

Committee’s activities to the Governor through the Chairperson or designee.

5. The administrative work of the Committee shall be performed by the Secretary and other necessary staff designated by the Chairperson or designee.

(b) (No change.)

4A:6-6.10 Appeals: State service

(a)-(c) (No change.)

(d) The Committee shall render the final administrative decision, which shall not be subject to further appeal to the Chairperson or designee or the Civil Service Commission.

(e) (No change.)

(a)

CIVIL SERVICE COMMISSION

Layoffs

Readoption with Amendments: N.J.A.C. 4A:8

Proposed: January 4, 2016, at 48 N.J.R. 12(a).

Adopted: November 15, 2016, by the Civil Service Commission, Robert M. Czech, Chairperson.

Filed: November 15, 2016, as R.2016 d.174, **without change**.

Authority: N.J.S.A. 11A:2-6.d, 11A:2-11.h, 11A:2-28, 11A:6-28, and 11A:8-1 through 11A:8-4.

Effective Dates: November 15, 2016, Readoption;
December 19, 2016, Amendments.

Expiration Date: November 15, 2023.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1.d(1), Governor Christie extended the expiration date from June 20, 2016, to June 20, 2017. See 48 N.J.R. 1445(a).

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this readoption with amendments was held on February 3, 2016, in Trenton, New Jersey. Walker Ristau served as hearing officer. Seven comments were received on the readoption with amendments at that time, and no recommendations were made by the hearing officer. No written comments were received. The record of the public hearing may be reviewed by contacting Christopher Myers, Assistant Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, PO Box 312, Trenton, New Jersey 08625-0312.

1. COMMENT: Marcus King, President, Teamsters Local 331, Atlantic County, expressed concern regarding possible temporary layoffs in Atlantic County. He asserted that in the past, furlough days were not evenly applied among employees. He requested that alternatives to temporary layoffs be explored.

RESPONSE: The readoption of Chapter 8 does not alter the provisions concerning alternatives to layoffs. Moreover, specific layoff plans are outside the purview of the readoption with amendments of Chapter 8.

2. COMMENT: Lisa Willett, Sophia Kent-Howerton, Margaret Bennett, Barbara Tardibyono and Tom Willett, Teamsters Local 331, Atlantic County, stated that a temporary layoff plan would not solve the current fiscal problem in Atlantic County. They asserted that the economic situation in Atlantic County requires a broader solution, which could include casinos paying more in taxes. They argued that their suggestions have not been heard. They requested that the Civil Service Commission consider the impact of the plan and the financial costs to Atlantic County employees. In this regard, they contended that temporary layoffs will make it harder for employees to make ends meet, as many are living from paycheck to paycheck.

RESPONSE: The Commission understands these concerns. However, as indicated in the Response to Comment 1, specific layoff plans are outside the purview of the readoption with amendments of Chapter 8.

3.COMMENT: Jeanine Williams, Teamsters Local 331, Atlantic County, inquired into the difference between mandatory and voluntary furlough.

RESPONSE: Voluntary furloughs are listed as an alternative to layoff per N.J.A.C. 4A:8-1.2(c). The purpose of a voluntary furlough is to lessen the need for a reduction in force by allowing employees to voluntarily take up to 30 days leave from work without pay in a calendar year with accrual of leave time, anniversary dates, and seniority treated as if the employee is in a pay status. See N.J.A.C. 4A:6-1.23(a). A mandatory furlough is a term that is sometimes used instead of temporary layoff where employees in a specific department are required to be off work for specific day(s).

Federal Standards Statement

A Federal standards analysis is not necessary, as there are no Federal standards or requirements applicable to the subject matter of the rules readopted with amendments. The rules readopted with amendments concern layoffs of New Jersey civil service employees and are authorized by State law, as indicated in the notice of proposal Summary and notice heading.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 4A:8.

Full text of the adopted amendments follows:

SUBCHAPTER 1. PROCEDURES

4A:8-1.2 Alternatives to layoff

(a)-(b) (No change.)

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Chairperson or designee;

2.-5. (No change.)

(d)-(e) (No change.)

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Chairperson or designee prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees’ right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a)-(c) (No change.)

(d) Upon request by an appointing authority, assistance may be provided by Civil Service Commission staff in implementing pre-layoff measures.

4A:8-1.4 Review by the Civil Service Commission

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Chairperson or designee, the following information shall be submitted by an appointing authority to the Chairperson or designee:

1.-8. (No change.)

(b) In local jurisdictions having a performance evaluation program approved by the Civil Service Commission, the appointing authority shall also submit the names of permanent employees who have received a rating of Unsatisfactory or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)5 above shall be filled, except under exceptional circumstances with the approval of the Chairperson or designee, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Chairperson or designee may take appropriate remedial action, including:

1.-4. (No change.)

(e) Upon approval of the layoff plan, the a representative of the Civil Service Commission shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

4A:8-1.5 Layoff units and job locations

(a)-(b) (No change.)

(c) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Civil Service Commission, a different layoff unit consisting of one or more departments may be approved by the Chairperson under the following procedures:

1. A request may be submitted by an appointing authority to the Chairperson or the matter may be initiated by the Chairperson.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Chairperson.

3. After receipt of the request, the Chairperson shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Chairperson shall issue a determination approving, modifying, or rejecting the proposed layoff unit, after considering:

i.-v. (No change.)

(d) In State service, the Chairperson or designee shall determine job locations within each department or autonomous agency.

1. (No change.)

2. The Chairperson or designee shall assign a job location to every facility and office within a department or autonomous agency.

3.-4. (No change.)

(e) (No change.)

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. For positions that are not targeted by a layoff but may be impacted by employees exercising their lateral or demotional rights, a general written notice must be served by the appointing authority personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail, at least 45 days prior to the action. A copy of the notice served on employees shall be provided to a representative of the Civil Service Commission and affected negotiations representatives.

