

Policy Guide – Policy 1.30, Layoff

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

SUMMARY OF POLICY 1.30, LAYOFF

Layoff Sequence

- wage employee performing the same work (wage employees are not covered by the provisions of the Layoff Policy);
- least senior through most senior part-time restricted employee;
- least senior through most senior part time classified employee;
- least senior through most senior full-time restricted employee (if the position is anticipated to be funded for longer than 12 months); and
- least senior through most senior full time classified employee.

Seniority

Seniority is based on the employee's CONTINUOUS state service in a salaried position since the most recent hire/rehire date.

Restricted and Part-time Employees

Employees in full-time, quasi full-time, or part-time restricted positions or part-time non-restricted positions are eligible for placement consideration only if:

- 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.

Restricted employees whose positions are contingent 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.

Substitutions/Waiver of Placement

If the agency decides to use these options, they must be applied consistently to those impacted by the layoff. They may not be implemented before the positions/functions to be abolished and the employees impacted have been identified.

Placement Opportunities within the Agency

- Placement will be by seniority to any valid vacancies agency-wide in the current or a lower Pay Band.
- Placement shall be in the highest position available for which the employee is minimally qualified at the same or lower level in the same or lower Pay Band, regardless of work hours or shift.

Minimally Qualified

Employees who are determined by agency management to be minimally qualified must:

- possess the necessary knowledge, skills, abilities 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.

Pre-Layoff Leave

- Agencies should grant pre-layoff leave to employees unless agency business needs preclude approval.
- 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 notice period).
- This period is intended to provide time for the employee who will be placed on LWOP-Layoff to seek employment in other state agencies or with other employers.
- The time may be granted in a block or intermittently, at agency discretion.

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Compensation for Employees Placed in the Agency

It is the intent of the Layoff 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.

Duration of LWOP-Layoff

LWOP-Layoff status is for one year from the layoff effective date or until the employee:

- is recalled,
- resigns,
- retires, or
- obtains employment in another classified position in a Pay Band equal to or higher than the Pay Band of the employee's former position and a salary equal to or higher than the salary held at the time of layoff.

Issuance of the "Yellow Card"

- When employees are notified that they will be impacted by layoff, agencies must issue the Interagency Placement Screening Form ("Yellow Card").
- "Yellow Card" allows employees to gain preferential hiring in any Executive Branch agency from the date of issuance of the "Yellow Card" until they are placed on LWOP-Layoff.
- "Yellow Card" is used to apply for advertised positions, including those advertised for agency employees only, 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.
- May refuse employment offers with other agencies and retain placement options within their agency, if available.
- Once an employee has accepted a position using the "Yellow Card," it may not be used to obtain another position.

Issuance of the "Blue Card"

- If no placement options are available within the employee's agency or within other Executive Branch agencies, the agency must give the employee the Preferential Hiring Form ("Blue Card") with the final notice on the last day of work, or immediately prior to the last day of work.
- "Blue Card" may be used to exercise preferential employment rights to an advertised classified position in another agency that is in the same Role as the employee's former position.
- Agencies must consider these applicants before any others except salaried applicants from inside the hiring agency.
- Wage employees of the hiring agency may not be hired over a minimally qualified applicant who presents a "Blue Card".

Compensation of Employees who Obtain Employment using the "Blue Card"

- Salaries offered to employees using their preferential employment rights are established according to the non-competitive Voluntary Transfer Pay Practice, as appropriate, based on the position.
- Typically the employee's salary should remain unchanged.

Leave Accruals and Service Credit While on LWOP-Layoff

Annual Leave

- No annual leave is accrued.
- Employee may request payment of his/her accrued annual leave, or be allowed to retain balances when placed on LWOP-Layoff.

Traditional Sick Leave

- No traditional sick leave is accrued.

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- Employee with five or more years of continuous state service may be paid for his/her traditional sick leave in accordance with Policy 4.55, Sick Leave; or be allowed to retain balances when placed on LWOP-Layoff.

VSDP Leave Balances

- VSDP leave balances will lapse.
- If employee is recalled or secures placement in another agency prior to the end of the layoff year (and prior to the January 10 leave year), the leave balances held at layoff will be reinstated.
- If employee is recalled or secures placement in another agency within the layoff year but after January 10, the employee will receive the appropriate VSDP sick and family/personal leave credits in accordance with Policy 4.57, Virginia Sickness and Disability Program.
- Employees on STD or LTD-working who are placed on LWOP-Layoff may not supplement with family and personal leave to receive 100% income replacement.

Disability Credits

- Disability Credit balances must be held while the employee is on LWOP-Layoff.
- At the expiration of LWOP-Layoff, or if the employee resigns or retires before the expiration of LWOP-Layoff, Disability Credits will be paid in accordance with Policy 4.57, Virginia Sickness and Disability Program.
- Employees may elect to convert unused disability credits to service credits to increase their VRS benefit in accordance with Virginia Retirement System procedures.
- Employees on STD or LTD-working who are placed on LWOP-Layoff may supplement with Disability Credits while in LWOP-Layoff to receive 100% income replacement.
- Employees on STD and LWOP-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

- Will be paid for accrued compensatory, overtime, and recognition leave.

Service Credit for Leave

Time spent on LWOP-Layoff, up to a maximum of 12 months, will count in determining:

- annual leave accrual rate upon an employee's return,
- months of service for VSDP upon an employee's return, and
- eligibility for payment of 25% of Traditional Sick Leave or disability credits upon separation.

Employees on Leave of Absence

Leave with Pay, Family and Medical Leave, or Unconditional LWOP

- Employees on any paid leave, Family and Medical Leave (see Policy 4.20, Family and Medical Leave) or on Unconditional Leave Without Pay (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 layoff benefits, they must be provided placement options and the appropriate benefits.
- If their positions are not being abolished, they may not be used as placement options for other employees impacted by layoff.

Military Leave Without Pay

- Employees on Military Leave Without Pay generally are eligible for placement or recall rights under the Layoff Policy and for severance benefits under the Severance Policy.

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- Employees on leave without pay-military retain employment rights for five years as stated in the Uniformed Services Employment and Reemployment Rights Act. 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.

STD and LTD-Working Disability

- Employees on STD and LTD-working under VSDP (see Policy 4.57, Virginia Sickness and Disability Program) may receive notice of layoff.
- Eligible employees may be on LWOP-Layoff and STD or LTD-working status concurrently.
- Eligible employees who move from STD to LTD during LWOP-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.

LTD, and Conditional LWOP

- Employees who are on LTD under VSDP (see Policy 4.57, Virginia Sickness and Disability Program) or who are on Conditional Leave Without Pay (see Policy 4.45, Leave Without Pay-Conditional/Unconditional) generally are not eligible for placement or recall rights under the Layoff Policy, or for severance benefits under the Severance Policy.
- 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

- 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.
- Agencies must contact the DHRM Office of Workers' Compensation at least two weeks prior to affecting an employee on Workers' Compensation with Layoff in order to insure that workers' compensation benefits and layoff are coordinated accurately.