



**NYSUT's Office
of General Counsel**



NON-INSTRUCTIONAL STAFF

Layoff and Recall



NON-INSTRUCTIONAL STAFF: Layoff and Recall

By NYSUT Office of General Counsel

This booklet discusses when a school district can layoff non-instructional and school-related professionals, the order in which such personnel are laid off, the rights of personnel slated to be laid off to retain other positions with the district, and the rights of laid off personnel to return to their jobs after the layoff. The content is for informational purposes only, does not constitute legal advice, and does not establish an attorney-client relationship. If you have specific questions regarding your situation, present them to your union representative for consideration and analysis.

When can a school district layoff staff?

A school district can eliminate positions for economic reasons, change in services, curtailment of activities and so forth. School districts have extremely broad authority in this area and, generally speaking, the courts will not second guess them.

When is a layoff improper?

The one limitation on a school district's authority to layoff is that the district cannot act in bad faith. This is a very high standard. An employee must show that there was no bona fide reason for eliminating the position, it achieved no cost savings, the district hired someone else as a replacement, or that the layoff was otherwise motivated by bad faith.

If a position is eliminated, who gets laid off?

If a school district decides to eliminate a position, who actually gets laid off depends on a number of factors including the type of position that is eliminated. Different positions have different rights. Very generally speaking, the law requires that competitive class employees are laid off by seniority, and they have various other rights when positions are abolished. Also very generally speaking, employees in the non-competitive and labor classes are laid off as the school district determines unless the applicable collective bargaining agreement gives them additional rights.

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What are the different types of non-instructional positions?

Non-instructional positions can be exempt, labor, non-competitive or competitive class positions. For school districts, the applicable county or city municipal civil service commission or personnel officer determines the appropriate class of any position.

- Exempt positions are policy-making positions and confidential positions. Due to the nature of the positions, they often are not in the bargaining unit.
- Labor class positions are unskilled laborers that are filled by appointment of the school board.
- Non-competitive positions are those that the local civil service agency determines are not practical to fill by competitive examination. They are not exempt or labor class positions. Appointment in a non-competitive class position is made by a school board after the appropriate civil service agency has examined the candidate on a non-competitive basis. Usually merely involves the review of the candidate's qualifications compared to the qualifications in the specification standards established for the position.
- Competitive class positions are those for which competitive examinations are held, lists established, and appointments made from such lists. Competitive class positions are not in any of the other classes described.

How does someone find out the type of position that he or she occupies?

If someone is not sure of the type of position that they hold, they should check with the personnel officer or the school district's human resources department, or the applicable county or city municipal civil service commission.

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What rights do non-competitive and labor class employees have when there is an elimination of those positions?

For non-competitive and labor class employees in school districts, the law does not provide any layoff rights or protections.

Any layoff rights such as bumping or recall rights for non-competitive and labor class employees are determined by the applicable collective bargaining agreement. Many of our collective bargaining agreements have established such rights for these employees. Accordingly, the applicable collective bargaining agreement should be carefully reviewed when layoffs are being considered for non-competitive and labor class employees.

What rights do competitive class employees have when there is an elimination of those positions?

Competitive class employees have a host of layoff rights, including the right to be laid off by seniority, bumping rights, retreat rights and, if they are laid off, the right to be put on a preferred list for rehire.

If competitive class positions are eliminated, who gets laid off first?

There are different types of competitive class positions, and what type of competitive class position a person holds determines the order in which that person would be laid off.

- Temporary appointments in the eliminated position must be laid off first. Temporary appointments are only supposed to be used for a short period of time when there is an “important and urgent need.”
- Provisional appointments must be laid off next. Provisional appointments are those made in a competitive position but not from a list because there has been no recent examination or other reason.
- Contingent permanent appointments must be laid off next. A contingent permanent appointment includes positions such as a provisional appointment to permanent positions where the holder

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of that position is on leave, a provisional appointment or a promotional appointment subject to a probationary term.

- Only after the above persons are laid off, can a permanent competitive class employee who has not completed the probationary period be laid off, and then permanent employees are laid off last by order of seniority.

How is seniority determined for competitive class employees?

A competitive class employee's seniority is calculated based on their first appointment date on a permanent basis in the classified service, not necessarily in the position currently held.

Service must be continuous. The following do not constitute a break in service:

- Resignation followed by reinstatement within one year;
- Termination due to Workers Compensation injury followed by reappointment;
- Employment on a temporary or provisional basis, or in the unclassified service, immediately preceded and followed by permanent service;
- Leave of absence without pay; and
- The period of time spent on the preferred list.

Do certain competitive employees get preference?

The following employees have a preference in retention over other employees:

- Blind employees have an absolute preference;
- Disabled war veterans have 60 months added to their actual service;
- Non-disabled war veterans have 30 months added to their actual service; and
- Spouses of totally disabled war veterans have 60 months added to their service if certain conditions are met.

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What are the bumping rights of a competitive employee?

A competitive employee who has been selected to be laid off has the right to bump an employee with less seniority in the next lower title in the direct line of promotion. If no one is serving in that title, then the next closest occupied title in the promotion series is used. A competitive class employee can only bump another competitive class employee even where the next lower title in the promotion series is in the non-competitive class.

What are the retreat rights of a competitive employee?

A competitive employee who has been selected to be laid off has the right to retreat to a position in which the employee last served on a permanent basis. Under the retreat procedure, the employee may displace the present incumbent with less seniority under certain conditions.

What happens after a competitive employee is laid off?

Upon layoff, a permanent competitive class employee is placed on a preferred list. The preferred list must be used to fill vacancies before any other list is used. A person stays on a preferred list for four years.

What if someone on a preferred list declines a position?

Employees on a preferred list may be offered full-time, part-time, permanent contingent, permanent or temporary types of appointment. If an employee declines a certain type of employment, such as temporary or part-time, he or she will no longer be eligible for any future appointments of that type but would still be eligible for the other types.

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What should I do if I might be laid off?

As the above indicates, this can be a complicated area. If you think you might be facing a layoff, be sure to gather all your relevant information including, paperwork regarding appointment, service and seniority, and contact your union. We have experts in this area who can guide you through it and make sure that the school district does it correctly and your rights are protected.

There are short timelines for enforcing layoff and recall rights so act swiftly to preserve your rights. Your union is here to help!



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