

**ARTICLE 13**  
**LAYOFF AND REDUCTION IN TIME**

**A. DETERMINATION**

The University shall determine when temporary or indefinite layoffs or reductions in time are necessary. This determination is non-grievable and non-arbitrable.

**B. DEFINITIONS**

1. A layoff is an involuntary separation from employment or an involuntary transfer to a limited appointment 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.
2. A temporary layoff is a layoff in which the University specifies a date for return to work of not more than four months.
3. An indefinite layoff is a layoff for which no date for return to work is specified, or no date of restoration to the former appointment rate is specified.
4. For the purposes of this Article, seniority shall be calculated by full time-equivalent months (or hours) of University service. Employment prior to a break in service shall not be counted. When employees have the same number of full-time equivalent months (or hours), the employee with the most recent date of appointment is the "junior" employee. [CCL]

**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. The selection of classes for layoff shall be at the determination of the University.
2. With regard to indefinite layoff only, the order of indefinite layoff of employees in the same class within a layoff unit shall be in inverse order of seniority except that:
  - a. The University may retain, at its discretion, employees irrespective of seniority who possess special knowledge or abilities which are not possessed by other employees in the same class, which cannot be learned in less than 6 months, and which are necessary to perform the ongoing functions of the department/division.
  - b. Regardless of seniority, the department may elect to invite all clerical unit employees in the same class within a layoff unit to volunteer for layoff. In that case, the union shall be notified of the invitation at the same time the invitation is transmitted to

employees. The union shall also be informed of the identities of volunteers before the layoff occurs.

- c. Upon notification to the more senior employee of reassignment to the least senior employee's position (or equivalent) he/she will be provided a copy of the job description, if the employee's duties will change. The employee may request to be laid off out of inverse seniority order. The University shall not solicit volunteers to be laid off out of seniority order. If the University proposes to grant the request, it shall provide notice to CUE. The University will not approve waivers of seniority rights without CUE's agreement. CUE and the University must agree to the waiver no later than fifteen (15) calendar days after the notice to CUE. Upon agreement the University shall provide forty-five (45) calendar days notice to the employee, if feasible. In no case will the employee receive less than forty-five (45) calendar days' notice, or pay in lieu of notice.
3. The department head shall select employees for layoff, but shall minimize indefinite layoffs from career positions by first reviewing the necessity for existing limited appointment and casual/restricted positions within the department.

#### **D. NOTICE**

1. 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. A copy of the notice provided to the employee shall be sent to CUE by facsimile or U.S. mail on the same or next business day. CUE will be responsible for providing the University with the fax numbers/addresses that apply to each campus/Laboratory/medical center. Except in cases of emergencies (including, but not limited to natural disasters and acts of war), advance notice of a layoff will be provided as follows:
  - a. For temporary layoff expected to last 120 calendar days or less, the University shall give 15 calendar days notice of the expected beginning and ending dates of the layoff.
  - b. For indefinite layoff, the University shall give 60 calendar days notice, if feasible. The University may pay up to 45 days of the 60 day notice period in lieu of notice. In no event shall an employee receive less than 45 days notice of indefinite layoff. For conversion from temporary layoff to indefinite layoff, the University shall give 30 calendar days' notice.
  - 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 give 45 calendar days notice to CUE. When such notice is provided regarding the layoff of five or more FTE, the campus/hospital/Laboratory will, upon receipt of a timely written request from CUE, meet with CUE to discuss the

layoff. During the meeting the parties may discuss alternatives to  
layoff.

2. When the University determines that there is to be a change in a layoff unit within the bargaining unit, it shall give CUE advance notice of at least 30 days and upon request shall meet and discuss such proposed changes. Changes to a layoff unit shall not occur more frequently than each 120-calendar days.

