

Supreme Court of Kentucky

2009-08

ORDER

**In Re: Amendments to the Rules of Administrative Procedure
AP Part III Personnel Policies, Section 8.03**

Under Sections 110(5)(b) and 116 of the Constitution of Kentucky, it is HEREBY ORDERED that Section 8.03 of the Kentucky Court of Justice Personnel Policies, AP Part III of the Rules of Administrative Procedure, dated May 24, 2005, is hereby deleted in its entirety and shall be replaced by the following:

SECTION 8.03 Layoffs

A. GENERAL RULES

- (1) A layoff is a separation of employment for reasons of shortage of funds, lack of work, or other considerations of efficiency with no fault attributable to the employee.
- (2) A layoff is based upon lack of work, lack of funds, abolishment of position, or a material change of duties of the organization.
- (3) A layoff plan shall be approved and implemented by the Chief Justice.
- (4) The reemployment rights referenced in these rules are only applicable to tenured employees of the Kentucky Court of Justice (KCOJ).
- (5) Any employee who is subject to layoff shall have a right to a detailed notice of the reasons for the action, notice of the opportunity for continuation of certain benefits, and unemployment insurance. Tenured employees shall also have a right to placement prior to layoff if possible, and to be recalled for reemployment after layoff if available.

- (6) "Bumping rights," defined as when a laid off employee is permitted to displace an employee with less seniority, shall not be available to any employee.
- (7) It shall be a violation of these rules to coerce employees to resign or retire in lieu of layoff. Layoffs shall not be utilized as a means of dismissal.
- (8) Temporary and probationary employees shall be subject to lay off before tenured employees. For purposes of these rules, "probationary employee" does not include a tenured employee serving a review period. A department shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
- (9) All placements shall be based solely on seniority. Placement of employees who are subject to layoff and who are eligible and qualified for an available vacant tenured or vacant non-tenured position shall be made in the following order:
 - a. placement in the same county, with the same job title and with the same elected official and/or appointing authority, unless all employees within the same county and job title are to be considered for layoff;
 - b. placement in the same or adjacent county, with any job title, and with the same elected official and/or appointing authority;
 - c. placement in an adjacent county, with any job title and with any elected official and/or appointing authority;
 - d. placement in any county, with the same job title and with any elected official and/or appointing authority;
 - e. placement in any county, with any job title and with any elected official and/or appointing authority.
- (10) Seniority shall be determined by the number of months an employee has been in continuous service for the Kentucky Court of Justice.
- (11) If two or more employees meet the minimum qualifications of a position, seniority shall determine the placement. If seniority is the same for two or more employees, work history and evaluations shall determine the placement.

B. EMPLOYEE NOTIFICATION

- (1) An employee subject to layoff shall be notified in writing that:
 - a. the employee is subject to layoff;
 - b. the employee will be considered for vacant positions;
 - c. if a layoff is required the employee shall receive a separate 15-day notice prior to the effective date of the layoff; and
 - d. if laid off, tenured employees shall have reemployment rights for one year after the effective date of the lay off.

- (2) The 15-day notice of layoff shall be in writing and shall provide:
 - a. that the employee has been laid off;
 - b. the effective date of layoff;
 - c. the reason for the employee's layoff;
 - d. the employee's reemployment rights and responsibilities, if tenured;
 - e. a list of frequently asked questions about placement and employee affected benefits; and
 - f. the expected date for the employee's last paycheck, the estimated cost of COBRA, the estimated net pay for individual compensatory, annual, and holiday balances and the expected date for receipt of such payments.

C. REEMPLOYMENT RIGHTS AND RESPONSIBILITIES

- (1) Tenured employees who have been laid off are entitled to be placed on reemployment lists for any tenured or non-tenured position for which they qualify.

- (2) Tenured employees who accept a non-tenured position will become a non-tenured employee and shall not have the right to appeal disciplinary actions.

- (3) An employee's placement on a reemployment list shall be ordered according to seniority.

- (4) An employee shall be considered for any vacancy for which he or she is qualified and has designated as a desired work county on an updated employment application.
- (5) If the position is of lesser discretion and grade, the employee shall be offered the vacancy at a salary less than his or her pre-layoff salary.
- (6) An employee is entitled to reemployment rights for one (1) year from the effective date of layoff and permit the employee a right of first refusal to any vacant tenured or non-tenured position.
- (7) Employees may not be involuntarily removed from the reemployment list unless he or she:
 - a. declines one written offer to the same job title, county or adjacent county, and salary from which they were laid off;
 - b. declines two written offers for any vacancy;
 - c. becomes unqualified;
 - d. makes a false statement of material fact on his application or attempts bribery with respect to his placement on the reemployment list;
 - e. is convicted of a felony or job-related misdemeanor within one year of separation;
 - f. cannot be located by postal authorities; or
 - g. accepts another KCOJ position, tenured or non-tenured.
- (8) A tenured employee reemployed into a tenured position shall serve a probationary period and receive a probationary increment.
- (9) A tenured or non-tenured vacancy may only be filled by the reemployment process. The AOC HR Department will implement the reemployment process.

Entered this 31st day of July, 2009.


CHIEF JUSTICE JOHN D. MINTON, JR.