# 18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

389 BUREAU OF HUMAN RESOURCES

Chapter 12 DISCIPLINARY ACTION, DEMOTION, RESIGNATION AND LAYOFF

SUMMARY: This chapter presents the basis and procedure for demotions, suspensions and dismissals in the State Service; procedure for resignation in good standing; and the statewide mechanism for addressing the unavoidable layoff of employees.

1. DISCIPLINARY ACTION

 Any action which reflects discredit upon the service or is a hindrance to the effective performance of state service shall be considered good cause for disciplinary action. Such action may include misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or willful violation of the Civil Service Law or of the rules.

 A. Suspension

 1. Cause for Suspension

 An appointing authority may suspend an employee without pay for disciplinary reasons or other cause.

 2. Notice of Reason

 The reasons therefor shall be furnished the employee and the Director of Human Resources in writing prior to the effective date of the suspension.

 3. Seniority Provision

 No seniority shall be acquired during the period of suspension, unless the employee is exonerated.

 4. Appeal Procedure

 An employee may appeal a suspension action under the provisions of Chapter 13 as annotated.

 B. Dismissal

 1. Cause for Dismissal

 a. Probationary Status. Employees who do not have permanent status may be dismissed at any time at the discretion of the appointing authority except that just cause shall be required for those serving the first 30 calendar days of a probationary period following transfer or promotion.

 b. Permanent Status. No employee who has permanent status shall be dismissed from a position except for just cause.

 c. Non-Status Employees. Project, provisional, emergency and temporary employees may be dismissed at any time and shall not be entitled to a hearing before the Director of Human Resources.

 NOTE: Reference Chapter 2 for regulations governing dismissal of intermittent employees.

 2. Notice of Reason

 The employee and the Director of Human Resources, before such action is taken, shall be furnished with a statement in writing setting forth the reason for the dismissal.

 3. Appeal Procedure

 An employee may appeal a dismissal action under the provisions of Chapter 13 as annotated.

2. DEMOTION

 A. Cause for Demotion

 An appointing authority may demote an employee for inefficient performance of duties, for disciplinary reasons, or for other just causes. Such cause may include:

 1. Performance During Probation

 Any time during the probationary period that an appointing authority determines that the employee's performance does not meet work standards, he/she may demote the employee, except that no employee serving a probationary period following his/her transfer or promotion shall be demoted except for just cause or with his/her consent during the first thirty calendar days of the probationary period.

 2. Layoff Action

 An appointing authority, with the consent of the affected employee, may demote a permanent or probationary employee in lieu of layoff. No employee so demoted shall displace a permanent or probationary employee except in order of seniority as defined by Section 4 of this chapter.

 3. Reinstatement from Military Leave

 Any permanent or probationary employee about to be laid off because of the reinstatement or promotional appointment of an employee returning from military leave, shall be demoted to displace any employee with less seniority in any lower class in which he/she previously served unless he/she elects to be laid off. In either event the name of such employee shall be placed on an appropriate layoff register, and upon written application, will also be placed on an appropriate reemployment register.

 B. Notice of Reason

 The appointing authority shall furnish a permanent employee with a written statement of the reasons for demotion and shall file a copy of the statement with the Director of Human Resources prior to the effective date of action. Notice shall be given 15 calendar days prior to the effective date of this action.

 C. Seniority Provision

 Seniority of an employee in the class to which he is demoted shall be limited to service in the agency and shall consist of the combined total of his prior seniority in the class to which demotion occurs, in all higher classes, and in all other classes which the Director of Human Resources determines to be sufficiently similar to the class to which demotion occurs.

 D. Probationary Provision

 The probationary period of an employee demoted without prejudice during or at the end of his/her probationary period shall include the period of probationary service in the higher class.

 E. Appeal Procedure

 1. An employee may appeal a demotion action under the provisions of Chapter 13 as annotated.

 2. A demotion in lieu of layoff shall not entitle the employee to a hearing in the demotion, but his/her name shall be placed on the layoff register, and upon written request may be placed on the reemployment register for the class from which demoted.

3. RESIGNATION

 A. Advance Notice to Appointing Authority

 An employee may resign from the service by presenting his/her resignation in writing to the appointing authority. To resign in good standing, an employee must give the appointing authority at least 7 calendar days' prior notice.

 B. Notice to Director of Human Resources

 A copy of such resignation shall be supplied by the appointing authority to the Director of Human Resources.

 C. Conditions for Approval

 The Director of Human Resources may make such investigation as deemed warranted for the purpose of verifying the facts as to the reasons for such resignation; and:

 1. No form of resignation which is filed without date or with a future date, and which is not intended to be a bona fide and voluntary resignation to be acted upon at the time of filing, shall be accepted by the Director of Human Resources as a resignation. Each separation under such circumstances shall be deemed a dismissal and the provisions of the act and these rules relating to dismissals shall apply.

 2. Any demand or request of an appointing officer for the filing of any such form or resignation for possible future action at the option of such appointing officer shall be deemed to constitute prima facie evidence of coercion in contravention of the purposes of the Civil Service Law and these rules.

 D. Withdrawal

 Upon approval of the appointing authority, an employee may withdraw his/her resignation at any time not later than ten days after the effective date of the resignation.

