State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS

- CLASSIFICATION & COMPENSATION BULLETIN -

-DIVISION OF COLLECTIVE BARGAINING BULLETIN-

-DIVISION OF MERIT RECRUITMENT AND SELECTION BULLETIN-

Date: December 12, 1995

Locator No: CC/POL-25
MRS-166
CBB-13 (15.0700)

Subject: Planning for Managing State Employes Possibly Affected by a Federal Government Shutdown

INTRODUCTION

In November of this year the federal shutdown caused us to look at the possibility of a temporary layoff of certain state employes. Everyone was thankful when a continuing resolution was passed and the federal government re-opened for business. To be active, however, we felt we should prepare guidelines if this specific situation should occur in the future. We believe that if such a shutdown would ever occur, it may result in the need to lay off certain state employes whose funding is partially or solely dependent on the federal revenue or operations that are shutdown.

The purpose of this bulletin is to provide information for use by appointing authorities and their staff in planning and implementing temporary layoffs and/or permanent layoffs of represented and nonrepresented state employes as a result of a federal shutdown. This information supplements information previously provided by Secretary Litscher of this department to agency heads in a memorandum dated November 17, 1995, and distributed with the memorandum from Secretary Klauser of the Department of Administration with that same date. (A copy of the previous DER memorandum is attached as **Attachment A.**)

DEFINITION OF TEMPORARY LAYOFF

The time requirements typically associated with the formal layoff processes may extend beyond the anticipated duration of a short-term layoff. Thus, the concept of temporary layoff gives the employer greater flexibility in certain short-term layoff situations, allowing the employer to be responsive to situations that are anticipated to be of a known and limited duration, and minimizing the effect of such layoffs on employes. All represented employe collective bargaining agreements and the rules governing classified nonrepresented employes allow for an exception to the formal layoff procedure for short-term layoffs.

The definition of temporary layoff varies between bargaining units and nonrepresented employe provisions. **Attachment B** includes a summary of the provisions relating to temporary layoff from all the collective bargaining agreements and the administrative rules for nonrepresented employes. **Because the definition of "temporary layoff" is not identical for each group of employes, appointing authorities must consider the classifications of the state employes affected by the federal shutdown and apply the definition from the applicable contract or rules to each employe.** If the expected layoff period is greater than the maximum for a temporary layoff for the affected employe, the formal layoff procedure must be applied. However, an employe who is temporarily laid off and returns to active pay status may be subject to

subsequent temporary layoffs, as long as each temporary layoff does not exceed the applicable time limit for the respective employe group and each layoff is in consecutive days.

TEMPORARY LAYOFF PROCEDURE

Represented employes. There is no specific procedure for the temporary layoff of represented employes. However, the temporary layoff must be within the specified time limits in the applicable collective bargaining agreement. As noted above, if an employe is laid off for one or more consecutive days and returns to active pay status, any future days on which the employe is laid off are considered to be a new instance of a temporary layoff.

Nonrepresented employes. The Administrator, Division of Merit Recruitment and Selection (DMRS), must approve the temporary layoff of nonrepresented classified employes. Typically, this can occur in a relatively short period of time. DMRS has prepared a summary of the procedure to follow to layoff nonrepresented employes on a temporary basis and a sample letter requesting approval of such a layoff. Those items are included as **Attachment C**. As noted above for represented employes, if a nonrepresented employe is laid off temporarily and returns to work, any additional day(s) of layoff are considered to be a new temporary layoff which must be approved by DMRS. All questions relating to the temporary layoff procedure for nonrepresented employes should be directed to Mr. Jesse Garza, Policy Advisor, DMRS, at (608) 267-0408.

SUMMARY CHART OF TEMPORARY LAYOFF PROVISIONS

The specific temporary layoff provisions vary by each represented employe group. Depending on the provisions under which an affected employe is covered, certain benefits may continue to accrue or be provided even though the employe is not in active pay status. **Attachment B** includes a summary of the benefits and how they are treated for each employe group for purposes of temporary layoff. The location of the relevant contract language or administrative rule provision is also included for easier reference. Questions regarding benefits not included on the chart should be directed to Ms. Eileen Kellor, Division of Classification and Compensation, who will direct the questions to the appropriate contact within the department. Ms. Kellor's telephone number is (608) 267-7617.

