



Best Practices for Managing Layoffs in Classified-Exempt Service

Purpose

This guide is intended to provide a structured approach for agencies considering involuntary reductions in scheduled work hours or layoffs, sometimes referred to as a reduction-in-force, of Division of Personnel (DOP) classified-exempt employees. This guide is intended to serve as a reference and provide procedural information. The general information it contains should not be construed to supersede any law, rule, or policy. In the case of any inconsistencies, the statutory and regulatory provisions shall prevail. Prior to the separation or involuntary reduction in work hours of any employee as a result of layoff, agencies are encouraged to consult the human resources office within their respective agency, legal counsel and/or the DOP Employee Relations section for technical assistance.

Step 1: Determine the Need for Layoffs

Assess the legitimate business reasons for initiating a layoff, such as:

- Financial difficulties or budget cuts
- Restructuring or reorganization
- Redundancy of roles due to automation or restructuring
- Closure or downsizing of departments or facilities

Step 2: Develop Layoff Criteria

Create and document clear, objective, and non-discriminatory selection criteria. Common methods include:

- Position-based (elimination of entire roles or departments)
- Performance-based (consider recent performance evaluations)
- Skill-based (identify essential skills for retention)
- Tenure-based (last in, first out). Length of Service: If all other factors are equal, length of service should be strongly considered

Step 3: Conduct a Workforce Impact Analysis

- Identify the organizational unit that will be affected. The organizational unit may be an entire department, agency, or subunit thereof.
- Identify if the layoff will include any DOP classified employees. If so, please refer to Section 12.4 of the DOP *Administrative Rule* 143CSR1 for procedural requirements specific to layoff within the DOP merit system.

- Conduct a disparate impact analysis to identify any impact on a specific group of persons. A layoff may have a disparate impact on members of a group, which could lead to allegations of violations of protections under Title VII of the Civil Rights Act of 1964.

When identifying positions for layoffs, agencies must be able to demonstrate non-discriminatory business reasons for their selections. Collaborate with human resources (HR) and legal counsel to assess and establish fair, unbiased selection criteria.

Step 4: Prepare Layoff Documentation

Prepare essential documents for each employee impacted:

- Layoff Notice Letter:
 - A statement of the circumstances requiring the layoff
 - The effective date of the layoff. In accordance with the West Virginia Division of Labor's *Wage Payment and Collection* Legislative Rule, W. Va. Code R. §42-5-1 *et seq.*, an employer shall furnish written notice to affected employees at least one (1) full pay period prior to the effective date of a change to the terms and conditions of an employee's employment." The Rule defines a pay period as "...the scheduled number of days for which an employee is paid, which may or may not coincide with the day an employee is paid."
 - COBRA notification (for continuation of health benefits)
 - Grievance rights, if applicable

Step 5: Notify Affected Employees

Plan notification carefully:

- Schedule private, respectful meetings with those affected. Avoid announcing layoffs via email or mass communication first.
- Deliver the message clearly, directly, and with empathy
- Allow time for questions and emotional reactions
- Offer support to laid-off employees. Consider offering:
 - Refer employees to unemployment and outplacement support resources, including [Workforce WV](#) and [Careeronestop.org](#).
 - Provide contact information regarding benefits and resources for assistance, including the [West Virginia Employee Referral Program Booklet](#).
 - Letters of recommendation, if appropriate

Include HR representatives or legal counsel in the meeting, if appropriate. Agencies are encouraged to advise employees of conditions or circumstances that may necessitate a layoff as they arise.

Step 6: Secure and Recover Company Property

Collect or disable:

- State ID cards
- Access to buildings or property
- Computers, phones, and other physical equipment
- IT system access. This may include administrator rights to social media or other third-party sites
- Agency P-cards

Document the return or recovery of all assets.

Step 7: Communicate with Remaining Employees

Open and honest communication is critical for maintaining morale and productivity:

- Hold a team meeting shortly after notifications
- Explain the reasons and process (without violating individuals' privacy)
- Acknowledge the emotional impact
- Address concerns about the agency's operations or future

Step 8: Record Retention

The appointing authority and agency representatives must document the decision-making process that was followed in the layoff determination. This documentation should include the following:

- The business necessity for the layoff (e.g., reorganization, position redesign, lack of work, including indefinite change in hours, or lack of funds)
- The organizational unit affected by the layoff
- Name(s), position, classification, and length of service of the employees selected for layoff, and the rationale (layoff criteria) used for the selection
- Name(s), position, classification, and length of service of remaining employees within the organizational unit, holding the same classification and/or position as the position(s) eliminated
- Management attempts to avoid or minimize layoffs, such as reassignments within the unit

Appendices

- Sample Notification Letters
 - o Reduction-in-Force (Layoff)
 - o Reduction-in-Force (Reduced Work Hours)
- Employee Information and Layoff Resources Document

Disclaimer: This guide is written with the understanding that the West Virginia Division of Personnel (DOP) is not engaged in rendering legal services. If legal advice or assistance is required, the services of legal counsel should be sought.

