are placed on leave without pay-layoff may supplement with Disability Credits while in leave without pay-layoff to receive 100% income replacement. • Employees on STD and leave without pay-layoff who transition into LTD will have Disability Credits transferred to the Third Party Administrator in accordance with Policy 4.57, Virginia Sickness and Disability Program.
Compensatory, Overtime, and Recognition Leave	An employee will be paid for accrued compensatory, overtime, and recognition leave when placed on LWOP-Layoff or separated-layoff.
Service Credit for Leave	<p>Time spent on LWOP-Layoff, up to a maximum of 12 months will count in determining:</p> <ol style="list-style-type: none"> 1. annual leave accrual rate upon an employee's return, 2. months of service for VSDP upon an employees return, and 3. eligibility for payment of 25% of Traditional Sick Leave or disability credits upon separation.

GLOSSARY

Abolishing Positions

Discontinuing a position due to agency needs based on funding or organizational changes. Classified employees in positions identified for abolishment will be considered for placement and layoff benefits according to the provisions of this policy.

Catalog of Federal Domestic Assistance	Defines project grants to include fellowships, scholarships, research grants, trainee grants, traineeships, experimental and demonstration grants, evaluation grants, survey grants, construction grants, and unsolicited contractual agreements. (Available at Catalogue of Federal Domestic Assistance .)
Classified Positions	A category of full-time, quasi full-time, or part-time state positions that are covered by the Virginia Personnel Act.
Compensable Factors	A component of the Career Group Description that is used to allocate a position to a Role in a Career Group based on the Complexity of Work, Results and Accountability.
Continuous State Service	Period of salaried state service that for this policy is counted from the employee's last date of hire or re-hire into a state salaried position.
Demotion in Lieu of Layoff	Placement into a different position in a lower Pay Band in the same agency as part of a reduction in force or reorganization.
Employees Eligible for Benefits	All full-time classified employees. Full-time and part-time restricted employees and part-time classified employees are eligible for layoff benefits only if (a) the position held immediately prior to the position being discontinued was a fulltime, non-restricted classified position, and (b) there was no break in service between the full-time non-restricted classified position and the restricted or part-time position.
Former Position	Position held by the employee just prior to being placed on leave without pay-layoff or being placed into another position through the layoff process.
Interagency Placement Screening Form (Yellow Card)	The Yellow Card is provided to employees when they are notified that they will be affected by layoff (Attachment A – Available from DHRM or Agency HR Office). This form is to be used by these employees to secure preferential consideration over applicants from outside an agency for positions for which they are minimally qualified in the same or lower Pay Band. The Interagency Placement Screening Form is valid from the date of issue until the employee's layoff effective date.
Layoff Benefits	Layoff benefits include: <ul style="list-style-type: none"> • placement options within the employee's agency; • preferential employment consideration in other Executive Branch agencies prior to layoff; • recall to position in same role in home agency;

	<ul style="list-style-type: none"> • preferential employment consideration for advertised vacancies in other agencies during leave without pay-layoff status.
Layoff Notice	<ul style="list-style-type: none"> • Written notification to an employee at least two weeks before the date of layoff or placement. • Agencies are encouraged to provide as much notice as feasible to employees affected by layoff. • The final notice must be given to the employee along with the Preferential Hiring Card (Blue Card) as soon as it is determined that the layoff is final and all agency placement and substitution options have been implemented. The Blue Card is provided the day before the employee enters Leave Without Pay – Layoff status.
Leave Without Pay – Layoff	<p>Leave status of a classified employee who is involuntarily separated from his/her position because the position was abolished or full-time status changed; the impacted employees is eligible for certain benefits as outlined in this policy. Leave without pay-layoff extends for 12 months from the layoff effective date, or until the employee is:</p> <ul style="list-style-type: none"> • recalled; • placed in a full-time salaried position that is in a Pay Band and salary equal to or higher than that of the employee's former position; • resigns; or • retires, <p>whichever is sooner.</p>
Leave Without Pay – Severance Only	<p>Leave status of a restricted employee who is not eligible for layoff options (no preferential hiring or re-call rights) but who may be eligible for severance benefits if the funding source agrees to pay for the severance benefits.</p>
Leave Year	<p>Period from January 10 through January 9.</p>
Long Term Disability-(LTD)	<p>Refer to Policy 4.57, Virginia Sickness and Disability Program for the most current definition.</p>
Long Term Disability Working-(LTD-Working)	<p>Refer to Policy 4.57, Virginia Sickness and Disability Program for the current definition.</p>
Minimally Qualified	<p>Employees who are determined by agency management to:</p> <ul style="list-style-type: none"> • possess the necessary knowledge, skills, abilities (KSAs) and other bona fide job requirements as outlined in the Employee Work Profile (or other document used by the agency to describe the nature of the position and the position's qualifications) and • be able to satisfactorily perform the duties of the position after a six-month period of orientation in the new position.

