State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN –

Date:	April 9, 2009	**Subject:**	Alternatives to Permanent Layoff for Represented Classified Employees and Related Issues
Locator No:	OSER-0237-CLR/LR		

This bulletin updates and replaces DER CLR/BLR-121 (dated February 27, 2003), which should be discarded.

This bulletin provides information and guidance to agencies regarding alternatives to permanent layoff for represented employees. Alternative options included under this bulletin are: (A) temporary layoff; (B) leave without pay; and (C) limited reduction in hours. These alternatives may be used to address a temporary reduction in the work force due to a stoppage or lack of work or funds or owing to material changes in duties or organization. These actions may be appropriate where the need is temporary or where the scope and severity of need is unknown but where some immediate action is required until a permanent plan is implemented.

Most of the provision references contained in this bulletin are from the 2007-2009 collective bargaining agreements. Provision references for ASP, SEA, and PERSA are from the 2005-2007 collective bargaining agreements because those bargaining units have not settled 2007-2009 agreements as of the date this bulletin was reissued. Agencies are cautioned that the applicable collective bargaining agreements govern and should be consulted for more specific details regarding each of the options provided below.

I. AVAILABLE OPTIONS

A. Temporary Layoff

Some collective bargaining agreements permit temporary layoff for some or all employees in an employing unit. The agreements which do include these provisions vary as to the number of days included under the temporary layoff definition from less than 20 to less than 30 consecutive calendar days, as well as to the timing of when the layoff must be taken/scheduled.

B. Leave Without Pay

Since collective bargaining agreements vary on their treatment of leaves of absence without pay, it is important to consult the applicable agreement to ensure this option is available and under what conditions. Most agreements do provide for discretionary general leaves of absence without pay for any reason for a specified period of time.

C. Reduction in Hours

Subject to collective bargaining agreement limitations noted below, management has the right to use "the most appropriate and efficient methods and means and utilize personnel in the most appropriate and efficient manner possible . . . and manage the employees . . .." (Sec. 111.90, Wis. Stats.) It is important to note that any permanent reduction in hours beyond what is authorized in the applicable collective bargaining agreement would constitute a layoff.

The ASP agreement permits a permanent reduction in the FTE hours of the laid off employee. [Art. 10/2/3]

The WSEU and WLEA agreements permit reduction of the weekly scheduled hours of some or all employees by class not to exceed 16 hours per pay period, 32 hours in a four week period, or 64 hours in a twelve month period. If the hours of only some of the employees are reduced, seniority considerations apply. [Art. 8/4/1 & 8/4/2]

The PERSA, WPEC and WPDA agreements permit a temporary reduction in hours to not less than 32 hours per week for no more than 4 weeks at a given time. If only some employees' hours are reduced, seniority governs. [PERSA and WPEC Art. 8/1/1/D; WPDA Art. 8/1/1/B]

Under the WEAC agreement, the hours of full-time employees can be *permanently* reduced by up to 20%. [Art. 8/1/1/D]

Some collective bargaining agreements do not include language addressing reduction in hours (WSAA, WSP, WSPDA, and SEA).

Due to the variation in language dealing with reduction of hours, it is extremely critical to examine the applicable collective bargaining agreement of each affected represented employee.

II. FAIR LABOR STANDARDS ACT (FLSA) IMPLICATIONS

FLSA implications must be considered when one of the above three options is applied to exempt employees. Title 29 C.F.R. 541, Part 541.5d allows for "budget required furloughs." Under that code, when an exempt employee has deductions taken from the employee's pay because of a budget required furlough, the employee will be considered to be non-exempt during the workweek in which the furlough occurs. As a practical matter, this is of no real consequence because with the reduced hours in the workweek, overtime hours are unlikely to be worked. Once the furlough is completed and the employee's pay is no longer reduced, the employee resumes exempt status.

III. BENEFIT IMPLICATIONS

The applicable collective bargaining agreement must be examined to determine whether there is language which specifically addresses benefits in a temporary layoff, leave without pay, or reduction in hours situation.

The following three options may affect employee benefits, excluding seniority:

A. Temporary Layoff

As a general rule, benefits will not be affected.

Many collective bargaining agreements (e.g. WSEU-Art. 8/14/2) provide that employees on temporary layoff "continue to earn vacation, sick leave and length of service credits during [the] temporary layoff. . . ." Agreements that do not specifically include such language are treated in the same manner. In addition, a number of agreements provide that specific benefits accrue and the Employer will continue to pay its share of the health insurance premium during a temporary layoff.

WRS retirement earnings are usually lower in the year in which a temporary layoff occurs, and therefore, retirement benefits may be affected if that year is one of the employee's three highest earnings years.

B. Leave Without Pay

Under this option, some benefits may not accrue and others may be prorated while the employee is on leave without pay. Vacation and sick leave hours do not accrue while on unpaid leave and legal holidays are prorated based on FTE status during the pay period in which the holiday falls.

Depending on the length of the leave without pay, employee contributions for and coverage by various insurance plans may be affected. Health insurance coverage is paid two months in advance and continues for three months while an employee is on leave without pay. Employees on leave without pay beyond this period must make arrangements to pay the entire premium in order to continue coverage.

C. Reduction in Hours

The implications for a temporary layoff also apply to a reduction in hours situation.

IV. GENERAL INFORMATION AND CONTACTS

Collective bargaining agreement interpretation questions related to temporary layoff, leave without pay, and reduction in hours for represented employees should be directed to Wil Mickelson, Bureau of Labor Relations, at (608) 267-5169, e-mail wil.mickelson@wisconsin.gov; or contact Kathy Kopp, Bureau of Labor Relations, at (608) 266-0711, e-mail kathy.kopp@wisconsin.gov.

Questions relating to FLSA coverage for employees, exempt or non-exempt, should be directed to Scott Dubenske at (608) 266-2705, e-mail scott.dubenske@wisconsin.gov.

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