



# Virginia Department of Corrections

## Human Resources

### Operating Procedure 175.2

#### *Layoffs and Reduction in Workforce*

#### Authority:

Directive 175, *Separation of Employees*

**Effective Date:** August 1, 2023

#### Amended:

#### Supersedes:

Operating Procedure 175.2, September 1, 2020

**Access:**  Restricted  Public  Inmate

#### ACA/PREA Standards:

None

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### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Appointing Authority** - The Organizational Unit Head or the next level of supervision above the Organizational Unit Head if the Organizational Unit Head position is vacant; this is the person who must give final approval for the selection of the individual to fill the vacancy. This authority may be delegated down the chain of command to the immediate supervisor.

**Demotion in Lieu of Layoff** - When an employee is removed from their position and is offered a position in a lower pay band as a result of a reduction in workforce.

**Discontinued Position** - The position has been identified by the DOC to be abolished due to a reduction in workforce.

**Geographic Area** - The area that is no more than 50 miles longer than the employee's current commuting distance, i.e., home to work, but does not exceed a total of 60 miles. If the employee is on leave without pay layoff, the geographic area is the area that is no more than 50 miles longer than the former commuting distance, but no greater than 60 miles.

**Interagency Placement Screening Form** - "Yellow form" provided to employees when they are notified that they will be affected by layoff. This form is to be used by these employees to secure preferential consideration over applicants from outside an agency for positions for which they are minimally qualified in the same or lower pay band. The Interagency Placement Screening Form is valid from the date of issue until the employee's layoff effective date.

**Layoff** - When an employee is removed from a position as a result of reduction in the workforce.

**Leave Without Pay-Layoff** - The status of an employee who is laid off from the agency and is eligible for certain benefits as outlined in this operating procedure.

**Minimally Qualified** - A person who is capable of satisfactorily performing the duties of a particular job within six months of occupying that job, as determined by agency management.

**Organizational Unit** - A DOC unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

**Organizational Unit Head** - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

**Organizational Work Unit** - The separate and distinct area of responsibility within the organizational unit.

**Preferential Hiring Card** - "Blue Card" issued to employees on the day before their leave without pay-layoff status becomes effective. This card is used by employees who are on leave without pay-layoff to obtain preferential employment rights to vacant positions in other Executive Branch agencies that are in the same role as their former positions and for which they are minimally qualified. The Preferential Hiring Card is valid from the date of issue for the duration of an employee's leave without pay-layoff status.

**Pre-Layoff Leave** - Leave prior to the effective date of layoff, which may be granted in a block or intermittently, at the agency's discretion to allow an employee in a position that is to be discontinued to seek alternate employment in other state agencies or with other employers; this paid leave is limited to eighty hours.

**Reassignment** - Assignment of an employee in lieu of being placed on leave without pay-layoff or separated-layoff status.

**Recall** - Action to return an employee who has been demoted in lieu of layoff or to rehire an employee on leave without pay-layoff to their former role at their same level; recall pertains only to the return of employees within their former agency or its parent organization.

**Relocation** - When an employee must change their place of residence due to placement in a position in a different location; an offer of a job placement within the geographic area is not considered a requirement for relocation.



**Return to Level** - Employees placed in lower-level positions in the same pay band as part of a reduction in workforce will have rights to return to their former level (role) for 12 months. This process will mirror the recall process.

**Role** - An array of similar jobs that are attributable to different levels of work or career progression through a career group; a specific occupational field consistent with the labor market; a role is assigned to a specific career group and pay band.

**Seniority** - Total continuous salaried state service computed from the most recent employment or re-employment date, including approved leaves without pay such as family medical leave or military leave; service with a locality may be included if, and only if, the position was assumed by the DOC.

**Separated Layoff** - When an employee is separated from state service because they refused a placement that did not require relocation or a change in salary.



## PURPOSE

This operating procedure establishes protocol for a reduction in the Department of Corrections (DOC) work force when necessitated by funding levels, reorganization, lack of work, job abolishment, or other similar conditions.

