

**New York State
Department of Civil Service**

Committed to Innovation, Quality and Excellence

Layoff Procedures

Opportunities at work.



**Andrew M. Cuomo
Governor**

INTRODUCTION

This manual is designed to provide guidance to those responsible for administering the law and rules governing competitive class layoffs in local governments.

The information contained in this manual is based upon Civil Service Law and the rules commonly adopted by local civil service agencies. Your local civil service rules may differ.

Legislation enacted to provide an orderly procedure for layoffs of employees requires thorough understanding to achieve its purpose. The guidance intended here may best be used by those who are familiar with the law and rules. Of extreme importance is the verification of the facts in each case to which the laws and rules are applied.

Required also is an unusual degree of communication between administrators, legislators and their civil service agencies. Financial considerations are a legislative function. Personnel status determinations are civil service agency functions. All three functions require detailed and ready interchange of information. Please refer to the Reductions in Force manual for additional information on administrative procedures.

The abolition of positions does NOT automatically mean the termination from employment of the incumbents of those particular positions. Law and rules provide a system of displacement.

I. TO WHOM THE LAW APPLIES

The law and rules on layoff in municipalities apply **ONLY** to positions in the competitive class.

II. LAYOFF UNIT

The Layoff unit consists of:

1. A department of government
2. A school district
3. A community college
4. A special district

Divisions, bureaus, and sections of a department **DO NOT** constitute layoff units.

Individual schools and administrative sections of a school district or community college are **NOT** layoff units.

FOR EXAMPLE:

A County Clerk Department may consist of the following divisions and/or sections:

- a. motor vehicle
- b. court
- c. property records
- d. records retention
- e. naturalization and passport

If two Senior Clerk positions were to be abolished – and the position of Senior Clerk exists in each division or section – **THEN** retention rights would have to be established among **ALL** employees in the title of Senior Clerk in the **ENTIRE** department.

III. LAYOFF TITLE

Determine the specific official title of each position to be abolished. The classification plan and roster record are the official title sources. Designations of positions by “in house” or common use titles must **NOT** be used.

EXAMPLE:

County Clerk Department

Naturalization and Passport



Senior Clerk (Official title)

Passport Clerk (In-house title)

Records Retention



Senior Clerk (Official title)

Property Records Clerk (In-house title)

IV. CONTINUOUS SERVICE

For purposes of determining retention rights, you must include continuous service in the **CLASSIFIED SERVICE** on a permanent basis from the original permanent appointment. The classified service includes the competitive, non-competitive, labor and exempt classes.

A. Section 80.2 of the Civil Service Law defines continuous service. The following does not constitute a break in service:

1. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter.

2. An employee who has been terminated because of a disability resulting from occupational injury or disease and who has been reinstated or reappointed in the service.
3. A period of employment on a temporary or provisional basis, or in the unclassified service, which is immediately preceded and followed by permanent service in the classified service.
4. A period of leave of absence without pay pursuant to law or the rules of the civil service agency having jurisdiction.
5. Any period during which an employee is suspended from his/her position pursuant to Section 80 of the Civil Service Law.

EXAMPLE

Susan Miller – Department of Public Works

	<u>JURISDICTIONAL CLASSIFICATION</u>	<u>PERSONNEL ACTION</u>	<u>AUTHORIZATION</u>	<u>EFFECTIVE DATE</u>
Laborer	L	A	Application 10/1/83	10/5/83
Clerk	C	A	EL 74-808	10/18/84
Typist	C	A	EL 65-302	7/21/86
Stenographer Senior	C	A	EL 62-205	8/17/87
Stenographer (pt)	NC	A	Application 12/1/88	12/10/88
Senior Stenographer Secretary to	C	A	EL 71-406	7/8/89
Commissioner	E	A	RPC 11/1/90	11/4/90
Principal Stenographer	C	A	EL 78-923	6/3/93

In this case, all of Miller's service is credited in determining her retention rights.

Note that Miller was employed in a labor class position, a non-competitive class position, and an exempt class position. Since all of her employment was in the classified service and was permanent, it is counted in determining her retention rights.

B. Resignation

1. Reinstatement more than one year following resignation is a break in continuous service. Calculate service from date of reinstatement.
2. Resignation, followed by reemployment within one year in temporary or provisional status in the classified service **in the same civil division** followed without a break in service by permanent appointment **within one year of resignation** is **not** a service break.
3. An employee reinstated within one year following resignation to his/her former position or to a position for which he/she was eligible for transfer is credited with the date of original permanent appointment by the former employee.

C. Leave of Absence

1. A leave without pay pursuant to law and rules is not an interruption of continuous service.

D. Transfer

1. Transfer of an employee resulting from transfer of governmental function – credit service from date of original permanent appointment in classified service of first employer.
2. Transfer of an employee pursuant to reciprocal rules – credit service from the date of original permanent appointment by the former employer.

