



Workforce Transitions: Layoffs, Furloughs, and Retention Strategies

Presented by:
Marc A. Fishel

 **FISHEL DOWNEY
ALBRECHT & RIEPENHOFF** LLC™
Attorneys at Law

Our Team

Fishel Downey Albrecht & Riepenhoff LLC (FDAR) is a mid-sized Columbus, Ohio, based law firm with a statewide practice. FDAR represents hundreds of clients, with facilities in nearly three-fourths of Ohio's 88 counties, as well as out-of-state and international clients with an Ohio presence.



Overview

❖ Five Basic Components to Abolishments and Layoffs:

- Establish the rationale and justification for the layoff.
- Communicate the plan and procedures.
- Make selection decisions.
- Review list of affected employees.
- Notify affected employees.

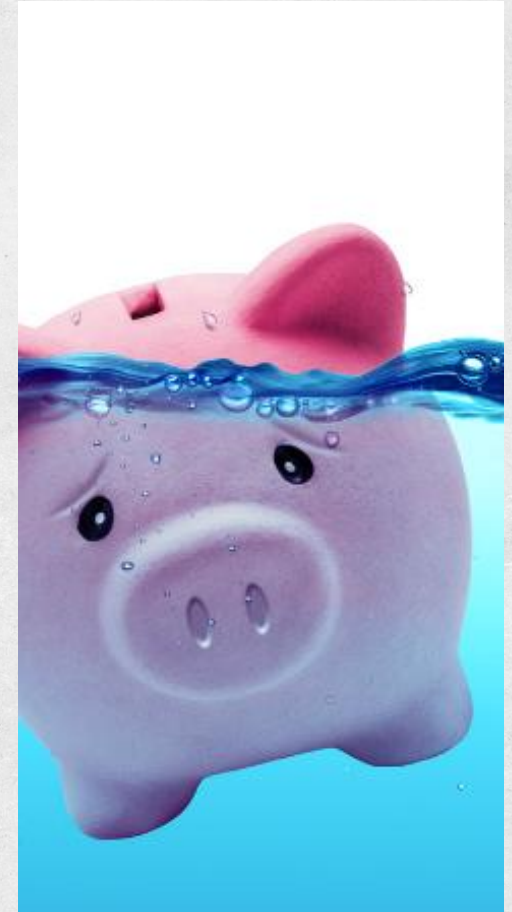


Layoffs and Job Abolishments of Classified Civil Servants

O.R.C. § 124.321 to § 124.328.

Reasons for Layoffs

- ❖ **Lack of Funds** - The appointing authority determines there is a current or projected deficiency of funding to maintain current, or sustain projected, levels of staffing and operations. O.R.C. § 124.321
- ❖ Positions with a dedicated funding source, i.e. grant funded positions; lack of funds is presumed if funding is reduced or withdrawn. O.R.C. § 124.321 (A)(2)



Reasons for Layoffs



- ❖ **Lack of work** - The appointing authority has a current or projected temporary decrease in the workload, expected to last less than one year, which requires a reduction of current or projected staffing levels. O.R.C. § 124.321(C).
- ❖ The appointing authority determines the staffing levels indicated by current or projected decrease in workload and if staffing levels are or will be excessive.

Reasons For Job Abolishments

O.R.C. § 124.321(D)

- ❖ “Abolishment” means the deletion of a position(s) from an organization, for any one or combination of the following reasons:
 - As a result of a reorganization for the efficient operation of the appointing authority;
 - For reasons of economy: or
 - For lack of work (permanent).

Statement of Rationale. Supporting Documentation for Abolishments and Layoffs

- ❖ **Layoff for lack of work** - Documents should provide statistical data covering a reasonable period that indicates the decrease in workload.
- ❖ **Layoff for lack of funds** - Documents should show projected revenues and projected expenditures that would then, if continued, result in a projected deficit.
- ❖ **Job abolishment** - Documents should explain how the economy or better efficiency can be achieved as the result of reorganization.

Layoffs Following Abolishments

O.R.C. § 124.321(D)(3)

- ❖ If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series.
- ❖ If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.
- ❖ If there is no successively lower position the employee may displace the least senior person (assuming that person has fewer retention points) in a position that the employee held within the past 3 years if the employee still meets the minimum qualifications for the position.

Classifications and Order Of Layoff

- ❖ The statute clearly establishes that the appointing authority determines the classifications for layoff or abolishment. Only a showing of abuse of discretion will set aside this determination.

Retention Points O.R.C. § 124.325

- ❖ Retention points - The order of layoffs must be based in part on length of service. Retention points are calculated at 1 point for each pay period in which the employee received pay for full-time positions or .5 points for part-time positions.



