

**Article 13
LAYOFF AND REDUCTION IN TIME**

A. GENERAL

The University, at its sole non-grievable discretion, shall determine when temporary or indefinite layoffs or reductions in time shall occur.

B. DEFINITIONS

1. A layoff is an involuntary separation of a non-probationary career employee from employment or an involuntary transfer to a casual position of a career employee. For the purposes of this Article, layoff shall include involuntary reductions in regularly scheduled hours of work. Layoffs may be temporary or indefinite.
 - a. A temporary layoff is a layoff in which the University specifies an affected employee's date for return to work of not more than one-hundred twenty (120) calendar days.
 - b. An indefinite layoff is a layoff for which the affected employee receives no date for return to work, or no date of restoration to her/his former appointment rate.
2. For the purposes of this Article, seniority is determined by the employee's most recent date of hire into a career position at a campus/medical center/laboratory. Employees hired on the same day shall be prioritized according to alphabetical order.

C. SELECTION FOR LAYOFF

1. If, in the judgment of the University, budgetary or operational considerations make it necessary to curtail operations, reorganize, reduce the hours of the workforce and/or reduce the workforce, staffing levels will be reduced in accordance with this Article.
2. The selection of classes for layoff shall be at the sole non-grievable discretion of the University.
3. The University shall review and, at its sole non-grievable discretion, minimize indefinite layoffs from career positions by first reviewing the necessity for existing limited appointment positions within the department.
4. With regard to indefinite layoff only, the order of indefinite layoff of employees in the same class within a department/division shall be in inverse order of seniority. However, the University may retain, at its discretion, employees irrespective of seniority 1) where the position(s) occupied by the less senior employee(s) requires qualifying skills, knowledge, or abilities which are not possessed to the same degree by other employees in the same class; 2) which cannot be learned on the job in six (6) months or less without negatively impacting patient care; and 3) which are necessary to perform the ongoing functions of the department/division. To the extent permitted by law, the University may also consider workforce diversity when making layoff decisions and implementing layoff actions. The decision to make such exceptions shall not be subject to Article 9 – Grievance Procedure or Article 3 - Arbitration Procedure of this Agreement, unless the inverse seniority or qualifying skills provision of this Article are alleged to have been misapplied.

D. NOTICE

1. When the University determines that a layoff is imminent within the unit, it shall give AFSCME such advance notice as is reasonable under the circumstances. The notice shall describe the general areas which may be affected.
2. When the University selects particular members of the unit for layoff, it shall give individual notice to each employee of the effective date of the layoff and whether the layoff is temporary or indefinite. Advance notice will be provided as follows:

- a. For temporary layoff expected to last 120 calendar days or less, the University shall give, if feasible, 15 calendar days notice of the expected beginning and ending dates of the layoff.
 - b. For indefinite layoff, the University shall give 30 calendar days notice, if feasible. If less than 30 calendar days notice is given, the employee shall receive straight time pay in lieu of notice for each additional day the employee would have been on pay status to a maximum of 30 calendar days. Upon receipt of written notice of layoff, an employee may schedule an appointment with the designated campus or Laboratory representative who will inform the employee regarding benefit continuation and procedures for recall and preferential rehire.
 - c. In the event of an anticipated indefinite layoff of five or more full-time-equivalent (FTE) employees on the same effective date in the same layoff unit, the University will, to the extent possible, give 45 calendar days notice to AFSCME. When such notice is provided regarding the layoff of five or more FTE, the campus/Laboratory will, upon receipt of a timely written request from AFSCME, meet with AFSCME to discuss the layoff. Such meeting to discuss the layoff of career employees will include, if asked, an indication of the reason for retaining any casual employees.
 - d. For conversion from temporary layoff to indefinite layoff, the University shall give 30 calendar days notice, if feasible.
3. The University shall notify AFSCME within a reasonable time after it notifies employees that they are to be laid off. To the extent possible, such notice will be concurrent.

E. RECALL

1. A non-probationary career employee who is indefinitely laid off shall be recalled in order of seniority to an active, vacant career position, provided:
 - a. the active, vacant career position is in the same bargaining unit and same department/division as the position from which the employee was laid off; and
 - b. the active, vacant career position is in the same class at the same or lesser percentage of time as the position from which the employee was laid off; or
 - c. the active, vacant career position is in a lower class at the same or lesser percentage of time than the position from which the employee was laid off, provided the employee previously held a career position in such lower class in the same department/division and bargaining unit.
2. In order to be recalled to such active, vacant career position, the employee must, as determined at the sole, non-grievable discretion of the University, be qualified to perform the duties of the active, vacant career position.
3. Employees who are eligible for recall shall retain recall eligibility for three years from the effective date of layoff. An employee may exercise his/her rights to recall immediately after the employee receives written notification of layoff.
4. Employees recalled from layoff status to a new position who fail to perform satisfactorily may, at any time during the six months following such return, be returned to layoff status with restoration of full recall rights. Previous time on layoff status prior to recall shall be deducted from an employee's period of eligibility.
5. Recall Termination

The right to recall terminates at the end of the period of eligibility described in Section E.3. above, or if an employee:

- a. fails or refuses within ten calendar days to respond affirmatively to University inquiries concerning the employee's desire to return to work. The ten-calendar-day response period shall begin immediately upon

personal notice or from the date written notice is served (as indicated in the Proof of Service), whichever is sooner; or

- b. refuses a recall to work; or
- c. refuses two offers of reemployment in career positions at the same or greater percentage of time and at the same or higher salary level; or
- d. accepts a career position at the same or higher salary level within the University; or
- e. accepts recall in any previously-held career position at a lower salary level.