E. Cover-in

1. Acquisition of private employees (CSL, Section 45) - credit service from date of cover-in. Rank employees by seniority amongst themselves preceding cover-in if necessary.

F. Temporary or Provisional

1. Service in temporary or provisional status immediately **preceded and followed** by permanent status is not an interruption of continuous service.
2. Service in either provisional or temporary status which **precedes** original appointment is not credited.

G. Disabled Veterans

1. Back-date original permanent appointment by sixty months.

H. Veterans

1. Back-date original appointment by thirty months.

I. Blind

1. Those employees certified as blind by the Commission for the Blind have absolute preference in job retention. However, blind veterans are not credited with additional service time. Neither may a provisional or probationary status blind person be given retention preference over an employee having permanent status.

J. Preferred List

1. Continuous service is not interrupted by a period of time during which an employee was on a preferred eligible list.

V. **PREPARING TO DETERMINE RETENTION RIGHTS**

A. Positions to be abolished –

Steps to follow:

1. List each incumbent in the **title** to be abolished in the Layoff Unit including employees on leave of absence who encumber positions in the title to be abolished.
2. Include **all** positions currently budgeted even if vacant. Include temporary, seasonal and part-time positions.
3. Record the status of each incumbent in the present title.
4. For each incumbent, determine the date of **original permanent** appointment in the **classified** service. From that date, trace the entire employment history in the municipality.

EXAMPLE:

Abolition Title: Senior Clerk

Layoff Unit: County Clerk

<u>LOCATION</u>	<u>NAME</u>	<u>STATUS IN PRESENT TITLE</u>
Motor Vehicle	Jones, M.	Permanent
	Morris, T.	Permanent
	Vacancy	
Microfilming	Smith, A.	Permanent
Property Records	Tolan, S.	Probation
	Diaz, C.	Temporary
	Brown, H.	Provisional

B. Order of Suspension

Provisions of most municipal layoff rules refer to the treatment of both permanent and non-permanent employees. Non-permanent employee retention should

follow a sequence determined both by the municipal rule and local civil service agency policy.

C. Humane and Logical Considerations Lead to a Recommended Layoff Order
Governing Situations Not Precisely Covered By Laws or Rules

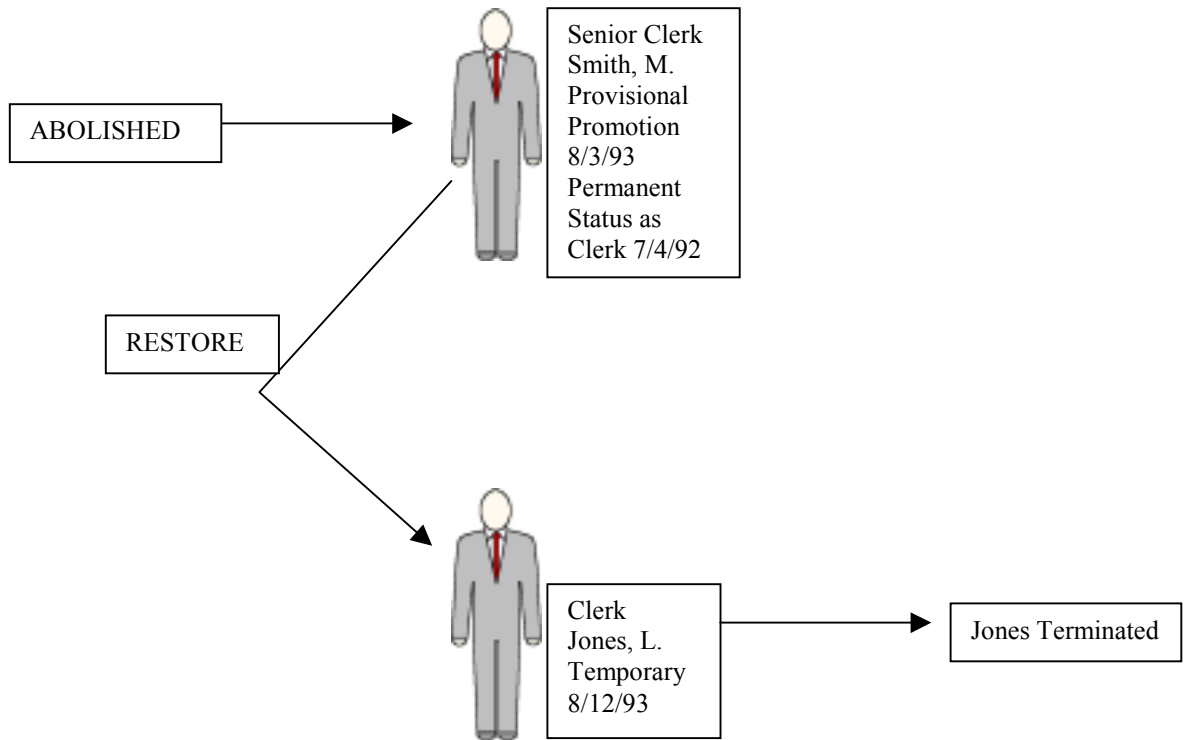
Non-Permanent Employees – Layoff Order

1. Temporary
2. Provisional
3. Contingent Permanent
4. Probationary

In the example on page 7, Diaz and Brown would be laid off in that order. Tolan would be the last person laid off among the non-permanent employees.