Appointment Categories, Order of Layoff O.R.C. § 124.323

Part-time probationary

Full-time probationary

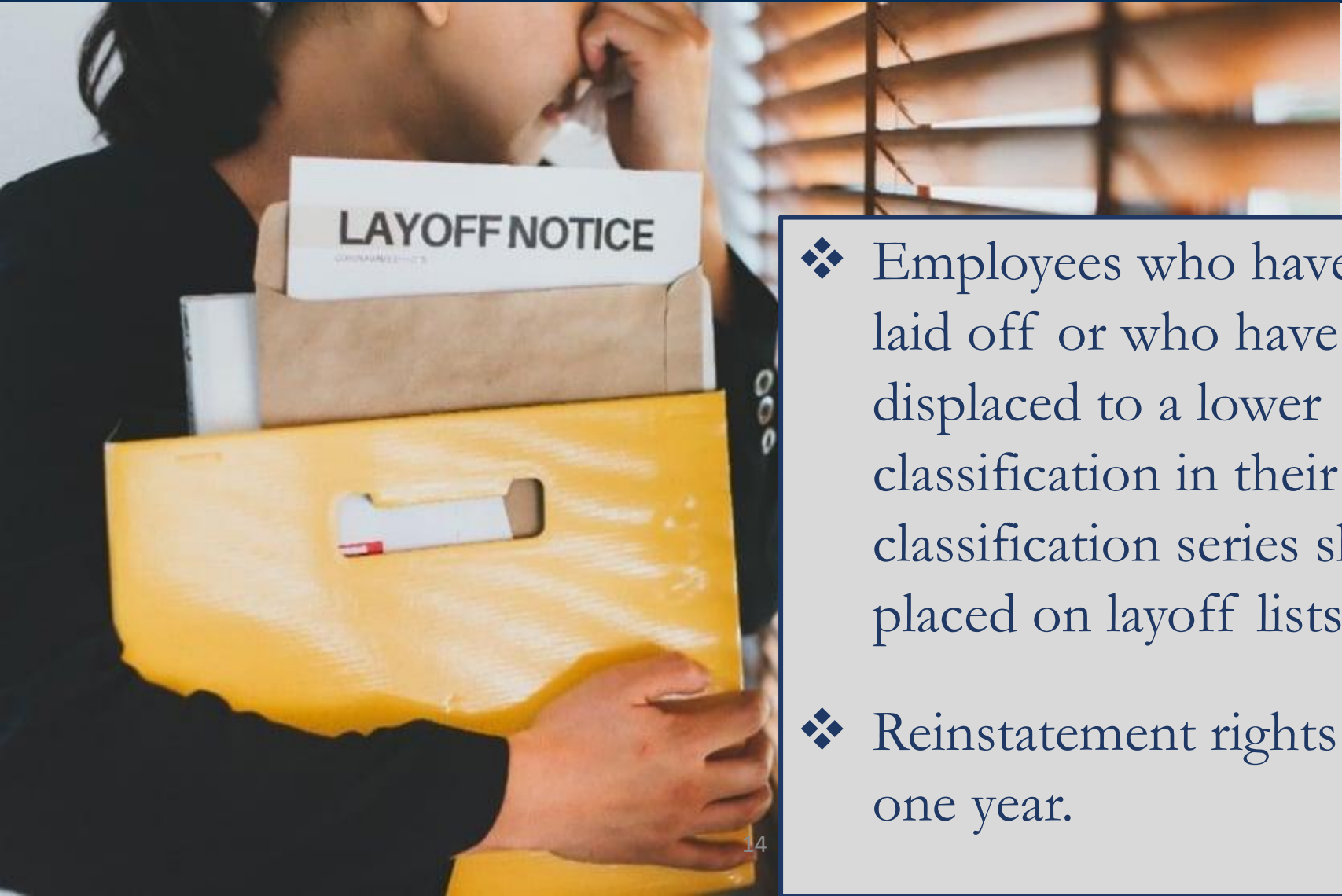
Part-time permanent

Full-time permanent

Displacement/Bumping Rights of Laid-off Employees O.R.C. § 124.324

1. Within the classification from which the employee was laid off.
2. Within the classification series from which the employee was laid off.
3. Within the classification the employee held immediately prior to holding the classification from which the employee was laid off as long as the employee meets the minimum qualifications or last held that classification more than three years prior to the date the employee was laid off.

Layoff Lists and Reinstatement Rights O.R.C. § 124.327.



- ❖ Employees who have been laid off or who have been displaced to a lower classification in their classification series shall be placed on layoff lists.
- ❖ Reinstatement rights last one year.

Layoff Notice

- ❖ Must be provided 14 or 17 days in advance.

Content of notice:

- Effective date of layoff
- Reason for layoff
- Number of retention points
- Bumping rights (if any)
- Reinstatement rights
- Right to appeal
- Payout of vacation leave
- O.R.C. § 124.393

Cost Savings Days

- ❖ Layoff Provisions
- ❖ O.R.C. § 124.393
- ❖ Exempt from collective bargaining
- ❖ Fiscal Emergency- Same as lack of funds/Reasons of economy
- ❖ Up to 80 hours in each state fiscal year
- ❖ Not subject to appeal

Modified Work Week

- ❖ O.R.C. § 124.394
- ❖ Exempt from collective bargaining
- ❖ **Fiscal Emergency- Same as lack of funds/Reasons of economy**

Checklist of Various CBA Provisions

❖ Layoff Provisions

- Displacement from or to non-bargaining unit positions “Chinese Wall” provision.
- Seniority only layoff.
- Merit layoffs.
- Appeals through grievant/arbitration procedure.

❖ Duty to Negotiate/Discuss Layoff

Thank You!

IF YOU HAVE ANY QUESTIONS, PLEASE ASK!

Marc A. Fishel

mfishel@fisheldowney.com

7775 Walton Parkway, Suite 200

New Albany, Ohio 43054

PH: 614-221-1216 / www.fisheldowney.com