SPECIAL CONSIDERATION FOR TEMPORARY LAYOFFS THAT COVER LEGAL HOLIDAY PERIODS

While this is highly unlikely, this question has been posed to us in a hypothetical context several times in recent weeks. Therefore, we felt there was a need to provide this information to assist appointing authorities in the event that this does occur.

If a federal shutdown occurs after the current continuing resolution expires after December 15, any resulting temporary layoffs of state employes could include the year-end holiday period. As demonstrated in the summary chart in **Attachment B**, some benefits continue to accrue to an employe during a temporary layoff period. However, legal holidays are not extended to any employe group during a temporary layoff, if those holidays occur during the temporary layoff period. If an employe's last regularly scheduled work day is the day preceding a holiday, or the employe's first regularly scheduled work day is the work day following the holiday, that employe may be eligible for the holiday, depending on the specified effective date and time of the temporary layoff.

Generally, an employe must be in active pay status the last scheduled work day before, or the first scheduled work day after, a legal holiday, to be eligible to be paid for the holiday or to accrue legal holiday credits if it occurs on a weekend. **However, if an employe terminates or is laid off as of the end of the last scheduled work day before a holiday, or is returned to active pay status the day after a holiday, the employe is**

not eligible to be paid for the holiday and is not eligible to earn legal holiday credits if the holiday is on a weekend. If an employe used his/her legal holiday credits for the December 24 and/or December 31 legal holidays and is temporarily laid off during those days, it is possible that the employe may have used more legal holiday credits during the year than were actually earned. If that occurs, the employe will need to repay the used, but unearned, legal holiday credits or charge that time to another leave balance to cover that time.

The following examples should illustrate this requirement. In both cases, the employe is covered by the Wisconsin State Employees Union agreement and works a standard Monday through Friday work schedule.

Example 1: The employe **is placed on temporary layoff at the end of the work day, Friday, December 22, 1995.** The employe returns to active pay status on Friday, January 5. The employe receives no legal holiday credits for the December 24, 1995, or December 31, 1995, legal holidays, and is not paid for the December 25, 1995, or January 1, 1996, holidays.

Example 2: The employe **is placed on temporary layoff as of Monday, December 25, 1995**. The layoff continues until Friday, January 5, 1996. In this case, the employe will receive legal holiday credits for the December 24, 1995, holiday and will be paid for the December 25, 1995, holiday, because the employe remained in active pay status until after the end of the December 25, 1995, holiday. The employe does not receive legal holiday credits for the December 31, 1995, holiday, and is not paid for the January 1, 1996, holiday, because the employe was not in active pay status on Friday, December 29, 1995, or January 2, 1996. Based on the employe's regular work schedule, these days would have been the employe's last scheduled workday before the holidays and the first scheduled work day after the holidays, respectively, had the employe been in active pay status.

For **employes who work nonstandard schedules**, the same concept applies but the last scheduled work day before, or first scheduled work day after a holiday, must be determined based on the employe's regular work schedule.

TREATMENT OF EMPLOYES WITH MIXED FUNDING SOURCES

Some affected employes may be funded entirely with federal funds affected by the shutdown, for others the federal funds may be only a small fraction of the funding, and for others the funding may be more balanced or subject to a state match for authorized federal funds. Thus, appointing authorities should consider these different possibilities when determining whether employes will need to be laid off as a result of the shutdown. The DER encourages each agency to develop and apply a consistent method of determining which employes must be laid off, taking into consideration the guidance provided by the State Budget Office. This decision may be affected by factors that do not lend themselves to any specific direction from DER, e.g., the financial ability of the state to authorize continuing operations of an affected federally-funded program in some cases and perhaps not others, the magnitude of the federally-funded portion (e.g., 0.8% of a position, vs. 75%), directions from the State Budget Office and so on. However, to the extent possible, each agency should be consistent in its decisions as to how to treat employes in similar circumstances.