D. Permanent Employees

1. Among persons appointed on the same day, retention rank is determined by their rank on the eligible list from which their competitive class appointment occurred. Persons with the same appointment date, may be ranked by objective means.
2. Persons occupying positions on a non-permanent basis should be restored to the position in which they possess permanent status, if any.

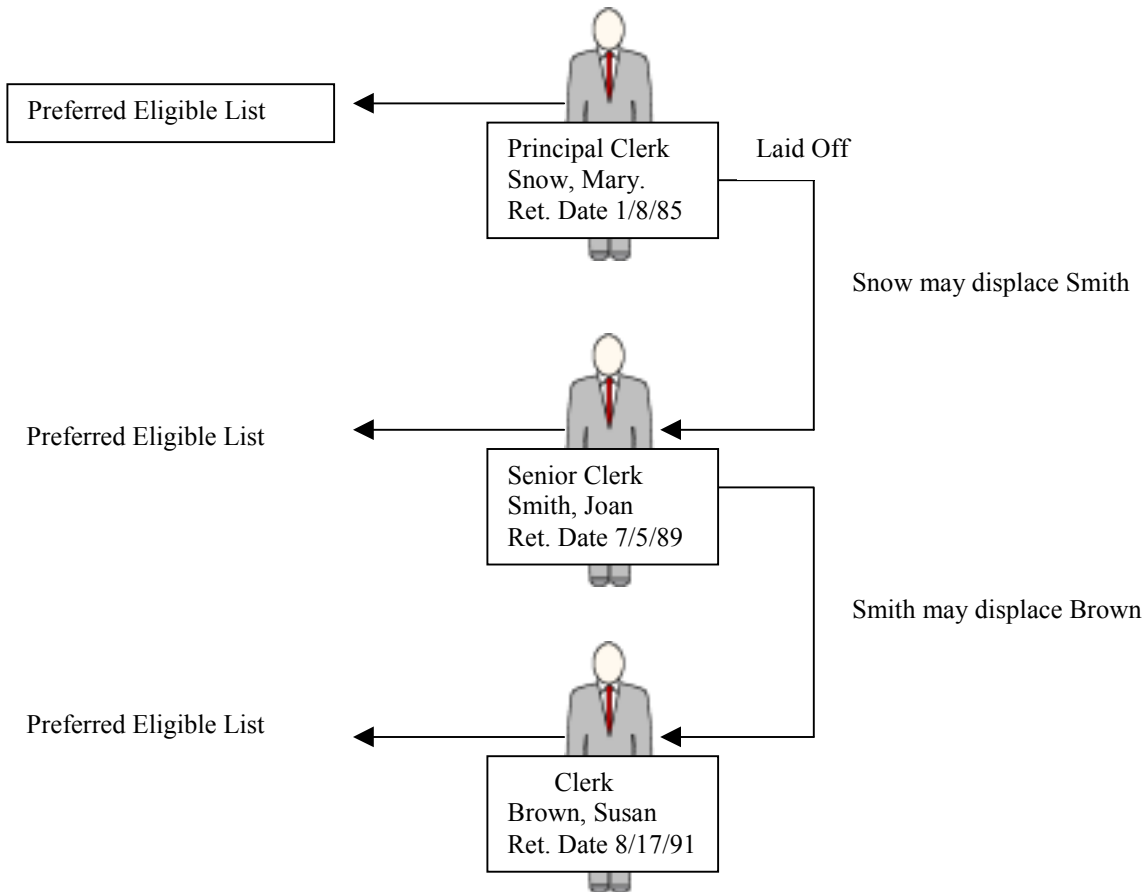


VI. DISPLACEMENT

A. Vertical Bumping

1. An employee laid off from a position to which there is a direct line of promotion has the option to displace the least senior incumbent of the next lower level position, provided that the laid-off employee has greater retention rights.

