

DEPARTMENT OF ADMINISTRATION AND FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
March 21, 2005

CIVIL SERVICE BULLETIN 15.1

TO: Agency Heads, Directors of Administrative Services, Agency Human Resource Representatives

SUBJECT: LAYOFF WITHIN THE MAINE MANAGEMENT SERVICE

The purpose of this bulletin is to ensure that employees assigned to the Maine Management Service (MMS) receive appropriate procedural due process when a layoff is implemented that includes MMS employees.

MMS employees in the classified service are subject to the layoff provisions of State of Maine *Civil Service Rules*, Chapter 15, Section 8. These MMS employees are subject to the "for cause" provision of 5 MRSA, § 7051, sub-§ 7.

In the event of a reduction in force, the State of Maine *Civil Service Rules*, Chapter 15, Section 8, sub-section 4, provides that ability and qualifications and the quality of past performance be considered first when determining which MMS employees may be laid off, transferred, or demoted. Length of service is the determining factor only after the appointing authority considers the relative ability and qualifications and demonstrable differences in the quality of past performance among MMS employees.

Given these provisions of the State of Maine *Civil Service Rules*, in the event a MMS employee with "for cause" protection under the Civil Service Law is designated to be laid off, the employee is, according to a recent holding of the U.S. Court of Appeals for the First Circuit, entitled to certain procedural protections of notice and an opportunity to respond.¹ Effective immediately, all notifications of layoff for MMS employees with "for cause" protection under the Civil Service Law must include the following information:

- (1.) **Notice of the proposed layoff action.** Notice must be given at least 15 calendar days before the date of layoff pursuant to *Civil Service Rules*, Chapter 15, Section 8, sub-section 7, A.
- (2.) **The *specific* reason the affected MMS employee was selected for layoff.** It is important to note that the reason must be more specific than a reference to budget reductions. For example, reasons might include reference the employee's qualifications (in terms of education and/or directly related work experience) in relation to employees being retained, a certain job function that is being eliminated, a need for certain critical skill sets, *documented* performance issues, etc.

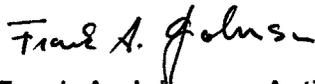
¹ Reference Whalen v. Massachusetts Trial Court, *et. al.*, 395 F. 3d 19 (1st Cir. 2005). See also Cleveland Bd. of Education v. Loudermill, 470 U.S. 532 (1985).

(3.) **An opportunity to meet with the appointing authority (or designee) prior to the effective date of the layoff and to respond to the reasons provided in (2.) above.** The appointing authority (or designee) shall provide a letter advising the employee of the final decision prior to the layoff date.

(4.) **The right to grieve a disputed layoff action** provided in 5 MRSA, § 7081-7084, pursuant to *Civil Service Rules*, Chapter 15, Section 8, sub-section 7, D.

This bulletin does not apply to employees who occupy positions in bargaining units or confidential employees who are not members of the MMS. An appointing authority should refer to *Civil Service Rules*, Chapter 15, when a layoff is contemplated. *Civil Service Rules* may be accessed at the Bureau of Human Resources website highlighted below.

<http://www.maine.gov/bhr/Civil%20Service%20Rules/index.htm>



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