## PROCEDURE

- I. Eligibility for Benefits
  - A. All full-time classified employees of the DOC are eligible to receive layoff benefits under this operating procedure.
  - B. Virginia Correctional Enterprise employees are exempt from the provisions of COV, Chapter 29, *Virginia Personnel Act*. Employees of VCE are not eligible for severance benefits.
  - C. The provisions of Department of Human Resources (DHRM) Policy 1.30, *Layoff* do not cover employees occupying part-time restricted positions or part-time classified positions that will be discontinued, unless their immediate prior position was full-time classified, and there was no break in service in the employee's tenure between the full-time classified position and the restricted or part-time position.
  - D. Employees in full-time, restricted status who have no prior non-restricted service are eligible for preferential employment consideration if they have at least three months of restricted service prior to the layoff effective dates and have been rated at the Contributor level or higher for their most recent performance assessment.
- II. Order of Layoff
  - A. The Organizational Unit Head will identify the organizational work units and roles affected by a work force reduction. The Organizational Unit Head will inform Human Resources of all potential layoff situations.
  - B. The Director must approve the abolishment of positions with incumbents. The Human Resources Director will coordinate the layoff process within the DOC.
  - C. After an organizational work unit has been identified from which positions will be discontinued, employees performing substantially the same work must be discontinued in the following sequence:
    1. Hourly (wage), Part-time restricted, Part-time classified, Full-time restricted positions occupied by employees who perform the same work in the identified organizational work unit.
    2. Classified full-time positions will be discontinued only after the work unit has discontinued hourly, part-time, and restricted positions.
- III. Employment Placement Procedures
  - A. Identification of employees in discontinued positions - After the discontinued positions are identified according to the established sequence in this operating procedure, the DOC must identify employees to be removed from the specific roles according to seniority.
  - B. Notice to Employees in a Discontinued Position
    1. The DOC must provide the employee with written notice at least two weeks before the layoff or reassignment.
    2. The final notice must be on the *Notice of Layoff or Placement (L-1)* in accordance with Department of Human Resources (DHRM) Policy 1.30, *Layoff*.
    3. It will be the responsibility of laid-off employees to keep their Human Resource officer advised of their current address and telephone number for 12 months following layoff, and to notify Human Resources when they accept another position of the same role in another state agency.



C. The DOC will attempt to reassign employees occupying discontinued positions as follows:

1. The DOC must first consider any vacant full-time positions within the DOC that it intends to fill at the same or a lower level as the discontinued position and that are in the employee's pay band.
  - a. The employee must be at least minimally qualified for the vacant position.
  - b. If the employee is not minimally qualified for the vacant position, or if the employee declines reassignment due to relocation, the DOC must consider the following.
2. If there are no other vacant positions that the employee is qualified for in the employee's pay band, the DOC will identify positions the employee is qualified for, for placement in successively lower pay band positions.
3. If the employee is not minimally qualified for the vacant positions, or declines reassignment due to relocation, the DOC must consider additional positions in succeeding lower roles.

D. Reassignment to Vacant Position

1. To be reassigned to a vacant position, an employee must be at least minimally qualified for the position.
2. If there is more than one minimally qualified employee for the position, the position will be awarded according to seniority.
3. If there is more than one vacant position, DOC management may determine which vacancy to offer.

E. Obligation of Employees to Accept Reassignment

1. Placement in the same pay band or placement in a lower pay band without a reduction in salary:
  - a. Requiring relocation - If a reassignment to a position in the same pay band requires relocation, the employee may reject the reassignment and be considered for the next placement step.
  - b. Not requiring relocation - An employee who declines reassignment to a position that does not require a salary reduction and does not require relocation, will lose all rights provided in this operating procedure and will be placed on separated layoff status.
2. Reduction in salary - An employee, who declines reassignment to a position in a lower pay band, not requiring relocation but requiring a decrease in salary, will be placed on leave without pay-layoff.