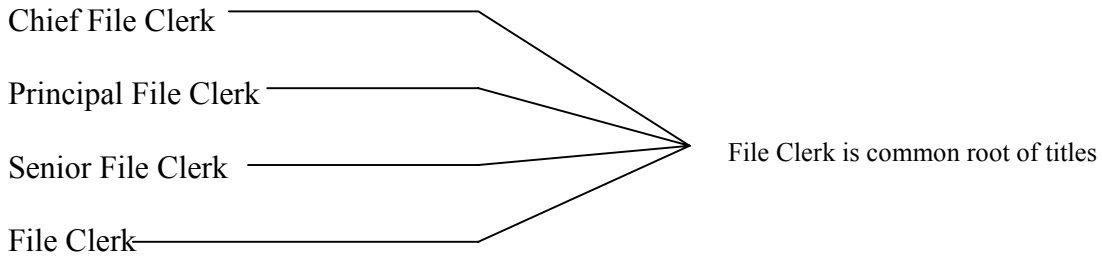
EXAMPLE:



2. The decision to bump rests with the employee to be laid off. Written commitment by the employee scheduled for layoff is required for administrative purposes. An employee who refuses to bump is laid off. However, the employee's name is entered on an appropriate preferred list.
3. The laid-off employee may displace only to an occupied position in the next lower title in direct line of promotion.
4. Displacement may occur only if the incumbent of the lower level position has less retention rights than the incumbent of the higher level position.
5. Exceptions, Cautions, Definitions

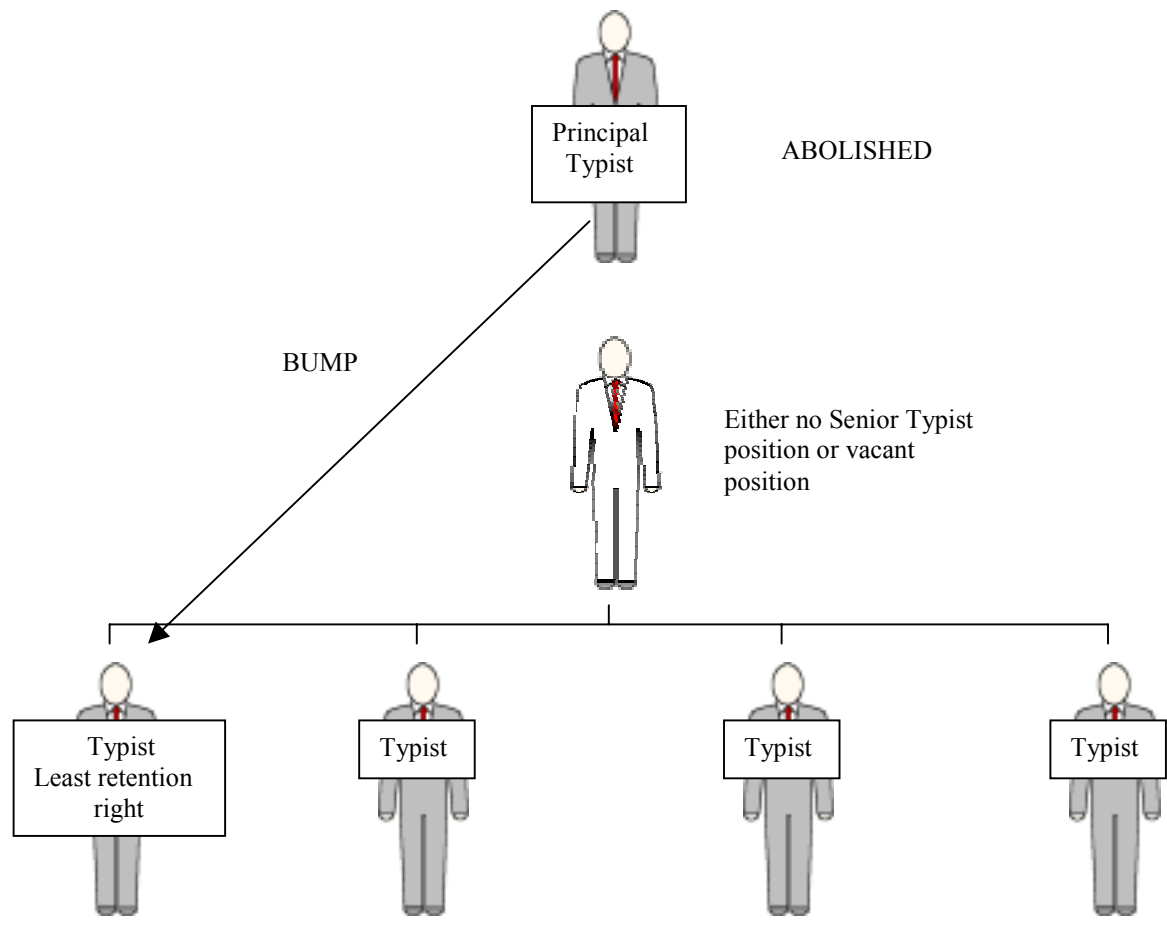
- a. Direct line of promotion is a narrow concept. Titles in direct line are those with a common root.

EXAMPLE:



In the above example, Senior Clerk would not be in direct line of promotion.

- b. Next lower occupied title.