Placement	The assignment of an employee to a position within the agency that is in the same Role in the same Pay Band or a different Role in the same or a lower Pay Band, to avoid placing the employee on leave without pay-layoff or separated-layoff status. An employee must be considered minimally qualified to perform the work of any placement offered.
Placement Option	Position offered to an employee for placement under this policy, as an alternative to being placed on leave without pay-layoff.
Preferential Employment Rights	The right of an employee who is on leave without pay-layoff to obtain a vacant position (using the Preferential Hiring Card) for which he/she is minimally qualified in another Executive Branch agency without competition from employees outside or wage employees inside the hiring agency. The position must be in the same Role as the employee's former position.
Preferential Hiring Card (Blue Card)	The Blue Card is issued to employees on the day before their leave without pay-layoff status becomes effective. This card is used by employees who are on leave without pay-layoff to obtain preferential employment rights to vacant positions in other Executive Branch agencies that are in the same Role as their former positions and for which they are minimally qualified. The Preferential Hiring Card is valid from the date of issue for the duration of an employee's leave without pay-layoff status (see Attachment C - Available from DHRM or Agency HR Office).
Pre-Layoff Leave	Paid leave that allows an agency to continue an employee's compensation for a maximum of two weeks (up to 80 hours) prior to the effective date of layoff (during the layoff notice period). This period is intended to provide time for the employee who will be placed on leave without pay-layoff to seek employment in other state agencies or with other employers and to make arrangements for this transition. The time may be granted in a block or intermittently, at the agency's discretion.
Recall	The placement of an employee into a position that is in the employee's pre-layoff Role, salary and "home" agency when the employee has: <ul style="list-style-type: none"> • been placed on leave without pay-layoff; • accepted a placement option with a reduced salary; or • been demoted in lieu of layoff.

Relocation	Requirement of an employee to move his/her place of residence due to the location of a placement option. Agencies define a relocation distance – most agencies use approximately 50 miles.
Restricted Position	A position that is funded 10% or more from non-continuous or non-recurring funding sources, such as grants, donations, contracts, capital outlay projects, or higher education auxiliary enterprise revenues.
Role	A Role describes a broad group of positions in a Career Group assigned to a specific Pay Band that are assigned different levels of work at various skill or knowledge levels.
Seniority	One of the criteria used by agencies to determine which employees will be impacted by position abolishment. Seniority is calculated based on total continuous salaried state service, computed from the last employment or re-employment date into a classified position, including approved leaves without pay and periods of Short Term Disability and Long-term Working Disability under the Virginia Sickness and Disability Program (VSDP). Seniority must be used by agencies when determining (1) who will be affected by layoff (2) who is eligible for placement options within the agency before layoff and (3) for recall opportunities.
Separated-Layoff	Transaction Code that designates status of employees who: <ul style="list-style-type: none"> • do not qualify for the continuation of benefits under this policy or for severance benefits as described in Policy 1.57 because they have declined certain placement or recall options; • are not eligible to receive either layoff benefits or severance benefits, e.g., any restricted employee not eligible for layoff or severance benefits.
Severance Benefits	Benefits provided to eligible employees that are designed to lessen the impact of involuntary separation by providing some cash payments and continuing key benefits for a period of time. Refer to Policy 1.57, Severance Benefits for detailed information on the benefits provided to eligible employees.
Standard Occupational Classification System (SOC Code)	System used by the federal government for statistical reporting purposes and for purposes of current and accurate occupational information.
Short Term Disability-(STD)	Refer to Policy 4.57, Virginia Sickness and Disability Program for the most current definition.

Substantially the Same Work One criterion used by agencies to determine which employee(s) will be impacted by the Layoff Policy. The following are indicators to assist agencies in making that determination:

- positions have similar job duties, KSAs, and other job requirements, based on the position description or Employee Work Profile;
- Positions are in the same work unit; positions are in the same Role;
- positions have the same work title;
- positions are at the same reporting level in the organizational structure; and
- positions have the same SOC Code.

Substitution Options

Agencies may choose to place on LWOP-Layoff employees who agree to accept layoff instead of those employees identified for layoff. Eligible employees placed on LWOP-layoff will receive severance benefits if applicable.

Substitution Option 1

- Any organizational unit, geographic area, same pay band.
- Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes.
- Substitutes do not need to be in the same work unit, geographic area, and role.
- The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee.
- Substitutes are not eligible for placement or recall rights.
- Substitutes are eligible for severance benefits.

Substitution Option 2

- Any organizational unit, geographic area, same role
- Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes.
- Substitutes do not need to be in the same work unit, or geographic area, but must be in the same role.
- The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee.
- Substitutes are not eligible for placement or recall rights.
- Substitutes are eligible for severance benefits.
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Substitution Option 3

- Same work unit, same role, and performing substantially the same duties.

- Employees identified for layoff must first be notified of their pending layoff and if no placement options exist, the agency may request substitutes.
- Substitutes are typically identified as those employees with the most seniority.
- The employee identified for layoff must be minimally qualified to perform the job duties of the substitute employee.
- Substitutes are not eligible for placement or recall rights.
- Substitutes are eligible for severance benefits.

Valid Vacancy

A vacant classified position that is fully funded and has been approved by the appointing authority to be filled. These may include part-time or restricted positions depending upon agency needs and position funding.

Wage employee

An employee who receives pay for hours worked rather than a fixed salary. Wage employees are sometimes referred to as hourly or P-14 employees. Wage employment is intended to cover peak workloads and seasonal or short-term needs. Wage employees have no guarantee of employment for a particular term. They serve at the pleasure of the appointing authority and may be terminated from employment at any time.

Work Unit(s)

Designation that an agency may use to define the scope of the layoff to organizational units smaller than the entire agency. The Work Unit designation may be by geographic area(s) or business unit(s) to be impacted. If such a designation is used by the agency, the designation must be made prior to implementing a layoff.