State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN –

Date:	February 16, 2015	**Subject:**	Layoff of Represented Employees
Locator No:	OSER-0387-CLR/LR		

I. INTRODUCTION

This bulletin updates and replaces OSER Bulletin 0236-CLR/LR (dated April 9, 2009) which should be discarded.

The purpose of this bulletin is to provide guidance and assistance to agency human resources staff in developing and implementing layoff plans and procedures for Public Safety employees. Layoff provisions for Public Safety Employees are found in the 2008-2009 Wisconsin Law Enforcement (WLEA) collective bargaining agreement. Relevant contract provisions are 8/2/1 – 8/2/2 for Layoff Procedure, 8/3/1 – 8/3/3 for Notice, and 8/5/1 – 8/6/4 for Employee Options and Restoration.

This bulletin contains information on mandatory restoration rights of laid-off employees, a brief description of OSER web-based resources including the State of Wisconsin Employee Referral Service (WISCERS), as well as information on exemptions from layoff and sample documents. Please remember this bulletin only provides guidelines and recommendations regarding layoff notices and letters. The collective bargaining agreement should be consulted for specific layoff language provisions.

Finally, layoff plans or summaries of layoff plans for Public Safety employees must be completed and forwarded to OSER unless otherwise notified. Plans do not need to be approved by OSER. Forward signed plans or summaries to the Bureau of Labor Relations at OSER after the layoff decision has been made. (See Attachment 5, Sample Layoff Plan.)

II. ESTABLISHING AN AGENCY POLICY AND PROCEDURE FOR LAYOFFS

OSER recommends that an internal policy and procedure to standardize and facilitate the layoff process be established. See Attachment I, Sample Layoff Policy and Procedure, for a complete list of items to be included in the layoff policy.

III. PROCEDURES FOR SUBMITTING A LAYOFF PLAN

If an agency must lay off employees after all other means to reduce costs or redeploy staff while maintaining critical missions have been implemented, the appointing authority will prepare a written layoff plan to determine the layoff group by classification or as specifically stated in the collective bargaining agreement. The layoff plan should explain the alternatives to layoff already implemented and/or why the layoff is necessary to preserve the agency's mission. It is important for employees who will be laid off or reassigned to know that all other solutions have been considered.

The layoff plan should include the following (see Attachment 5, Sample Layoff Plan):

A. The employing unit(s) affected;

B. The layoff group (classification title), number of positions to be eliminated, names of employees, seniority date, gender, racial/ethnic code, disability status, percentage of positions and employment status;

C. Exemptions to layoff and reasons for exemptions;

D. Names of employees to be laid off and date of layoff;

E. Order of release of employees;

F. Alternatives in lieu of termination as a result of layoff;

G. Approval of agency affirmative action officer; and

H. The name, phone number and email address of person to contact regarding questions about the layoff plan.

IV. ESTABLISHING A LAYOFF GROUP

Please refer to the collective bargaining agreement for specifics on determining the layoff group. Generally, a layoff group is determined by classification.

V. EXEMPTIONS TO ESTABLISHED LAYOFF GROUP

The WLEA collective bargaining agreement permits exemptions to the layoff process to retain Public Safety employees in positions requiring special skills and to maintain a reasonable affirmative action program, as well as a management exemption available to the employer without any defined conditions. The special skill and management exemptions provided in the Agreement should be utilized, as needed. The affirmative action consideration is for the purpose of preventing discrimination and may be one of several factors supporting an exemption.

If the affirmative action exemption for the purpose of preventing discrimination is to be used as the sole basis for its exemption decision, the agency should do so (1) only if the layoff projections or actual layoff experience reveals that a disproportionate number of employees in the protected categories will be or have been adversely affected; and (2) only after first consulting with agency legal counsel and/or OSER legal counsel regarding the specific facts of the situation.

Additionally, it is very important that documentation be maintained for each decision to exercise the exemption. This documentation must support the agency's decision and cite the specific exemption provision in the collective bargaining agreement. This is especially important when exercising the management exemption available under the Agreement. The agency must have records or other evidence that the decision was not arbitrary and capricious.

