



THE STATE OF FLORIDA  
**JUSTICE ADMINISTRATIVE COMMISSION**

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**MEMORANDUM HR17-2020**

TO: Agency Administrators

FROM: Carolyn Horwich, Esq., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Layoff versus Dismissal

DATE: September 3, 2020

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Issue: Judicial-Related Offices (JROs) are terminating employees due to budget issues and using different termination codes on the PARs. Human Resources provides the information below to assist JROs in preparing the PARs in these cases.

Options available in People First: When JAC Human Resources receives a PAR with a BOMS action code, staff here selects the People First action code that most clearly illustrates the JRO's intent. This is because BOMS codes and People First codes are not the same. JAC has received termination PARs with "layoff" in the comments.

However, according to the Florida Administrative Code, there is a distinction between "layoff" and "dismissal". Specifically, the former is available only for Career Service employees whereas the latter is to be used only for SES or SMS employees and their equivalents. All employees in Justice Administration are considered SES or SMS equivalents.

**Rule 60L-33.0065 Separations.**

- (1) Separation is the act of removing an employee from an established position due to severance of employment from the agency, or removing an employee from Other Personal Services employment.
- (2) Agencies are responsible for processing employee separations on a timely basis through the State Personnel System's human resource information system and shall use one of the following separation types and corresponding reason:
  - (a) Voluntary Separations:
    - 1. Move to Private Sector – this reason shall be used when the employee communicates to the agency that the reason for the separation is to accept employment with a non-government entity.
    - 2. Move within State of Florida Government – this reason shall be used when the employee

communicates to the agency that the reason for the separation is to accept employment with another state government entity.

3. Other – this shall be used when any reason other than those indicated in this rule or no reason is given by the employee. This reason shall also be used when the employee retires under the Public Employees Optional Retirement Plan (investment plan).

4. Retirement – this reason shall be used when the employee retires under a state pension plan or completes their Deferred Retirement Option Program (DROP) participation.

5. End of Appointment Period – this reason shall be used when the agency separates an employee at the end of a time-limited appointment.

6. Move to non-State of Florida Government – this reason shall be used when the employee communicates to the agency that the reason for the separation is to accept employment with a local government entity.

7. Abandonment – this reason shall be used when an agency separates an employee due to an employee's absence from the job without approved leave for a minimum of five consecutive work days and the employee's conduct or circumstances imply no intent to return. Abandonment is deemed to be an unwritten resignation.

**(b) Involuntary Separations:**

1. Failed Probationary Period – this reason shall be used when the agency dismisses the career service employee for failure to successfully complete the required probationary period for the position.

**2. Layoff** – this reason shall be used when the agency separates a career service employee due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function.

**3. Dismissal** – this reason shall be used when the agency dismisses a career service employee pursuant to Section 110.227, F.S., or when the agency dismisses a selected exempt service or senior management service employee pursuant to Sections 110.604 and 110.403, F.S.

4. Death of the Employee – this reason shall be used when the agency separates an employee due to the employee's death. 5. Death of Employee in the Line of Duty – this reason shall be used when the agency separates an employee due to death arising out of and in the actual performance of duties required by the employee's position.

6. Legislative Directed Transfer – this reason shall be used when the agency separates an employee due to a legislatively mandated action resulting in the employee moving to another State Personnel System agency.

7. Dismissal-Employee also Retires – this reason shall be used when the agency dismisses a career service employee pursuant to Section 110.227, F.S., or when the agency dismisses a selected exempt service or senior management service employee pursuant to Sections 110.604 and 110.403, F.S., and the employee also retires from the Florida Retirement System.

