

**ARTICLE 16
LAYOFF AND REDUCTION IN TIME**

A. GENERAL CONDITIONS

1. Layoffs may be temporary or indefinite and may occur because of budgetary reasons, curtailment of operations, lack of work, reorganization, or redefinition of the University's or department's needs.
2. The University shall have the sole right to determine:
 - a. when temporary or indefinite layoffs in career positions shall occur, the units of layoff, and the unit in which the layoffs shall occur, and
 - b. which classification and/or positions are to be subject to layoff.
3. If the University determines that a layoff is necessary, it will be accomplished in accordance with the provisions of this Article.
4. When the University determines that there is to be a change in a layoff unit within the bargaining unit, it shall give UPTe advance notice of at least thirty (30) calendar days, if feasible, and upon request shall meet and discuss such proposed changes. Changes to a layoff unit shall not occur more frequently than each one-hundred twenty (120) calendar days.
5. The terms of this Article shall not apply to probationary or non-career employees, except as specifically provided in this Article.
6. The procedures for fulfilling the terms of this Article may vary by campus. However, campus procedures must be consistent with the provisions of this Article.

B. DEFINITIONS

1. A layoff is an involuntary:
 - a. separation of an employee from employment as implemented in accordance with the provisions of this Article, or
 - b. transfer of a career employee to a non-career position, or
 - c. reduction in the appointment rate of an individual employee, or
 - d. reassignment of an employee in a full-time career position to a partial-year career position, to a limited appointment position, or to a part-time position at a fixed or variable percentage of time.
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 her/his 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. Notice

When the University identifies particular employee(s) 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).

- b. If less than fifteen (15) calendar days notice is granted for temporary layoff, 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.
- c. If the ending date of the temporary layoff is changed and the total duration of the temporary layoff is less than one-hundred twenty (120) calendar days, the University shall give the affected employee fourteen (14) calendar days notice of the date to return to work. The employee shall return to work on the date provided in the notice, unless the employee and the University agree otherwise.
 - 1) The employee shall return to work on the date provided in Section C.1., 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.1., above.
 - 2) Notice of a change in temporary layoff dates does not invoke the pay in lieu of notice provisions of this Article.

2. **Conversion Of Temporary To Indefinite Layoff**

For conversion from temporary layoff to indefinite layoff, the University shall give thirty (30) calendar days notice, if feasible. If less than thirty (30) calendar days notice is given, the employee will receive fifteen (15) calendar days pay in lieu of notice.

- 3. The University may institute the State of California Work Sharing Unemployment Insurance Program on each campus/laboratory/hospital where applicable.

D. INDEFINITE LAYOFF

The University shall effectuate indefinite layoffs as follows.

1. **Alternatives To Layoff**

In order to avoid a layoff, the University may reassign an employee to a position for which the employee is qualified at the same or greater percentage of time and at the same or higher rate of pay. Such action will nullify the layoff.

2. **Selection For Layoff**

- a. The order of indefinite layoff of employees in the same classification within the unit of layoff shall be in inverse order of seniority. In the event all employees in a unit of layoff are equally affected by layoff of ten percent (10%) or less, seniority provisions do not apply.
- b. "Seniority" is 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 shall be considered the less senior employee.
- c. The University may retain employees irrespective of seniority who possess special knowledge, skills, or abilities which are not possessed by other employees in the same classification in the layoff unit and which are necessary to perform the ongoing functions of the department. If an 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 employee.

- d. 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.
- 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 will 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) days notice period in lieu of notice. In no event shall an employee receive less than thirty (30) days notice of indefinite layoff or pay in lieu of notice. For conversion from temporary to indefinite layoff, the University shall give thirty (30) calendar days notice, if feasible.
- b. An employee shall be provided all rights under Sections D.4. and D.5., below, beginning at the time of notification of his/her indefinite layoff.
- c. An employee shall receive at the time of layoff, information on how to activate preference and recall rights according to local campus/hospital/Laboratory procedures. Eligible employees must indicate an interest in and eligibility for the specific preference and/or recall rights. If the employee requests information about preference, recall and active vacant openings, the University will provide the information about how to access related job opening information. The University will, upon the employee's employment application, confirm the eligibility for preference or recall and will assess the employee's qualifications.

4. RECALL

- a. Career employees who are indefinitely laid off shall have a right to be recalled in order of seniority of those employees applying for recall to an active, vacant career position for which the employee is qualified in the same classification and department from which they were laid off. An active career position is a position which the University, in its sole discretion, determines to fill. The eligible employee shall file a timely application for recall and self-identify that they are eligible for recall.
- b. Career employees who are eligible for recall shall retain recall eligibility based on the amount of University service at the time the layoff occurs as follows:
 - 1) for one (1) year for up to five (5) years University service,
 - 2) for two (2) years for up to ten (10) years University service,
 - 3) for three (3) years for more than ten (10) years University service.
- c. Employees recalled from layoff status who are not returned to their same job and who fail to perform satisfactorily, as determined by the University, may at any time during the six (6) months following such recall be returned to layoff status with restoration of the unused portion of their recall rights.

- d. The right to recall terminates at the end of the eligibility period.