#### **E. PREFERENTIAL REHIRE**

1. A non-probationary career employee who is indefinitely laid off shall have preferential rehire status for an active vacant career position. An active career position is a position which the University, in its sole discretion, determines to fill. 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. Such employees are rehired provided:
  - a. The active, vacant career position is in the same bargaining unit and at the same campus/hospital/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. 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. Employees who are eligible for preferential rehire status with five years, but less than 10 years seniority at the time the layoff occurs shall retain preferential rehire status eligibility for two years. Employees who are eligible for preferential rehire status with 10 years or more seniority shall retain preferential rehire status eligibility for three years.
3. An employee may exercise his or her rights to preferential rehire immediately after the employee receives written notification of layoff and meets with the campus representative designated in the layoff notice. An employee who exercises preferential rehire rights and is not selected for the position will, upon request, be informed in writing of the reasons for the non-selection.

4. 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 with restoration of full preferential rehire status. In addition, an employee, at his or her option, may request to be returned to layoff status within 60 calendar days of rehire. The time on job status will not be counted as part of preferential rehire eligibility time.

5. Preferential Rehire Termination

The preferential consideration described above shall terminate at the end of the period of eligibility described in §E.2. 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 15 calendar days. The 15-calendar day response period shall begin immediately upon personal notice of the career employment opportunity or 10 calendar days from the date written notice is postmarked.

6. If an employee voluntarily reduces his or her time for a reason listed in §C.1. above, within one year prior to a layoff, the employee is entitled to recall/rehire rights at a percentage of time equal to that from which the employee voluntarily reduced his or her time. The request for the voluntary reduction must be submitted by the employee in writing and approved by the supervisor and must state the effective date and the percentage of the reduction in time.

**F. 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 class and department at the same or lesser percentage of time as the position from which the employee was laid off.
- b. The employee is qualified to perform the duties of the active, vacant career position.

2. Employees who are eligible for recall shall retain recall eligibility for three years from the date of layoff. An employee who accepts a limited appointment or a position in a lower class or at a lesser percentage of time shall remain eligible for recall rights during the period of recall.

3. 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. The time on job status will not be counted as part of recall eligibility time.

4. Recall Termination

The right to recall terminates at the end of the period of eligibility or if an employee:

- a. Refuses a recall to work; or
- b. 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
- c. Accepts a career position at the same or higher salary level within the University.

**G. SEVERANCE**

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. Each campus department shall, in each instance of layoff, including reduction in time, offer severance in lieu of preferential rehire and recall rights to all employees in the department affected by the layoff. Severance pay shall be in accordance with the following:

- a. An employee who elects severance pay in lieu of preference for reemployment and the right to recall shall be paid a lump sum amount of one week (5 workdays) of salary for each full year of service from the most recent break in service, up to a maximum of 16 weeks of base pay.
- b. An employee whose time has been reduced indefinitely and who elects severance pay in lieu of preference for reemployment and the right to recall shall receive severance pay for the percent of time reduced in accordance with the payment schedule above.
- c. Employees who are laid off following a reduction in time that occurred within 60 calendar days of the layoff notice shall be eligible for 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 or reduction in time except as provided in section G.1.c. above.

2. Should an employee be returned to work as a result of a grievance, arbitration, or settlement agreement related to the layoff, any severance pay received will be deducted from the back pay award. An employee cannot be returned to work without first repaying the severance or signing a severance repayment agreement.

#### **H. CONTINUITY OF SERVICE UPON REEMPLOYMENT**

1. 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 and, therefore, no break in service. However, seniority and benefits accrue only when an employee is on pay status.
2. An employee who has been laid off and is rehired at another University location within the employee's period of recall will be eligible for the following as a result of no break in service:
  - a. Reinstatement of all sick leave accumulated from prior service,
  - b. Reinstatement of vacation accrual rate,
  - c. Calculation of University service based on full-time equivalent months (or hours) of University service, and
  - d. Buy-back of UCRP service credit according to the University Benefit Regulations.

#### **I. EFFECT ON BENEFIT COVERAGE**

See Article 42, – University Benefits, §C.1.

#### **J. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications and calculations in effect at PERB's certification of CUE on November 21, 1997, relative to severance pay that are in conflict with the Agreement shall remain in effect for employees at the Lawrence Berkeley National Laboratory.