4. LAYOFF: CONDITIONS AND PROCEDURE

 A. Conditions

 1. An appointing authority may lay off an employee in the classified service by reason of abolition of position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.

 2. Any interruption of employment of fifteen calendar days or less is not considered a layoff.

 3. The duties formerly performed by laid off employees may be assigned to other permanent civil service employees who, in the opinion of the Director, hold positions in appropriate classifications.

 B. Organizational Units

 1. Organizational units may be established within an agency on the basis of geographic, functional, budgetary, statutory or other lines as approved by the Director of Human Resources and which best serve the needs of State Government.

 2. In the event that organizational units are established within an agency, the units will thereafter be used for layoff and recall.

 3. The appointing authority must post a listing of established organizational units or must distribute copies of the listing to notify affected employees of the establishment of organizational units.

 C. Procedure for Layoff

 1. Seniority Determinations

 a. Seniority for purposes of layoff and recall is the length of continuous employment with permanent or probationary civil service status. There shall be no proration for part time and seasonal employment.

 b. Seniority of permanent or probationary employees on leave of absence or layoff will continue to accrue.

 c. A former employee who is on layoff and who is reemployed within three (3) years of layoff will be credited with all accrued seniority.

 2. Transfer and Demotion in Lieu of Layoff

 a. Employees who are laid off from their positions must be offered transfer in lieu of layoff to a vacant position in the same job classification or, if no vacant positions are available, to the position in the same job classification occupied by the employee with least seniority, provided the employee has greater seniority than the employee to be displaced. Transfer must be by agency, or by organizational unit, as appropriate.

 b. An employee must be offered demotion if the employee has no transfer rights to any position in the same classification. Demotion is limited to classifications previously held, with status, by the employee. Demotion rights are limited to positions that are either vacant or occupied by the least senior employee in the agency or organizational unit for which the employee to be demoted has greater seniority.

 3. Equal Seniority

 a. Where it is determined that seniority is equal, transfer or demotion rights will be determined by the date of acquisition of permanent status.

 b. If transfer or demotion rights cannot be determined by date of acquisition of permanent status, these rights will be determined by the appointing authority in such a manner as to conserve to the state the services of those employees deemed most valuable.

 4. Rights to Other Employment

 a. In the event that a probationary or permanent employee is to be laid off from any position while any project, acting capacity or otherwise temporary employee is working in any classification for which the Probationary or permanent employee may have transfer or demotion rights, the permanent or probationary employee must be offered the work.

 5. Limitations on Transfer and Demotion

 a. Transfer and demotion rights are subject to the availability of funded positions.

 b. No employee may transfer or demote to a position if, in the opinion of the appointing authority, the employee is not qualified to perform the duties of the position and the employee cannot acquire the necessary skills and qualifications within a reasonable orientation or training period.

 c. In the event that an employee is deemed unqualified to transfer or demote to the position occupied by the least senior employee, the employee must be offered transfer or demotion to the position occupied by the least senior employee for which the employee is qualified to perform the duties, provided the employee has greater seniority than the employee to be displaced.

 d. Seasonal employees are not entitled to transfer or demote into year round positions. Year round employees are not entitled to transfer or demote into seasonal positions.

 e. Part time employees are not entitled to transfer or demote into full time positions. Full time employees are not entitled to transfer or demote into part time positions.

 6. Layoff Registers and Recall

 a. The names of permanent or probationary employees laid off or demoted in lieu of layoff must be placed in order of seniority on the layoff register for the classification.

 b. Recalls to vacancies must be certified in order of seniority, first to employees who were employed within the agency or organizational unit at time of layoff or demotion, second to employees from other organizational units within the agency, and finally to employees from other agencies.

 c. The appointing authority may, with the approval of the Director of Human Resources, refuse to hire an employee for recall if the employee is not qualified to perform the duties of the position and cannot acquire the necessary skills and qualifications within a reasonable orientation or training period.

 7. Recall Provisions

 a. Probationary Status. Upon recall, employees laid off during the probationary period will be credited with time served prior to layoff.

 b. Longevity. An employee who is recalled or reemployed from layoff within three (3) years of layoff will have time on layoff count for the purpose of determining eligibility for longevity pay.

 c. Vacation Accrual. Time on layoff will not count for purpose of adjustments to the vacation accrual rate.

 8. Notice to Employees

 a. In every case of layoff of a permanent or probationary employee, the appointing authority must give written notice at least fifteen calendar days before the date of layoff. The notice must give reasons for the layoff. A copy of the notice must be forwarded to the Director of Human Resources at the time the notice is given to the employee.

 b. In the event that an employee is notified of transfer or demotion rights under this Chapter, the employee must inform the appointing authority of his/her decision to accept employment or to accept layoff within three work days.

 c. The appointing authority will indicate to all temporary and seasonal employees at time of hire the approximate date of termination of employment. This notice will constitute all notice required under these rules.

 d. Notice to employees must inform employees of their right to grieve disputed layoff and recall actions pursuant to Chapter 13 of these rules and sections 7081 - 7084 of the Civil Service Law.

 AUTHORITY: 5 MRSA Chapter 372, §§ 7034, 7036, 7051, and 7081 - 7084.

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