IV. Pre-Layoff Leave

- A. Pre-layoff leave may be granted prior to the effective date of a layoff for a maximum of two weeks, up to 80 hours, by the supervisor in consultation with the Human Resources Office for the following purposes:
1. Job interviews with other State agencies.
  2. Job interviews outside of State government.
  3. Consultation with the Virginia Retirement System (VRS).
  4. Consultation with the Virginia Employment Commission.
- B. The Organizational Unit Head in consultation with the Human Resources Director or designee may grant exceptions to the above.

V. Compensation of Employees Reassigned within the DOC

- A. Compensation - An employee retains the pre-layoff base salary, unless the base salary is above the maximum of the pay band of the position to which the employee is being reassigned.
1. Adjustments are made for differentials that the employee may be receiving.
  2. If above the maximum, the employee's base salary will be reduced to the maximum of the pay band of the new position.
  3. At the discretion of the Director of Human Resources, the base salary may be frozen above the



maximum of the pay band of the new position for up to six months before it is reduced.

- B. Performance increases - Employees who are reassigned will be eligible for performance increases and bonuses in accordance with DHRM Policy 1.40, *Performance Planning and Evaluation*, and Operating Procedure 145.2, *Employee Performance Management*.

VI. Rights of Employees on Leave Without Pay - Layoff or Who Have Been Demoted in Lieu of Layoff

- A. An employee must be placed on leave without pay-layoff when reassignment to a vacant position is not possible or the employee rejects a reassignment offer because it requires a reduction in salary.

- B. Recall rights are in effect for 12 consecutive months following the effective date of placement on leave without pay-layoff or reassignment to a lower pay band, i.e., demoted in lieu of layoff.

1. Employees who are on leave without pay-layoff or who were demoted in lieu of layoff have recall rights for vacant DOC positions in their role at their same level.
2. If more than one employee has recall rights to a position, then the position will be awarded to the most senior, minimally qualified employee.
3. When an employee declines recall that:
  - a. Requires relocation, the employee who is on leave without pay-layoff or who has been demoted in lieu of layoff may decline recall to any position that requires the employee to relocate. The employee will retain recall rights for the remainder of the 12-month recall period.
  - b. Does not require relocation, the employee who is on leave without pay-layoff will be placed on separated layoff status from state service and forfeits all other rights provided in this operating procedure.
  - c. Does not require relocation, the employee who has been demoted in lieu of layoff will forfeit all other rights provided by this operating procedure.
4. The Human Resources Office at Headquarters will maintain all recall lists.

- C. Return to level rights are in effect for 12 consecutive months following the effective date of placement in a lower-level position in the same pay band as part of a reduction in force.

1. Offers for placement into positions under this process will only be made after the positions have been offered to employees whose positions have been abolished, and the employee was laid-off or accepted a demotion in lieu of layoff.
  - a. The most senior employee will be offered the position first.
  - b. Positions that require judicial appointment will only be filled if the judicial appointment is made.
2. There will be no increase in salary because of the return to the higher position.
3. If a position in the geographic area is declined, the employee will not be offered another position.
4. The Human Resources Office at Headquarters will coordinate the process.

VII. Preferential Employment Rights for Employees on Leave Without Pay - Layoff

- A. Employee Responsibilities - To exercise preferential employment rights for positions in other Executive Branch agencies, an employee on leave without pay-layoff must apply for a vacant position and present their Interagency Placement Screening Form ("Yellow Form") or Preferential Hiring Card ("Blue Card") on or before the closing date for applications for the position.

- B. Duration of preferential employment rights - An employee has preferential employment rights for 12 months from the effective date of placement on leave without pay-layoff, or until recalled to the DOC, whichever is sooner.

- C. Positions subject to preferential employment rights - A State employee with preferential employment rights may be chosen for a vacant position provided the employee is deemed at least minimally qualified,





and the agency does not select an employee currently employed within that agency.

## VIII. Transitional Severance Benefits

### A. Employees on leave without pay-layoff are entitled to the following benefits:

1. Life Insurance - The DOC will continue its contribution for group life insurance during leave without pay-layoff.
2. Health Insurance
  - a. The DOC will continue to pay its portion of the employee's health insurance premium during leave without pay-layoff. The employee is responsible for their share of the premium as directed by the DOC.
  - b. An employee may change coverage elections at the start of leave without pay-layoff. Employees are subject to the same health benefits program rules as active employees during leave without pay-layoff.
3. Other insurance coverage - Other insurance coverage that an employee paid through payroll deductions before placement on leave without pay-layoff will be continued in the same manner as is available for continuing such coverage during periods of leave without pay for other reasons.