1. In State service, the Chairperson or designee may order a greater period of time for written notice to employees.

(b)-(c) (No change.)

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Chairperson or designee for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Chairperson or designee of employees who successfully complete their working test periods prior to displacement. The Chairperson or designee shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Civil Service Commission, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated a two (Successful) or above

in a three-level rating scale or a three (Successful) or above in a five-level rating scale in the most recent final PAR rating (or equivalent), shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Chairperson or designee based on the following criteria:

1.-4. (No change.)

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than, but related to the affected title of the employee. Demotional title rights shall be determined by the Chairperson or designee based on the following criteria:

1.-4. (No change.)

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral, and lower related titles. Special reemployment rights shall be determined by the Chairperson or designee in the same manner as lateral and demotional rights.

1. (No change.)

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Chairperson or designee:

1.-4. (No change.)

(e)-(f) (No change.)

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted, or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. (No change.)

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Chairperson or designee for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Chairperson or designee for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b)-(g) (No change.)

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the Chairperson or designee for good cause:

- 1.-3. (No change.)
- (b)-(c) (No change.)

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency, or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Civil Service Commission (see N.J.A.C. 4A:2-2.9); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Civil Service Commission (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested. Appeals not specifying the required information may be dismissed after notice of and a reasonable opportunity to provide the missing information.

- (c) (No change.)

EDUCATION

(a)

COMMISSIONER OF EDUCATION

Appeals

Readoption with Amendments: N.J.A.C. 6A:4

Proposed: August 15, 2016, at 48 N.J.R. 1520(a).
 Adopted: November 22, 2016, by Kimberley Harrington, Acting Commissioner, Department of Education.
 Filed: November 22, 2016, as R.2016 d.184, **without change**.
 Authority: P.L. 2008, c. 36.

Effective Dates: November 22, 2016, Readoption;
 December 19, 2016, Amendments.
 Expiration Date: November 22, 2023.

Summary of Public Comments and Agency Responses:
No comments were received.

Federal Standards Statement

The rules readopted with amendments are not inconsistent with, nor do they exceed, Federal requirements or standards as there are no Federal requirements or standards related to the chapter.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:4.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

6A:4-1.1 Purpose and scope

This chapter implements the provisions of P.L. 2008, c. 36, which removed the State Board of Education's authority to hear appeals of determinations of the Commissioner of Education, the State Board of Examiners, and the School Ethics Commission. The law instead provided that Commissioner determinations shall be deemed final agency actions and that State Board of Examiners and School Ethics Commission determinations shall be appealable to the Commissioner.

The chapter establishes standards and procedures for the filing, briefing, and adjudication of appeals, and supersedes any rule with which it may be inconsistent.

6A:4-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter, unless the context clearly indicates otherwise:

"Day" means business day when the period specified is less than seven days and calendar day when the period specified is seven days or more.

"Filing" means receipt of an original paper by an appropriate officer of the Department. With the prior approval of the director of the Office of Controversies and Disputes, and generally up to a maximum of 10 pages, filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped with sufficient postage for this purpose.

"Pro se" means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by N.J.A.C. 1:1, Uniform Administrative Procedure Rules.

"Representative" means an attorney or other person as permitted by N.J.A.C. 1:1, Uniform Administrative Procedure Rules, appearing on behalf of a party in proceedings governed by this chapter.

6A:4-1.3 Appeal of decisions

(a) Final Commissioner decisions, including decisions in controversies and disputes arising under the school laws pursuant to N.J.A.C. 6A:3, shall be deemed final agency actions appealable as of right to the Appellate Division of the Superior Court. Interlocutory Commissioner decisions may be appealed to the Appellate Division of the Superior Court by leave granted pursuant to applicable Appellate Division rules.

(b) Appeals of decisions of the State Board of Examiners suspending or revoking certificates pursuant to N.J.A.C. 6A:9B-4 shall be made to the Commissioner in accordance with this chapter.

1. Appeals of decisions of the State Board of Examiners denying issuance of a certificate shall proceed as contested cases in accordance with N.J.A.C. 6A:3.

(c) Appeals of School Ethics Commission decisions finding that a school official has violated the School Ethics Act (Act), including the Code of Ethics for School Board Members, shall be made to the Commissioner in accordance with this chapter. If the official found to have violated the Act is an officer or employee of the New Jersey School Boards Association, the School Ethics Commission decision as to both violation and sanction shall be deemed final agency action appealable to the Appellate Division of the Superior Court.

1. School Ethics Commission decisions finding that probable cause does not exist to credit the allegations in a complaint, or dismissing a complaint, shall be deemed final agency actions appealable to the Appellate Division of the Superior Court pursuant to N.J.S.A. 18A:12-29.b and N.J.A.C. 6A:28-11.1.

2. If the School Ethics Commission's underlying finding of violation is appealed, the matter shall proceed in accordance with N.J.A.C. 6A:4-2.2(b).

3. If the School Ethics Commission's underlying finding of violation is not appealed, a sanction recommended by the School Ethics Commission for a school official other than an officer or employee of the New Jersey School Boards Association shall be reviewed by the Commissioner in accordance with N.J.A.C. 6A:28-10.12 and 6A:3-9.1.

(d) Interlocutory orders, decisions, or actions of the State Board of Examiners or the School Ethics Commission may be appealed to the Commissioner by leave granted pursuant to N.J.A.C. 6A:4-3.4.

- (e) (No change.)

SUBCHAPTER 2. PROCEDURES FOR APPEAL

6A:4-2.1 Who may appeal

(a) Any party aggrieved by a State Board of Examiners decision suspending or revoking a certificate, or by a School Ethics Commission