

MAINE STATE LEGISLATURE

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Department of Administration

December 19, 1990

TO: Agency Personnel Officers
Directors of Administrative Services

FROM: Nancy Kenniston, Director, Human Resources
Ken Walo, Director, Employee Relations

SUBJECT: Layoff Questions and Answers

The following list of questions and answers represents all the questions on layoff, bumping and notification of employees that have been asked to date.

Questions and answers have been grouped by subject to assist you in finding the answer you may need.

Updates to this list will be distributed as additional questions are brought to our attention.

SENIORITY CALCULATIONS

General

Q - Does seniority continue to accrue during a leave of absence?

A - Yes, except for unpaid personal leaves of absence.

Q - How is seniority determined for confidential employees?

A - Seniority is length of continuous service in the class in the agency. For bumping to classifications previously held, time in the agency in the target class counts. There is no lower related bumping for confidential employees. See HR memorandum 5-90 for more details.

Q - How is time as a trainee counted for seniority.

A - In most cases, trainee classifications are set at a lower pay grade than the permanent, fully qualified classification. Time counts one half point in these cases. If the trainee is paid at the same pay grade as the fully qualified class, one point. If the employee came "off the street", trainee time is retroactively counted once the employee attains permanent status in the fully qualified job classification.

Q - Some employees started their careers in State Government as CETA participants or in Public Works jobs. Does that time count toward seniority?

A - Yes, as long as the time is with State Government and there was no break in service as the employee transitioned to permanent employment.

Q - How does continuous service (or a break in service) affect seniority points?

A - Only continuous service counts. A break in service is specifically defined by labor contracts.

Q - Does an employee continue to accrue seniority points while on lay-off?

A - Yes, except for permanent seasonal employees who move to year round positions. See "seasonal/year round/part time" section of these questions and answers for more information.

Q - In calculating seniority, how are portions of a month treated?

A - Fractions of a month are prorated based on date of hire/promotion vis a vis date of seniority point calculation.

Q - Even though unclassified employees cannot ordinarily bump classified employees and vice versa, does time in the other service count toward seniority points?

A - For MSEA bargaining unit employees, yes. Time in all job classifications in the Executive branch counts towards seniority point calculation.

Q - Does time in non-status employment, such as acting capacity or project appointments, count towards seniority calculation?

A - No, except that an employee on temporary compensation continues to accrue seniority in their permanent position.

Q - What kinds of employee leave time count toward seniority calculation?

A - All authorized leaves, except unpaid personal leaves of absence granted pursuant to the Unpaid Personal Leave Of Absence article counts toward seniority point calculation.

Q - Does an employee accrue seniority while on promotional probation?

A - Yes.

Employment in Different Classifications/Pay Grades

Q - If a position has been approved by the Bureau of Human Resources for reclassification, but is waiting funding through the budgetary process, do I treat the employee as occupying the higher level classification for seniority and bumping purposes?

A - No. The reclassification is not implemented. Upon implementation, the reclassification is retroactively implemented. However, no bumping or displacement that has already taken place is affected.

Q - How is seniority calculated if an employee has time in both higher and lower classifications?

A - Time in all classifications at pay grades equal to or higher than the pay grade for the class presently held is one point per month. Time in lower classifications are one half point per month.

Q - If a classification has been range changed, how are seniority points calculated?

A - Since it is the same class, count all time as one point.

Q - If a position is reclassified to a different class, how is seniority calculated?

A - Time at lower class, one half point.

Seasonal/Year Round/Part Time

Q - If an employee has held both seasonal and year-round positions, how is their seniority calculated?

A - While in a seasonal track, count seasonal layoff time toward seniority. Once an employee becomes a year-round employee, count time worked in seasonal positions only, unless bumping back into a seasonal position.

Q - How are seniority points for part-time employees calculated?

A - Prorate weekly hours vs. 40 hours. For example, an employee working 32 hours per week will accumulate $\frac{4}{5}$ point per month ($\frac{32}{40} \times 1$ point per month).

DISPLACEMENT AND BUMPING

Q - MSEA agreements allow for return rights to a bargaining unit if the employee has previously held a position in the bargaining unit and promoted out through a normal career ladder. Can an employee chose to return to a different bargaining unit if they have any options in their present unit?

