

LAYOFF POLICY FOR NON-REPRESENTED EMPLOYEES

Policy Number: HR-402

Effective Date: May 6, 2020

Application: Applies to all non-represented, non-WMS, and non-Exempt employees of the **Eastern Washington State Historical Society (EWSHS)**. A separate Layoff Policy will cover WMS employees.

History: This policy updates the previous version dated February 1, 2017. This replaces previous version HR Policy BP#127. The EWSHS Board of Trustees adopted final changes on May 6, 2020.

NOTE: Nothing in the layoff policy and procedures shall be construed to negate the rights of the **EWSHS** to transfer, promote, demote, dismiss or separate any employee of any employment status in any manner permissible under the Civil Service Rules.

Definitions

Agency Director – The director of the **EWSHS** functioning with the authority to set agency direction and implement internal policy.

Comparability of Positions – Comparable positions in the layoff unit for full-time positions are 40 hours per week. Comparability for part-time positions is less than 40 hours per week. Comparability of positions in the layoff unit also means the same shift and the same geographic location.

Director – The state human resources director within the office of financial management functioning with the authority to set state-wide direction through rule making authority.

General Government Transition Pool (GGTP) – The purpose of the transition pool program is to minimize the effects of staff reductions on general government employees while meeting needs of general government employers to fill vacant positions. This program is administered by the Department of Enterprise Services and is available to eligible general government employees as defined in WAC 357-46-095.

Layoff – An EWSHS-initiated action taken in accordance with WAC 357-46-010 that results in: (1) separation from service with EWSHS; (2) employment in a class with a lower salary range maximum; (3) reduction in the work year; or (4) reduction in the number of work hours.

Layoff Unit – This is a clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

Transition Review Period – A six-month evaluation period that allows the employer and employee to determine whether a placement into a position as a layoff option or appointment to a position from a layoff list or the GGTP is a good match. This not required in all cases; refer to WAC 357-46-110 & 115.

Policy Statement

The **EWSHS** is committed to attracting and retaining a workforce that contributes to the organization's mission, vision, values and goals, with the primary focus placed on excellence in performance. While commitment to the organization is valued, the successful performance of its employees is what ensures the organization's success. Layoff is not viewed as a disciplinary action

within the **EWSHS** and the agency will only implement a layoff for reasons permitted by the Washington Administrative Code (WAC). Reasons include, but are not limited to:

1. Lack of funds.
2. Lack of work.
3. Organizational change.

Examples of layoff actions due to lack of work may include, but are not limited to:

1. Availability of fewer positions than there are employees entitled to such positions.
2. Employee's ineligibility to continue in a position following its reallocation to a class with a higher salary range maximum.
3. Employee's ineligibility to continue, or choice not to continue, in a position following its reallocation to a class with a lower salary range maximum.
4. Elimination of a position due to the work of the position being competitively contracted.
5. Termination of a project or special employment.

Alternatives prior to implementing a layoff

In order to diminish the impacts of layoff, whenever practical and when actions do not disrupt business operations, the **EWSHS** will consider the viability of alternative actions before initiating a layoff. These actions include, but are not limited to:

- Voluntary employee transfer.
- Voluntary reduced schedules.
- Voluntary leave without pay.
- Vacancy management.

Identifying different sections within the agency as individual layoff units

To keep from unduly restricting its employees during a layoff, the **EWSHS** will be considered one single layoff unit, with the exception of projects or special employment programs. Each project will be a separate and exclusive layoff unit. Additionally, special employment programs will be separate and exclusive layoff units.

Identifying certain positions within the agency that will NOT be impacted by layoff

Prior to implementing a layoff action, the agency director may exclude certain positions from the layoff based on legitimate business requirements. Such business requirements may include circumstances or characteristics that render a position or group of positions vital to business continuity such as meeting critical deadlines, research progress or the implementation of legislation.

Determining which positions will be abolished or vacated in the event a layoff becomes necessary

The agency director will make all final decisions regarding which positions are to be abolished or vacated. These decisions will be made without prejudice according to the established procedures that are consistent with WAC 357-46. Once the decisions have been made, the Employee Retention Rating (ERR) will determine the order in which layoffs occur.

Calculating Employment Retention Ratings (ERR)

For the **EWSHS** an employee's ERR is determined using seniority in years, months, and days as calculated in WAC 357-46-055.

Veterans Preference

Eligible veterans will receive preference by having seniority increased to include the eligible veteran's total active military service, not to exceed five years, to their unbroken service date. For more information on eligibility refer to WAC 357-46-060.

Breaking a tie when more than one employee has the same ERR

Ties in seniority will be broken by first measuring the employee's last continuous time within their current classification. If a tie still exists, the agency will measure the employee's last continuous time in the current agency. If a tie still exists, the agency will draw lots.

Notifying employees of a layoff

Per WAC 357-46-025, probationary employees being separated due to layoff must receive at least one calendar day's notice. See WAC [357-46-185](#).

Permanent employees being laid off must receive at least fifteen calendar day's notice, unless the employer and employee agree to waive the fifteen-day notice period.

The layoff notice shall be in writing and include the following:

1. The reason or basis for the layoff.
2. The employee's layoff options as outlined in WAC 357-46-035, including any requirement for the employee to serve a transition review period.
3. The specific layoff list(s) that the employee is entitled to request placement on according to WAC 357-46-070 and 357-46-080 and information on how to request placement on the statewide layoff list.
4. The date by when the employee must select a layoff option.
5. The employee's right to appeal the layoff.