SAMPLE
Classified-Exempt Reduction-in-Force (Layoff)

[Date]

[Name]
[Address]

Via [Hand Delivery OR Certified Mail No. _____]

Dear [Mr./Ms. Last Name]:

I regret to inform you that, due to [reason: e.g., lack of funds, lack of work, reorganization] in the [agency/department name], it is necessary to implement a reduction-in-force. Regrettably, you must be laid-off from your classified-exempt/at-will position as [classification] at the close of business on [date - the West Virginia Division of Labor's *Wage Payment and Collection* legislative rule, W. Va. Code R. §42-5-1 *et seq.*, provides that "When an employer changes an employee's rate of pay, pay period, place or method of payment, time of payment, or any other term of employment, the employer shall furnish a written notice to the affected employee at least 1 full pay period prior to the effective date of the change." The Rule defines Pay Period as "...the scheduled number of days for which an employee is paid, which may or may not coincide with the day an employee is paid."].

You will be paid for all accrued annual leave as of your last day of work. In accordance with the West Virginia Division of Personnel's *Administrative Rule*, W. Va. CODE R. §143-1-1 *et seq.*, all accumulated sick leave shall be canceled as of the date and time of separation.

In accordance with WV Code §21A-1-1 *et seq.*, you may be eligible for unemployment insurance benefits. To learn about eligibility and the application process, contact WorkForce WV at 1-800-252-JOBS (5627) or by visiting workforcewv.org.

Eligibility for retirement benefits under the Public Employees Retirement System (PERS) is based on specific criteria. Upon separation from employment, laid-off members may be eligible to either leave their retirement contributions on deposit until they meet the requirements for retirement benefits or request a refund of their contributions, including any eligible accumulated interest.

To determine your eligibility or obtain additional information, contact the West Virginia Consolidated Public Retirement Board (CPRB) at (304) 558-3570 or 1-800-654-4406 or visit the CPRB website at wvretirement.com.

According to the provisions of W. VA. CODE §5-16-13(c), you may be eligible to continue insurance coverage for up to three months following your reduction-in-force. Additionally, after any coverage granted by State law expires, the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 USC Sec. 1162, may provide for an additional period of coverage. You should contact the Public Employees Insurance Agency at (304)558-7850 or (888) 680-7342 for specific information concerning eligibility, coverage, and premium payment. Other health coverage options may be available to you, including coverage through the Health Insurance Marketplace. Visit www.HealthCare.gov or call (800) 318-2596 for more information.

[If Grievance Rights Apply] For any appeal rights you may have, please refer to W. VA. CODE §6C-2-1 *et seq.*, the West Virginia Public Employees Grievance Procedure. Details regarding the grievance procedure, as well as grievance forms, are available on the Board's website at www.pegb.wv.gov. Alternatively, you may telephone the Board at (304) 558-3361 or toll-free at (866) 747-6743.

Please let me know if you have any questions.

Sincerely,

[Appropriate Signature Authority]

c: Agency Personnel File
West Virginia Division of Personnel

[OPTIONAL LANGUAGE - If the employer meets with the employee and hand delivers the letter, the employer may request that the employee verify receipt by signing the following acknowledgement typed at the bottom of the letter.]

I have received a copy and am aware of the contents of the foregoing letter.

Employee Signature

Date

[OPTIONAL LANGUAGE - If mailed via U. S. Postal Service, the following certification may be typed at the bottom of the letter.]

The undersigned certifies that the above letter/notification was mailed to **[name]** by first-class and certified mail, return receipt requested, on the _____ day of _____, 20____.