A - Yes. If the employee has previously held a position in that bargaining unit, the employee is given bumping options as if the employee was a member of the unit. This means that "lower related" and "previously held" options given to employees may include positions in several bargaining units.

Q - Do confidential unclassified employees, who serve at the pleasure of an appointing authority, have return rights to a bargaining unit if they have previously held a position in the unit?

A - The MSEA agreements allow for return to a bargaining unit if the employee promoted out of the bargaining unit through a "normal career ladder".

Q - Employees may have more than one option available to them, by virtue of classes previously held and lower related. Should all options available to an employee be given to the employee at the same time, or are the options prioritized?

A - The employee must be given all options available. The employee has freedom to chose among the options. **Note**, however, that contracts do set up tiers of options and an employee must accept an option in one tier, if available, before options in subsequent tiers are made available.

Q - Can an employee bump back into a class previously held as acting capacity?

A - No. Acting capacity, like project employment, is "non-status" and does not count as a class previously held for bumping purposes, nor is the time counted for seniority calculation.

Q - Must full time employees bump part time positions and vice versa?

A - Yes. Bumping options must be exercised regardless of whether positions are part time or full time.

Q - Can an employee bump from one bargaining unit (including confidential) to another?

A - The MSEA agreements allow employees to bump back into bargaining units in which they previously held a position **provided** the employee has no options for employment in their current unit. This includes confidential employees who have held bargaining unit positions.

Q - Can employees bump from the unclassified service to the classified service, and vice versa?

A - No, unless the employee has previously held a position in the other service.

Q - If an employee has bumping rights to a lower related classification or class previously held, but is not qualified to perform the work, can the employee bump into the position?

A - "Not qualified" determinations must be reviewed and approved by the Bureau of Human Resources before bumping options are withheld from an employee. It is very tough to show that an employee is not qualified, unless the position requires as special license or a specialized, recognized discipline.

Q - If an employee is not qualified to perform the duties of a position occupied by the least senior employee, what options should be given the employee?

A - You must offer a position for which the employee is qualified to perform the duties, if one is available. The employee may displace the least senior employee in a position for which the employee is qualified, provided the employee has greater seniority than the employee being displaced or bumped.

Q - If an employee transfers or promotes from one agency to another, is placed on probation, and is affected by layoff, how are the employee's return/bumping rights determined? Return to old position in previous agency? Layoff rights limited to new agency only? Both?

A - If the employee is still on promotional probation, the employee is returned to the former position in the former agency.

Q - Do affirmative action concerns enter into displacement or bumping options?

A - No. However, if an employee is working light duty, reasonable accommodations may have an impact of "qualified to perform the work of the position" determinations. The Bureau of Human Resources must be involved in all decisions to deem an employee not qualified to exercise a bumping option.

Q - Can an employee ever bump up?

A - Yes. Under the MSEA agreements, the employee may bump up to a previously held class at option 3, but not option 4. (Previously held class, same unit division).

Q - If an employee "bumps up", how is time in present class used?

A - Even though the employee is bumping to a class in a higher pay grade, time in the present classification will always receive one point per month.

Q - If an employee displaces a less senior employee in the same classification or bumps into a lower classification, is the employee placed on probation?

A - No.

Q - If two or more employees have the same date of hire and the same seniority points, how are displacement and bumping options determined?

A - Use the date the employees gained permanent status as the initial tie breaker (end of initial probation). If still tied, the agency may rely on performance appraisal distinctions, or on other reasonable and appropriate factors.

NOTIFICATIONS

Q - Since part time employees' time is prorated for seniority point calculations, the timing of the calculations may impact on employees' bumping options. What date should be used for seniority calculations?

A - Points must be up to date when the agency implements the decision by notifying the employee under the initial 10 day rule.

Q - Is the effective date of layoff on or after the 10th workday required for notification under the contract?

A - After.

Q - Does the 5 day notice of bumping by an employee run from the notice of the effective date of layoff?

A - The 5 days runs from the date or receipt of notice by the employee.

