

## Guidelines and Frequently Asked Questions About Nonpermanent Employees During Layoff

In considering the issue of the layoff of permanent/probationary employees and the agency's ability to perform nonpermanent work, it is important to keep in mind the fundamental purpose of layoff provisions in a collective bargaining environment. Essentially, layoff protections exist to assure that the most senior employee (as defined by the applicable contract) can continue to work as long as possible, and, if laid off, is returned to work as soon as possible in order to minimize that individual's economic harm. That being said, it is also important that an agency be able to continue to operate in the most efficient and cost effective manner possible.

The Division of Personnel & Labor Relations believes that the following guidelines enable the State of Alaska to meet both objectives: fair and equal treatment based on specific contract language to permanent/probationary employees facing layoff and flexibility for management to conduct the necessary work of the agency.

Prior to making the decision that layoff of a permanent/probationary employee is necessary, the department must thoroughly review the need for continuance of all types of nonpermanent positions (e.g. short-term, long-term, on-call) within the department. If continuance is essential the process outlined in the section titled "Reassignment of Nonpermanent Work" must be followed.

The decision about which nonpermanent position(s) need to be eliminated and/or how that work is assigned to employees facing layoff depends on the bargaining unit, location, and funding source of both the nonpermanent position and the employee(s) slated for layoff.

### GENERAL PROVISIONS:

**Do we have to eliminate nonpermanent positions in one bargaining unit when the layoff occurs in a different bargaining unit?**

No, that would be imposing the contract terms of one bargaining unit on another bargaining unit. However, nonpermanent positions in the Excluded service will need to be reviewed and eliminated as appropriate based on the direction below.

**What is the "Excluded" service?**

The Excluded service consists of positions that are excluded from collective bargaining such as the employees of the Alaska Labor Relations Agency and Interns.

**What does the term "agency" mean in interpreting the contract language regarding layoff provisions?**

The term “agency” is given the same meaning as department.

### **How are Interns treated? Do we have to eliminate those positions as well?**

Interns, regardless of their educational level, are considered nonpermanent employees. Several factors need to be considered in determining whether they can be retained while permanent/probationary employees are laid off. Is the work the person is performing directly tied to a school program? Are they receiving credit for performing the work? Is the work regular and reoccurring work of the agency, or is it tied to a special research project? If there was not an Intern in the position, would the agency still want that body of work completed? Is there a permanent/probationary employee slated for layoff that could perform the work and is interested in doing so?

As a general rule of thumb, the closer the Intern work is to the regular and reoccurring work of the agency, the more difficult it will be to defend keeping an Intern employed while a permanent/probationary employee is placed in layoff status. The fact that the Intern is receiving credit for the work may not, in and of itself, be enough to protect the Intern’s employment.

If you believe that an Intern position should be protected when a permanent/probationary employee is laid off, and the permanent/probationary employee is qualified, available, and interested in performing the work assigned to the Intern, approval must be requested of the director of the Division of Personnel and Labor Relations. Only those requests that include an extremely compelling business reason will be considered.

### **Is it ever possible to keep an Excluded or bargaining unit nonpermanent employee employed while a permanent/probationary bargaining unit employee is laid off?**

Yes, but instances in which this might occur are limited to the following:

- 1) There are more nonpermanent employees than permanent/probationary employees slated for layoff.
- 2) Permanent/probationary employees are offered the nonpermanent work and decline to accept it.
- 3) Permanent/probationary employees cannot be reasonably assigned the nonpermanent work and an extremely compelling business reason exists which requires the completion

of the nonpermanent work. (The definitions of “reasonably assigned” are provided in the section title “Reassignment of Nonpermanent Work.”)

- 4) Your agency believes that there is a compelling business reason for keeping a nonpermanent employee employed while a permanent/probationary employee of the same bargaining unit and location, who meets the minimum qualifications for the job class of the nonpermanent work, wishes to work in a nonpermanent capacity during the lay off period. Approval must be requested of the director of the Division of Personnel and Labor Relations. Only those requests that include an extremely compelling business reason will be considered.

### **Can a nonpermanent position be established if there are people on layoff?**

Yes; the nonpermanent work created should be offered however, first to employees within the agency and bargaining unit in that location who are in layoff status and could reasonably be assigned to do the work consistent with the needs of the agency. If no employee of the agency, location, and bargaining unit to which the nonpermanent work is assigned is interested or available, although not required, first consideration should be given to other laid off employees who express an interest or submit application. If no laid off employee is available or interested at that location, after the five day recall period the department may seek to fill the position through normal methods. It is the responsibility of agency Human Resources staff to ensure this occurs.

Note: Article 21.01.C of the Confidential Bargaining Unit specifically addresses the order in which nonpermanent positions are to be offered to employees on layoff

### **Does a permanent/probationary employee lose his or her lay off rights if he or she declines available nonpermanent work?**

No. A laid off permanent/probationary employee may accept or decline nonpermanent work while in layoff status without losing his or her layoff rights. If a layoff candidate is interested or no longer interested in being notified about nonpermanent work, they must notify the Division of Personnel & Labor Relations, Recruitment Services, in writing.