Generally, an employe with split funding should be laid off in consecutive full work days in the amount necessary to continue the employe at the level at which the position remains funded. For example, an employe who is 10% federally funded and works a standard eight-hour work day, should be laid off for a full eight hours at the end of the pay period in which the temporary layoff must occur. It is recommended that when possible, temporary layoffs should be scheduled for the part of the pay period that most effectively maximizes the state's ability to continue to fund that employe; it is acknowledged that this timing may vary based on the funding source, state cash flow levels, and other unique factors that cannot be effectively enumerated.

If an agency needs specific guidance in this area, please contact Eileen Kellor, at the number noted above, to request assistance.

REFERRAL OF QUESTIONS

Appointing authorities are encouraged to consult their personnel and employment relations staff if there are questions regarding any of the information in this bulletin or attachments. If questions remain or if there are questions on issues not addressed in this bulletin, please direct them to Ms. Eileen Kellor, Division of Classification and Compensation, at 267-7617, or Mr. Glen Blahnik, Division of Collective Bargaining, at 267-9604.

James A. Pankratz, Administrator
Division of Classification and Compensation

Joseph P. Pellitteri, Acting Administrator
Division of Collective Bargaining

Robert J. Lavigna, Administrator
Division of Merit Recruitment and Selection

Attachments: Attachment A (Litscher memo to agency heads)
Attachment B (Summary chart of temporary layoff provisions)
Attachment C (DMRS Nonrepresented employe temporary layoff procedure and sample letter)

Attachment A

State of Wisconsin

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

137 East Wilson Street
P.O. Box 7855
Madison, WI 53707-7855

DEPARTMENT OF EMPLOYMENT RELATIONS

DATE: November 17, 1995

TO: State Agency Heads

FROM: Jon E. Litscher, Secretary
Department of Employment Relations

SUBJECT: Effect on State Employes of Federal Government Shutdown

The Department of Administration requested that I communicate to you some general information and concerns relating to the possible layoff of permanent state employes in response to the federal government shutdown. However, it is imperative that you understand that because of variations in the collective bargaining agreements and administrative rule provisions that cover nonrepresented classified state employes, there are very few general statements that can be made about how state employes will be affected in the event of temporary layoffs.

Specific questions are best directed to your agency's personnel director, who will be able to research the individual situation and provide you with an accurate response. To assist the personnel directors, staff from this department are developing a detailed set of information relating to temporary layoffs specific to each represented employe group and to nonrepresented classified employes. This information will be distributed to agency personnel directors in the form of a Department of Employment Relations (DER) bulletin no later than next Wednesday, November 22. Appropriate staff from this department will also be available to assist personnel directors as questions arise before this information is distributed.

The following items are offered to assist you in planning your agency's response to this shutdown and to identify employment-related areas of concern which we are aware of and that may affect your planning and identification of affected employes. If questions arise in areas not covered in this informational memo, they may be directed to Ms. Eileen Kellor, who will be DER's contact for this information. Ms. Kellor's telephone number is (608) 267-7617.

1. If employes are laid off, must the formal layoff process be applied?

For layoffs of a short-term nature, exemption from the formal layoff provisions may be available. **The temporary layoff of nonrepresented employes requires approval from the Division of Merit Recruitment and Selection.** For more information on the layoff process for nonrepresented employes, please contact Mr. Jesse Garza, Policy Advisor for the Division of Merit Recruitment and Selection, at (608) 267-0408. Each collective bargaining agreement and the administrative rules provide that the formal layoff provisions do not apply to **temporary**

layoffs. The definition of **temporary layoff** varies across groups, and ranges from periods of less than 20 consecutive calendar days to less than 30 consecutive calendar days. The collective bargaining agreement or administrative rules applicable to an individual employe must be consulted to determine whether a temporary layoff situation exists. For layoffs that exceed the specified limit for a temporary layoff, the formal layoff process must be used.

2. Will the temporary layoffs of employes who are "exempt" under the Fair Labor Standards Act (FLSA) change the "exempt" status of those employes?

An "exempt" employe who has deductions taken from his or her pay because of a budget-required furlough will be considered to be "non-exempt" **during the workweek in which the furlough occurs and for which the employe's pay is reduced**. After the furlough, the employe will retain his or her "exempt" status. This is a special provision in the federal regulations which applies specifically to public employes. See 29 C.F.R. § 541.5d(b).