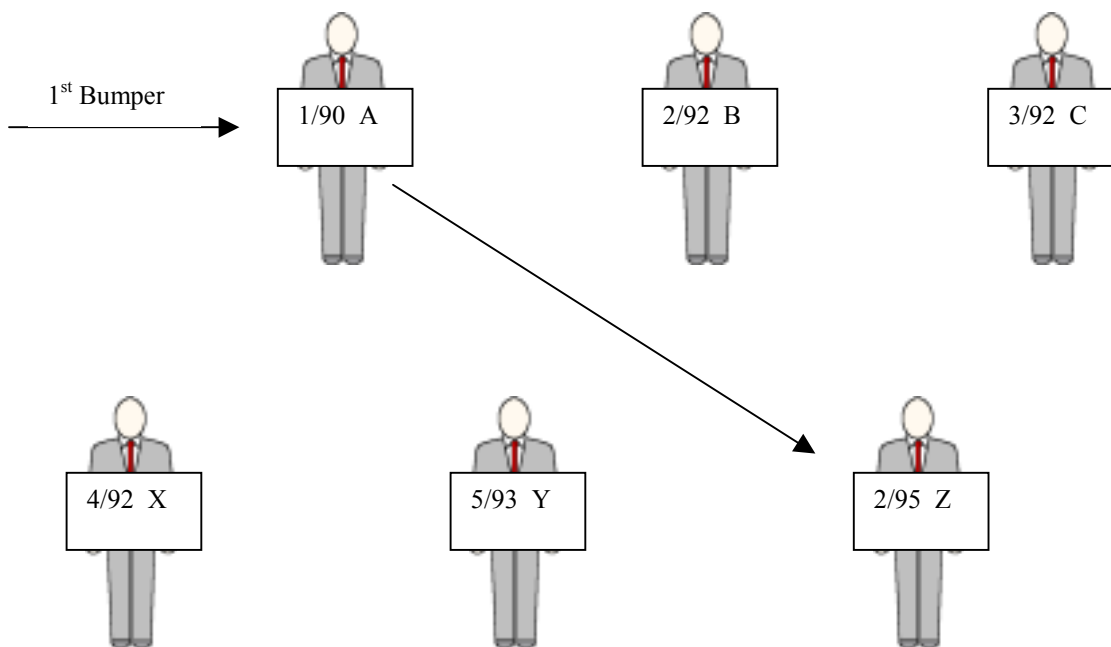


In the above example, bumping to the next lower occupied title forces displacement of the Typist with the least retention right. The same bumping pattern would occur if a Senior Typist position existed but was vacant.

c. Order of Bumping

When more than one occupied position in a title is abolished, the person with the most retention rights must be offered the opportunity to bump first.

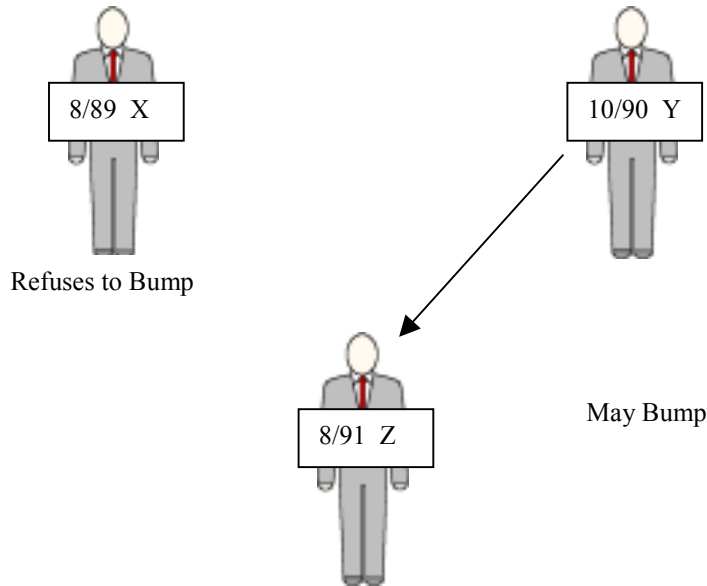
EXAMPLE:



In the above example, A has the first opportunity to bump; B bumps second; C bumps third.