[signature] _____
[typed name and title]

SAMPLE
Classified-Exempt Reduction-in-Force (Reduced Work Hours)

[Date]

[Name]
[Address]

Via [Hand Delivery OR Certified Mail No. _____]

Dear [Mr./Ms. Last Name]:

I regret to inform you that, due to [reason: e.g., lack of funds, lack of work, reorganization] in the [agency/department name], it is necessary to implement a reduction-in-force in the form of reduced work hours. Regrettably, your work schedule as a [classification] will be reduced from [%] full-time equivalency to [%] effective [date - the West Virginia Division of Labor's *Wage Payment and Collection* legislative rule, W. Va. Code R. §42-5-1 *et seq.*, provides that "When an employer changes an employee's rate of pay, pay period, place or method of payment, time of payment, or any other term of employment, the employer shall furnish a written notice to the affected employee at least 1 full pay period prior to the effective date of the change." The Rule defines Pay Period as "...the scheduled number of days for which an employee is paid, which may or may not coincide with the day an employee is paid."] [NOTE: reduction to less than 50% may impact employees' eligibility for certain benefits].

Your work schedule will now be [Shift times and days per week]. As a result, your accrual of sick leave will be reduced from [hours] per month to [hours] per month, your accrual of annual leave will be reduced from [hours] per month to [hours] per month, and your annual salary of \$[salary] will be reduced to \$[salary]. Your accrual of service tenure will also be adjusted accordingly.

In accordance with WV Code §21A-1-1 *et seq.*, you may be eligible for Unemployment Insurance benefits. To learn about eligibility and the application process, contact WorkForce WV at 1-800-252-JOBS (5627) or by visiting workforcewv.org.

[If Grievance Rights Apply] For any appeal rights you may have, please refer to W. Va. CODE §6C-2-1 *et seq.*, the West Virginia Public Employees Grievance Procedure. Details regarding the grievance procedure, as well as grievance forms, are available on the Board's website at www.pegb.wv.gov. Alternatively, you may telephone the Board at (304) 558-3361 or toll-free at (866) 747-6743.

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Employee Signature

Date

[OPTIONAL LANGUAGE - If mailed via U. S. Postal Service, the following certification may be typed at the bottom of the letter.]

The undersigned certifies that the above letter/notification was mailed to **[name]** by first-class and certified mail, return receipt requested, on the _____ day of _____, 20____.

[signature]_____

[typed name and title]

LAYOFF IN CLASSIFIED-EXEMPT/AT-WILL SERVICE

The purpose of this document is to provide classified-exempt employees in agencies covered by the West Virginia Division of Personnel (DOP) receiving notice of layoff, sometimes referred to as a reduction-in-force, with information associated with layoff and resources for assistance. Additional resources may be available beyond those included in this document. For more specific information on the topics referenced below, please contact the appropriate office or your agency's human resources (HR) office.

BENEFIT INFORMATION

Annual Leave

Upon separation from employment, an employee shall be paid for all accrued and unused annual leave, compensatory time, and or holidays as of the effective date of separation. In this situation, the date of separation is defined in the DOP *Administrative Rule* as the last date and time worked by an employee separated from employment due to layoff. The employee may elect to be paid for annual leave in a lump sum on the next regular payday or to remain on the payroll until all annual leave is paid. The method of annual leave payment selected may affect the employee's insurance termination date. See Continuation of Insurance below.

Sick Leave

All accrued and unused sick leave shall be forfeited as of the effective date of separation from employment or the last day physically worked. However, if an employee is re-employed in a permanent position within a DOP-covered agency, canceled sick leave shall be restored in accordance with the provisions of the DOP *Administrative Rule*. At the discretion of the appointing authority, agencies not covered by the DOP may accept the transfer of accrued sick leave.

Continuation of Insurance

After a layoff occurs, the Public Employees Insurance Agency (PEIA) offers valuable benefit options to employees who participate in the health insurance program. Agency contributions for health insurance coverage for laid-off employees will continue for the entire month in which the separation occurs and for an additional three (3) months at no additional cost to the employee as provided in W. VA. CODE § 5-16-13(c). The laid-off employee is responsible for the timely payment of the employee's share of the premium. Failure to submit such payment by the due date may result in the termination of insurance coverage. Employees who elect to receive their annual leave in a lump sum payment will have insurance coverage through the end of the month in which they are removed from the payroll, plus an additional three (3) months. Employees who elect to remain on the agency payroll until all accumulated annual

leave is paid will have insurance coverage through the end of the month in which their annual leave payments end, and they are removed from the payroll, plus an additional three (3) months. Thus, employees may wish to remain on the payroll until all annual leave is exhausted in order to extend their eligibility for agency contributions to the cost of their insurance coverage.

After the mandatory three-month period, all health insurance will be canceled for employees unless they elect to continue their insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 USC 1161.