VI. PUBLIC SAFETY TEMPORARY TRANSACTION RATE (TTR)

Temporary Transaction Rate (TTR)

A TTR received under the provisions of Appendix G of the WLEA collective bargaining agreement shall continue if the employee is subsequently covered by the provisions of this Appendix and the employee's base pay rate is over the maximum of the applicable pay range. Effective the first day of the pay period following the expiration date of the TTR, or the date the employee leaves a WLEA-represented position, the employee's base pay rate shall be the TTR rate or the maximum of the applicable pay range, whichever is less. If the date of expiration or termination is the first day of the pay period, that date will be the effective date.

The TTR shall be considered expired if a subsequent transaction will result in a higher pay rate. The new base pay rate will be calculated using the TTR rate or the maximum of the old pay range, whichever is less, as the current rate of pay immediately prior to the transaction.

Employees who have received a layoff letter: All represented and nonrepresented employees who have received a layoff letter and are demoting to a WLEA position are eligible for the TTR under Appendix G.

Nonrepresented employees and employees represented by an Agreement other than WLEA who are designated "at risk" and demote to a WLEA position are not eligible to receive the TTR. Pay for these employees will be set in accordance with Appendix G.

When filling a permanent vacancy and more than one employee is eligible, the vacancy will be filled in the following order:

1. Transfer within the employing unit (7/2/1).
2. Restoration within employing unit by seniority (8/6/1) and bumping to a vacancy (8/5/3/A). Within this category, the most senior employee will fill the vacancy.
3. Transfer between employing units of the department (7/3/A).
4. Employees who seek voluntary demotion in lieu of layoff under 8/5/3/B.
5. Restoration within Employing Unit (8/6/2)
6. Restoration within the department by seniority (8/6/3).
7. Restoration between departments by seniority (8/6/4).
8. Reinstatement within the department (8/8/2) with equal consideration along with the other candidates for the vacancy provided they meet the qualifications.
9. Reinstatement between departments (8/8/2) with equal consideration along with other candidates for the vacancy provided they meet the qualifications.
10. In accordance with other provisions of the Agreement and Wisconsin Statutes.

VI. SERVICES AVAILABLE TO EMPLOYEES AT RISK OF LAYOFF: RESOURCES ON THE OSER WEB PAGE, STATE OF WISCONSIN EMPLOYEE REFERRAL SERVICE (WISCERS) AND STATE AGENCY AFFIRMATIVE ACTION OFFICERS.

Several services are available to employees identified as at risk of being laid off. An "at-risk" employee is any one of the following:

A. An employee whose position has been identified for deletion (i.e., in the agency's budget);
B. An employee who has received written notice that he or she is at risk of being be laid off;
C. An employee who is in the layoff group;
D. An employee who may be displaced as a result of layoff; or
E. An employee who is laid off and who needs to be returned to a position closer to or at the level from which the employee was previously laid off.

Resources on the OSER Web Page

There are resources available on the OSER web page to assist employees, supervisors, and managers with layoff: Workforce Reduction Resources for State Employees, and Workforce Reduction Resources for Management. The web page also includes links to the Employee Assistance Program (EAP). EAP is a free, voluntary, confidential program available to employees and employees' family members with a personal concern such as comprehensive assessment, information, crisis intervention, referral for treatment and follow-up are among the services provided.

State of Wisconsin Employee Referral Service

OSER also offers the State of Wisconsin Employee Referral Service (WISCERS), an online service dedicated to finding new opportunities for at-risk or laid off state employees. Information on how to use WISCERS is available at the above link. WISCERS allows users to search for jobs, create a personal account, and find information on classifications and pay ranges.

Additionally, WISCERS provides users with application materials, information on restoration rights and reinstatement eligibility, as well as links to the Department of Workforce Development. For complete details, see Wisconsin Human Resources Handbook Chapter 236, Designation of Employees as At-Risk and Use of the Employee Referral Service.

State Agency Affirmative Action Officers

Affirmative Action Officers maintain many useful resources such as lists of community-based organizations, professional employment networks, and counseling services for at-risk target group employees. They also help members of at-risk target group employees with interviewing techniques, resume writing, and special educational/training opportunities.

