



Layoff Resource Guide

A handbook for managers and supervisors

April 2016

INTRODUCTION

A layoff is difficult for supervisors and employees. This guide is designed to assist managers and supervisors in planning and implementing a layoff. The guide presents a general overview and therefore is not intended to substitute for the layoff provisions outlined in UM policies and collective bargaining agreements.

PREPARING FOR LAYOFF

In preparing for a layoff, first carefully document the reasons and the goals for the layoff. Departments sometimes mistakenly conclude that the reason for a layoff (or a job elimination), such as cutting costs, will be obvious and does not need to be explained further. But the actions of managers will be judged after the layoff. What happens if savings are not realized, the savings are reinvested in a way that the remaining staff views as imprudent, or if something happens and the department needs to hire shortly after the layoffs take place? The reason given for the layoff can be challenged as a pretext to cover up the manager's "real" intent – perhaps to eliminate or reduce the number of employees in a protected class. Careful preparation and research done during the planning stages of a layoff will help you protect yourself against such claims.

- Identify the reasons the layoff is necessary and document the **business** purposes for it. Reasons for layoffs can include cuts in grants, technological changes, a poor financial forecast, overstaffing, reorganization/reallocation of resources, changes in institutional priorities, or elimination of jobs that have become unnecessary. All reasonable alternatives must first be considered.
- Carefully consider and document whether goals can be achieved through other means including possible sources of additional revenue or cutting expenses (including reducing employee hours). If the department has proof it has considered alternatives, it will be easier to justify that the layoff was necessary for business reasons only.
- If the layoff is for financial reasons, inform your department of the financial concerns ahead of time. In addition to staff suggesting additional revenue sources or operating expense reductions, members of your staff who have been considering leaving the University for other employment or retiring, or who prefer part-time employment may come forward.
- Determine the critical services of the department and what skills, knowledge, and abilities are necessary to meet the department's goals.
- Carefully review the current structure and the current positions and tasks to determine which tasks and positions can be consolidated or eliminated while still meeting departmental goals. (If any new and different positions need to be created in place of old ones, job descriptions should be written along with reporting relationships, duties and qualifications.) This will help move toward a more efficient organizational structure where important tasks are accomplished with fewer employees.

SELECTING EMPLOYEES FOR LAYOFF

Up to this point, we have identified only positions based on accomplishing the department's goals - no individual employee has been considered. The manager should have documented the current organizational structure and the structure after making changes, clearly defining these changes.

After designing the new organizational structure, the next critical step is to establish fair and defensible criteria for selecting the individuals to be laid off. The more objective the criterion (such as length of service or length of time in a position), the less the layoff is likely to be questioned.

There are certain criteria that may not legally be considered in layoff decisions, such as whether employees are close to retirement or have health concerns or physical ailments that affect their ability to perform their jobs. There are other circumstances that may indirectly affect layoff decisions such as employees who are currently on leave, employees who have recently come back from leave, or employees who have filed grievances or other complaints. Layoffs of employees in these situations could form the basis for claims of retaliation. Human Resources is available to discuss these concerns and suggest approaches which will minimize legal risk.

Protected classes of employees that need to be dealt with very carefully include employees who are members of a certain race, color, ethnicity, national origin, religion, gender, age (over 40), disability, or veteran status. This does not mean that these employees cannot be included in a layoff; it does mean that the criteria for the layoff must be very carefully planned and conducted in compliance with the law.

Criteria which may be considered include: job skills, performance appraisals, disciplinary record, job classification, and seniority. These criteria must be reviewed carefully to be sure they are nondiscriminatory and do not have an adverse impact on protected classes of employees. If they do, then you should either change the selection criterion, or demonstrate that using this criterion is a business necessity.