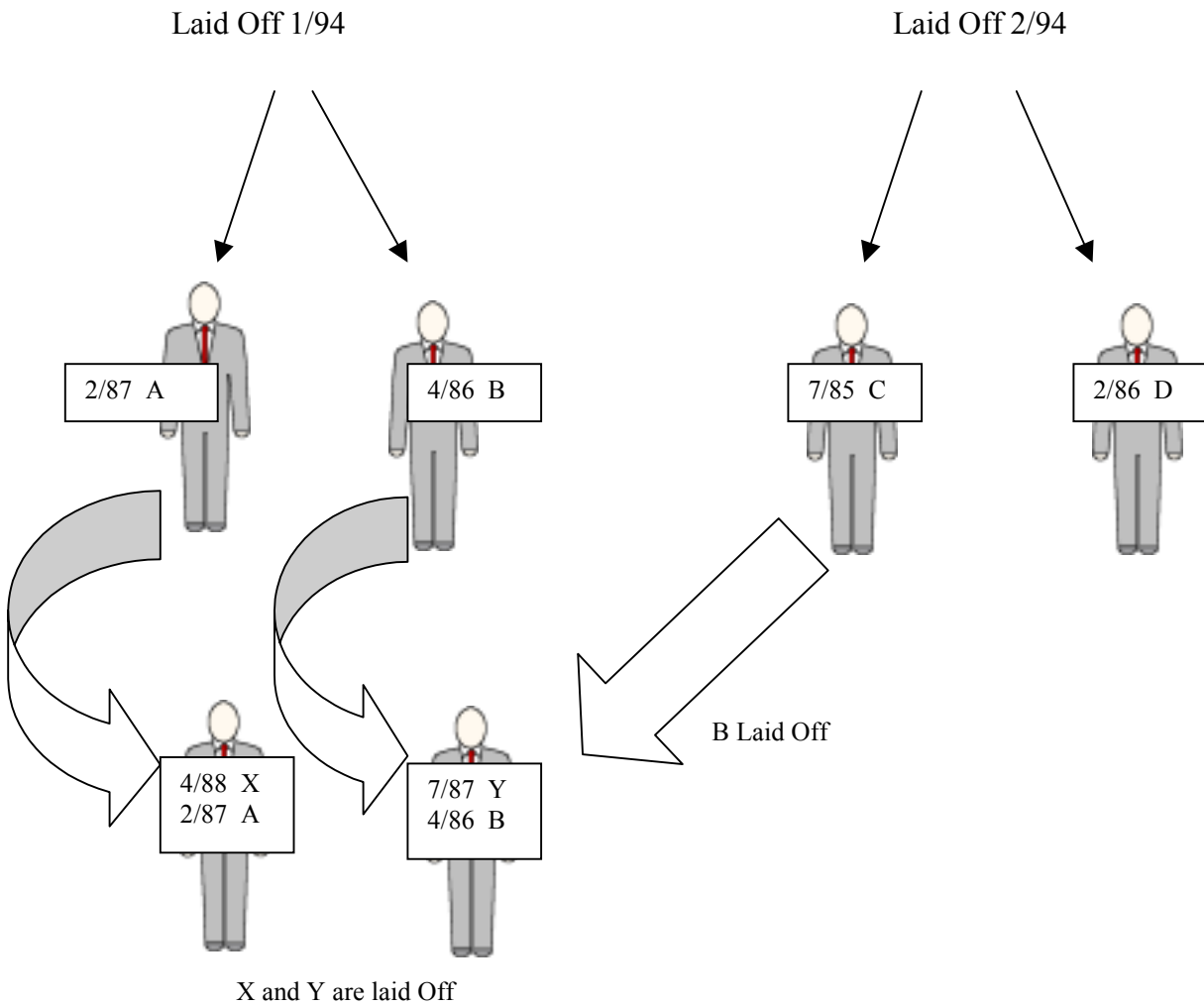
d. Refusal to Bump

An employee who chooses not to bump must still be laid off. Such refusal will not protect the lower level employee.



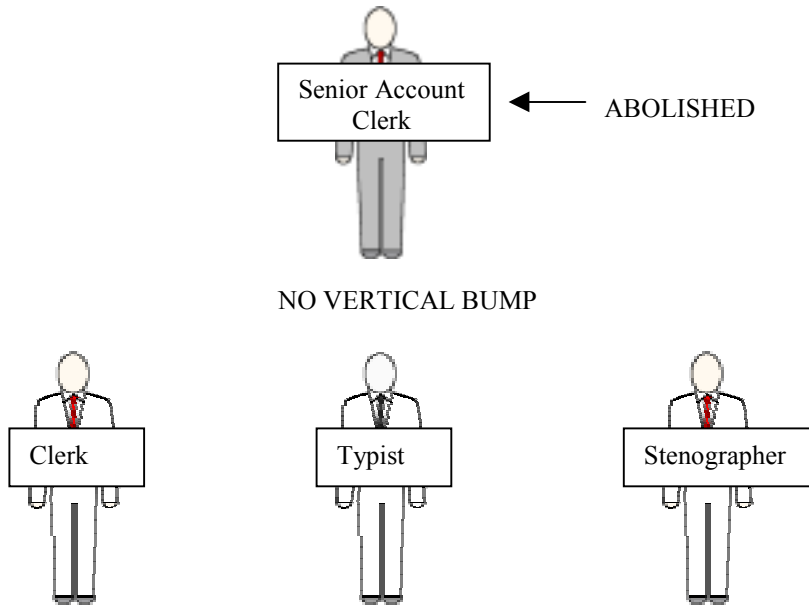
e. Bump and be Bumped

A laid-off employee has bumped and now occupies a lower level position. Subsequent layoffs would place that employee in an “occupied position” subject to bumping.

