

NDE Layoff Q&A

Layoff Decisions, Notifications and Time Frames (This section applies to both bargaining- and Rules-covered personnel)

Q1. How are the determinations made about which employees are selected for layoff?

A1. Positions will be identified for layoff on the basis of reduced funding and service priorities of the Department. Unless specific programs or services are specifically cut, the Commissioner will make decisions about the programs, services and staffing that will be reduced in accordance with §16.2 of the NAPE Agreement and Chapter 12 of the NDE Personnel Rules.

Q2. When and how will employees be notified if they are to be laid off?

A2. Once a layoff plan is created, the Agency must meet with NAPE/AFSCME to discuss the plan (for NAPE covered employees to be laid off). Once that happens, the Agency will notify the affected employee(s) holding bargaining positions in writing as soon as they are formally identified for layoff, but not less than 30 work days in advance of the layoff date, unless the emergency layoff provisions in §16.7 apply. There are no specific timelines for layoff notifications for Rules-covered personnel.

Q3. What information will be provided to employees in the layoff notice?

A3. The layoff letter will include the following type of information:

- Reason for layoff;
- Effective date of layoff;
- Layoff procedures and rights under the NDE-NAPE/AFSCME bargaining agreement or NDE Personnel Rules, as applicable;
- Vacancies for which the employee may be eligible as well as the job descriptions for those vacancies;
- Bumping procedures, if applicable (if there are no vacancies for which the employee may be eligible); and
- EAP information

Q4. If the budget bill is passed late in the legislative session so as not to allow adequate time to follow the typical timelines for layoff notice for bargaining personnel, what will happen?

A4. If the agency receives official notice of a funding reduction (e.g., the budget bill is passed by the Legislature and signed by the Governor), which is effective in less time than would allow for the procedures in sections 16.3 and 16.4 of the Agreement to be followed, (i.e. insufficient time to draw up a layoff plan, have the advance meeting with NAPE, and then have the layoff notices provided to affected employees 30 workdays in advance of the layoff), and layoffs are determined to be needed by the effective date of the budget bill, the Department would proceed under “Emergency Layoff Provisions” per section 16.7 of the bargaining agreement. Affected employees will be notified as soon as practicable.

Transfer in Lieu of Layoff (This section applies to both bargaining- and Rules-covered personnel)

Q5. How does the transfer option work?

A5. Subsequent to providing a formal layoff notice, the Agency will provide the employees to be laid off information about vacant positions available for transfer, including an indication of those for which they appear to meet qualification requirements. These positions would not have to be posted per §11.A6 of the bargaining agreement. However, all other HR and fiscal procedures must be followed as if the position were to be posted.

Q6. How is it determined whether a laid off employee “satisfies the required qualifications as determined by the Agency” in order to be considered for transfer to a vacant position in lieu of layoff?

A6. The education and work experience qualifications of the employee wishing to transfer must meet the minimum qualifications of the position as documented on the current classification specification and/or the job posting. “Preferred” qualifications are not normally considered in making the determination. In consultation with the General Counsel and HR Offices, and to the extent needed, with the LC or immediate supervisor of the position at issue, the Commissioner makes the final decision as to whether or not an employee satisfies the qualification requirements of a position considering all relevant factors.

Q7. What happens if more than one laid off employee elects to transfer into a vacant position?

A7. Per §16.5B of the bargaining agreement and Chapter 12, §005.02 of the NDE Personnel Rules, the selection will be made based on seniority. If more than one laid off employee elects to transfer into a vacant position, the selection will be made based on seniority. In determining the priority of transfers, those in the same geographical area (i.e., within 60 miles) will be given priority over those in a different area.

Q8. How is seniority determined?

A8. Seniority is determined based on the agency service date or agency adjusted service date. In other words, seniority is based only on service to NDE; other state service is not considered. The amount of time spent in a particular NDE position or classification is not considered; overall years of NDE service is the critical factor.

Q9. If multiple individuals expressed interest in transferring into the same vacant position, and the most senior employee takes it, what options are available to the others?

A9. The other employees may be considered for transfer to other positions for which they satisfy the required qualifications. If there are none, the employees could exercise their bumping rights.

Q10. What is a *partial layoff*? What options does an employee have if a partial layoff occurs?

A10. A partial layoff means that a percentage of the employee's FTE has been de-funded. For example, if an employee's salary is funded by multiple funding streams and funding for one of them ends, it could result in a partial layoff based on the percentage of FTE supported by the funding source. In this case, the employee would have the same options as an employee laid off in whole (i.e., exercise transfer or bumping rights as applicable). Additionally, the employee may elect to be retained at the reduced FTE.

