

Effective Date: July 1, 2015

Last Update: June 2, 2015

Last Reviewed:

Next Review: July 1, 2016

Policy Summary

The purpose of this policy is to provide an operational framework to be used by UW-Whitewater in the development of layoff procedures for university staff.

Policy Considerations

This policy applies to all university staff at the University of Wisconsin - Whitewater. It should be read by university staff employees, all unit heads and administrators, direct supervisors, directors, deans, and vice chancellors. All units of the university which employ university staff are affected by this policy.

The Office of Human Resources & Diversity (HR&D) will be consulted as early as possible to assist divisions in reviewing potential alternatives to layoff. HR&D will ensure that all actions and decisions are conducted in an equitable and consistent manner. Additionally, by providing early notice to HR&D, steps can be taken to ensure that disruption to the organization and to the employee may be minimized or avoided.

Definitions

“Layoff” means separation from employment for reasons of budget or due to the discontinuance, curtailment, modification, or redirection of a program.

“Layoff group” means a combined group of employees in related positions from which the layoff will be made. The layoff group will generally include all employees employed in a particular operational area that are similarly, although not necessarily identically, situated by title, pay range, and/or function.

“Length of Service of Employee” means adjusted continuous permanent service in any classification without a break of more than five years during that time at a UW System or State of Wisconsin employing agency.

“Operational area” means an area of focus or function in a college, division, department, or office, as identified in the employee’s appointment letter, and need not encompass the whole unit.

“Official title” The title assigned to a position that describes a single position or a group of positions that possesses substantially similar (though not identical) duties and responsibilities.

“Probationary period” means the initial period of employment in an appointment during which the employee has no right to appeal discharge as identified in the employee’s appointment letter.

“Temporary employment” means employment in a university staff temporary or project appointment.

Policy

Determining whether position(s) must be designated for layoff begins with an objective assessment of the need for the existing functions within the organization.

A. Reasons for Layoff

It is the goal of the University to provide stable employment. However, in situations where there is a lack of funding, an organizational change, or a shortage of work, a reduction in workforce may be necessary. The decision to layoff university staff employees is difficult and may only be utilized when other options will not meet the organization’s needs.

The layoff process may not be utilized to address inadequate performance, poor attendance or misconduct. Such issues must be addressed through a performance review or the disciplinary process. Layoffs may not be made in a discriminatory manner in violation of the Wisconsin or Federal Family Medical Leave Act (WFMLA or FMLA) or as defined under Title VII, the Americans with Disabilities Act (ADA), Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA).

University staff employees may be laid off in accordance with this policy for the following reasons:

- **Lack of funds:** If the university administration determines that a reduction in the workforce is necessary due to a lack of funds, the employing unit dean, director, or division head shall determine the title in which layoffs will occur and the number of employees to be laid off within each title. For this instance, the operational area for the layoff plan is defined as the division from which the cuts are to take place. If cuts are expected to span more than one division, it is recommended the operational area be identified as the entire UW-Whitewater campus.
- **Organizational Change and Shortage of Work:** The university administration may determine that a reduction in the work force is necessary as a result of a reorganization to

more effectively operate the university for financial reasons, or for lack of work that is expected to be permanent. For these instances, the operational area for the layoff plan is defined as the department, college, or division.

B. Layoff Selection and Plan

Prior to providing layoff notice to any employees, the employing unit, in consultation with HR&D, the dean, director, or division head, shall develop a plan under which a layoff will occur. The layoff plan shall be discussed with the Chancellor, or Chancellor's designee and the University Staff Council.

The plan will document:

1. the justification for the layoff,
2. the operational area(s) affected,
3. the employing unit(s) affected,
4. the identification of eliminated functions,
5. the position(s) to be eliminated,
6. the order in which the employee(s) will be laid off if more than one,
7. the date of effective layoff if known,
8. the date the employee(s) will be provided written notice of layoff, and
9. the name of the HR&D contact managing the layoff process.

The layoff plan will be shared with the University Staff Council except for names of employees. Names will be divulged after the individuals are officially notified.