VII GENERAL INFORMATION AND CONTACTS

The attached documents are recommended only as samples and need to be tailored to meet the needs of each situation. Questions regarding contract provisions for Public Safety employees should be directed to the Bureau of Labor Relations: Doug Thayer by phone at (608) 266-2052 or via e-mail at Douglas.Thayer@wisconsin.gov; or Jim Underhill by phone at (608) 266-9564 or via e-mail at Jim.Underhill@wisconsin.gov.

Kathy Kopp

Kathy Kopp, Administrator
Division of Compensation and Labor Relations

Attachments

ATTACHMENT INDEX

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ATTACHMENT 1

Sample Layoff Policy and Procedure

Department of (_____) Human Resources

INTERNAL POLICY AND PROCEDURE

Subject: Layoff Plan and Implementation

Background

Layoff policy and procedure with employee rights and options emanate from Wis. Stat. ss. 230.34(2) & (3). For represented employees, layoff provisions are prescribed in the collective bargaining agreements. For nonrepresented and career executive employees, layoff provisions are found in Wis. Admin Code ER-MRS 22 and 30.105.

Purpose

The purpose of this policy is to outline the layoff procedures to standardize and facilitate the layoff process.

Layoff Procedure

A. Notify Human Resources of impending layoff including position number, classification, reason for layoff, proposed effective date, and employee names.

B. Notify Public Safety union of impending layoff (see Attachment 2) and OSER Director (see Attachment 4).

C. Establish who will determine when to send out the "at-risk" letter notifying the employee of the impending layoff situation (division administrator/institution superintendent).

D. Send an "at-risk" letter to the employee as official notification of an impending layoff situation (see Attachment 3).

E. Identify "at-risk" employees in the Office of State Employment Relations' Employee Referral Service (WISCERS).

F. Enter employee into agency "at risk" referral process for permissive referral and consideration for selected vacancies.

G. Ensure layoff-affected employees are kept informed of any pre or post layoff rights and options.

H. Prepare a layoff plan (see IV. of bulletin and Attachment 5). This should be completed approximately 40 days before proposed layoff effective date to ensure proper review and approvals are completed.

I. Obtain review and approval of layoff plan from Affirmative Action/Civil Rights Compliance Office.

J. Compare layoff plan with seniority list using most recent payroll/personnel report.

K. Create a file with the following documentation: layoff plan, employee "at-risk" notification letter, completed layoff referral information form, OSER notification letter, Public Safety union notification letter (if applicable), official notice of layoff letter to employee, copy of Restoration from Layoff form OSER-DMRS-77.

L. Draft layoff letter (see Attachment 6).

M. Deliver layoff letter to employee within appropriate timeframe.

N. Revise layoff plan if employee invokes bumping or displacement rights.

O. Work with affected employees. Educate employee on Employee Assistance Program and Employee Referral Service (see Wisconsin Human Resources Handbook Chapter 236).

P. Maintain a Mandatory Restoration from Layoff list. Review prior to filling any vacancies in the respective unit.

Q. Ensure affected employee's rights and options in lieu of layoff are implemented in a thorough and timely manner.

R. Make appropriate mandatory and permissive referrals to vacancies.

ATTACHMENT 2

Sample Notification Letter for WLEA – Public Safety Union

Date

Union President
Union
Address
City, State Zip

Dear_____[*Union President*]:

In accordance with [*Article*], [*Section*], [*Paragraph*] of the labor agreement, the Department of [*Name*] hereby notifies the [*Union*] of an impending layoff involving [*FTE*] [*classification*] position(s) in the [*name of division/employing unit location*].

This action will affect [number] member(s) of the [*union*]. [*This/These*] employee(s) will be notified individually according to the provisions of the Agreement.

The scheduled effective date of layoff is [*date*].

Sincerely,

[*Division Administrator/HR Manager*]

cc: [*Appointing Authority*]
[*Employing Unit*]
[*HR Specialist*] (copy to layoff file)

Sample "At-Risk" Letter for Employee-Official Notification

Date:

To: [*Name and Title of "At-Risk" Employee*]

From: [*Division Administrator/ Superintendent*]

Subject: "At-Risk" Notice

[*Statement of the cause of layoff*]

The Governor's 2015-2017 budget

[*Indication of the employee's situation*]

1. Places your position "at- risk" of being eliminated;
2. Would eliminate a position in your classification in this division. If we need to proceed with a layoff action, you may be the affected employee; or
3. Would eliminate a position in your classification in this facility. If we need to proceed with a layoff action, you would be in the layoff group.

