

REPRESENTED EMPLOYEE

Frequently Asked Questions (FAQs)

The following layoff questions and answers are *based on the SEIU contract* provisions. However, since many of the state's other collective bargaining agreements contain layoff language similar to the SEIU provisions, the answers furnished in this article generally should provide a good starting point for applying those provisions as well.

However, *answers to limited duration employee FAQs* regarding layoff rights stated below may be inapplicable to non-SEIU contracts because of specific language in the SEIU agreement regarding limited duration employees.

The answers given below are general in nature. Please review the applicable provisions in your agency's labor contract before relying on the information in this article.

Questions should be directed to agency personnel offices.

1. Who determines the specific positions to be vacated by layoff?

The agency.

2. Will the agency provide the union with seniority information for all affected positions in advance of the layoff notice?

Yes. The agency should provide this information to SEIU headquarters; to each steward in the geographic area in question; and post a copy of the information regarding each affected position on the employee bulletin board in the geographic area. The agency should also notify the union that the seniority of all represented employees in the affected geographic area will be frozen from the date of notice for a period not to exceed three months.

3. When is an employee given notice of a layoff?

An employee will be given notice of the layoff at least 15 calendar days before the effective date of the layoff. At the same time, the employee will be notified of his or her seniority and contractual bumping rights.

4. When an employee is notified of a pending layoff, what does the employee need to do and what are the employee's options?

In general, an employee notified of a pending layoff shall have one (1) opportunity to prioritize the following options and communicate the choice(s) in writing to the agency

within seven (7) calendar days from the date the employee is notified in writing (the seven-day response time is extended to the next business day if the seventh day falls on a weekend or holiday day off):

- (1) The employee may displace (bump) the employee in the agency with the lowest seniority in the same classification in the same geographic area in the agency where the layoff occurs.
- (2) If no positions are accessible under option number 1 (see the following question/answer for clarification), the employee may displace the employee in the agency with the lowest seniority in the same geographic area in the same salary range in any classification in which the employee previously held regular status, including any predecessor classification; or, if this choice is not available to the employee, the employee may move into vacant positions in classifications with the same salary range that the agency intends to fill in the same geographic area.
- (3) The employee may demote to one (1) of up to three (3) classifications in lower salary ranges identified and prioritized by the employee within the agency and geographic area. The employee may demote to the lowest seniority position in the classification. Employees who elect to demote are placed on any geographic area layoff list of their choice within the agency for the classification from which they demoted.
- (4) The employee may elect to be laid off. An employee who elects to be laid off is placed on any geographic area layoff list of his or her choice within the agency for the classification from which the employee was laid off.

To be **qualified** for option numbers 1 – 3 above, an employee must meet the minimum qualifications for the position's classification and must be capable of performing the specific requirements of the position (including any special qualifications) within a reasonable period of time (30 days for SEIU). This 30-day period is for orientation, it is not a training or trial service period (for more on the 30-day orientation period, see *Management Insight*, January 2000, page 2).

5. If layoff Option 1 is accessible to me, can I select Option 2 instead?

No. Option 2 only is available for selection if Option 1 is selected and is not accessible. Non-accessibility of Option 1 means you do not have enough seniority to bump a junior employee or do not meet the special qualifications for positions within your current classification and geographic area.

6. Does an employee bumped by another employee have any layoff rights?

Yes. Any employee displaced by another employee exercising one of the options noted above may also exercise layoff options. Such an employee will receive 15 calendar days notice of the effective date of layoff, and will have seven (7) calendar days (plus extension, if appropriate) from the date of the notice to and also shall have one (1) opportunity to prioritize options.

7. How is seniority calculated?

Seniority is the Layoff Service Date (LSD), which is the date the employee began state service (except as a temporary appointee). The LSD is adjusted for periods of time the employee is not employed with the state or is on a leave of absence in excess of one (1) year. If an employee separates from employment for more than two (2) years, then the employee's LSD starts over and prior service time is not counted. However, if an employee's separation from employment does not exceed two (2) years, then the LSD is adjusted for the period of absence. In addition, the LSD is adjusted for leaves without pay in excess of one (1) year.

Since the Layoff Service Date became a new method of determining seniority with the '05-'07 bargaining agreement, a one-time adjustment was made to the Layoff Service Date. The adjustment pro-rated all part-time and seasonal regular hours worked for eligible service of employee's employed prior to September 1, 2005.

For recall purposes, due to current computer program limitations the Layoff Service Date may be converted to a numeric score. The numeric score is calculated based on one (1) point per each full month of service.

8. Can an employee bump into a vacant position in the same classification and agency?

Yes, providing that the agency intends to fill the vacancy. Such a vacant position is deemed to carry zero (0) seniority. Where more than one vacant position is available, the agency may choose which position the employee must fill.

9. What happens if two employees have the same seniority?

If two or more employees have equal seniority based on the layoff service date, a tie would be broken by the length of continuous service with the agency. If the tie remains, the agency may determine the layoff order.