3. What happens to the sick leave, annual leave, and continuous service accrual of employes on temporary layoff?

Most collective bargaining agreements and the provisions covering nonrepresented employes provide for continued accrual of the above benefits when an employe is on temporary layoff status. However, a small number of collective bargaining agreements do not specify that accrual of these benefits will continue during temporary layoff. Therefore, each employe's situation should be evaluated on an individual basis and information provided accordingly.

4. Will an employe lose health insurance coverage during a temporary layoff or be required to pay the full premium amount?

Generally, an employe who is already eligible for and receiving the employer contribution towards the health insurance premium will continue to be covered during the temporary layoff. In the event the temporary layoff exceeds the specified limit and is greater than the three-month period during which the State continues to pay the employer portion of the health insurance premium upon an employe's layoff, provisions exist to allow for the employe to use sick leave credits to pay for the health insurance. At this time, it does not appear likely that any employes would be subject to this latter provision.

5. Will an employe on temporary layoff continue to earn creditable service or earnings under the Wisconsin Retirement System?

An employe on temporary layoff will not have any earnings reported for that period, nor will creditable service accrue during that time. Specific questions on retirement benefits should be directed to your agency's payroll manager.

6. What happens if an affected employe is scheduled to use paid leave time, such as annual leave or sick leave, during the time that he or she would be temporarily laid off?

An employe who is scheduled to use paid leave time during the specified period must be treated the same as other similarly situated employes who are not scheduled to use paid leave time. Thus, the employe's use of scheduled leave must be canceled and the employe notified and placed on temporary layoff.

7. Will furloughed employes be eligible for unemployment compensation benefits?

Usually employes on layoff are eligible for unemployment compensation (UC) benefits. However, each individual's eligibility depends on his/her work experience in the previous "base year." Therefore, questions about UC eligibility should be directed to your agency's personnel or human resources director.

Summary of Provisions Relating to Temporary Layoff

Employe Group	Temporary layoff exception provision located at:	Temporary Layoff Definition	Health Insurance Employer Contribution Continues?	Annual Leave Accrues?	Sick Leave Accrues?	Legal Holiday Paid/Earned?
ASP (Assistant DAs)	10/1/1	Less than **30** consecutive **calendar** days	See note at end of summary.	No.	No.	No.
Nonrepresented classified employes	s.ER-MRS 22.14, Wis. Adm. Code	Not to exceed **20 working** days	See note at end of summary.	Yes. [s. ER 18.02(4)(a)]	Yes [s. ER 18.03(b)]	No.
PERSA (Research, Statistics, and Analysis)	8/1/1.A	**Temporary layoff**: less than **21** consecutive **calendar** days	Yes. (8/1/3).	Yes. (8/1/2)	Yes. (8/1/2)	No.
SEA (Engineering & Related)	8/1/1	Less than **21** consecutive **calendar** days	See note at end of summary.	No.	No.	No.
Trades	8/1	Less than **20** consecutive **calendar** days	Not applicable (no employer contribution for any employes)	No.	No.	No.
UPQHC (Patient Care)	10/1.A	Less than **20** consecutive **calendar** days	Yes. (10/1)	Yes. (10/1)	Yes. (10/1)	No.
WEAC (Education & Related)	8/1/1.A	Less than **21** consecutive **calendar** days	Yes. (8/10/2)	Yes. (8/10/1)	Yes. (8/10/1)	No
WPDA (Patient Treatment)	8/1/1A	**Temporary layoff**: less than **21** consecutive **calendar days**	Yes (8/1/3)	Yes. (8/1/2)	Yes. (8/1/2)	No
WPEC (Fiscal & Staff Services)	8/1/1A	**Temporary layoff**: less than **21** consecutive **calendar** days	Yes. (8/1/3)	Yes. (8/1/2)	Yes. (8/1/2)	No