- **Job skills:** Determine which functions are needed to continue to run the organization efficiently after reorganization. Determine skills, knowledge, and abilities needed to perform those functions and identify employees with those skills. Try to minimize disruption by keeping position incumbents whenever possible. If you use this criterion, make sure that you have documentation of your employees' job skills, knowledge, and abilities before using these factors for layoff.
- **Performance appraisals:** Although basing layoffs on employees' performance ratings might seem ideal, using these ratings could leave you vulnerable to discrimination claims because few managers maintain consistently well-documented, up-to-date, and objective employee performance appraisals for all employees. In order to consider performance appraisal, there must be a significant difference between ratings, e.g. "meets expectations" vs. "below expectations". It is not considered significant for one employee to have a higher "meets expectations" rating than another employee's "meets expectations" ratings. Differences in ratings must be supported by specific instances of performance. For long term employees, comparing only the most recent performance appraisal is not acceptable.
- **Disciplinary record:** An employee's official disciplinary record (this does not include informal counseling or anecdotal notes) may be used to distinguish between employees for layoff. However, in order to use the disciplinary record, it must follow the progressive guidelines outlined in HR 601, and there must be a pattern of disciplinary action culminating in a recent disciplinary action (within the last six months), i.e. a layoff should not be based on the recent discipline of an employee who had a successful discipline-free career up to that point.
- **Job classification:** Part-time, temporary, or probationary employees should be considered for layoff before full-time, non-probationary employees.
- **Seniority:** If employees have substantially equal skills, knowledge, ability, and training to perform the necessary functions, layoffs of non-management employees must be determined in reverse order of seniority, i.e. most recently hired, first to be laid off. If you are concerned that implementing a seniority-based layoff might have an adverse impact on a legally protected group of employees in your department who have been employed at the University for a long time, you should contact Human Resources or OEO. University policy (HR 117) first considers seniority by position or occupational group within the department (for employees in similar positions), next departmental seniority, and finally University (not campus) seniority.

PLANNING AND PREPARATION FOR THE NOTIFICATION MEETING

Careful planning prior to the layoff notification meeting can help ensure a successful outcome. A successful meeting will be one in which the employee feels he or she has been treated with compassion, dignity and sensitivity; legal problems for the organization have been avoided; and trauma to the remaining workforce has been minimized so they can focus on working productively.

Decisions must be made regarding who will deliver the message, the content of the message, and the location and timing of the meeting. Because the meeting results in emotional reactions for both the terminated employee and those who remain part of the organization, it is essential that managers prepare and practice. And, don't forget, take care of yourself! This can be an emotionally and physically draining time. Diet, exercise and proper rest are critical during these peak stress events.

Timing of the Meeting

Where possible avoid significant dates – birthdays, anniversaries, family celebrations, holidays, religious holidays, etc. Select a day not immediately prior to a weekend, holiday, or scheduled vacation for either you or the employee. Many people want to schedule the layoff notification meeting on Friday afternoon – to put it off as long as possible or to avoid dealing with remaining staff immediately following the layoff. This is not recommended because it forces the laid off employee to worry about it over the weekend without access to resources that are necessary to move forward. In the long run, you will probably find that it is more difficult for you also because it may prevent you from quickly addressing festering organizational or human resources issues. Generally, the best time is early in the week, preferably Monday or Tuesday. This gives the employee a chance to talk with someone about the termination and to begin taking some positive action toward the next career step rather than having to wait all weekend before taking action. You should plan for enough uninterrupted time to complete the meeting and to fully answer the employee's questions.

Who Delivers the Message

The employee's immediate supervisor should deliver the message. Depending on how the employee is expected to react, the supervisor may wish to include his or her supervisor, department head, or another member of management. When others are present, they should only serve as support and as witnesses. Human Resources should not be included because the employee being laid off may regard this as an alliance with management and may feel that this reduces his or her later recourse. Managers who are uncomfortable with the notification process should contact Human Resources for additional support prior to the meeting. Campus police should not be involved unless a volatile reaction is expected from the laid off employee.

Location of the Meeting

It is recommended that a "neutral ground" be used for the meeting - a place that provides sufficient privacy or a conference room away from the employee's work area. Whenever possible avoid using your office. That will make it easier for you to end the meeting by getting up and leaving after the message has been delivered and avoids the awkwardness of a protracted conversation. Keep the seating arrangement informal if possible.