Therefore, you are eligible to be placed on the Department of [*name*] Pre-Layoff Referral System for vacancies within the department and have access to the state-wide vacancy notices as part of the Office of State Employment Relations, Division of Merit Recruitment and Selection, Wisconsin Employee Referral Service (WISCERS). This process is designed to assist you in identifying and considering alternative employment options in the event you need to leave your current position.

At this time, these processes are permissive for you as well as the unit filling a vacancy. The intent is to give you and other "at-risk" staff as many options as possible to find the best fit before reaching the point of mandatory, less flexible employment options.

[*Modify this paragraph to reflect your agency's applicable form.*] Enclosed is the Layoff Referral Information form. I encourage you to complete as much of this form as you can, and then contact [*name of employing unit HR*] at [*phone number*] to finish the form for submittal to [*HR designee*]. [*S/He*] is ready to assist you with any questions you may have about your situation, the process, and possible vacancies within our own [*division/institution*].

WISCERS, located at http://ers.state.wi.us/public/indexers.asp is designed to give all State of Wisconsin "at-risk" employees first access to all jobs available around the state. Follow the specific instructions in each announcement (found in the "How to Apply") to notify the appropriate Human Resources Office of your interest in the position.

cc: [*Union*]
[*Employing Unit HR Designee*]
[*Employees' Supervisor/Others in Supervisory Chain*]
[*Division of HR Representative*]
[*Agency HR Specialist*]
Personnel file

ATTACHMENT 4

Sample Notification Letter for OSER Director

Date

Mr. Gregory L. Gracz, Director
Office of State Employment Relations
101 E. Wilson Street
P.O. Box 7855
Madison WI 53707-7855

Dear Director Gracz:

This letter is to notify the Office of State Employment Relations of the impending layoff of [*number*] member(s) of the WLEA Public Safety bargaining unit. This involves [*number*] FTE [*classification]* position(s) located at/in [*division/employing unit, location*].

The scheduled effective date of the layoff is [*date*].

Sincerely,

[*HR Manager*]

Sample Layoff Plan for Represented Employees

I. Reason.

II. Items to be identified.
   A. Employing unit and number
   B. Classification affected. (List class code and use one layoff plan per affected classification.)
   C. Bargaining unit
   D. Number of positions to be vacated. (Positions and FTE)
   E. Effective date of layoff. (Use last work day of pay period whenever possible.)
   F. Employee(s) in layoff group. Include employees on leave of absence and list employees in seniority order starting with the most senior. Under Status, state whether employee is LTE, original probation, permanent or project 05. Complete the following for each affected employee:

Name	Seniority	Ethnicity	Handicap	FTE	Status

   G. Employee(s) exempted. (Attach justification.)
   H. Employee(s) who are scheduled to be laid off.
   I. Employee(s) separated from employment in lieu of a less senior employee.
   J. Employee(s) who will be sent a layoff notice.

III. Copy of Proposed Layoff Letter (Attach)

Appointing Authority	Date
Affirmative Action Officer/Designee	Date
HR Specialist	Date
ER Specialist	Date
HR Director (Final Approval)	Date

cc: Bureau of Labor Relations, Office of State Employment Relations

Checklist for WLEA Public Safety Employee Layoff Letter

The following is a checklist of things that may need to be referenced in the layoff letter for WLEA Public Safety bargaining unit employees:

- Effective Date of Layoff- Ensure proper notice is given per union contract.
- Bumping Rights
- Transfer Rights in Lieu of Layoff
- Demotion in Lieu of Layoff
- Permissive Transfer
- Voluntary Demotion
- Reinstatement Eligibility/Rights
- Restoration Rights
- Recall Rights
- Last Day of Work
- Date Final Paycheck will be Available
- Inclusion or Exclusion of Earned/Used Vacation and Holiday
- Eligibility for Promotional Opportunities
- Information on Fringe Benefits
- Information on the Employee Referral Service