

ARTICLE 13
LAYOFF AND REDUCTION IN TIME

A. GENERAL

1. The University has the sole, non-grievable, non-arbitrable right to determine when temporary, emergency, or indefinite layoffs shall occur. If, in the judgment of the University, a layoff is necessary, staffing levels will be reduced in accordance with this Article. The University shall determine the unit of layoff and which positions are to be subject to layoff. When the University determines that there is to be a layoff within the bargaining unit, it shall give UPTE advance notice in accordance with Sections C. and D. below.
2. Layoffs may be emergency, temporary or indefinite.
3. A layoff is an involuntary:
 - a. Separation from employment as implemented in accordance with the provisions of this Article, or
 - b. Transfer of an employee in a career position to a non-career position, or
 - c. Reduction in appointment rate of a non-probationary career employee.

B. DEFINITIONS

1. An emergency layoff is one for which the need occurs suddenly and may be caused by a decrease in workload, low census, or unforeseen occurrence that limits the availability of work. An individual employee may not be subject to emergency layoffs for more than fifteen (15) calendar days. An emergency layoff requires no advance notice.
2. A temporary layoff is one for which the University specifies an affected employee's date for return to work of not more than one hundred-twenty (120) calendar days from the effective date of the layoff.
3. An indefinite layoff is one for which the affected employee receives no date for return to work, or no date of restoration to his/her former appointment rate.

C. TEMPORARY LAYOFF

If the University determines that a temporary layoff of one hundred-twenty (120) calendar days or less is imminent, it shall be implemented in accordance with the provisions of this Section.

1. Alternatives To Layoff

The University may, at its sole, non-grievable discretion attempt to avoid a temporary layoff, or to ease its impact, by implementing the following alternatives:

- a. Temporarily reassigning the affected employee(s) to an alternative assignment for which he/she is qualified, or
- b. Scheduling the use of accrued compensatory time, or
- c. Scheduling the use of accrued vacation time.

2. Notice

When the University identifies particular employees to be affected by a temporary layoff, it shall give the individual employee written notice of the expected beginning and ending dates of the temporary layoff as follows:

- a. The University shall give, if feasible, fifteen (15) calendar days' notice of the expected beginning and ending dates of the layoff to the affected employee(s) and the Union.
- b. For conversion from temporary layoff to indefinite layoff, the University shall give thirty (30) calendar days' notice, if feasible.
- c. If less than fifteen (15) calendar days' notice is granted, the affected employee(s) may receive straight time pay in lieu of notice for each additional day the employee(s) would have been on pay status had the employee(s) been given fifteen (15) calendar days' notice. Pay in lieu of notice is provided for reductions in appointment rate only for the difference between the two rates.
- d. If the ending date of the temporary layoff is changed, the University shall give the affected employee notice. The employee shall return to work on the date provided in the notice.
 - 1) The employee shall return to work on the date provided in the Section C.2., Notice, above, and shall notify the University in advance if he/she is unable to do so. The

University and the employee shall attempt to establish a mutually agreeable return date. If, due to operational considerations, the University cannot accommodate the employee's request for an alternate return date, he/she will be considered to have resigned effective on the date provided in the notice in Section C.2., above.

2) Notice of a change in temporary layoff dates does not invoke the "pay in lieu of notice" provisions of this Article.

e. When the University determines that a temporary layoff is imminent, it shall give UPTE such notice as is reasonable under the circumstances. The notice shall describe the general area(s) which may be affected. The University shall notify the union concurrent with notification to affected HX employees that they are to be laid off, or that changes in the temporary layoff dates have occurred.

3. Conversion Of Temporary To Indefinite Layoff

In the event the University converts a temporary layoff or reduction in time to an indefinite layoff, the affected employee shall be provided all rights under Section D., Indefinite Layoff, beginning at the time of notification of conversion. If the University determines that an indefinite layoff is imminent, it shall be implemented in accordance with the provisions of Section D, below.

In the case of reduction in time, employees who are laid off following a reduction in time that occurred within sixty (60) calendar days of the layoff notice shall be eligible for severance, or reduced severance, on the basis of their percentage of appointment just prior to their reduction in time.

D. INDEFINITE LAYOFF

If the University determines that an indefinite layoff is imminent, it shall be implemented in accordance with the provisions of this Section.

1. Alternatives To Layoff

The University may attempt to avoid an indefinite layoff, or to ease its impact, by implementing the following alternatives:

a. Offering affected employee(s) an active available vacant career position, if any, at the same appointment rate, at the same salary level as determined by the salary range maximum within the layoff unit within the facility, provided the employee is qualified for the vacant position, or

- b. Scheduling the use of accrued vacation and/or compensatory time, in accordance with the needs of the University.