STATE OF MAINE

Inter-Departmental Memorandum

February 26, 1991

TO: Agency Heads, Personnel Officers, Human Resource and Labor Relations Staff

FROM: Kenneth A. Walo, Director, Bur. of Employee Relations
Nancy Kenniston, Director, Bur. of Human Resources

SUBJECT: Temporary Layoff Questions and Answers

Following is a list of Questions and Answers as a follow-up to the informational meeting on February 20, 1991. Updates and changes will be distributed to you as may be necessary in the future.

1. Q - What is a workday for the purpose of implementation of the Executive Order?

A - A workday for the purpose of implementation of the Executive Order is a regular eight hour work period, prorated for part-time employees. Employees on compressed workweek schedules shall be allowed to revert to regular eight hour work days for those weeks in which they are temporarily laid off. However, employees who work extended workweeks (scheduled for more than 40°) shall be laid off for a total of 24 hours. This will be accomplished by laying employees off for two full workdays and for a proportionate amount of time on the third day which will provide a total of 24 hours. Examples of various work schedules follow - if you have an employee who does not fit one of these categories please call the Bureau of Employee Relations for guidance.

Example #1: Employee works five eight hour days each week.

This employee will be laid off for three eight hour days.

Example #2: Employee works a part-time schedule i.e. 20 hours per week.

This employee will be laid off for a total of 12 hours which is 20/40 of 24°. This may be accomplished by three layoffs of four hours each or any combination which totals 12°.

Example #3: Employee works a compressed work schedule i.e. four ten hour days each week.

This employee will be laid off for two ten hour days plus four hours of a third day for a total of 24 hours. Alternatively, this employee could be allowed to revert to a regular schedule of five eight hour days for those weeks in which layoff occurs in accordance with #1 above.

Example #4: Employee works an extended workweek i.e. five nine hour days each week.

This employee will be laid off two nine hour days plus six hours of a third day for a total of 24 hours.

2. Q - Are employees who participated or are currently enrolled in a Voluntary Cost Savings Program exempt from the Executive Order?

A - Employees who, as of February 24, 1991, have participated or are enrolled in the Voluntary Cost Savings Program are to be credited with up to three days of voluntary days off without pay, provided such time is taken prior to June 1, 1991. Although employees are expected to complete their initial voluntary program commitment, it is not necessary to complete the total commitment until June 30, 1991.

Example: Employee signs up for ten sporadic days off from July 1, 1990, to June 30, 1991. Employee takes five days off prior to February 1, and has five days remaining for his/her initial commitment. The employee shall be credited with three days and therefore be exempted from the Executive Order, but will, of course, complete the full commitment.

Under the provision of the Voluntary Cost Savings Program Agreement, which was signed by the Unions and the Commissioner of Administration on February 20, 1990, employees have the right to request the appointing authority to reduce or rescind their participation in the VCSP based on personal or financial emergencies only. If such request is approved by the appointing authority, the affected employee continues to be eligible for up to three days exemption and would not be required to complete his/her initial commitment. Also, employees who have been laid off and are involved in displacement of other employees, and whose individual VCSP has been terminated through no fault of their own are eligible for up to three days credit. Agencies are still responsible for meeting their respective budget targets for which the VCSP was originally designed and for finding other sources to achieve the required savings.

3. Q - Can holidays be used as a temporary layoff day?

A - Under the respective collective bargaining agreements, employees are entitled to receive holiday pay regardless of whether they actually work the holiday or have that day off. For implementation of the Executive Order, holidays are not to be considered as temporary layoff days.

4. Q - Does the three day temporary layoffs apply to project employees?

A - The temporary layoffs apply to all employees in the Executive Branch of State government regardless of funding source, except employees covered by the Maine State Troopers Association agreement. Also, for employees in the Institutional Services Unit, please refer to the separate agreement dated 2/15/91.

5. Q - Do the temporary layoff days apply to employees who have been out on child bearing leave or any other authorized unpaid leave of absence?

A - The temporary layoffs apply to all employees except those exempted under the Voluntary Cost Savings Program.

6. Q - Can employees agree to take a reduction in pay now and take the time off later?

A - No. Employees who are temporarily laid off in any given payroll period must have the reduction in pay implemented in that same payroll period and must have this time accurately reflected.

7. Q - Will the Voluntary Cost Savings Program days off count toward next year if employees are temporarily laid off again?

A - No.

8. Q - Will the three temporary layoff days without pay count toward earnable compensation for retirement purposes?

A - No.