## **REASSIGNMENT OF NONPERMANENT WORK:**

### **What does “reasonably be assigned” mean?**

**SU & CEA:** the term “reasonably be assigned” is defined as meeting the Minimum Qualifications associated with the nonpermanent work to be performed.

**GGU, LTC, PSEA & Excluded:** the term “reasonably be assigned” is defined as work which the incumbent is capable and qualified to perform. This means that the person to be assigned the work meets the Minimum Qualifications of the job class to which the nonpermanent work is assigned including any other special requirements necessary to perform the work. If a permanent/probationary employee slated for, or on layoff is being barred from performing available nonpermanent work, you need to have a documented compelling business reason.

### **What does the term “consistent with the needs of the agency” mean?**

“Consistent with the needs of the agency” means that there may be valid business reasons associated with selecting one person over another to perform the work of the nonpermanent position. In applying this term, you must be able to articulate a compelling business reason to offer the work available to an individual other than the employee slated for layoff.

### **If we reassign employees to nonpermanent work, how do we determine who has preference if there are more layoffs than nonpermanent positions available?**

Assignment to nonpermanent positions should be handled on a seniority basis. Positions should be offered to the most senior employee slated for layoff who can reasonably be assigned the work. If that person declines the work, it should be offered to the next most senior person who can reasonably be assigned the work and so forth. However, there may be instances in which the needs of the agency will not be met solely through seniority placement. In these instances, the reason(s) seniority order was not used must be thoroughly documented.

### **How do we reassign the nonpermanent work?**

The process to use for reassigning nonpermanent work depends on the manner in which the position is budgeted, the salary range assigned to the nonpermanent work, and the salary range of the laid off employee.

The following process should be used:

- 1) Determine the bargaining unit, location, and salary range of the permanent/probationary employee to be laid off.
- 2) Determine if there are Excluded nonpermanent positions or nonpermanent positions within the same bargaining unit in the same personal services budget line, location, and salary range. If there are no available positions that meet this criteria, skip to #7.

- 3) If there are nonpermanent positions that meet this criteria, determine if the work performed by the nonpermanent employees can be reasonably assigned to the permanent/probationary employee slated for layoff consistent with the needs of the agency. (See above for a definition of “reasonably assigned” and “consistent with the needs of the agency”)
- 4) If the nonpermanent work can reasonably be assigned to the permanent/probationary employee slated for layoff consistent with the needs of the agency, the work must be reassigned and the permanent/probationary employee should be kept in his or her position until there are no more available funds in the personal services budget line for that location to fund the reassigned work.
- 5) In this case, the employee should continue to be paid at the step and range that he or she has earned until the funds run out and the formal layoff occurs.
- 6) Once the funds have run out, the permanent/probationary employee is laid off and has access to other available nonpermanent work in the department and location that can be reasonably assigned consistent with the needs of the agency.
- 7) If there are no Excluded nonpermanent positions or nonpermanent positions within the same bargaining unit in the same personal services budget line, location, and salary range, determine if there are Excluded nonpermanent positions or nonpermanent positions within the same bargaining unit in the same department and location as the permanent/probationary employee slated for layoff which can reasonably assigned to the employee consistent with the needs of the agency.
- 8) Determine if the employees slated for layoff wish to accept nonpermanent work.
- 9) Offer available nonpermanent work in accordance with the seniority provisions of the applicable contract, provided the person being offered the work can reasonably be assigned the duties consistent with the needs of the agency.(See above for discussion of the term “reasonably assigned” and “consistent with the needs of the agency.)

In this case, the employee is appointed to the nonpermanent position and is paid at the salary range assigned to the nonpermanent position. Step placement is based on the applicable Personnel Rule or contractual provision.

- 10) The permanent/probationary employee subject to layoff who accepts nonpermanent work will be deemed certified to the nonpermanent position per the appropriate contractual language, e.g. GGU 12.01B, SU 17.1B, CEA 21.01B, etc.

- 11) The employee who accepts the nonpermanent work retains full layoff rights as outlined in the bargaining unit agreement from which the employee was laid off. A laid off individual can decline nonpermanent work without loss of layoff rights.
- 12) Although not required, it is recommended that if no laid off member of the bargaining unit wishes to accept the nonpermanent work, and a qualified employee from a different bargaining unit who is in layoff status expresses interest or submits application, first consideration should be given to this laid off employee.
- 13) If no employee in layoff status wishes to accept the nonpermanent work, the position may be filled from any other source available.

**WHEN MAKING DECISIONS REGARDING THE CONTINUED EMPLOYMENT OF NONPERMANENT EMPLOYEES WHEN PERMANENT/PROBATIONARY EMPLOYEES ARE FACING LAYOFF, PLEASE LOOK AT YOUR DECISION THROUGH THE EYES OF A NEUTRAL THIRD PARTY.**