Identifying layoff options for employees whose positions are subject to layoff

The **EWSHS** will determine the layoff options as outlined in WAC 357-46-035 below:

- 1. What option does a permanent employee have to take a position when the employee is scheduled for layoff?**

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

- a. The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

- b. The position is comparable to the employee's current position as defined by the employer's layoff procedure.
- c. The employee satisfies the competencies and other position requirements.
- d. The position is funded and vacant or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

2. What if the employee has no option under subsection (1)?

If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

- a. The position is at the same or lower salary range maximum as the position from which the employee is being laid off.
- b. The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment.
- c. The position is comparable or less than comparable.
- d. The position is one for which the employee meets the competencies and other position requirements.

If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

3. What happens when a class in which the employee previously held permanent status has been revised or abolished?

- a. If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.
- b. For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option

4. Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?

General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.

Number of days employees have to accept or reject a layoff option and who they notify of their choice

An employee has five (5) business days to respond in writing to the human resource representative. (NOTE: Failure to respond to the human resource staff within five (5) business days will be regarded as a rejection of the option(s).)

Determining comparability in positions when identifying layoff options for employees

In determining position comparability, the **EWSHS** will consider shift times, geographic location, and hours per week.

Determining Competency and Other Position Requirements

Per WAC 357-46-045, competency and other position requirements are determined by:

1. Licensing or certification requirements.
2. Position description.
3. Class specification.
4. Information technology professional structure evaluator's handbook.
5. Skills and competencies listed on the position's most recent recruitment announcement or the last announcement used to fill the position.
6. Bona fide occupational requirement(s) approved by the Washington Human Rights Commission.
7. Additional documented competencies or requirements not reflected in the position description.

Transition review period when accepting a layoff option

An employee may be asked to complete a six-month transition review period by their supervisor or manager. However, an employee who is being appointed to a comparable position with the same job duties as the position the employee held permanent status in prior to the layoff does not need to complete a transition review period. The employer determines the comparability of the position.

Permanent classified employee appeal process

Any permanent Washington General Service employee subject to the statutory jurisdiction of the Personnel Resources Board may appeal directly to the Personnel Resources Board, for a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list. For removal from a layoff list, the employee may appeal to the Personnel Resources Board by filing written exceptions to the director's review determination.

Primary roles and responsibilities with the EWSHS if a layoff is necessary.

Role	Responsibilities
Agency Director	<ul style="list-style-type: none"> ▪ Determine which areas of the EWSHS will be impacted due to a layoff and how they will be impacted.
Department of Enterprise Services (DES) HR Consultant	<ul style="list-style-type: none"> ▪ Ensure that seniority dates are correct for affected employees. ▪ Compute ERRs for employees within affected layoff unit(s).
Agency Director & DES HR Consultant	<ul style="list-style-type: none"> ▪ Identify layoff options for employees in positions selected for layoff or who are affected by layoff.
DES HR Consultant	<ul style="list-style-type: none"> ▪ Provide written notification to affected permanent employees at least fifteen (15) calendar days prior to the layoff action, and at least one (1) calendar day prior for probationary employees being separated due to the layoff. Notification will contain the following: <ul style="list-style-type: none"> ▪ The reason and basis for the layoff. ▪ Layoff options identified for the individual employee including the requirement for the employee to serve a transition review period if applicable. ▪ The specific layoff list(s) that the employee is entitled to request

	<p>placement upon and information on how to request placement on the statewide layoff list.</p> <ul style="list-style-type: none"> ▪ The date by when the employee must select a layoff option, usually within five (5) business days. ▪ A statement of the employee's right to appeal the layoff.
Supervisor/ DES HR Consultant	<ul style="list-style-type: none"> ▪ Hand deliver the layoff notification as closely as possible to the beginning of a scheduled business day. (NOTE: The delivery date will constitute the first calendar day of the notice.) ▪ When hand delivery is not possible, mail the layoff notification via certified mail at least sixteen (16) calendar days prior to the layoff. (NOTE: The day after the postmark will constitute the first calendar day of the notice.)
DES HR Consultant	<ul style="list-style-type: none"> ▪ Record the date of the layoff notification delivery.
DES HR Consultant	<ul style="list-style-type: none"> ▪ Add affected employee names to any applicable internal layoff lists effective the same date as the layoff notification delivery. ▪ Upon employee request, coordinate the employee placement on the state layoff list and the general government transition pool program.
Employee	<p>Advise the HR staff by completing and submitting the document which indicates acceptance or rejection of the options provided in the layoff notification within five (5) business days.</p> <p>(NOTE: Failure to respond to the HR staff within the prescribed time limit will be regarded as a rejection of the option(s).)</p>
Agency Director & DES HR Consultant	<ul style="list-style-type: none"> ▪ Proceed forward with the layoff action and provide information and assistance to affected employees.

WAC's that apply to this policy and procedure

357-46-005 (impact of layoff)	357-46-010 (reasons for layoff)
357-46-020 (procedure req)	357-46-025 (how much notice)
357-46-030 (notice content)	357-46-035 (layoff option)
357-46-040 (comparability)	357-46-045 (identifying competencies)
357-46-050 (employee retention rating)	357-46-060 (veterans' preference)
357-46-070 (internal layoff list)	357-46-075 (internal list-higher class)
357-46-080 (state layoff list)	357-46-090 (transition pool purpose)
357-46-095 (transition pool eligibility)	357-46-110 (transition review period)
357-46-040 (comparability)	357-46-045 (identifying competencies)
357-46-115 (transition review period n/a)	357-46-185 (prob notice req)
357-52-010 (appeals)	

NOTE: If any new WAC's are published that affect or are pertinent to the layoff area, they are hereby incorporated and referenced to these policy and procedures.