2. Selection for Layoff

- a. "Seniority" is based on the most recent date of hire in a career position. Employment prior to a break in service shall not be counted when calculating seniority. When employees have the same date of hire, seniority shall be determined according to alphabetical order of the last name.
- b. The order of indefinite layoff of employees in the same classification within the unit of layoff shall be in inverse order of seniority.
- c. The University may retain employees irrespective of seniority who possess special knowledge, skills, or abilities which are not equally possessed by other employees in the same classification in the layoff unit and which are necessary to perform the ongoing functions of the affected area. However, senior employees selected for layoff who have the ability to learn the necessary skills, within thirty (30) days, will be retained in the unit.
- d. Employees in the unit(s) affected by the layoff who have more seniority than those employees designated for layoff may volunteer to waive their seniority rights solely in order to be designated for the layoff. The University may approve such waiver, provided that the needs of the University, as determined by the University, are met.

Such employees shall be provided all rights under Section D.4., and Section D.5., below, beginning at the time of notification of Indefinite layoff.

- e. Where electronic job placement bulletin boards are in use, the University shall provide bargaining unit members access to such placement bulletin boards to the same degree as such bulletin boards are made available to other staff employees. Employees who are laid off may be provided information about other University locations' job placement bulletin boards according to local procedures.

3. Notice

- a. When the University identifies particular employees to be affected by an indefinite layoff, it shall give individual written notice of the

effective date of the layoff to each affected employee and the Union. Advance notice will be provided as follows:

- 1) For indefinite layoff, the University shall give sixty (60) calendar days notice if feasible. The University may pay up to thirty (30) days of the sixty (60) day notice period in lieu of notice. In no event shall an employee receive less than thirty (30) days notice of indefinite layoff. For conversion from temporary layoff to indefinite layoff, the University shall give thirty (30) calendar days notice if feasible.
- 2) If an HX unit employee with less seniority is to be retained, the University shall notify the union in advance of the layoff date and in writing of the special knowledge, skills and abilities, which support the retention of the less senior HX employee.

- b. An employee shall be provided all rights under Section D.4. and Section D.5., below, beginning at the time of notification of his/her indefinite layoff.

4. Recall

- a. Non-probationary career employees who are indefinitely laid off shall be recalled in order of seniority to an active available vacant career position provided:
 - 1) The position is to be filled and
 - 2) Is in the same classification within the layoff unit from which they were laid off, as determined by the University.
- b. Probationary, per diem, and limited appointment employees shall not have a right to recall. Employees who are eligible for recall with less than five (5) years of seniority shall retain recall eligibility for one (1) year. Employees who are eligible for recall with five (5) years or more seniority shall retain recall eligibility for two (2) years.
- c. The right to recall terminates:
 - 1) Upon the employee's retirement; or
 - 2) At the end of the eligibility period; or
 - 3) If an employee refuses and/or fails to respond affirmatively within ten (10) calendar days to a University inquiry

concerning the employee's desire to remain on the recall list for possible return to work; or

- 4) If an employee refuses or fails to respond within ten (10) calendar days to a written recall to work in the same classification within the layoff unit, at the same or greater appointment rate, and at the same or greater rate of pay earned by the employee at the time of layoff, or
- 5) If an employee refuses an offer of reemployment at the same or greater appointment rate, at the same or higher salary level as determined by the salary range maximum, and at the same or higher rate of pay earned by the employee at the time of layoff within ten (10) calendar days, or
- 6) If an employee accepts a career position within the University at the same or higher salary level as determined by the salary range maximum, the same or greater appointment rate, and the same or higher rate of pay earned by the employee at the time of layoff, or
- 7) If a career employee who has received her/his notice of indefinite layoff elects to receive severance pay in lieu of recall.

d. Recall rights, once terminated, may be reinstated at the sole discretion of the University, upon the request of the employee.

5. Preference for Reemployment

- a. A non-probationary career employee who is on indefinite layoff, or who has received written notice of an indefinite layoff shall be granted preference for reemployment or transfer to any active, vacant career bargaining unit position at the same campus/hospital/laboratory from which the employee was laid off and for which the employee is qualified when the position is to be filled is:
 - 1) At the same or lower salary level (as determined by the salary range maximum); and
 - 2) At the same or lesser percentage of time as the position held by the employee at the time of layoff.