Employees subject to layoff will be determined and evaluated by HR&D using all of the following criteria:

- Needs of UW-Whitewater to deliver services;
- Relative skills, knowledge, or expertise of employees; and
- Length of service of employees,
- Other appropriate criteria.

Determining whether position(s) must be designated for layoff begins with an objective assessment of the needs of UW-Whitewater to deliver services, and the existing functions necessary to complete the tasks identified in the operational area to deliver those services. Using this evaluation, it will then be determined which official title(s) will be eliminated.

Determining the individuals identified for layoff by official title within an operational area will be based on the knowledge, skills, and expertise needed to perform the necessary remaining job functions. If more than one employee holds the official title(s) identified for layoff in the operational area, then the layoff will be determined based on the length of service of the employees. The employee having the least length of service will be laid off.

In the case where a more senior employee clearly demonstrates the inability to perform or the unwillingness to learn the necessary job functions, the least senior employee may be given consideration for an exception to the layoff based on length of service. The exception would be subject to grievance and superior work performance. Requests for exemptions must be made with a written formal request to HR&D that details the justification for the exemption to the layoff order. Without an approved exemption, the employee with least length of service will be laid off. When two or more employees have equal years of length of service, the layoff shall be determined by length of service within the operational area only.

Once the layoff group has been determined, any employee from within the affected layoff group may elect to retire or voluntarily be laid off to avoid involuntary layoffs of others in the layoff group.

The employer reserves the right to rescind a layoff notice and/or postpone the layoff date. Any changes to the layoff date due to withdrawal or extension of the notice must be provided in writing to the employee by HR&D. Once the employee has been officially notified of any intended layoff date, the employer may not make the layoff date any earlier.

Employees on approved leaves of absences may be included in the layoff group and may be laid off while on leave.

Full-time and part-time positions may constitute different groups for purposes of layoff. If practicable, employees to be laid off within an operational area may be given the option to decrease their budgeted FTE to meet programmatic, budget, or departmental needs to prevent full layoff.

An involuntary reduction of an appointment in excess of .25 FTE is considered a layoff for the purposes of this policy.

Upon an employer's layoff notification to an employee, the employee may appeal the layoff decision through the appropriate grievance procedure (see University Staff Personnel Rules: Grievance Procedures).

C. Temporary and Probationary Employment

Whenever practicable, temporary or project, fixed-term employees in the same or similar titles identified for layoff in the operational area shall be terminated before invoking the layoff procedures. Consideration may be given to objective, job-related standards, which may include differences in knowledge, skills, and abilities. Employees funded by grants are

governed by the guidelines of the grant, and may not be subject to this policy.

Employees on an original probationary period shall be dismissed prior to laying off non-probationary employees, providing that those remaining employees have the necessary skills, knowledge, and ability to perform and willingness to learn the work.

D. Notice

A full or part-time permanent university staff employee who is designated for layoff must be provided official written notice as soon as practicable, or no less than 30 days prior to the effective date of the layoff. An employee who receives notice of layoff has the right to meet with the employer upon request to discuss the layoff plan and decision to eliminate the position(s).

Where it is reasonably certain a layoff may occur, notice should be provided to the employee no less than 60 days, or as soon as practicable, in order to provide the employee with the best opportunity to seek alternative employment. Official written notice with the effective date of layoff listed will be sent as soon as the date is identified.

To ensure that such advance notice can be provided to all affected parties, HR&D should receive the layoff plan with sufficient time to review the materials, discuss the proposed layoff with the employing unit or division, and to assist with the drafting of the layoff letter. All official written notices and any written notice of layoff shall come from HR&D.

Exempt employees, once notified in writing that a layoff in the employee's title may occur, may not then elect to move to an academic staff title under UPS Operational Policy TR 3: Voluntary Reassignment of Formerly Classified FLSA-Exempt Employees to Academic Staff/Limited Appointment Positions. If the layoff is rescinded, the employee will regain the ability to elect to move to an academic staff title under policy TR3.