Length of the Meeting

The meeting should be no longer than 20 minutes; any longer opens up the possibility of derailing the conversation and encouraging debate. However, it should be long enough so that you are not viewed as insensitive. The actual notification should occur within the first few minutes of the start of the meeting.

Practice Delivering the Message

It is important to know what you want to say. Communicating the message in a brief, concise and sensitive manner is your goal. To help achieve this, prepare a script and then rehearse it. Anticipate the types of reactions you may see and questions you may get from the employee and be prepared to deal with them.

CONDUCTING THE MEETING

Notifying an employee that they have been laid off is difficult. No one likes to be the bearer of bad news, and no one likes to receive it. This section will assist those responsible for conducting the notification meeting. It has been broken down into its basic steps which will be helpful because the approach is logical and sensitive and the steps are brief and final.

Meeting Outline/Overview

Step 1: Greet the Employee

Make the employee feel comfortable; keep it friendly, but succinct.

Example: *"Hi John, thank you for meeting with me. Please have a seat."*

Step 2: Provide a Warning and Rationale

The opening statement should be brief and to the point. It should contain the facts and background of the situation and why this decision is necessary.

Example: *"John, I have important news that impacts you. UM-St Louis has lost a substantial amount of state funding and this has resulted in the need to eliminate a number of jobs. Our department is one of the areas most affected and a 20 percent reduction in the workforce is required."*

Step 3: Deliver the Message

Speak slowly and calmly. Tell the employee clearly and briefly that he or she is laid off and why. Provide the employee with a letter notifying him or her in writing of the layoff. The letter should contain an effective date of the layoff (end of the two week notice period), a reminder to turn in keys, ID, and any other items belonging to the University, and encourage the employee to meet with Human Resources about benefits, assistance with his or her resume' and job search, transition assistance if eligible, and any concerns. Allow the employee time to read the written notice of layoff.

Example: *"I'm meeting with you because I must, unfortunately, inform you that your position has been eliminated. We do not have another position to offer you. This means you are being laid off effective today. Here is your official letter" (sample template follows):*

Dear _____:

This is to provide you with two weeks' notice that the position of _____ in _____ (department) at the University of Missouri-St. Louis is being eliminated. Your employment with the University will be terminated effective _____ (two weeks from date of letter). Please turn in your keys, UMSL ID, and any other University property immediately. Please contact Joann Westbrook (516-5639) about University benefits and transition assistance. For additional assistance with your job search or other matters related to this job elimination, please contact Human Resources.

I am grateful for your service to the University of Missouri-St. Louis and wish you well in your future endeavors.

Give the letter to the employee and allow him or her time to read the letter and process the information.

"As you may know, we are in a time of (budget cutbacks, reorganization, etc.) Although we have done everything possible to minimize the impact of these ____ on our department, we still need to implement some very difficult decisions. I would like you to know that this action is not easily taken and only after long and careful review of many options. It is a final decision.

(Pause)

"I know this is difficult news. Is everything I've said clear? Do you have any questions?"

Step 4: Listen and Respond with Empathy and Compassion

Wait in silence for a reaction from the employee. Answer questions honestly and appropriately. Listen carefully and make eye contact with the employee. Assess the employee's emotional state and/or behavior to see if he or she might be a threat to himself or herself or others. If so, call Human Resources for assistance. Avoid trite statements such as, "I know how you feel", "It's not as bad as it seems.", or "Consider this a blessing in disguise." Even if you may wish to continue with the meeting, consider whether it is in the best interests of the employee or if he or she will hear any further information at this time.

Example: *"What would be most helpful for you now?"*

"Is there someone I can call for you?"

"Would you like to take a brief break before we continue?"

"Would you like to leave for the rest of the day and continue this discussion first thing tomorrow morning?"