Employe Group	Temporary layoff exception provision located at:	Temporary Layoff Definition	Health Insurance Employer Contribution Continues?	Annual Leave Accrues?	Sick Leave Accrues?	Legal Holiday Paid/Earned?
WSAA (Attorneys)	9/1.A	Less than **30** consecutive **calendar** days	See note at end of summary.	No.	No.	No.
WSEU (Administrative Services, Blue Collar, Technical, Social Services, Security & Public Safety	8/1/1.A	Less than **20** consecutive **calendar** days (8/1/2 notes total period of each temporary layoff shall be in consecutively scheduled workdays)	Yes. (8/14/3)	Yes. (8/14/2)	Yes. (8/14/2)	No.
WSP (Science)	8/1/1.A	Less than **21** consecutive **calendar** days	Yes. (8/1/3)	Yes. (8/1/2)	Yes. (8/1/2)	No.

General note regarding health insurance: Where there is a specific reference to health insurance upon temporary layoff, it is noted. However, it is our understanding that in accordance with Employe Trust Fund provisions, health insurance premiums are prepaid two months in advance, and the employer's contribution towards the premium continues for the first three months of a leave of absence or layoff. Thus, practically speaking, a layoff of less than two months typically would not result in loss of health insurance coverage for someone who already is receiving the employer contribution. Specific questions regarding continuation of health insurance premium contribution for a particular employe should be directed to the agency's payroll office.

TEMPORARY LAYOFF OF NONREPRESENTED EMPLOYES

Section ER-MRS 22.14, Wis. Admin. Code, provides for the temporary layoff of nonrepresened employes under certain circumstances. Generally, when initiating a temporary layoff, the rules for permanent layoff are waived and the appointing authority makes his or her layoff decisions based on the "needs of the agency."

Temporary layoff plans **require approval** from the Administrator of the Division of Merit Recruitment and Selection (DMRS), in the Department of Employment Relations, before being implemented and **may not exceed 20 working days**. However, consecutive temporary layoffs in 20-day increments may be approved, but only if a plan for permanent layoff has been submitted to the DMRS Administrator.

An approved temporary layoff plan authorizes the requesting agency to implement that plan. If the circumstances under which the initial layoff plan was approved have changed, then the appointing authority must notify DMRS of the change.

Appointing authorities must **provide the following information** in their temporary layoff request:

a. Reason/s for the layoff (e.g., loss of funding);
b. Affected job classifications;
c. Numbers of employes to be laid off (include gender, and race/ethnic status);
c. Specific number of days that the affected employe(s) will be laid off; and
d. Effective date of the temporary layoff.

NOTE: The above requested information may be provided as an attachment to the request if generated by a payroll/personnel system.

Agencies must provide written notification to each employe targeted for a temporary layoff. If there isn't enough time to provide written notification before the effective date, then orally notifying the employe will suffice. Of course, agencies must follow up any verbal notification with a written notice.

Attached is an example of a typical temporary layoff request.

Please submit all nonrepresented layoff requests to the DMRS Policy Advisor, Mr. Jesse Garza. If you have any questions regarding the process for requesting approval for a temporary layoff, please contact Mr. Garza at (608) 267-0408.

EXAMPLE OF A TEMPORARY LAYOFF REQUEST

DATE: December 7, 1995

TO: Jesús G.Q. Garza
DMRS Policy Advisor

FROM: *(Name of Requestor)*
(Title)
(Agency)

SUBJECT: Temporary Layoff

Current federal budget uncertainties make it necessary to implement a temporary layoff of two employes whose positions depend on federal funding. Pursuant to § ER-MRS 22.14, Wis. Admin. Code, I am requesting that DMRS grant an exception to the requirements of Chapter 22, Wis. Admin. Code, and approve this request for a temporary layoff.

The attached list, which was generated by our personnel/payroll system, includes the names; racial/ethnic, and gender status; and job classifications of the two affected employes.

I am requesting the full 20 working days permitted by administrative rule for this temporary layoff. I anticipate that this temporary layoff will begin on December 18, 1995, and end not later than January 17, 1996.

Please contact me, at (XXX) XXX-XXXX, with any questions regarding this request.

This request is APPROVED/DISAPPROVED. _____

Jesús G.Q. Garza Date
DMRS Policy Advisor