### B. Accrual of paid leave

1. No accrual of leave. An employee on leave without pay-layoff will not accrue annual or sick leave during leave without pay-layoff.
2. Treatment of accrued annual, sick, compensatory and/or overtime leave.
  - a. Sick leave (Traditional) - Employees on leave without pay-layoff will retain their accrued sick leave. Employees may receive payment for the maximum portion of accrued sick leave only if they resign while on leave without pay-layoff.
  - b. The *Virginia Sickness and Disability Program*; see DHRM Policy 1.30, *Layoff*
  - c. Annual leave - An employee on leave without pay-layoff is allowed to retain accrued annual leave when placed on leave without pay-layoff but will receive payment only up to the maximum allowable if the employee resigns while on leave without pay-layoff. The employee may request payment for their annual leave balance at the time they are placed on leave without pay-layoff.
  - d. Compensatory and overtime leave - An employee placed on leave without pay-layoff will be paid for their accrued compensatory and overtime leave.
  - e. Service credit - For purposes of determining the accrual rate for annual leave and the entitlement to payment of accrued sick leave upon termination from state service, credit will be granted for the time spent on leave without pay layoff.
  - f. Retirement (Virginia Retirement System - VRS)
    - i. Employees on leave without pay-layoff will not receive contributions from the Commonwealth toward their retirement fund with the VRS.
      - (a) An employee may withdraw VRS contributions only upon resignation from state service.
      - (b) If the employee resigns, they forfeit the right to recall.
    - ii. Employees may be eligible for enhanced retirement benefits using credits for health insurance, life insurance, and severance monies. Employees interested in retirement should contact their Human Resource Officer or the VRS for more information.
    - iii. An employee may elect to retire during leave or leave without pay-layoff, consistent with the procedures for service retirement, but forfeits recall rights pursuant to this operating procedure. See also Operating Procedure 175.1, *Employee Separations*.
  - g. Severance pay - Employees will be given severance pay and other benefits in accordance with DHRM Policy 1.57, *Severance Benefits*.





**IX. Compensation of Affected Employees who are Recalled**

- A. Compensation in these instances will be based on DOC Pay Practices referenced in Operating Procedure 102.4, *Compensation*.
- B. An employee recalled from leave without pay-layoff or reassignment to a lower pay band is eligible for performance increases and bonuses in accordance with DHRM Policy 1.40, *Performance Planning and Evaluation*, and Operating Procedure 145.2, *Employee Performance Management*.
- C. Short-term Disability; see DHRM Policy 1.30, *Layoff*

**X. Separation Layoff**

Employees who have been on leave without pay-layoff for 12 months will be placed on separated layoff status.

**XI. DOC Responsibilities are Assigned as Follows:**

- A. Organizational Unit Heads and Human Resources Office are responsible for the consistent application of this operating procedure within the DOC.
- B. The Human Resources Office at Headquarters is responsible for maintaining an up-to-date recall list, and the actual recall of employees as appropriate.
- C. The Human Resources Office at Headquarters is responsible for recalling DOC employees, as appropriate.
- D. Organizational Unit Heads and Human Resources Office are responsible for ensuring the hiring of employees who are eligible for preferential employment.

**REFERENCES**

COV, Chapter 29, *Virginia Personnel Act*

Department of Human Resource Management Policy 1.30, *Layoff*

Department of Human Resource Management Policy 1.40, *Performance Planning and Evaluation*

Department of Human Resource Management Policy 1.57, *Severance Benefits*

Operating Procedure 102.4, *Compensation*

Operating Procedure 145.2, *Employee Performance Management*

Operating Procedure 175.1, *Employee Separations*

**ATTACHMENTS**

None

**FORM CITATIONS**

*Notice of Layoff or Placement (L-1)*