- b. Preference for reemployment or transfer is not extended to probationary, per diem, or limited appointment HX employees. A regular status HX employee with preference for reemployment or transfer may be rejected only if the employee lacks qualifications required of the position sought.
- c. HX employees eligible for preference for reemployment with less than ten (10) years seniority at the time the layoff occurs shall retain preference for reemployment status for one (1) year. HX employees with ten (10) or more years of seniority at the time the layoff occurs shall retain preference for reemployment for two (2) years.
- d. HX employees preferentially rehired from layoff status or assigned to a new position after receiving notice of layoff who fail to perform satisfactorily may, at any time during the six (6) months following such return, be returned to or placed on layoff status. Previous time on layoff status prior to rehire shall be deducted from the employee's period of eligibility.
- e. The right to preference for reemployment terminates:
 - 1) Upon the employee's retirement; or
 - 2) At the end of the eligibility period; or
 - 3) If an HX employee refuses recall under the provisions of Section D.4., Recall, above; or
 - 4) If an HX employee refuses and/or fails to respond to a University inquiry concerning the employee's desire to remain on the preference for reemployment list; or
 - 5) If an HX employee accepts a career position; or
 - 6) If an HX employee refuses to accept a position offered by the University which is at the same or higher salary level (as determined by the salary range maximum); and, is at the same or higher appointment rate held by the HX employee at the time of layoff; or
 - 7) If a career employee who has received her/his notice of indefinite layoff elects to receive severance pay in lieu of preferential rehire.

- f. The right to preference for reemployment continues during, but is not extended by, temporary periods of employment in limited appointment and/or Per Diem positions.
6. Severance – Effective March 30, 2007 through the Duration of the Agreement.
- a. A career employee who has received notice of indefinite layoff may elect, in writing, to receive 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. Each medical center/campus department shall, in each instance of layoff, not reduction in time, offer severance in lieu of preferential rehire and recall rights with reduced severance to all employees in the department affected by the layoff. Employees who are reduced in time may elect only severance pay (proportional to their reduction in time) in lieu of preferential rehire and recall rights. Severance pay shall be in accordance with the following:
 - 1) Payment. An employee who elects severance pay in lieu of preferential rehire and recall rights shall be paid a lump sum as follows:
 - a. Employees with less than five (5) years of University service shall receive two (2) weeks severance pay.
 - b. Employees with five (5) or more years of University service shall receive five (5) weeks severance pay, plus one week for each additional year of service, up to a maximum of sixteen (16) weeks.
 - c. 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, or reduced severance, on the basis of their percentage of appointment just prior to their reduction in time.
 - d. This section shall not apply to temporary layoff.
 - e. Failure to make an election as provided in Section 6 will result in the employee receiving preferential rehire and recall rights and extinguish the right to severance pay.

b. Reduced Severance (with Preference and Recall)

- 1) A career employee who has received notice of indefinite layoff may elect, in writing, to receive preferential rehire and recall rights with reduced severance within 14 days of receipt of the notice of layoff. Election is irrevocable. The University shall offer severance in lieu of preferential rehire and recall rights with reduced severance to all eligible employees in the department affected by the layoff. Reduced severance pay shall be in accordance with the following:
- 2) Employees with less than five (5) years of service are not eligible for reduced severance under this section.
- 3) Employees with five (5) or more years of service shall receive four (4) weeks reduced severance.
- 4) Employees with 13 or more years of service shall receive eight (8) weeks reduced severance.
- 5) Employees who are laid off following a reduction in time that occurred within sixty (60) calendar days of the layoff notice shall be eligible for reduced severance on the basis of their percentage of appointment just prior to their reduction in time.
- 6) This section shall not apply to temporary layoff or reduction in time.
- 7) Failure to make an election as provided in Section 6 will result in the employee receiving preferential rehire and recall rights and extinguish the right to the reduced severance pay option.

- c.
- 1) UPTE will be notified if an employee has been provided severance or reduced severance.
 - 2) Should an employee, as a result of a grievance, arbitration, or settlement agreement, be returned to work or be rehired or preferentially rehired or recalled, related to the layoff, the severance or reduced severance received will be deducted from the back pay award, if any, or credited as an advance on earnings, if proportional severance is to be returned.

- d.
 - 1) An employee cannot be returned to work without first repaying the severance or reduced severance or signing a severance repayment agreement. The employee's failure to complete the severance repayment obligation shall not increase the University's back pay liability, if applicable.
 - 2) 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 or higher 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.

E. CONTINUITY OF SERVICE UPON REEMPLOYMENT

1. A layoff of one hundred-twenty (120) calendar days or less does not create a break in service.
2. Reemployment in a career position within the period of right to recall or preference provides continuity of service and reinstates previous seniority.
3. Seniority accrues, and benefit accruals are accumulated, only when an employee is on pay status.

F. BENEFIT COVERAGE

Medical and retirement plan coverage may be provided to employees in layoff status, in accordance with the Plan Regulations and Documents. An employee in layoff status should discuss his/her medical and/or retirement coverage with the campus/hospital benefits office representative.

G. LAWRENCE BERKELEY NATIONAL LABORATORY

Policies, procedures, definitions, qualifications, and calculations in effect at PERB's certification of UPTC-CWA Local 9119, on September 15, 1997, relative to severance pay, preferential rehire, and recall shall remain in effect for employees at the Lawrence Berkeley National Laboratory and shall supersede the provisions of this Article where in conflict with the agreement.