

N. Staff Reduction Procedures – All Employees**

**This section does not apply to employees subject to the State Division of Professional-Technical Education's Rules Governing Postsecondary Reduction or Termination, IDAPA 55.01.02.

~~3.~~ Application for 1. Reduction in Force

A reduction in force may occur in the following manner and may be the same or may differ from one (1) agency, institution, school, or office to another:

- a. By entire entity, scope or across an entire agency, institution, school, or office; or
- b. By subunit within an agency, institution, school, or office, such as, but not limited to, a college, school, academic department, administrative department, division, office, bureau, discipline, ~~or~~ specialty within a discipline, or job classification; or

~~c. e.~~ by any combination of the aforementioned.

~~52.~~ Staff Reduction Criteria

In making any staff reduction recommendation to the Board or the Executive Director, the chief executive officer must utilize as the first criterion the preservation of the quality and effectiveness of the programs of the agency, institution, school or office. Consequently, those employees who are deemed to be of key importance to the specific program will be retained in preference to other employees, whatever their status, at the discretion of the chief executive officer. Programs, for the purposes of this subsection, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include, but are not limited to, tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service or work.

~~4.~~ 3. Reduction Procedures for Classified Employees

- a. State of Idaho Classified Employees

Any reduction in force affecting Board employees subject to the Idaho classified personnel system will be made pursuant the Rules of the Division of Human Resources. The reduction in force must be approved by the Executive Director. The decision of the chief executive officer relating to specific employees is final and not appealable to the Board, but may be appealable to the Division of Human Resources.

b. University of Idaho Classified Employees

The rules of the Division of Human Resources must be used to differentiate among University of Idaho classified employees within the unit or subunit being reduced in force. The reduction in force must be approved by the Executive Director, provided, however, that employees do not have a right of appeal to the Board. The University of Idaho will maintain a layoff roster in the event of a layoff at the University of Idaho classified employees consistent with the policies of the University of Idaho.

The decision of the chief executive officer relating to specific employees is final and not appealable to the Board.

4. Reduction Procedures for Nonclassified Employees

a. Unless subject to an employment contract, nonclassified employees serve at the pleasure of the chief executive officers, or where applicable, the Board. Therefore, nonclassified employees are “at-will” employees and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

b. If an agency, institution or school seeks to lay off nonclassified employees that are not subject to an employment contract, the reduction in force must be approved by the Executive Director.

c. Nonclassified employees subject to an employment contract may be terminated only if there is adequate cause, or if the Board declares financial exigency through the process set forth in section 5 below, “Reduction Procedures for Faculty.”

d. Appeal Rights-

1. Contract Employees-In most instances, a reduction in force of employees serving under a contract of employment for a fixed term will be accomplished by nonrenewal of the contract of employment rather than by layoff during the term of employment. Nonrenewal under these circumstances is not appealable to the institution or school, nor is it appealable to the Board. In the event an employee serving under a contract of employment for a fixed term is laid off during the term of employment, that employee is entitled to use the appeal procedure of the institution or school. For this purpose, each institution or school must establish its own appeal or grievance procedure in the event such procedure does not currently exist. The employee must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice of layoff, of his intent to use

the internal appeal procedure. The decision of the chief executive officer following the appeal procedure is final and not appealable to the Board. Use of the appeal procedure does not delay the effective date of the layoff.

2. Noncontractual Employees-Termination of employees serving at the pleasure of the Board or a chief executive officer in furtherance of a reduction in force is not appealable.

5.—Staff Reduction CriteriaProcedures for Institutional Faculty

~~In making any staff reduction recommendation to the Board, the chief executive officer must utilize as the first criterion the preservation of the quality and effectiveness of the programs of the agency, institution, school, or office. Consequently, those employees who are deemed to be of key importance to the specific program will be retained in preference to other employees, whatever their status. Programs, for the purposes of the subsection, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include but are not limited to tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work.~~

1. Financial Exigency

a. Financial Exigency

The Board recognizes that in order to discharge its responsibilities for the ~~agencieies, institutions, school or office under its governance,~~ it may become necessary to curtail, modify, or eliminate some of its programs of the ~~agencieies, institutions, school, or office~~ due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of ~~its agencieies, the~~ institutions, ~~school, and office~~. As used here, “financial exigency” means a demonstrably bona fide, financial crisis that adversely affects an ~~agency, institution, school or office as a whole,~~ or one (1) or more programs, or other distinct units. A state of financial exigency exists only upon Board declaration.