Step 5: Provide Clear Structure and Next Steps

Since the employee may be in shock and may not understand what is or has been said, care should be taken to clearly outline his or her next steps, which are as follows:

- Discuss any operational or transition issues and transfer of duties
- To get the employee looking ahead, schedule meeting with HR representative

Example: *"HR is available to discuss your benefits, transition assistance and unemployment compensation and to assist you with your resume' and job search. I'd like to send you over there to meet with them right now (or schedule a meeting with them for you)."*

- Return University property
 - Building/Office/Desk/Storage keys
 - Employee ID badge
 - Laptop, Cell phone, Pager
 - Uniforms
- Make arrangements to retrieve personal belongings
 - Have boxes available if you want the employee to empty his or her office immediately, or;
 - Discuss a possible time when he or she can return to retrieve belongings

Step 6: Close the Meeting

When closing the meeting, offer support and best wishes and thank them for their work.

Example: *"John, I want to thank you for your service to our department and to UMSL and I regret having to take this action. I wish you the best of luck and if I can be of further help, please let me know."*

DO'S & DON'TS FOR TALKING WITH EMPLOYEES

Do

- Speak to the employee in a private place
- Get right to the point
- Be gracious – express your gratitude for the employee's contributions to the unit and to the University and your sympathy about the termination.
- Briefly explain the reasons for the layoff
- Listen to the employee and wait for a response
- Restate the message if necessary

- Keep the employee focused on his or her situation, refocus if necessary
- Give the employee his or her layoff letter
- Clarify the separation date
- Send him or her to Human Resources to meet with a Benefits representative
- If needed, schedule a later meeting to discuss logistics (i.e. turning in belongings, obtaining personal items, transferring duties)
- Honor the employee's personal space
- Listen carefully, and after the meeting, document anything that could lead to a potential problem. Consult with HR, if appropriate.
- If at any time you feel at risk in the conversation, remove yourself from the conversation
- Offer support and encouragement; treat the employee with compassion and dignity.
 - Encourage the employee to use the available resources (Benefits, Employment counseling, etc)
 - Be available in the next few days to meet with the employee if he or she has additional questions.
 - Understand and appreciate the employee's position.
 - Focus the employee on the next steps in his/her future.

Don't

- Engage in small talk
- Allow the meeting to be interrupted
- Blame others for the actions being taken
- Use humor
- Be apologetic
- Defend, justify or argue
- Identify others being laid off
- Allow employee to compare his or her situation to others in your department
- Discuss the employee's performance, attendance, health, conduct, or attitude
- Lay off employees in a group
- Try to minimize the situation
- Personalize the anger
- Say that you disagree with the decision
- Make comments like: "Who knows how long I'll be here."
- Negotiate the separation date or transition assistance, or try to reverse the decision
- Change your mind or even indicate that there is a possibility that you might change your mind
- Indicate to the employee that there is a possibility that he or she might be recalled
- Discuss or try to resolve personal or family concerns (however, it is okay to listen with empathy)

RECOGNIZING AND RESPONDING TO REACTIONS

Reactions of employees will be unique and specific to the individuals concerned. However, there are some familiar patterns of behavior that are predictable or considered normal. Generally four types of reactions occur: denial, shock, anger and acceptance.

Some employees may:

- Sit in stunned silence or go into shock and not accept what is happening
- Appear confused, tearful, or break down emotionally
- Get angry, defensive, resistant and/or threatening

- Ask “why me” questions
- Argue that someone else should be laid off because he or she is not as capable, has less seniority, etc.
- Challenge the manager’s authority or ask to speak to someone in charge
- Become angry and verbally attack the manager
- Criticize the university
- Threaten with legal action or other formal action, such as retaliation complaint
- Bring up their personal obligations – mortgage, kids in college, debts, etc.
- Plead his or her case or bargain for another chance
- Try to make it a personal or performance issue

What to do:

- Stay in control of the meeting and your emotions at all times
- Show compassion and empathy
- Give the employee time to accept the news
- Offer to take a brief break or delay the rest of the meeting until the employee is composed
- Calmly let the employee know that he or she is free to make whatever calls/contacts they feel are appropriate, but the decision is final and will be implemented
- Be sure the employee knows the details are in writing
- Repeat that the decision is not about performance or about other employees
- Be supportive and offer positive suggestions, where appropriate
- Acknowledge the anger
- Avoid becoming angry or defensive and remain calm. Keep the discussion moving through the points that need to be covered.
- If necessary, end the discussion.
- Take all actions necessary to protect the separating employee, the other employees, and the reputation of UMSL.
- Avoid:
 - Extensive justification or detailed discussion of the layoff
 - Criticism of “higher authority” for the decision or for forcing you to make it
 - Arguing over past performance, old grudges, history of abuses, previous problems or issues
 - Trying to take away “bad feelings” by excessive reassurances
 - Derailing the conversation by discussing side issues
 - Seeming apologetic or making promises that cannot be kept

Anticipated Questions and Statements

By anticipating tough questions and statements and planning your responses, you will be more effective in the notification meeting. The following are examples of common statements or responses from employees, and recommended responses.

Statement: “I can’t believe this is happening to me.”
 Response: “I realize this is a difficult moment for you.”

Question: “Are you telling me I’m fired?”
 Response: “No, you are not being fired; you are being placed on layoff.”

Question: “Why me?”
 Response: “The realities of the significant budget reductions within our institution require drastic changes.”

Question: "But why did you pick me?"
Response: "As a part of the University-wide budget reductions, your position has been eliminated."

Question: "What did I do to deserve this?"
Response: "This isn't about you, it's about your position and the budget reductions."

Question: "Are you getting rid of Jones, too? He's much worse than I am."
Response: "I know this must be difficult for you, but we're here to discuss your situation. I'm not at liberty to discuss others affected."

Question: "Am I the only one being laid off?"
Response: "I know this must be difficult for you, but we're here to discuss your situation. I'm not at liberty to discuss others affected."

Question: "How about a transfer? Or at least wait until next year?"
Response: "Before deciding on your notification, we looked at all possible alternatives. There are no current possibilities for transfer or delay."

Statement: "I don't accept this at all. I'm going to the president...Chancellor...newspaper."
Response: "Do what you feel you need to, however, the realities of the significant budget reductions within our institution require drastic changes."

Statement: "I don't accept this at all. I'm going to file a grievance."
Response: 1) "Well, that is an action on which you will have to decide.
2) (If applicable) An agreement accepting transition assistance will waive your right to file a grievance challenging the layoff."

Statement: "Well, I think you're discriminating against me because of my age...my sex...my race, etc."
Response: "That's not so. As I said before, the reason is due to a substantial decrease in funding in turn requiring us to reduce the total number of positions."

Statement: "I'm going to sue you. You can't get away with this."
Response: "Well, that's an action on which you will have to decide."

Statement: "You're going to regret this." Or other threatening statements
Response: *Note to Manager: Sometimes no response is appropriate. However, if at any time you feel your safety is at risk, end the conversation and remove yourself from the situation.*

Question: "I have so many projects. Can I work one more month?"
Response: "No, the significant budget cut requires that your position end _____."

Question: "What about my benefits?"
Response: "Human Resources will answer your benefits questions. The benefits staff in HR are expecting you."

Question: "Is there a chance of being rehired if there are openings?"
Response: "Yes, and I encourage you to check the career opportunities online on a regular basis and stay in contact with HR."

Question: "Are other employees with less seniority being kept?"
Response: "I know this must be difficult for you, but we're here to discuss your situation. I'm not at liberty to discuss others affected."

Question: "Couldn't you have accomplished this by attrition?"
Response: "We are in need of cutting our overall budget immediately and cannot afford to do it gradually."

Statement: "I was just told or promised a secure future or another position in the University."
Response: "You may have been given this impression in past discussions, however, there has been a significant change in our financial outlook."

MANAGING THE REMAINING EMPLOYEES

Reactions of employees who remain after a layoff vary greatly, but it is definitely an emotional time. Experiencing feelings of relief, fear, anger, cynicism, and shock is not uncommon. They may have questions such as, "Will I be next?"..."Why was I so lucky?"... "What will happen to my friends?"..."Why did UMSL do this?" A negative attitude, insecurity and resistance to change may surface.

Timely communication with remaining employees is imperative so that they can begin to focus on their work and the challenges of the future.