Once it has been decided that a layoff may occur, official written notice shall be provided to staff with the follow information included:

1. Written notice shall be given to the employee in person and a copy sent via mail to the person(s) holding the official title(s) subject to layoff that meets the three criteria identified for layoff. This notice shall include:
 - a. the number of identified position(s) subject to layoff,
 - b. the official title(s) of the position(s) subject to layoff,
 - c. the number of employees identified for layoff,
 - d. the justification for layoff,
 - e. the possible alternatives to layoff including reassignment or reduction of

- hours,
- f. the effective date of layoff.
2. Notice shall be sent to the campus community of impending layoffs after the employee(s) affected are officially notified, and shall include the justification for the layoff and the operational area(s) affected.

E. Alternatives to Layoff

An employee may be reassigned to another position regardless of being designated in layoff status. The employee shall receive written notice as to why s/he is being moved. Involuntary employee movements are not meant to circumvent the recruitment process and should only be used to avoid a reduction in force.

The employee may choose not to accept the involuntary reassignment and as a result be laid off. If the employee accepts the involuntary reassignment, the employee's rate of pay and applicable benefits will not decrease if the movement is lateral; however, the rate of pay may be adjusted with a downward movement.

At any time during the notification of layoff period and with mutual agreement of the employee and appointing authority, a lateral movement or demotion to a different position within UW-Whitewater may be made outside of a recruitment process.

With the approval of the employer, a more senior employee who would otherwise not be subject to layoff may volunteer to be laid off in place of another employee with less length of service. An employee who is separated through voluntary layoff will be granted all rights and privileges and other such benefits, as may be granted to other laid off employees.

Every effort will be made to maintain active positions for employees so long as this effort does not adversely affect the operational area's budget or impede the area's ability to fulfill its mission.

F. Employee Benefits Upon Layoff

Employees enrolled in State Group Health Insurance at the time of layoff are eligible to continue coverage under the group plan following the layoff date. The employee's coverage will continue through the month in which premiums are paid. The employer contribution towards the health insurance premium is paid for an additional three (3) months, provided the employee pays his or her share. The employee may pay the premium through payroll deduction, personal check, or converted sick leave credits.

Affected employees being at risk of layoff or who have received a notice of layoff will be provided with layoff assistance to include:

1. Time off without loss of pay to attend job training with HR&D and supervisor approval;
2. Assistance or training in the preparation of a resume;
3. The use of flex time without loss of pay for job search activities, including interviews and examinations; and the use of unpaid leave of absence for interviews, examinations, and other job search activities if the employee has no available leave to use.

Affected employees will have continued use of campus facilities and participation in University activities in accordance with University policies.

UW System employees who terminate due to layoff are eligible for the conversion of their sick leave credits to pay for State Group Health Insurance provided eligibility requirements are met under the Accumulated Sick Leave Conversion Credit (ASLCC) and Supplemental Health Insurance Conversion Credit (SHICC) programs as outlined in [Wis. Stat. §§ 40.05\(4\)\(b\)](#) and [40.95](#).

Health insurance premiums are paid from sick leave credits until the earliest of the following events:

1. The credits are exhausted;
2. The first of the month following the begin date of other employment offering comparable health insurance coverage;
3. Five (5) years have elapsed from the date of layoff (no time restriction if the employee has over 20 years of WRS creditable service at time of layoff); or
4. The employee dies. If the employee dies, the employee's surviving spouse/domestic partner and dependents can continue to use remaining sick leave credits to pay for health insurance.

Coverage under all other benefit plans ends according to the normal termination rules of the plan.

An employee working reduced hours as part of the layoff plan shall have their vacation and sick leave credits prorated accordingly until full-time status is restored.

G. Consideration for Vacant Positions within UW System

An employee who is or will be affected by a layoff may request, in accordance with the hiring authority's requirements, to be considered for other vacancies within the UW System. Such consideration does not guarantee an interview or mandatory job offer. Every effort will be made to maintain active positions for employees so long as this effort does not adversely affect the operational area's budget or impede the area's ability to fulfill its mission.