9. Q - Can managers achieve the cost savings in different ways for confidential employees?

A - No, not at this time. We are currently reviewing this matter and will provide you with any clarifications if we are to do things differently.

10. Q - Can an employee who is temporarily laid off on any given day be recalled by management in cases of emergency?

A - It is the intention that anybody temporarily laid off without pay not be recalled to work. However, the appointing authority would have to make a judgement decision as to whether or not employees would be recalled for emergency situations.

11. Q - Would an employee be exempt from the temporary layoffs if he/she had been otherwise laid off and subsequently recalled?

A - No.

12. Q - Should employees be informed in writing about temporary layoffs?

A - Yes, if possible. For tracking and record keeping purposes, employees should be notified in writing of temporary layoffs. Although this is not necessary for compliance with the contract, employees should be given written reasonable notice of any temporary layoffs affecting them. A sample letter of notification is attached for your use.

Questions regarding implementation of the Executive Order should be referred to either the Bureau of Human Resources or the Bureau of Employee Relations as appropriate.

KAW/bls

NOTICE OF TEMPORARY LAYOFF

TO: _____
Employee Name

ON: _____
Date

In compliance with Executive Order 11 FY 90/91 and the guidelines for the implementation of this Executive Order, the dates of your temporary layoff are scheduled to be:

- | | |
|----------------------------|---|
| 1. _____
Day/Month/Year | _____
Hours if Part-time or
Extended Workweek |
| 2. _____
Day/Month/Year | _____
Hours if Part-time or
Extended Workweek |
| 3. _____
Day/Month/Year | _____
Hours if Part-time or
Extended Workweek |

These layoff dates are firm and will not be altered for any reason except operational necessity.

Appointing Authority Name/Title
or
Designee

Date of Notice



State of Maine

OFFICE OF THE GOVERNOR

AUGUSTA, MAINE 04333

FOR IMMEDIATE RELEASE
February 13, 1991

CONTACT: WILLIS LYFORD
207/289-2531

GOVERNOR PUSHES FURLOUGHS TO SAVE \$8 MILLION

Citing Democrats' unwillingness to agree to spending reductions, Maine Governor John McKernan said today that he will move ahead with his Administration's plans to save \$8.5 million in the State's General Fund for fiscal year 1991 by requiring that state employees take three temporary layoff days by June 1 and by administratively delaying the pay day for the state workforce by one week over the next several months.

An Executive Order implementing the cost savings was signed by the Governor today, and he is sending out notices informing the state workforce of the actions.

The Governor cited the temporary layoff or furlough, an original part of his budget balancing plan since last December, as key to avoiding hundreds of additional layoffs of state workers. The Governor had first called for twelve temporary lay off days as a way to realize personnel cost savings in state government, but later scaled back his plan and added the pay day change as a means to minimize the financial impact on the workforce while still securing the necessary savings.

"Budget discussions have been gridlocked for weeks now, and, because of Legislative inaction, I must move ahead on my own to implement the furlough plans so we can begin to realize the savings vital to achieving a balanced budget. While state workers may be upset with this action, the reality is that not imposing a furlough would have meant hundreds of added layoffs. Moreover, New Hampshire, Massachusetts, New York, and many other states facing the same budget squeeze as Maine have had to resort to this type of action," the Governor said.

All state workers, with the exception of law enforcement officials employed under the State Troopers contract, which does not allow temporary layoffs, will be required to take three days off without pay by June 1. Cost savings equivalent to the furlough will be implemented by other administrative action for the Maine State Troopers in the Department of Public Safety.

The Governor also said that he would be urging the leaders of the Legislative and Judicial branches to follow his lead by implementing cost saving measures similar to the unpaid furlough plan. "We are asking sacrifices of state workers, and I think it is not unreasonable to ask that employees outside of the Executive Department be asked to make a contribution. I hope the leaders of these branches will see the need to follow our example," he said.

State employees who committed to participation in the Administration's voluntary cost saving plan last year, which encouraged days off or part time work to realize personnel costs savings, will be granted up to three days credit towards the furlough requirement, the Governor said. "The generous contribution of the state workers who volunteered as part of our earlier cost savings plans is greatly appreciated, and they will receive full credit for each voluntary day they took," the Governor said.