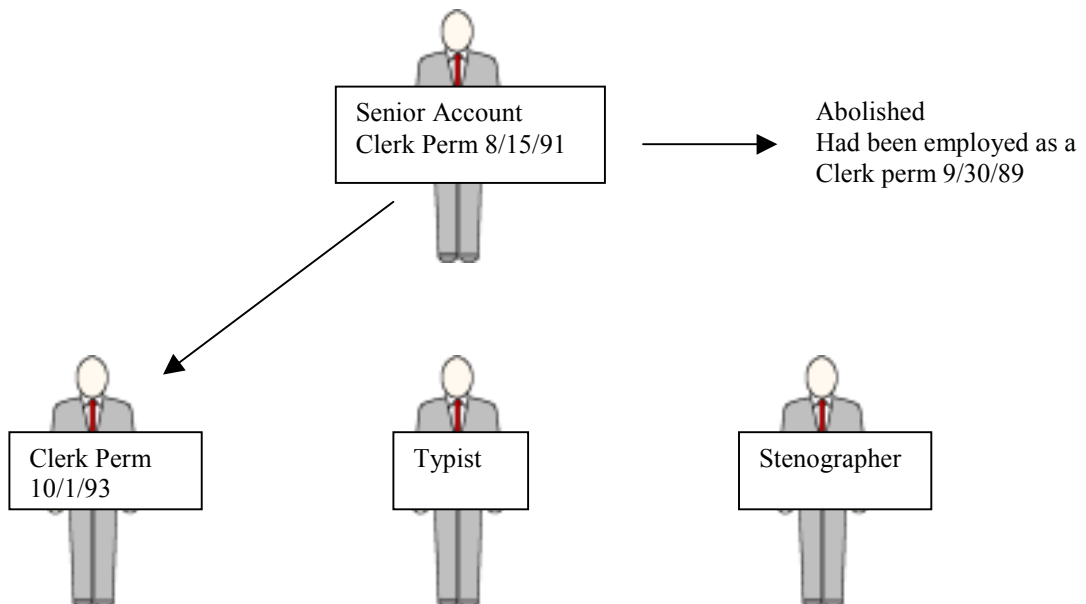


B. Retreat

1. When vertical bumping cannot occur – **because there is no occupied lower level position in direct line of promotion**, then –