Q11. What happens when there are no vacant bargaining positions for which a bargaining employee is eligible to transfer?

A11. If there are no vacant bargaining unit positions available for bargaining employees to transfer into, the employee may exercise bumping rights if any exist (i.e., if there are any less senior employees that occupy a position for which they are qualified that is in their same classification).

Q12. If a bargaining employee declines an opportunity to transfer to another position in lieu of layoff, can bumping rights still be exercised?

A12. No, if there is a vacant bargaining unit position for which the employee satisfies the qualification requirements as determined by the Agency, but the employee refuses the transfer opportunity(ies), the employee may not then exercise their bumping rights. See Section 16.6 of the bargaining agreement, which provides that employees can *bump* "if no transfer positions were available." (Rules-covered personnel do not have bumping rights.)

Q13. Can a bargaining employee transfer into a vacant fixed term position in lieu of layoff?

A13. Fixed term positions are not subject to the provisions of Article 16 in the bargaining agreement, which provides the procedures and requirements for layoffs. Therefore, a vacant fixed term position for which an employee is qualified is not one that an employee must take to avoid layoff. An employee could instead elect to exercise bumping rights as to any existing positions in his/her same classification for which (s)he are qualified and which are held by a less senior employee. However, a qualified employee could choose to apply for the vacant fixed term position at his/her discretion.

Q14. Will hiring supervisors of vacant positions be notified of the specific individuals who have been told that they qualify for a transfer to a vacant position in lieu of layoff?

A14. Hiring supervisors of the vacant positions will only be informed that one or more employees have been notified that they qualify for their position.

Q15. If an employee transfers to another position in lieu of layoff, or is laid off, will (s)he be notified of a fixed term vacancy?

A15. If a fixed term position is posted after an employee transfers to another position in lieu of layoff, or is laid off, the employee will be notified if the vacancy is in the same

classification series (job family) as the position previously held and (s)he satisfies the required qualifications as determined by the Agency per §16.8B of the bargaining agreement or Chapter 12, §006.02 of the NDE Personnel Rules. If a fixed term position is accepted, it must be understood that fixed term positions do not have bumping rights. Also, fixed term positions covered by the bargaining agreement are not subject to any of the other terms of Article 16 of the Agreement (the Article addressing layoffs and recall).

Q16. If an employee exercises transfer rights, what are the salary implications?

A16. If an employee transfers to another position in the same classification or paygrade, the salary will not be affected.

Q17. What happens if an employee transfers to a vacancy in lieu of layoff and the funding source for the vacancy is inadequate to meet the current salary level?

A17. Bargaining personnel. The bargaining agreement provides that if an employee transfers to a vacant bargaining-covered position to avoid being laid off, *IF* that position is in the same *classification or paygrade* as the position the employee held that is the subject of the lay-off notice, then the transfer is to be done “so as to effectuate no loss in pay”. If that pay is such that the existing funding cannot sustain that, the LC should immediately consult with Finance and HR. In some cases, additional layoffs or other measures to support such moves may be needed as a result.

Rules personnel. The NDE Personnel Rules (Ch. 12, §005.04) state that an employee who transfers to another position in the same *classification* shall be transferred “so as to effectuate no loss in pay”.

Bumping (This section applies only to bargaining personnel.)

Q18. Are bumping rights available to all NDE employees?

A18. No. Bumping rights are available only to those employees covered by the NDE-NAPE/AFSCME bargaining agreement, with the exception of fixed term employees.

Q19. How does bumping work?

A19. Per §16.6 of the bargaining agreement, “Based on seniority, those employees may bump into the non-vacant position held by the least senior employee in the same classification, for which that employee satisfies the qualification requirements, as determined by the Agency, if no transfer positions were available per Section 16.5. However, if the least senior employee’s permanent duty station is not in the same geographical area (i.e., within sixty [60] miles) of the laid off employee’s permanent duty station, the laid off employee may elect to bump into the non-vacant position held by the least senior employee in the classification within the laid off employee’s geographical area.”

Q20. Can a permanent employee bump into a fixed term position?

A20. No. Fixed term positions are excluded from the provisions of Article 16 of the bargaining agreement. Therefore, a permanent bargaining employee may not bump into an existing

and occupied fixed term position and displace the fixed term employee that holds it. Rules-covered employees do not have bumping rights.

Q21. If a position is funded by a mix of state and federal funds (e.g., 50% state, 50% federal), can an employee be laid off for a portion of their FTE? If so, would transfer or bumping rights apply?