H. Three Year Restriction on Rehiring for Duties of Laid Off Employee

For three years from the anniversary of the layoff, no person may be employed in a position with an expectation of continued employment, in that operational area to perform duties reasonably comparable to the duties of the laid off employee, without first making an offer of return to the laid off employee, either as a temporary employee or permanent if possible. An employee's failure to accept such an offer of return shall terminate the employee's rights under this section.

The laid off employee shall retain grievance rights during this three year period should the laid off employee determine there is evidence of unlawful recruitment practices.

I. Reemployment after Layoff

A laid off employee may apply for any vacant positions in the same manner as a current employee. For one year after the layoff date, an employee who has been laid off shall have the right to be interviewed for any positions at the University in their title but outside of the operational area from which they were laid off.

In order to facilitate any offers of interview or return, it is the employee's responsibility to keep HR&D informed of any changes to the employee's contact information, including changes to phone number, email, or physical mailing address.

An employee's right to interview or return will be withdrawn:

1. If the employee fails to respond within seven calendar days of a notice regarding either an opportunity to interview, or return without good cause,
2. If the employee refuses to accept a position within the University without good cause,
3. If the employee has been placed into an equivalent position, or accepts a position in the same or higher title series within the university which is the same FTE or within .25 FTE of the position from which the employee was laid off.

All UW-Whitewater university staff employees in layoff status as of July 1, 2015, shall retain the same rights to restoration and associated benefits provided at time of layoff under Wis. Stat. § 230.

University Responsibilities

The Office of Human Resources & Diversity and the University Staff Council will share joint responsibility for evaluating the effectiveness of the policy by conducting yearly reviews of

layoff issues and resolutions. The Office of Human Resource & Diversity may provide procedural assistance for employees if requested.

Equal Employment Opportunity

This policy will be applied and administered in a manner consistent with UW-Whitewater's equal employment opportunity and affirmative action programs which includes, but is not limited to, without regard to race, religion, color, national origin, sexual orientation, marital status, parental status, age, disability, sex or veterans status, except where a characteristic is a bona fide occupational qualification.

Background

Wis. Stat. [§ 36.115\(2\)](#) requires the Board of Regents and the UW-Madison chancellor to develop personnel systems that are separate and distinct from the personnel system under Wis. Stat. Chapter 230. Effective July 1, 2015, the layoff procedures contained in Chapter [ER-MRS 22](#) of the Wisconsin Administrative Code and the procedures established by the Office of State Employment Relations are no longer applicable to current UW System classified employees. Therefore, this operational policy provides the framework for layoff procedures for university staff with an expectation of continued employment at UW System institutions.

Layoff procedures for faculty and academic staff are set forth in Wis. Admin. Code Chapters [UWS 5](#) and [UWS 12](#).

For group health insurance purposes, an employee terminated due to permanent layoff will be treated as if on a leave of absence per [Wis. Stat. §§ 40.02\(40\)](#) and [40.05\(4\)\(bm\)](#).

Wis. Stat. § [230.34, Demotion, suspension, discharge and layoff](#)
Wis. Stat. § [230.44\(1\)\(c\), Demotion, layoff, suspension or discharge](#)
Wis. Admin. Code Chapter [ER-MRS 22, Layoff procedure](#)

This policy document was approved on _____ and defines the UW-Whitewater _____ policy as of July 1, 2015.

Related Documents / References

Wis. Admin. Code Chapter [UWS 5, Layoff and Termination for Reasons of Financial Emergency](#)
Wis. Admin. Code Chapter [UWS 12, Layoff of Academic Staff for Reasons of Budget or Program](#)

UPS Operational Policy TR 3: [Voluntary Reassignment of Formerly Classified FLSA-Exempt Employees to Academic Staff/Limited Appointment Positions](#)

UPS Operational Policy BN 3: Sick Leave

UW-Whitewater University Staff Personnel Rules: Employee Grievance Policy

Contact

Please direct questions about this policy to the Office of Human Resources & Diversity, or the University Staff Council.

ACCEPTED AND APPROVED ON BEHALF OF THE UNIVERSITY

Chancellor Date

Vice Chancellor for Administrative Affairs Date

Director, Human Resources & Diversity Date

Chair, University Staff Council Date