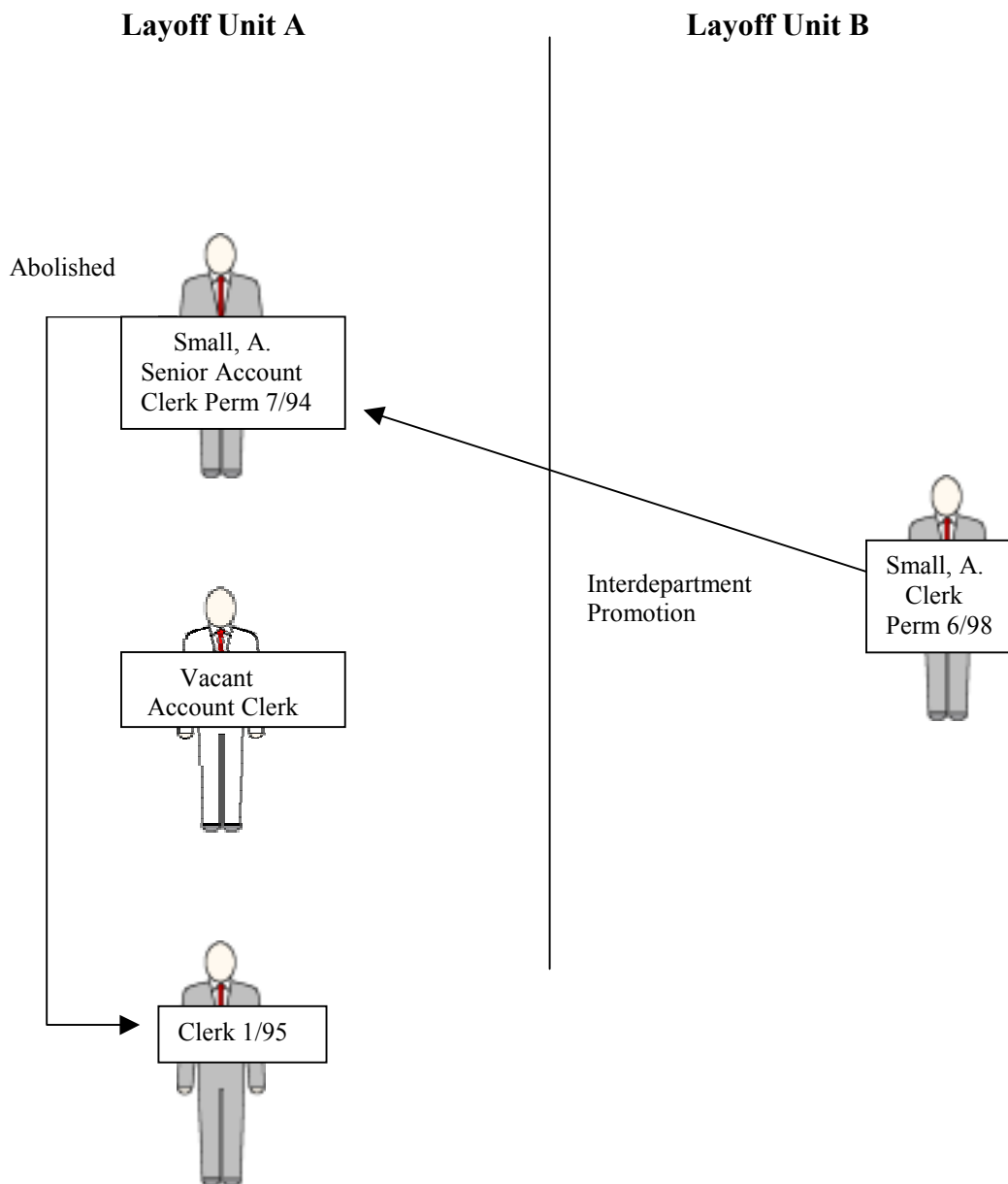


2. The displaced employee may retreat to a position in the same layoff unit in the title he/she **last served** on a permanent basis prior to the current position.



3. Service in the previously held title may have been in the same or another layoff unit.

EXAMPLE:



Note: A common misconception is that an employee who cannot bump because of less retention rights than the incumbent of the lower level position may retreat. **Retreat can**

only occur when and only when there is no lower occupied title in a direct line of a promotion.

4. Conditions for retreat
 - a. Service in the prior position must have been satisfactory.
 - b. The retreat position must be competitive.
 - c. The retreat position must be in a lower salary grade.
 - d. The incumbent must have less retention standing.
 - e. A title change in the retreat position without substantial change of duties does not prevent retreat. On reclassification, some positions titled Clerk I were titled Clerk with no significant change in duties. A displaced employee who has been promoted from Clerk I might retreat to Clerk.
 - f. Service between the retreat title and the title from which displacement occurs does not prevent retreat, providing the intervening service was not on a permanent basis. The Clerk – Small (diagram p. 15) might have had temporary or provisional service in a variety of titles (File Clerk, Senior Clerk, Account Clerk). This non-permanent service does not alter the retreat title – Clerk.
 - g. Retreat may not be to a position in the title twice removed from the current title. If the title in which the employee **last served** has been abolished, the employee has no retreat rights.

Layoff Status Record

This sample record form was designed to provide a simple means of recording and verifying the retention rights of employees in a layoff situation. The form may be amended to accommodate special needs or to facilitate understanding and accuracy. For example, the column recording appointment date is a convenience rather than a necessity.

The following numbered items correspond to those on the Layoff Status Record:

1. Enter the name of the layoff unit. See definitions for layoff unit if needed.
2. Layoff title is the title scheduled for abolition. Use official title only.
3. Bump title is the lower level position in direct line of promotion to the abolished title.
4. List names of incumbents of positions in title to be abolished. Also enter vacant positions.
5. In large layoff units, grouping names by sub-units may help assure a complete unit.
6. APPT STAT – Enter status of the incumbent in present title. Use roster card abbreviations – PERM for permanent, PROV for provisional, etc.
7. APPT DATE – Enter the date of appointment in present position.
8. PERM CLAS SRVC – Determine and enter first date of permanent appointment in the classified service. Be certain that all service has been continuous.
9. VETS CODE-BLND – Enter “BLND” if employee is certified blind. Record veteran’s status:

NV – Non-Veteran

V- Veteran

DV - Disabled Veteran

10. RETN DATE (Retention Date) - Complete computations and enter date from which seniority for retention right starts.

11. RETN RANK (Retention Rank) - Indicate numerical order of layoff. Use inverse order of Retention Dates. Rank "1" is first to be laid off.

12. EXPLANATORY REMARKS – This space may be used for entries that will clarify any information entered. Among the possible uses are the entry of:

- a. Budget line number
- b. Social Security number
- c. Cover-in per Civil Service Law, Section 45
- d. Notes on reinstatement or transfer
- e. Retreat title

1. DEPARTMENT**2. LAYOFF TITLE****3. BUMP TITLE**

NAME	APPT	APPT	PERM	VETS	RETN	RETN	EXPLANATORY REMARKS
	STAT	DATE	CLAS	CODE	DATE	RANK	
			SRVC	BLND			
4.	6.	7.	8.	9.	10.	11.	12.
5.							

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**Issued by:
New York State
Department of Civil Service
Albany, NY 12239**

April 2008