10. Do limited duration employees have layoff rights?

It depends. A newly hired person on a limited duration appointment has no layoff rights. However, a newly hired person on a limited duration appointment *for workload needs* would be entitled to layoff rights *after seventeen (17) months*. LDs hired for *project needs* are not entitled to layoff rights, but are entitled to be placed on the Agency layoff/recall list after two years service. Special rules also apply to transfers from regular status to limited duration. A regular-status classified employee who accepts a limited duration appointment in the same agency is entitled to layoff rights in the employee's immediate prior held regular-status classification. If a regular-status classified employee accepts a limited duration appointment in a *new* agency, that employee would have layoff rights only in the new agency, and only if the new agency uses the employee's former regular-status class (or successor class to the former class). If the new agency does not utilize the employee's prior class, the employee would have no layoff rights.

- 11. Does an LD with immediate, prior regular status in a classified position in another agency before accepting the LD appointment have layoff rights if the prior regular status class does not exist in the new agency?**

No. A 1995 Letter of Agreement clarified that an LD does not have layoff rights when the immediate prior regular status class (or the successor class to it) before accepting the LD appointment does not exist in the new agency.

- 12. May a limited duration employee bump into a regular status position?**

Yes.

- 13. Do LDs have a separate seniority list than permanent employees?**

No. The contract does not list LDs as having a separate seniority list. They are included on other appropriate seniority lists (e.g., full-time, part-time) specified in the contract. However, LDs need to be identified for manual tracking during layoff and recall processing.

- 14. Can an LD employee on the Agency recall list turn down recall offers to LD and/or permanent positions?**

Yes. However, refusals of offers of recall to permanent or LD positions by an LD employee are subject to the Article 70, Section 10 provisions that require removal from layoff lists upon a second refusal.

- 15. If an employee works for 17 months as a Workload LD, then accepts a new Project, Grant, etc., LD appointment, does the employee continue to have layoff rights based on the previous Workload LD appointment?**

No. The employee gave up layoff rights upon accepting the Project, Grant, etc., LD Appointment. However, if the combined LD appointments exceed twenty-four (24) months, the employee has recall rights.

- 16. If an employee works continuously in LD appointments, alternating between Workload and Project, Grant, etc., LD appointments, does the employee gain layoff rights based on the accumulated in the Workload LD appointments even though the appointments were not 17 months consecutively?**

No. The Workload LD time needs to be consecutive. Upon acceptance of a new Workload appointment after serving in a Project, Grant, etc., LD appointment, the counting of time toward the 17 months for Workload LD layoff rights restarts.

17. Can a “permanent” employee on the Agency recall list turn down recall offers to LD appointments without being removed from the recall list?

Yes. A permanent employee can refuse multiple offers for recall to LD appointments. It is not the intent that a laid off permanent employee would lose recall rights to a permanent position by refusing recalls to LD appointments. However, the permanent employee should let the Agency know whether or not s/he is willing to accept LD appointment offers. If the permanent employee indicated s/he would consider recall offers to LD appointments, then upon the second refusal in the same geographic area, the employee should not be offered any further LD appointment recall offers in that geographic area. Agencies need to track offers of LD appointment and note whether or not the employee should be offered LD appointments.

If a permanent employee is offered and accepts recall to an LD position, the employee is not removed from the layoff/recall list for permanent positions. The permanent employee would retain eligibility for the remainder of the two year recall period.

18. If a “permanent” employee voluntarily demotes in lieu of layoff, and accepts recall as an LD in the former classification, does the employee remain on the Agency recall list for offers to permanent positions in the class from which the employee demoted in lieu of layoff?

Yes. A permanent employee can accept recall to an LD appointment in the class from which he/she demoted in lieu of layoff without giving up recall rights to the former class in a permanent position. The employee remains on the recall list for the class from which he/she demoted in lieu of layoff for permanent positions, even though the employee accepted recall to an LD appointment. The intent is that the permanent employee does not lose rights to recall to a permanent position for the remainder of the two year recall period.

19. Can an initial trial service employee displace a regular status employee?

No.

20. Do temporary employees have layoff rights?

No.

21. If an agency initiates a layoff, what happens to temporary employees working in that agency?

Temporary employees working in the geographic area and classification subject to layoff must be terminated before trial service and regular status employees.

22. If an agency initiates a layoff in one classification, what happens to temporary employees in other classifications?

It depends. Nothing happens to temporary employees in classifications unaffected by the layoff. However, if someone exercising layoff options bumps into the previously unaffected classification of the temporary employees (e.g., demotion to a class that was not included in the original layoff), the temporary employees in the class and geographic area will be released since the layoff now affects their classification.

23. May an employee in one agency bump an employee in another agency?

Generally, no (there is an exception for a few small health-related licensing boards).

24. May a full-time employee bump into a part-time position?

No.

25. May a regular status employee bump into a limited duration position?

Yes, as long as the limited duration position is expected to continue for at least 90 days beyond the time of layoff.

26. Is there cross-bumping between unions or between union and management positions?

Generally, no. A laid-off management service employee with prior classified service may have restoration and layoff rights arising from the employee's prior represented classification.