- Schedule meetings with all the departmental employees as soon as possible after the notification has occurred
- Communicate information about the following topics
 - The department's rationale – explain what jobs were selected for layoff and why. It is important that it is clear that objective criteria were used to determine which employees would be laid off – not subjective, random, or political criteria
 - Changes in work responsibilities
 - Changes in reporting relationships
 - The department strategic plan
- Acknowledge the feelings and concerns of employees:
 - Do not place blame on leadership
 - Solicit and legitimize feelings and concerns
 - Do not get defensive, do not apologize
 - Understand that the situation is stressful
- Be honest about situations that are not resolved; agree to provide information as soon as possible
- Communicate respect and concern for those laid off
 - Do not downgrade the laid off employee(s)
 - Focus on the positive things the company is doing to assist the laid off employee(s) – Transition Assistance, availability of outplacement services, etc. These services demonstrate to remaining employees that UMSL respects and cares about its employees.
- Discuss next steps. Focus the remaining employees on the future rather than what has just occurred. A common response to layoff is a feeling of helplessness and lack of control. Employees may experience depression, stress, or lack of initiative and innovation. To help empower employees, involve them in the following:
 - Have department meeting(s) to refocus goals, roles and responsibilities
 - Ask for suggestions for improving department effectiveness
 - Meet with individuals whose jobs are changing to clarify roles, objectives and career opportunities
- Manage by walking around and making yourself available for guidance and support
- Do what you can to get things back to as normal as possible
- Thank employees for the continued support but make no promises or guarantees about the future
- Stress that staff members are valued and important and why

Important points to remember...

- Meet with all employees, not just a selected few
- Don't give information you are not sure about or make promises you can't keep. It is important to maintain your credibility at this sensitive time.
- Be available and accessible
- Encourage employees to discuss their feelings and concerns
- Individuals may need time to absorb what has happened, so be patient with "surviving" employees. Be prepared to work with employees in a compassionate and realistic way given the stress of the situation.
- Try to include employees in the decision process when structuring new assignments where appropriate, keeping in mind additional work assignments given immediately after notifications may be difficult to accept.
- Avoid inappropriate "humor" as an attempt to release tension
- Keeping employees satisfied and motivated is critical to your organization's success. To motivate your employees:
 - Be respectful: Communicate information openly and consistently and seek employee input on business decisions that affect them
 - Show appreciation and recognition: Employees are probably working harder and longer, and they should be recognized and praised whenever possible

Rights of Laid Off Employees

- Notice Pay: Staff employees who are laid off are entitled two weeks of notice pay. At the end of the notice pay period the employee's vacation balance will be paid out in a lump sum on the employee's final paycheck for regular employment.
- Transition Pay: Full-time staff employees who are laid off are eligible for one week of transition pay (minimum of 4 weeks, maximum of 26 weeks) for each year of continuous regular employment immediately prior to the layoff, regardless of the source of funding for their positions. However, staff employees who are bound by contract may be limited by the term of the contract. Transition pay is paid out according to the regular pay cycle. It ends if the employee accepts another full-time position with the University. Temporary or part-time employment at the University will not affect transition pay.
- Layoff Leave of Absence: Full-time staff employees with more than five years of service will be placed on a one year leave of absence. Full-time staff employees with less than five years of service will be placed on a three month leave of absence. During the layoff leave of absence, employees will be eligible to continue their benefits at the active employee rate and will be given preferential consideration (i.e. they must be eliminated from consideration before other candidates can be considered) for openings in their departments for which they apply.
- COBRA: Following the layoff leave of absence, employees will be notified of their right to continue their benefits through COBRA. The qualifying event for COBRA eligibility is the effective date of the layoff leave of absence. Laid off employees may be eligible for a COBRA subsidy under the ARRA.
- Unemployment Compensation: Missouri employees who are laid off should contact the Division of Employment Security as early as possible.
- Grievance Rights: Regular, non-probationary laid off employees can file a grievance contesting the layoff. However, in order to be eligible for transition assistance, employees must agree to waive their grievance rights.