Under the provisions of COBRA, eligible employees and their dependents have an opportunity to continue their health insurance coverage for up to an additional 18 months beyond the mandatory three-month extension period. Employees who wish to continue their coverage must apply within 60 days of the end of the coverage. Disabled COBRA beneficiaries may extend their insurance coverage for 29 months beyond the mandatory three-month extension period. In either case, the insured is responsible for paying the entire premium for insurance coverage under the COBRA provisions. Enrollment for COBRA coverage is coordinated through a third-party administrator. The premium payment should be submitted monthly and payable to the program administrator. You may wish to contact your payroll office or PEIA at (304) 558-7850 or 1-888-680-7342 for specific eligibility, coverage, and premium information. Other health coverage options may be available, including coverage through the Health Insurance Marketplace. Visit www.healthcare.gov or call 1-800-318-2596 for more information.

Retirement Options

Upon separation from employment, laid-off members of the West Virginia Consolidated Public Retirement Board (CPRB) may be eligible to either leave their retirement contributions on deposit until they meet the requirements for retirement benefits or request a refund of their contributions, including any eligible accumulated interest.

Eligibility for retirement benefits under the Public Employees Retirement System (PERS) is based on specific criteria. To determine your eligibility, please visit the CPRB website at wvretirement.com.

Questions or information requests should be directed to the CPRB at (304) 558-3570 or 1-800-654-4406.

Unemployment Compensation

Unemployment Insurance (UI) benefits provide eligible individuals with financial assistance who have lost their job or experienced a significant reduction in full-time work hours. Individuals can apply for benefits the day after their employment ends or when their work hours are significantly reduced. To learn about eligibility and the application process, visit workforcewv.org or call 1-800-252-JOBS (5627).

WHERE TO GET ASSISTANCE

Employee Referral Program

The Employee Referral Program (ERP) is provided to State employees as a service of the West Virginia Department of Human Services in conjunction with the DOP. The ERP provides employees and their families with opportunities to obtain assistance for a variety of personal problems, including layoffs, that may affect their quality of life. Referrals are made confidentially for treatment with independent, off-site professionals. Issues may include family/child difficulties, grief and loss, stress management, financial issues, mental and emotional wellness, addiction and recovery, and other interpersonal conflicts that affect both personal and work lives.

For general information about the ERP, please contact the DOP at (304) 414-1853 or visit the DOP website at www.personnel.wv.gov. Individuals may also call or text the Help Line at 1-844-HELP4WV (1-844-435-7498). Chat with a HELP4WV representative online chat at www.HELP4WV.com.

Your Agency

You may wish to request an appointment with your HR office, alone or as a group, to seek assistance, as opportunities may be available or provided by your agency. HR can also provide you with access to your personnel records to assist with the preparation of a resume or completing applications. You can also obtain information from HR regarding any agency policy regarding work time to look for work, prepare applications, attend interviews, contact CPRB, PEIA, WFWV, etc.

JOB SEARCH ASSISTANCE

Applying to State Government Vacant Positions

Former classified-exempt employees may apply to competitive registers for positions in the DOP merit system posted on the DOP website or for classified-exempt positions posted on the DOP website or directly with the hiring agency. Former permanent DOP-classified employees may apply for any position for which they qualify within State Government.

The DOP's Staffing and Recruitment section may assist affected employees in cooperation with WFWV and other State agencies. Staffing and Recruitment may provide applicants with guidance to determine areas of occupational interest as well as information on reviewing vacancy announcements.

Job Search Help from Workforce West Virginia

WorkForce West Virginia will make every effort possible in the transition from layoff to other gainful employment to assist displaced employees in obtaining available State jobs. In addition, they will provide employment assistance designed to help affected employees gain private employment while also offering a wide range of other services such as vocational counseling, testing, and referral to appropriate

support services. WorkForce West Virginia will also be able to provide you with information regarding additional training that may assist you in obtaining your desired vocation. Colleges, vocational schools, and other training providers will also have placement assistance available.

RESOURCE CONTACTS

West Virginia Division of Personnel

Capitol Complex, Building 3, Suite 500
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
304-558-3950
Website: www.personnel.wv.gov

Public Employees Insurance Agency

601 57th St., SE, Suite 2
Charleston, West Virginia 25304-2345
304-558-7850 or 1-888-680-7342
Website: www.peia.wv.gov

Consolidated Public Retirement Board

4101 MacCorkle Avenue SE
Charleston, West Virginia 25304
304-558-3570 or 1-800-654-4406
Website: www.wvretirement.com

WorkForce West Virginia, Employment Services

To Locate the Office in Your Area 1-800-252-5627
Website: www.workforcewv.org