27. May an employee facing layoff bump a less senior employee in the same classification in another geographic area within the same agency?

No. However, such an employee may bump a less senior employee assigned to a different workstation, provided that the different workstation is in the same geographic area and the employee can meet the other prescribed criteria.

28. If an employee chooses to bump into a position 50 miles further from his or her current residence, than is the employee's current workstation, does he or she receive moving expenses?

No (different rules, however, apply to recall from layoff).

29. Are there any special provisions regarding employees overfilling or underfilling a position?

Yes. Generally, such employees will be considered in the position's classification for purposes of layoff.

30. What about job-share employees?

Generally, job share employees are considered one full-time position, unless one of the employees elects to be treated as a part-time employee for layoff purposes. If one job sharer opts to be considered part-time, then each employee in the job share position is treated as a part-time employee for layoff purposes. Special rules regarding the calculation of seniority also apply.

31. What happens to a laid-off employee's accrued leave and compensatory time?

An employee receives payment for accrued vacation leave and compensatory time upon layoff. Personal leave is not paid off. Sick leave is "banked" for up to two years, and if the employee returns to work within two years of the layoff, the sick leave will be reinstated.

32. What circumstances stop the running of a seniority provision's break-in-service period?

For most of the State's collective bargaining agreements, calculating seniority involves a determination of continuous or "unbroken" service (either with the State or the agency, depending on applicable contract language). A break in service is usually defined as a separation or interruption of employment (either from the agency or the State) for a certain time period (usually between 90 days and two years). *Once an employee leaves State (or agency) service and the applicable break-in-service period begins to run, can it be stopped? The answer is yes.* Generally, any State employment (or agency employment, if required by the contract) *prior* to the running of the applicable labor contract's full break-in-service period will stop the period from running any further. This would typically include a direct temporary appointment, as well as employment in a State classified, unclassified, management service or exempt service position. A subsequent separation from State (or agency) service would result in a new period starting over again (e.g., requiring two full years for a member of the SEIU bargaining unit). A personal service contract with the State generally does not stop a break-in-service period from continuing to run, since it does not constitute employment with the State or agency.

33. Do employees on leave without pay for a compensable job-incurred injury continue to accumulate seniority for layoff purposes?

It depends. Conditions of reinstatement and reemployment of such injured workers are subject to a collective bargaining agreement's seniority provisions and employment restrictions. So, the terms of the applicable labor contract control.

34. Do employees on military leave without pay continue to accumulate seniority for layoff purposes?

Yes. Generally, an employee on military leave is treated as if continuously employed. Thus, an employee on military leave without pay will accrue the same seniority which he or she would have accrued if no military leave had been taken.

35. Do employees on FMLA or OFLA leave without pay continue to accumulate seniority for layoff purposes?

It depends. Accrual of seniority during FMLA and OFLA leave is subject to the employer's policies and the terms of any applicable collective bargaining agreement.

36. What happens to an employee on promotional trial service whose new position is targeted for layoff?

Generally, the employee exercises his or her layoff rights in the current (promotional trial service) classification. The fact that the employee has not yet gained regular status in the new position is not determinative.

37. What rules or policies govern layoff of management service and classified unrepresented employees?

Human Resource Services Division (HRSD) State Policy 50.025.01, Layoff/Removal, provides policy direction for the layoff of management service and classified unrepresented employees and contains model layoff/removal plans. Agencies use HRSD's model policy unless they have adopted an alternative layoff/removal plan. The complete policy may be accessed through HRSD's web page at www.hr.das.state.or.us, by clicking on "HRSD Rule and Policy Manual."

38. What rules or policies govern restoration of management service employees to classified service?

HRSD State Policy 50.030.01, Restoration of Removed Management Service Employees, provides for restoration of management service employees with former classified service under certain circumstances. Such restoration rights are subject to limitations contained in applicable collective bargaining agreements (e.g., Article 46 for SEIU).

39. What rules or policies govern restoration of executive service employees?

HRSD State Policy 50.030.01, Restoration of Removed Management Service Employees, provides for restoration of executive service employees with former classified service under certain circumstances and subject to limitations in applicable labor contracts. HRSD State Policy 40.035.01, Unclassified Service Employment and Termination may provide for restoration to management service under certain circumstances.

40. How are the salary, and salary eligibility date, determined for an SEIU represented employee who chooses demotion in lieu of layoff from a promotional trial service position?

The employee's salary will be reduced to the former step and the pre-promotion salary eligibility date will be restored. In general, Article 29, Section 4 of the SEIU Agreement governs the salary an employee will receive when demoting to a job classification with a lower salary range. Article 29, Section 5, however, includes an exception to these general provisions. Section 5, paragraph 2 covers the specific situation of an employee who is demoted or removed during promotional trial service. In such a case, Section 5 requires that the employee's salary be reduced to the former step, and the previous salary eligibility date restored. Article 70 demotions in lieu of layoff from promotional trial service fall under Section 5.