F. PREFERENTIAL REHIRE

1. A non-probationary career employee who is indefinitely laid off shall have preferential rehire status for an active, vacant career position, provided:
 - a. the active, vacant career position is in the same bargaining unit and at the same campus/Laboratory as the position from which the employee was laid off; and
 - b. the active, vacant career position is in a class with the same or lower salary range maximum as the class from which the employee was laid off; and
 - c. the active, vacant career position is at the same or lesser percentage of time as the position from which the employee was laid off.
2. The laid off non-probationary career employee will, along with any other laid off University employees, be given preferential consideration for an active, vacant career position which is being filled by the campus/Laboratory, provided the conditions in Section F.1.a.-c. above are met. First consideration for preferential rehire shall be given to employees who are on layoff status (not currently employed by the University) and who were laid off from the same department where the vacant position exists. In order to be placed in such a position, the employee must, as determined at the sole, non-grievable discretion of the University, be fully qualified to perform the duties of the position.
3. The operation of preferential rehire consideration shall be consistent with the procedures established at the individual campus/Laboratory and shall be consistent with the University's management right to fill a position with the best available candidate for a vacant position.
4. Employees who are eligible for preferential rehire status with less than five years of seniority at the time the layoff occurs shall retain preferential rehire status eligibility for one year from effective the date of layoff. Employees who are eligible for preferential rehire status with five years, but less than ten years, seniority at the time the layoff occurs shall retain preferential rehire status eligibility for two years from the effective date of layoff. Employees who are eligible for preferential rehire status with ten years or more of seniority shall retain preferential rehire status eligibility for three years. An employee may exercise his/her rights to preferential rehire immediately after the employee receives written notification of layoff and meets with the campus or Laboratory representative designated in the layoff notice.
5. Employees preferentially rehired from layoff status who fail to perform satisfactorily may, at any time during the six months following such return, be returned to layoff status. In addition, an employee, at his/her option, may request to be returned to layoff status within 60 calendar days of rehire. Previous time on layoff status prior to rehire shall be deducted from an employee's period of eligibility.
6. Preferential Rehire Termination

The preferential rehire consideration described above shall terminate at the end of the period of eligibility described in Section F.4. above, or if an employee:

- a. refuses an offer to return, at the same or greater percentage of time, to that department/division and class from which laid off; or
- b. accepts any career position; or
- c. refuses two offers of employment for a career position at the same or higher salary level and the same percentage of time as the position held by the employee at the time of layoff; or
- d. fails to respond to a written notice of a career employment opportunity within 10 calendar days. The 10 calendar day response period shall begin immediately upon personal notice of the career employment opportunity or from the date written notice is served (as indicated in the Proof of Service), whichever is sooner.

G. SEVERANCE

Effective thirty (30) calendar days following ratification through the Duration of this Agreement. This provision expires at the end of this Agreement.

1. A career employee who has received a notice of indefinite layoff may elect in writing, severance pay in lieu of preferential rehire and recall rights within fourteen (14) calendar days of receipt of the notice of layoff. Election is irrevocable. The University shall, offer severance in lieu of preferential rehire and recall rights to all employees in the department who receive notice of indefinite layoff. Severance pay shall be in accordance with the following.
 - a. Payment - An employee who elects severance pay in lieu of preferential rehire and recall rights shall be paid a lump sum as follows:
 - 1) Employees with less than five (5) years of University service shall receive two (2) weeks severance pay.
 - 2) Employees with five (5) or more years of University service shall receive five (5) weeks severance pay, plus one (1) week for each additional year of service, up to a maximum of sixteen (16) weeks.
 - 3) Employees who are laid off following a reduction in time that occurred within sixty (60) calendar days of the layoff shall be eligible for severance, on the basis of their percentage of appointment just prior to their reduction in time.
 - 4) This section shall not apply to temporary layoff or reduction in time.
 - 5) Failure to make an election as provided in Section 1 will result in the employee receiving preferential rehire and recall rights and extinguish the right to severance pay.
 - b. Repayment - An employee who has received severance pay under this provision and who returns to work in a career position with the University at the same or higher salary and same percentage of time as the position held at the time of layoff shall repay to the University the portion of severance pay received that exceeds the time the employee was laid off. Before returning to work, the employee must make repayment in full or sign a repayment agreement.

H. CONTINUITY OF SERVICE UPON REEMPLOYMENT

A temporary layoff does not create a break in service. Reemployment in a career position within the period of right to recall provides continuity of service and continuation of previously-accrued seniority. However, seniority and benefits accrue only when an employee is on pay status.

I. BENEFIT COVERAGE

Medical plan contributions by the University will be provided for a maximum of three months in a calendar year for employees on temporary layoff, for employees on temporary reduction in time, or on furlough as provided in Article 29 - Positions, paragraph F. For medical plans to remain in force, employees on temporary layoff, temporary reduction in time or furlough must remit to the University the amount of the employee's contributions, if any.

J. LAWRENCE BERKELEY LABORATORY

Policies, procedures, definitions, qualifications and calculations relative to severance pay at the Laboratory shall remain in effect for employees at the Laboratory.

- K.** In the event an alleged violation of this Article with regard to notice is grieved/arbitrated, any remedy, settlement or arbitrator's award or decision acknowledging improper notice shall be limited to an amount of back pay and/or reinstatement of benefits which would make the employee whole for the number of days the notice was deficient. In no case shall such amount be calculated for a period of greater than 30 calendar days.