5. **Preferential Rehire**

- a. 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. The eligible employee shall file a timely application for preference and self-identify that they are eligible for rehire preference according to this Section.
- b. Such employees are rehired provided:
 - 1) 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
 - 2) 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
 - 3) the active, vacant career position is at the same or lesser percentage of time as the position from which the employee was laid off, except as provided in Section D.6.
- c. The laid off non-probationary career employee will, along with any other qualified laid off University employees, be given preferential consideration for an active vacant career position which is being filled by the campus/hospital/laboratory, provided the conditions in Sections D.5.b.1-3 above are met. Qualified laid off University employees will be interviewed for the position. In order to be placed in such a position, the employee must be fully qualified to perform the duties of the position.
- d. Employees who are eligible for preferential rehire status with less than five (5) 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 (5) years, but less than ten (10) years seniority at the time the layoff occurs shall retain preferential rehire status eligibility for two (2) years. Employees who are eligible for preferential rehire status with ten (10) years or more seniority shall retain preferential rehire status eligibility for three (3) years. An employee may exercise her/his rights to preferential rehire immediately after the employee receives written notification of layoff and meets with the campus/hospital/laboratory representative designated in the layoff notice.
- e. Employees preferentially rehired from layoff status who fail to perform satisfactorily may, at any time during the six (6) months following such return, be returned to layoff status with restoration of full preferential rehire status. In addition, an employee, at her/his option, may request to be returned to layoff status within sixty (60) calendar days of rehire. The time on job status will not be counted as part of preferential rehire eligibility time.
- f. According to local procedures, employees who are on layoff status and who indicate an interest in University-offered training classes will be offered classes when there are spaces available after the location's deadline for active employees to sign up.
- g. **Preferential Rehire Termination**

The preferential consideration described above shall terminate at the end of the period of eligibility described in Section D.5.d. above, or if an employee:

- 1) refuses an offer to return, at the same or greater percentage of time, to that department/division and class from which laid off; or

- 2) accepts any career position; or
 - 3) refuses two (2) 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.
6. If an employee voluntarily reduces her/his time due to budgetary reasons, curtailment of operations, lack of work, reorganization, or redefinition of the University's or department's needs within one (1) year prior to her/his layoff, the employee is entitled to recall/rehire rights to a percentage appointment equal to that from which the employee voluntarily stepped down. In order to be eligible for such increased recall/rehire rights, the employee must submit to her/his supervisor a written statement confirming the offer for the voluntary reduction in time when the voluntary reduction in time occurs and her/his supervisor must approve the voluntary reduction in time.
7. Severance - Effective July 1, 2003 through the Duration of the Agreement, but in any case, no later than June 30, 2008;

career employees who receive their notice of indefinite layoff may elect severance pay either a) or b) below within fourteen (14) calendar days as follows: If the employee does not timely elect either a) or b), and notify the University according to local procedures, the employee will be determined to have elected b).

a. A career employee who has received her/his notice of indefinite layoff may elect, in writing to receive severance pay in lieu of preferential rehire and recall rights with reduced severance, within fourteen (14) calendar days of receipt of the notice of layoff. Election is irrevocable. Each 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) Employees who elect severance pay in lieu of preference/recall with reduced severance shall be paid a lump sum amount of one week (five (5) workdays, based on 8-hour days) of salary for each full year of service from the most recent break in service, up to a maximum of sixteen (16) weeks of base pay.
- 2) 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.
- 3) This section shall not apply to temporary layoff (except as provided in Sections D.7.a. and D.7.a.2. above).

b. Reduced Severance (with Preference and Recall)

- 1) A career employee who has received her/his notice of indefinite layoff may elect, in writing, to receive preferential rehire and recall rights with reduced severance, as an alternative to severance (Section 7.a. above) within fourteen (14) calendar days of receipt of the notice of layoff. Election is irrevocable. Each 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. Reduced severance pay shall be in accordance with the following:
 - a) Employees with less than five (5) years of service receive no reduced severance.

- b) Employees with five (5) or more years of service receive four (4) weeks or 20 work days, based on 8-hour days, reduced severance.
 - c) Employees with 13 or more years of service receive eight (8) weeks or 40 work days, based on 8-hour days, reduced severance.
- 2) 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.
 - 3) This Section shall not apply to temporary layoff (except as provided in Sections D.7.a. and D.7.a.2. above).
- c. UPTE will be notified if an employee has been provided severance or reduced severance. Should, as a result of a grievance, arbitration, or settlement agreement an employee be returned to work, 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. 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 her/his severance repayment obligation shall not increase the University's back pay liability, if applicable.
 - d. When an employee is rehired to a career position before the expiration of the number of weeks for which the employee has received severance payments, he or she will be required to pay back the remaining severance amounts as a condition of employment. The repayment will be on a proportional basis if the rehired position is a different percentage than the original appointment.

If a career employee is rehired after previous layoff and severance payment and then subsequently laid off again, he/she may be eligible for additional severance based on employee's election in Section D.7 for the severance-eligible layoff. The employee's previous layoff election of severance or preference and recall with reduced severance will remain the same for any additional layoff action that occurs and the employee may be eligible for additional severance based on the following:

- 1) Option 1 (break in service upon original layoff) - employee is eligible only for severance based on service credit earned after break in service.
- 2) Option 2 (no break in service) - employee is eligible for severance repaid by employee plus severance based on additional service credit.

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 preferential rehire does not create a break in service.
- 3. Seniority accrues, and benefit accruals are accumulated, only when an employee is on pay status.

F. LAWRENCE BERKELEY NATIONAL LABORATORY

See Appendix F – LBNL Layoff and Reduction in Time.

- G.** 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 sixty (60) calendar days.