2. Staff Reduction Procedures

a. b. The Board must take action by written resolution setting forth the basis for its decision to implement a ~~staff~~ reduction of faculty, after notice and hearing, at a regular or special meeting of the Board.

b.c. A reduction in force must be done equitable, in good faith, and in systematic manner directly related to the financial exigency.

e.d. After active consultation with the employees, including faculty, professional staffs, and classified personnel, the chief executive officer of each institution must prepare and recommend to the Board a program consisting of various alternatives to implement staff reduction procedures. When developing this program, consideration must be given to the necessity and manner of reducing the employment force, the appropriate unit or subunit to be reduced in force, and the criteria for identifying the employees who are to be laid off. The Board must consider and approve a program to implement its decision prior to the effective date of any layoffs.

d.e. Each of the institutions may establish a committee, which may include representatives of the administration, faculty, staff or students, to advise the chief executive officer on the need for declaring a state of financial exigency and possible remedies therefore.

6.f. Form of Notice

The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in this policy, the agency, institution, school, or office chief executive officer must give notice in writing to employees who are affected by a reduction in force, which notice must include the effective date of the layoff; a statement of the reasons for the Board's action to declare a financial exigency; the basis, the procedures, and the criteria used to lay off an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee.

7.g. Time of Notice

~~Each agency, institution, school, or office must make every effort to give as much notice as is practical in light of the financial exigency to each employee in advance of the effective date of the layoff. Yet, the legislative appropriation process and the subsequent analysis needed before the Board declares a condition of financial exigency and receives, considers, and approves implementing programs may allow little time for official notice of layoff. The active consultation with its employees that the Board requires of each agency, institution, school, or office should give to each employee as much actual, informal notice of impending action as is humanly possible under the circumstances. However, the Board is also aware that under some circumstances the decision to declare a condition of financial exigency is based on estimated revenues, rather than on actual revenues. Because of this the Board encourages the longest time of notice possible under the circumstances to any employee who is to be laid off. However, the Board can and does bind each agency, institution, school, or office under its governance to the following minimum written notice of layoff:~~

Each institution shall provide the following minimum written notice of layoff:

~~a. Classified Employees (State and UI) — Not less than sixty (60) calendar days before the effective date of the layoff.~~

a. Nonclassified Contract Employees And Nontenured Faculty - Not less than sixty (60) calendar days before the effective date of the layoff.

e.b. Tenured Faculty - To tenured faculty members occupying faculty positions, a notice of layoff with the effective date of layoff being one (1) full semester after the semester in which exigency is declared. An individual institution may, at its option, allow up to a full year's notice.

~~d. Pleasure Of The Board Employees — To employees serving at the pleasure of the Board, thirty (30) calendar days before the effective date of the layoff.~~

8.h. Appeal Rights

~~a. Classified Employees~~

~~A layoff of employees subject to the Idaho classified personnel system and University of Idaho classified employees is a grievable matter, but unless otherwise required by law or regulation, the grievance procedure does not delay the effective date of the layoff. The decision of the chief executive officer of the agency, institution, school, or office is final and not appealable to the Board. In the event that such appeal or grievance procedures do not currently exist, each agency, institution, school, or office must establish such procedures.~~

~~b. Non Faculty, Nonclassified Employees~~

~~(1) Contract Employees — In most instances, a reduction in force of employees serving under a contract of employment for a fixed term will be accomplished by nonrenewal of the contract of employment rather than by layoff during the term of employment. Nonrenewal under these circumstances is not appealable at the agency, institution, school, or office, nor is it appealable to the Board. In the event an employee serving under a contract of employment for a fixed term is laid off during the term of employment, that employee is entitled to use the appeal procedure of the agency, institution, school, or office. For this purpose, each agency, institution, school, or office, must establish its own appeal or grievance procedure in the event such procedure does not currently exist. The employee must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice of layoff, of his intent to use the internal appeal procedure. The decision of the chief executive officer of the agency, institution, school, or office following the appeal procedure is~~

~~final and not appealable to the Board. Use of the appeal procedure does not delay the effective date of the layoff.~~

- ~~(2) Pleasure Of The Board Employees—Notwithstanding the provisions of the prior paragraph, termination of employees serving at the pleasure of the Board pursuant to any other provision of the Board's policies and procedures in furtherance of a reduction in force is not appealable.~~