A21. An employee could be laid off for a portion of their FTE (e.g., the .50 FTE that is state-funded.) An employee who is “partially laid off” would have transfer and bumping rights, as applicable, just as an employee who laid off at 1.0 FTE.

Recall and Re-employment (This section applies to both bargaining- and Rules-covered personnel)

Q22. What’s the difference between “recall” and “re-employment”?

A22. Employees who are *recalled* either return to their previously eliminated position (e.g., Program Specialist I) or take a vacancy in the same job family subsequent to being laid off (e.g., Program Specialists I-IV). *Re-employment* occurs when there is a vacancy after layoff and there are no persons laid off, or transferred in lieu of layoff, who held a position in the job family of the vacancy at the time the layoff began.

Q23. If an employee accepts a transfer in lieu of layoff, and the original position held is later restored, does the employee have priority recall as a laid off employee?

A23. Yes per §16.8B of the bargaining agreement and Chapter 12, §006.02 of the NDE Personnel Rules.

Q24. If an employee transfers in lieu of layoff and another position is created in the classification series (i.e., job family), is the employee eligible for recall?

A24. Yes per §16.8B of the bargaining agreement and Chapter 12, §006.02 of the NDE Personnel Rules.

Q25. If an employee transfers in lieu of layoff and another position is created in the job family, is the employee eligible for recall?

A25. Yes; §16.8B specifically mentions procedures for recall when a vacancy is created in the same classification series. Note that employees are recalled in reverse order, in groups of five.

Q26. If a bargaining employee bumps into another position, what recall and re-employment rights are available to the employee who bumped into a position?

A26. After an employee exercises bumping rights, a recall notification is received only when a position previously eliminated is restored (per §16.8A of the bargaining agreement). The employee occupying the position at the time of reduction in force has the first recall priority. The employee has ten work days following the date of notification to accept or refuse the recall by providing written notice to NDE.

An employee who exercised bumping rights and later applies for a posted position is subject to the same hiring procedures as other applicants. The employee would compete against all other applicants and NDE has the right to hire the most qualified applicant. Please note that §11.1B of the bargaining agreement stipulates that the employee would be subject to the same salary range that was identified on the posting for all applicants. Employees are not entitled to retain their current salary if they accept the offer to fill the vacancy.

Q27. How is the hiring salary determined when an employee is recalled or re-employed?

A27. A lower classification than previously held as a result of recall from layoff or re-employment will be based on the salary rate in effect at the time of layoff and the demotion rates as set forth in §11.3B of the bargaining agreement and Chapter 6, §004 of the NDE Personnel Rules.

Q28. When does “re-employment” apply?

A28. Re-employment occurs when there is a vacancy and there are no persons laid off or transferred in lieu of layoff who held a position in the classification series at the time layoff began. All laid off employees are notified of the vacancy and the qualifications required to hold the position. If a laid off person is interested in the vacancy, they have 10 calendar days following receipt of notice to apply for said position.

Q29. What is the time period in which recall and re-employment rights are in effect? What happens after their expiration?

A29. Recall and re-employment rights are in effect during the 12-month period following layoff or transfer in lieu of layoff. When the 12-month period expires, employees no longer will receive notice of vacancies and hiring rates would be the same as for any other applicant.

Q30. Can an employee waive their rights to receive recall and re-employment notices?

A30. Employees may waive their rights to receive recall and re-employment notices by providing a written statement to the NDE Human Resources Office.

Q31. When a bargaining vacancy occurs during the twelve month period following layoffs, must the position be posted?

A31. A position is posted during this twelve month period only when there are no persons laid off or transferred in lieu of layoffs who held a position in the classification series at the time layoff began.

Probation

Q32. If an employee transfers to another position in lieu of layoff, or bumps into another position, is (s)he placed on probation?

A32. Section 11.6 of the bargaining agreement and Chapter 5, §004 of the NDE Personnel Rules state that when an employee accepts a new position, whether because of applying for a different position, receiving a promotion, a lateral transfer, or demotion, the employee is placed on secondary probation.

Resources

Q33. What resources are available to employees who are laid off?

A33. The following resources are available on Inside NDE:

- Current job listings for:
 - The State of Nebraska
 - University of Nebraska System
 - State College System
- Links to other job opportunity websites
- Employment seeking skills information (e.g., interviewing skills, resume tips)
- The Employee Assistance Program (EAP) is also available to assist laid off employees and their family members. Contact EAP at (402) 354-8000 or (800) 666-8606 or check out their website at www.BestCareEAP.org. EAP services are available at no charge to the employee through the end of the month in which (s)he ends employment. However, the employee may elect to continue EAP benefits at a cost of \$1.28 per month through COBRA.