*Rulemaking Authority 110.1055(1), 110.201(1), 110.227(2)(a), 110.403(1), 110.605(1) FS. Law Implemented 110.105, 110.227, 110.403, 110.604 FS. History–New 1-26-14.*

The process for instituting a layoff comprises a series of specific steps, which JROs do not use:

**Rule 60L-33.004 Layoff and Employee Transition.**

(1) Agencies may effect a layoff for a variety of reasons, including budget cuts, program reductions resulting from outsourcing or privatization efforts, or program phase-outs. Agencies shall accomplish a layoff in an orderly, systematic, and uniform manner in accordance with this rule.

(2) Each agency shall have a Department-approved workforce transition plan. The goal of the plan is to ensure that the agency makes reasonable efforts to provide a smooth transition for the career service employees adversely affected by the layoff. The plan shall identify the steps the agency will take during the layoff to advance this goal. The following steps shall be included in any plan,

unless the plan justifies in writing why they are not included:

- (a) Appoint a workforce transition team responsible for overseeing and administering the layoff.
- (b) Develop a communications plan, designed to ensure open, honest, and frequent communication regarding staffing changes. Provide clear avenues for employees to seek and obtain information and assistance. Address necessary communications with the Department, the Department of Economic Opportunity, and unions.
- (c) Assess the positions to be deleted and the mission and goals of the residual program (that is, the program area that will remain after the deletion of functions and positions). Identify the employees and programs or services that will be affected by the layoff. Identify the knowledge, skills, and abilities that employees will need to carry out the residual program.
- (d) Assess employees.
  1. If the layoff affects law enforcement or correctional officers, firefighters, or professional health care providers, develop procedures to establish the relative merit and fitness of these employees. Include a formula for uniform application within a competitive area, taking into consideration the type of appointment, the length of service, and the evaluation of the employee's performance within the last five years of employment. The Department may authorize selective competition within the competitive area, based upon specific qualifications deemed necessary for a position, if the duties and responsibilities requiring such qualifications are clearly reflected in the official position description on file with the agency.
  2. If the layoff affects any other career service employee, develop assessment procedures on objective measures that include comparative merit, demonstrated skills, experience and length of service in the State Personnel System. In determining which employees to retain, consider which employees will best enable the agency to advance its mission; in this context, consider how each employee fares with respect to the following factors: commitment, cooperation, excellence, fairness, honesty/integrity, initiative, respect, and teamwork.
- (3) A career service employee with permanent status in their current position facing layoff shall have an opportunity for first interview within any agency for a vacancy for which the employee is qualified and has applied.
- (4) Before laying off a career service employee with permanent status in their current position, an agency shall provide the employee reasonable notice of the intended action. Where possible, the agency shall provide at least thirty days' notice, and in all cases the agency shall provide at least ten days' notice or, in lieu thereof, pay or a combination of notice and pay.
- (5) The Department of Economic Opportunity through its existing programs shall make available placement assistance to affected agencies and employees.
- (6) Agencies shall prepare and maintain a workforce transition spreadsheet of adversely affected employees and provide the spreadsheet to the Department and to the Department of Economic Opportunity to assist in the job placement of such employees.
- (7) A layoff is not a disciplinary action therefore, it may not be appealed to the Public Employees Relations Commission.

*Rulemaking Authority 110.1055, 110.201(1), 110.227(2) FS. Law Implemented 110.227 FS.*

*History—New*

*1-1-02, Amended 4-3-03, 1-20-09, 1-26-14.*

**Consequences:** Both *layoff* and *dismissal* are considered involuntary terminations. Both actions will result in a COBRA packet being sent to an employee so that the employee can choose to continue with state group insurance. Regardless of the code used, employees will be able to apply for unemployment benefits.

With the information above, you may wish to add specific comments in the termination PAR if the employee's termination is due strictly to a budget shortfall as opposed to performance. That way, the

employee's personnel record will contain documentation that may counterbalance the negative appearance of an involuntary termination.

If you anticipate mass terminations or unpaid hours, you can prepare a generic statement on letterhead explaining the reason for the action taken. Human Resources can then file that document in each employee's personnel file.

Thank you.