~~e. —Tenured and Non-Tenured Faculty~~

- (1) ~~Nontenured Faculty. Nontenured faculty members~~ Nonclassified Contract Employees and Nontenured Faculty. Nontenured faculty members and nonclassified contract employees occupying permanent faculty positions who are laid off are entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the final written recommendation of the hearing body, is final and not appealable to the Board.
- (2) Tenured Faculty. A tenured faculty member is entitled to use one or the other of the following appeal procedures, but not both:
- (a) A tenured faculty member may file a written request of appeal to the chief executive officer of the institution within fifteen (15) calendar days of certified receipt of the notice of intention of the chief executive officer to recommend layoff to the Board. In the written request, the tenured faculty member must set down the grounds upon which the layoff is alleged to be improper and ask for an informal resolution of the issue in advance of final action by the Board. If an informal resolution is not reached, the tenured faculty member may appear before the Board prior to its final action on the chief executive officer's recommendation for a layoff. The appearance before the Board will be informal and is not a contested case. The decision of the Board is final; or
- (b) Following final action of the Board, the tenured faculty member so affected is entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the written recommendation of the hearing body, is final and not appealable to the Board. In the event the chief executive officer determines that his recommendation was made in error, a corrective recommendation must be made to the Board.
- (3) Institutional Appeal Procedures

Each institution must establish an appeal procedure in the event such procedure does not currently exist. The hearing procedures must ensure a prompt and expeditious hearing that is fair and unbiased, but the procedural requirements of formal adjudication are not required. The final written recommendation of the hearing body must be conveyed to the chief executive officer. Use of the hearing procedure does not delay the effective date of the layoff.

- (a) Hearing Standard. The hearing body established must evaluate whether the established and approved procedures were followed and appropriate criteria applied in arriving at the decision to lay off a faculty member.
- (b) Limitations Upon Review. The hearing body will not review the Board's decision or the funding distribution among and within the institution(s).

9. i. Standard of Review

~~The sole basis on which to contest a layoff of employees subject to the Idaho classified personnel system and of University of Idaho classified employees is compliance with the rules of the Division of Human Resources where applicable, and compliance with these rules and the program for reduction in force approved by the Board.~~ The sole basis to contest a layoff of tenured faculty members, nontenured faculty members, and nonclassified employees serving under a contract of employment for a fixed term is compliance with these rules and the program for reduction in force approved by the Board. The decision of the Board is judgmental or discretionary and is not subject to contest by any employee in any grievance or appeal procedure.

10. Layoff Roster for Classified Employees

~~An agency, institution, school, or office laying off employees subject to the Idaho classified personnel system must prepare and distribute a listing of retention point scores of employees in classes to be affected by a layoff as required by the rules of the Division of Human Resources. The Idaho Division of Human Resources will maintain the layoff roster. A classified employee reinstated from a layoff roster will be paid at a pay grade and step consistent with the rules of the Idaho Division of Human Resources in effect at the time of reinstatement.~~

- ~~a. The University of Idaho will maintain a layoff roster in the event of a layoff of University of Idaho classified employees consistent with the policies of the University of Idaho.~~
- ~~b. An employee who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies,~~

~~and procedures governing the administration of such insurance program so permit.~~

- ~~c. An employee who has been laid off and who accepts reemployment at an agency, institution, school, or office must be credited with any sick leave which the employee had accrued as of the date of layoff, and with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.~~

~~11.i.~~ Reinstatements Rights

~~a.(1.)~~ Tenured Faculty

In cases of layoff of tenured faculty members occupying permanent faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer is extended.

- ~~(+)(a)~~ Refusal Of Reinstatement Offer. If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member.

- ~~(2)(b)~~ Benefits During Layoff. A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.

- ~~(3)(c)~~ Leave Credit. A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave which the employee has accrued as of the date of layoff and for which the employee has not received payment.

~~b.(2.)~~ Non Tenured Faculty and Nonclassified Employees

In cases of layoff of nontenured faculty members occupying permanent faculty positions, and nonclassified employees occupying permanent positions, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the employee has been offered a return to employment in that position and the

employee has not accepted the offer within thirty (30) calendar days after the offer is extended.

~~(1)~~(a) If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee.

~~(2)~~(b) A nontenured faculty member or a nonclassified employee who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.

~~(3)~~(c) A nontenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.

~~(4)~~(d) A nonclassified employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.